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## SCHEDULES

### SCHEDULE 23

Section 86(1)

#### DATA-GATHERING POWERS

##### **Modifications etc. (not altering text)**

- C1** Sch. 23 applied by S.I. 2009/470 reg. 33(1) (as substituted (6.4.2013) by [The Education \(Student Loans\) \(Repayment\) \(Amendment\) Regulations 2013 \(S.I. 2013/607\)](#), regs. 1(1), 9))
- C2** Sch. 23 applied (16.6.2016) (with application in accordance with reg. 1 of the amending S.I.) by [The Education \(Postgraduate Masters Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#), regs. 1(1), 43(1)

#### **PART 1**

##### POWER TO OBTAIN DATA

###### *Power to give notice*

- 1 (1) An officer of Revenue and Customs may by notice in writing require a relevant data-holder to provide relevant data.
- (2) Part 2 of this Schedule sets out who is a relevant data-holder.
- (3) In relation to a relevant data-holder, “relevant data” means data of a kind specified for that type of data-holder in regulations made by the Treasury.
- (4) The data that a relevant data-holder may be required to provide—
- (a) may be general data or data relating to particular persons or matters, and
  - (b) may include personal data (such as names and addresses of individuals).
- (5) A notice under this paragraph is referred to as a data-holder notice.

###### *Purpose of power*

- 2 (1) The power in paragraph 1(1) is exercisable to assist with the efficient and effective discharge of HMRC's tax functions—
- (a) whether a particular function or more generally, and
  - (b) whether involving a particular taxpayer or taxpayers generally.
- (2) It is additional to and is not limited by other powers that HMRC may have to obtain data (for example, in Schedule 36 to FA 2008).
- (3) But it may not be used (in place of the power in paragraph 1 of that Schedule) to obtain data required for the purpose of checking the relevant data-holder's own tax position.

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- (4) Sub-paragraph (3) does not prevent use of the power in paragraph 1(1) of this Schedule to obtain data about a matter mentioned in paragraph 14(3)(a) (beneficial ownership of certain payments etc).
- (5) Nothing in this paragraph limits the use that may be made of data that have been obtained under this Schedule (see section 17(1) of CRCA 2005).

*Specifying relevant data*

- 3 (1) A data-holder notice must specify the relevant data to be provided.
- (2) Relevant data may not be specified in a data-holder notice unless an officer of Revenue and Customs has reason to believe that the data could have a bearing on chargeable or other periods ending on or after the applicable day.
- (3) The applicable day is the first day of the period of 4 years ending with the day on which the notice is given.

*Compliance*

- 4 (1) Relevant data specified in a data-holder notice must be provided by such means and in such form as is reasonably specified in the notice.
- (2) If the notice specifies that the data are to be provided by sending them somewhere, the data must be sent to such address and within such period as is reasonably specified in the notice.
- (3) If the notice specifies that the data are to be provided by making documents available for inspection somewhere, the documents must be made available for inspection at such place and time as is—
  - (a) reasonably specified in the notice, or
  - (b) agreed between an officer of Revenue and Customs and the data-holder.
- (4) A place used solely as a dwelling may not be specified under sub-paragraph (3)(a).
- (5) A data-holder notice requiring the provision of specified documents requires the documents to be provided only if they are in the data-holder's possession or power.
- (6) A power in this paragraph to specify something in a notice includes power to specify it in a document referred to in the notice.

*Approval by tribunal*

- 5 (1) An officer of Revenue and Customs may ask for the approval of the tribunal before giving a data-holder notice.
- (2) This does not require an officer to do so (but see paragraph 28(3) for the effect of obtaining approval).
- (3) An application for approval under this paragraph may be made without notice (except as required under sub-paragraph (4)).
- (4) The tribunal may not approve the giving of a data-holder notice unless—
  - (a) the application for approval is made by, or with the agreement of, an authorised officer,

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- (b) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
  - (c) the data-holder has been told that the data are to be required and given a reasonable opportunity to make representations to an officer of Revenue and Customs, and
  - (d) the tribunal has been given a summary of any representations made by the data-holder.
- (5) Paragraphs (c) and (d) of sub-paragraph (4) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice any purpose for which the data are required.
- (6) A decision by the tribunal under this paragraph is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).
- (7) “Authorised officer” means an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for the purposes of this paragraph.

#### *Power to copy documents*

- 6 An officer of Revenue and Customs may take copies of or make extracts from any document provided pursuant to a data-holder notice.

#### *Power to retain documents*

- 7 (1) If an officer of Revenue and Customs thinks it reasonable to do so, HMRC may retain documents provided pursuant to a data-holder notice for a reasonable period.
- (2) While a document is being retained, the data-holder may, if the document is reasonably required for any purpose, request a copy of it.
- (3) The retention of a document under this paragraph is not to be regarded as breaking any lien claimed on the document.
- (4) If a document retained under this paragraph is lost or damaged, the Commissioners are liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

## **PART 2**

### **RELEVANT DATA-HOLDERS**

#### *Introduction*

- 8 (1) This Part of this Schedule sets out who is a relevant data-holder for the purposes of this Schedule.
- (2) Descriptions of the various types of data-holder are to be read as including anyone who was previously of such a description.

#### *Salaries, fees, commission etc*

- 9 (1) Each of the following is a relevant data-holder—

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- (a) an employer,
  - (b) a person who is concerned in making payments to or in respect of another person's employees with respect to their employment with that other person,
  - (c) an approved agent within the meaning of section 714 of ITEPA 2003 (which relates to payroll giving), and
  - (d) a person who carries on a business in connection with which relevant payments are or are likely to be made.
- (2) Relevant payments are—
- (a) payments for or in connection with services provided by persons who are not employed in the business, or
  - (b) periodical or lump sum payments in respect of any copyright, public lending right, right in a registered design or design right.
- (3) Payments are taken to be made in connection with a business if they are made—
- (a) in the course of carrying on the business or a part of it, or
  - (b) in connection with the formation, acquisition, development or disposal of the business or a part of it.
- (4) Sub-paragraph (1)(d) applies to the carrying on of any other kind of activity as it applies to the carrying on of a business, but only if the activity is being carried on by a body of persons (and references in sub-paragraphs (2) and (3) to the business are to be read accordingly).
- (5) A reference in this paragraph to the making of payments includes—
- (a) the provision of benefits, and
  - (b) the giving of any other valuable consideration.
- 10 (1) This paragraph applies if—
- (a) services that an individual provides or is obliged to provide under an agency contract are treated under section 44(2) of ITEPA 2003 as the duties of an employment held by the individual with the agency, or
  - (b) remuneration receivable under or in consequence of arrangements falling within section 45 of that Act is treated as earnings from an employment held by an individual with the agency.
- (2) For the purposes of paragraph 9—
- (a) the individual is treated as being employed by the agency, and
  - (b) payments made to the individual under or in consequence of the agency contract, or treated as earnings under section 45 of ITEPA 2003, do not count as “relevant payments”.
- (3) “Agency contract” and “remuneration” have the same meaning as in Chapter 7 of Part 2 of ITEPA 2003.
- 11 (1) This paragraph applies if—
- (a) a person (“A”) performs in the United Kingdom duties of an employment,
  - (b) the employment is under or with a person resident outside and not resident in the United Kingdom,
  - (c) the duties performed in the United Kingdom are performed for a continuous period of not less than 30 days, and
  - (d) those duties are performed for the benefit of a person (“B”) resident or carrying on a trade, profession or vocation in the United Kingdom.

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- (2) For the purposes of paragraph 9—
- (a) B is treated as if B were an employer, but
  - (b) only the name and place of residence of A may be specified for a relevant data-holder of B's type in regulations made under paragraph 1(3).

*Interest etc*

- 12 (1) A person by or through whom interest is paid or credited is a relevant data-holder.
- (2) For the purposes of this paragraph, the following are to be treated as interest—
- (a) a dividend in respect of a share in a building society,
  - (b) an amount to which a person holding a deeply discounted security is entitled on the redemption of that security,
  - (c) a foreign dividend, and
  - (d) an alternative finance return.
- (3) In sub-paragraph (2)—
- “alternative finance return” means—
- (a) an alternative finance return within the meaning of Part 10A of ITA 2007, and
  - (b) an alternative finance return within the meaning of Part 6 of CTA 2009;
- “building society” means a building society within the meaning of the Building Societies Act 1986;
- “deeply discounted security” has the same meaning as in Chapter 8 of Part 4 of ITTOIA 2005;
- “foreign dividend” means any annual payment, interest or dividend payable out of, or in respect of the funds or securities of—
- (a) a body of persons that is not resident in the United Kingdom, or
  - (b) a government or public or local authority in a country outside the United Kingdom.

*Income, assets etc belonging to others*

- 13 A person who (in whatever capacity) is in receipt of money or value of or belonging to another is a relevant data-holder.

*[<sup>F1</sup> Merchant acquirers etc*

**Textual Amendments**

**F1** Sch. 23 para. 13A and cross-heading inserted (with application in accordance with s. 228(2) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. 228(1)

- 13A (1) A person who has a contractual obligation to make payments to retailers in settlement of payment card transactions is a relevant data-holder.
- (2) In this paragraph—
- “payment card” includes a credit card, a charge card and a debit card;
- “payment card transaction” means any transaction in which a payment card is accepted as payment;

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“retailer” means a person who accepts a payment card as payment for any transaction.

- (3) In this paragraph any reference to a payment card being accepted as payment includes a reference to any account number or other indicators associated with a payment card being accepted as payment.]

*[<sup>F2</sup>Providers of electronic stored-value payment services*

**Textual Amendments**

- F2** Sch. 23 paras. 13B, 13C and cross-headings inserted (with application in accordance with s. 176(2) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 176\(1\)](#)

- 13B (1) A person who provides electronic stored-value payment services is a relevant data-holder.
- (2) In this paragraph “electronic stored-value payment services” means services by means of which monetary value is stored electronically for the purpose of payments being made in respect of transactions to which the provider of those services is not a party.

*Business intermediaries*

- 13C (1) A person who—
- (a) provides services to enable or facilitate transactions between suppliers and their customers or clients (other than services provided solely to enable payments to be made), and
  - (b) receives information about such transactions in the course of doing so,
- is a relevant data-holder.
- (2) In this paragraph “suppliers” means persons supplying goods or services in the course of business.
- (3) For the purposes of this paragraph, information about transactions includes information that is capable of indicating the likely quantity or value of transactions.]

*Money service businesses*

- [<sup>F3</sup>13D(1) A person is a relevant data-holder if the person—
- (a) carries on any of the activities in sub-paragraph (2) by way of business,
  - (b) is a relevant person within the meaning of regulation 8(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692), and
  - (c) is not an excluded credit institution.
- (2) The activities referred to in sub-paragraph (1)(a) are—
- (a) operating a currency exchange office;
  - (b) transmitting money (or any representation of monetary value) by any means;
  - (c) cashing cheques which are made payable to customers.

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- (3) An excluded credit institution is a credit institution which has permission to carry on the regulated activity of accepting deposits—
- (a) under Part 4A of the Financial Services and Markets Act 2000 (permission to carry on regulated activities),<sup>F4</sup> ...
  - <sup>F5</sup>(b) .....
- (4) Sub-paragraph (3) is to be read with section 22 of and Schedule 2 to the Financial Services and Markets Act 2000, and any order under that section (classes of regulated activities).
- (5) In this paragraph “credit institution” has the meaning given by Article 4.1(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms.]

#### Textual Amendments

- F3** Sch. 23 para. 13D and cross-heading inserted (with application in accordance with s. 69(2) of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\), s. 69\(1\)](#)
- F4** Word in Sch. 23 para. 13D(3)(a) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\), regs. 1, 20\(3\)\(a\)\(i\)](#) (with regs. 39-41); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F5** Sch. 23 para. 13D(3)(b) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\), regs. 1, 20\(3\)\(a\)\(ii\)](#) (with regs. 39-41); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

#### *Payments derived from securities*

- 14 (1) Each of the following is a relevant data-holder—
- (a) a person who is the registered or inscribed holder of securities,
  - (b) a person who receives a payment derived from securities or would be entitled to do so if a payment were made,
  - (c) a person who receives a payment treated by the company that makes it as a payment to which section 1033 of CTA 2010 applies (purchase by unquoted trading company of own shares), and
  - (d) a person who receives a chargeable payment within the meaning of Chapter 5 of Part 23 of CTA 2010 (company distributions: demergers).
- (2) But, for a relevant data-holder of a type described in this paragraph, data may only be specified in regulations under paragraph 1(3) if the data concern a matter mentioned in sub-paragraph (3).
- (3) The matters are—
- (a) whether the relevant data-holder is the beneficial owner (or sole beneficial owner) of the securities or payment in question,
  - (b) if not—
    - (i) details of the beneficial owner (or other beneficial owners), and
    - (ii) if those details are not known or if different, details of the person for whom the securities are held or to whom the payment is or may be paid on, and
  - (c) if there is more than one beneficial owner or more than one person of the kind mentioned in paragraph (b)(ii), their respective interests in the securities or payment.

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- (4) “ Payment derived from securities ” includes in particular—
- (a) an amount (whether of income or capital) that is payable out of or in respect of securities or rights attaching to securities, and
  - (b) a payment that is representative of any such amount.
- 15 (1) A person who makes a payment derived from securities that has been received from or is paid on behalf of another is a relevant data-holder.
- (2) “ Payment derived from securities ” has the same meaning as in paragraph 14.

*Grants and subsidies out of public funds*

- 16 (1) A person by whom a payment out of public funds is made by way of grant or subsidy is a relevant data-holder.
- (2) For these purposes, a payment is a payment out of public funds if it is provided directly or indirectly by—
- (a) the Crown,
  - (b) any government, public or local authority whether in the United Kingdom or elsewhere, or
  - (c) any EU institution.

*Licences, approvals etc*

- 17 (1) A person by whom licences or approvals are issued or a register is maintained is a relevant data-holder.
- (2) “ Register ” includes—
- (a) any record or list that a local authority maintains, and
  - (b) any record or list that any other person is required or permitted to maintain by or under an enactment.

**Modifications etc. (not altering text)**

**C3** Sch. 23 para. 17 modified (6.4.2018) by [Housing and Planning Act 2016 \(c. 22\)](#), ss. **39(5)**, 216(3); S.I. 2018/393, reg. 2(a)

*Rent and other payments arising from land*

- 18 (1) Each of the following is a relevant data-holder—
- (a) a lessee (or successor in title of a lessee),
  - (b) an occupier of land,
  - (c) a person having the use of land, and
  - (d) a person who, as agent, manages land or is in receipt of rent or other payments arising from land.
- (2) The reference to a person who manages land includes a person who markets property to potential tenants, searches for tenants or provides similar services.



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### *Dealing etc in securities*

- 19 (1) Each of the following is a relevant data-holder—
- (a) a person who effects or is a party to securities transactions wholly or partly on behalf of others (whether as agent or principal),
  - (b) a person who, in the course of business, acts as registrar or administrator in respect of securities transactions (including a person who manages a clearing house <sup>F6</sup>or a central securities depository as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories] for any terminal market in securities),
  - (c) a person who makes a payment derived from securities to anyone other than the registered or inscribed holder of the securities,
  - (d) a person who makes a payment derived from bearer securities, and
  - (e) an accountable person within the meaning of the Stamp Duty Reserve Tax Regulations 1986 ( S.I. 1986/1711).
- (2) “ Payment derived from securities ” has the same meaning as in paragraph 14 (and “payment derived from bearer securities” is to be read accordingly).
- (3) “ Securities transactions ” means—
- (a) transactions in securities,
  - (b) transactions under which a representative payment has been, is to be or may be made, or
  - (c) the making or receipt of a representative payment.
- (4) In sub-paragraph (3)—
- “ representative payment ” means a payment that is representative of an amount payable out of or in respect of securities or rights attaching to securities;
  - “ transactions in securities ” means transactions, of whatever description, relating to securities, and includes in particular—
- (a) the purchase, sale or exchange of securities,
  - (b) issuing or securing the issue of new securities,
  - (c) applying or subscribing for new securities, and
  - (d) altering or securing the alteration of rights attached to securities.

#### **Textual Amendments**

**F6** Words in [Sch. 23 para. 19\(1\)\(b\)](#) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), reg. 1, [Sch. para. 15\(a\)](#) (with regs. 7(4), 9(1))

### *Dealing in other property*

- 20 Each of the following is a relevant data-holder—
- (a) the committee or other person or body of persons responsible for managing a clearing house <sup>F7</sup>or a central securities depository (as defined in paragraph 19)] for any terminal market in commodities,
  - (b) an auctioneer,

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- (c) a person carrying on a business of dealing in any description of tangible movable property, and
- (d) a person carrying on a business of acting as an agent or intermediary in dealings in any description of tangible movable property.

#### Textual Amendments

**F7** Words in Sch. 23 para. 20(a) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, Sch. para. 15(b) (with regs. 7(4), 9(1))

#### *Lloyd's*

- 21 A person who is registered as managing agent at Lloyd's in relation to a syndicate of underwriting members of Lloyd's is a relevant data-holder.

#### *Investment plans etc*

- 22 Each of the following is a relevant data-holder—
- (a) a plan manager (see section 696 of ITTOIA 2005), and
  - (b) an account provider in relation to a child trust fund (as defined in section 3 of the Child Trust Funds Act 2004).

#### *Petroleum activities*

- 23 Each of the following is a relevant data-holder—
- (a) the holder of a licence granted under Part 1 of the Petroleum Act 1998, and
  - (b) the responsible person in relation to an oil field (within the meaning of Part 1 of OTA 1975).

#### *Insurance activities*

- 24 Each of the following is a relevant data-holder—
- (a) a person who is involved (in any capacity) in an insurance business (as defined for the purposes of Part 3 of FA 1994),
  - (b) a person who makes arrangements for persons to enter into contracts of insurance, and
  - (c) a person who is concerned in a business that is not an insurance business and who has been involved in the entering into of a contract of insurance that provides cover for any matter associated with the business.

#### *Environmental activities*

- 25 A person who is involved (in any capacity) in any of the following activities is a relevant data-holder—
- (a) subjecting aggregate to exploitation in [<sup>F8</sup>England, Wales or Northern Ireland] (as defined for the purposes of Part 2 of FA 2001) or connected activities,
  - (b) making or receiving supplies of taxable commodities (as defined for the purposes of Schedule 6 to FA 2000) or connected activities, and
  - (c) [<sup>F9</sup>disposal of material] (as defined for the purposes of Part 3 of FA 1996).

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#### Textual Amendments

- F8** Words in Sch. 23 para. 25(a) substituted (with effect in accordance with s. 18(4) of the amending Act) by [Scotland Act 2016 \(c. 11\)](#), s. 72(3), [Sch. 1 para. 13](#)
- F9** Words in [Sch. 23 para. 25\(c\)](#) substituted (with effect in accordance with s. 42(2), Sch. 12 para. 29(1) of the amending Act) by [Finance Act 2018 \(c. 3\)](#), [Sch. 12 para. 28](#)

#### Settlements

- 26 (1) Each of the following is a relevant data-holder—
- (a) a person who makes a settlement,
  - (b) the trustees of a settlement,
  - (c) a beneficiary under a settlement, and
  - (d) any other person to whom income is payable under a settlement.
- (2) Section 620 of ITTOIA 2005 (meaning of “settlement” etc ) applies for the purposes of this paragraph.

#### Charities

- 27 A charity is a relevant data-holder.

### PART 3

#### APPEALS AGAINST DATA-HOLDER NOTICES

#### Right of appeal

- 28 (1) The data-holder may appeal against a data-holder notice, or any requirement in such a notice, on any of the following grounds—
- (a) it is unduly onerous to comply with the notice or requirement,
  - (b) the data-holder is not a relevant data-holder, or
  - (c) data specified in the notice are not relevant data.
- (2) Sub-paragraph (1)(a) does not apply to a requirement to provide data that form part of the data-holder's statutory records.
- (3) Sub-paragraph (1) does not apply if the tribunal approved the giving of the notice in accordance with paragraph 5.

#### Procedure for appeal

- 29 (1) Notice of an appeal under paragraph 28 must be given—
- (a) in writing,
  - (b) before the end of the period of 30 days beginning with the date on which the data-holder notice was given, and
  - (c) to the officer of Revenue and Customs by whom the data-holder notice was given.
- (2) It must state the grounds of appeal.

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- (3) On an appeal that is notified to the tribunal, the tribunal may confirm, vary or set aside the data-holder notice or a requirement in it.
- (4) If the tribunal confirms or varies the notice or a requirement in it, the data-holder must comply with the notice or requirement—
  - (a) within such period as is specified by the tribunal, or
  - (b) if the tribunal does not specify a period, within such period as is reasonably specified in writing by an officer of Revenue and Customs following the tribunal's decision.
- (5) A decision by the tribunal under this Part is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).
- (6) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under paragraph 28 as they have effect in relation to an appeal against an assessment to income tax.

## PART 4

### PENALTIES

#### *Penalties for failure to comply*

- 30 (1) If the data-holder fails to comply with a data-holder notice, the data-holder is liable to a penalty of £300.
- (2) A reference in this Schedule to failing to comply with a data-holder notice includes—
  - (a) concealing, destroying or otherwise disposing of a material document, or
  - (b) arranging for any such concealment, destruction or disposal.
- (3) A document is a material document if, at the time when the data-holder acts—
  - (a) the data-holder has received a data-holder notice requiring the data-holder to provide the document or data contained in the document, or
  - (b) the data-holder has not received such a notice but has been informed by an officer of Revenue and Customs that the data-holder will do so or is likely to do so.
- (4) A document is not a material document by virtue of sub-paragraph (3)(a) if the data-holder notice has already been complied with, unless—
  - (a) the data-holder has been notified in writing by an officer of Revenue and Customs that the data-holder must continue to preserve the document, and
  - (b) the notification has not been withdrawn.
- (5) A document is not a material document by virtue of sub-paragraph (3)(b) if more than 6 months have elapsed since the data-holder was (or was last) informed.

#### *Daily default penalties for failure to comply*

- 31 If—
  - (a) a penalty under paragraph 30 is assessed, and
  - (b) the failure in question continues after the data-holder has been notified of the assessment,

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the data-holder is liable to a further penalty, for each subsequent day on which the failure continues, of an amount not exceeding £60 for each such day.

*Penalties for inaccurate information or documents*

- 32 (1) This paragraph applies if—
- (a) in complying with a data-holder notice, the data-holder provides inaccurate data, and
  - (b) condition A, B or C is met.
- (2) Condition A is that the inaccuracy is—
- (a) due to a failure by the data-holder to take reasonable care, or
  - (b) deliberate on the data-holder's part.
- (3) Condition B is that the data-holder knows of the inaccuracy at the time the data are provided but does not inform HMRC at that time.
- (4) Condition C is that the data-holder—
- (a) discovers the inaccuracy some time later, and
  - (b) fails to take reasonable steps to inform HMRC.
- (5) If this paragraph applies, the data-holder is liable to a penalty not exceeding £3,000.

*Failure to comply with time limit*

- 33 A failure to do anything required to be done within a limited period of time does not give rise to liability under paragraph 30 or 31 if the thing was done within such further time (if any) as an officer of Revenue and Customs may have allowed.

*Reasonable excuse*

- 34 (1) Liability to a penalty under paragraph 30 or 31 does not arise if the data-holder satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the data-holder's control,
  - (b) if the data-holder relies on another person to do anything, that is not a reasonable excuse unless the data-holder took reasonable care to avoid the failure,
  - (c) if the data-holder had a reasonable excuse for the failure but the excuse has ceased, the data-holder is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

*Assessment of penalties*

- 35 (1) If the data-holder becomes liable to a penalty under paragraph 30, 31 or 32, HMRC may assess the penalty.
- (2) If they do so, they must notify the data-holder.

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- (3) An assessment of a penalty under paragraph 30 or 31 must be made within the period of 12 months beginning with the latest of the following—
- (a) the date on which the data-holder became liable to the penalty,
  - (b) the end of the period in which notice of an appeal against the data-holder notice (or a requirement in it) could have been given, and
  - (c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.
- (4) An assessment of a penalty under paragraph 32 must be made—
- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs, and
  - (b) within the period of 6 years beginning with the date on which the data-holder became liable to the penalty.

*Right to appeal against penalty*

- 36 <sup>F10</sup>(1) The data-holder may appeal against a decision by an officer of Revenue and Customs—
- (a) that a penalty is payable under paragraph 30, 31 or 32, or
  - (b) as to the amount of such a penalty.

[<sup>F11</sup>(2) But sub-paragraph (1)(b) does not give a right of appeal against the amount of an increased daily penalty payable by virtue of paragraph 38.]

**Textual Amendments**

**F10** Sch. 23 para. 36(1): Sch. 24 para. 36 renumbered as Sch. 24 para. 36(1) (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), s. 177(5)

**F11** Sch. 23 para. 36(2) inserted (15.9.2016) by [Finance Act 2016 \(c. 24\)](#), s. 177(5)

*Procedure on appeal against penalty*

- 37 (1) Notice of an appeal under paragraph 36 must be given—
- (a) in writing,
  - (b) before the end of the period of 30 days beginning with the date on which notification under paragraph 35 was given, and
  - (c) to HMRC.
- (2) It must state the grounds of appeal.
- (3) On an appeal under paragraph 36(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (4) On an appeal under paragraph 36(b) that is notified to the tribunal, the tribunal may—
- (a) confirm the decision, or
  - (b) substitute for the decision another decision that the officer of Revenue and Customs had power to make.

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- (5) Subject to this paragraph and paragraph 40, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under paragraph 36 as they have effect in relation to an appeal against an assessment to income tax.

*Increased daily default penalty*

- 38 (1) This paragraph applies if—
- (a) a penalty under paragraph 31 is assessed under paragraph 35,
  - (b) the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which notification of that assessment is given, and
  - (c) the data-holder has been told that an application may be made under this paragraph for an increased daily penalty to be [F12 assessable].
- (2) If this paragraph applies, an officer of Revenue and Customs may make an application to the tribunal for an increased daily penalty to be [F13 assessable] on the data-holder.
- [F14](3) If the tribunal decides that an increased daily penalty should be assessable—
- (a) the tribunal must determine the day from which the increased daily penalty is to apply and the maximum amount of that penalty (“the new maximum amount”);
  - (b) from that day, paragraph 31 has effect in the data-holder’s case as if “the new maximum amount” were substituted for “£60”.
- (4) The new maximum amount may not be more than £1,000.]
- (5) But subject to that, in determining [F15 the new maximum amount] the tribunal must have regard to—
- (a) the likely cost to the data-holder of complying with the data-holder notice,
  - (b) any benefits to the data-holder of not complying with it, and
  - (c) any benefits to anyone else resulting from the data-holder's non-compliance.

**Textual Amendments**

- F12** Word in Sch. 23 para. 38(1)(c) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\), s. 177\(2\)\(a\)](#)  
**F13** Word in Sch. 23 para. 38(2) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\), s. 177\(2\)\(a\)](#)  
**F14** Sch. 23 para. 38(3)(4) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\), s. 177\(2\)\(b\)](#)  
**F15** Words in Sch. 23 para. 38(5) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\), s. 177\(2\)\(c\)](#)

- 39 (1) If [F16 the tribunal makes a determination] under paragraph 38, HMRC must notify the data-holder.
- (2) The notification must specify the [F17 new maximum amount and the day from which it applies].
- [F18](3) . . . . .

**Textual Amendments**

- F16** Words in Sch. 23 para. 39(1) substituted (15.9.2016) by [Finance Act 2016 \(c. 24\), s. 177\(3\)\(a\)](#)

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- F17** Words in Sch. 23 para. 39(2) substituted (15.9.2016) by Finance Act 2016 (c. 24), s. 177(3)(b)  
**F18** Sch. 23 para. 39(3) omitted (15.9.2016) by virtue of Finance Act 2016 (c. 24), s. 177(3)(c)

### *Enforcement of penalties*

- 40 (1) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the date mentioned in sub-paragraph (2).
- (2) That date is—
- (a) the date on which notification under paragraph 35 <sup>F19</sup>... is given in respect of the penalty, or
  - (b) if (in the case of a penalty under paragraph 30, 31 or 32) a notice of appeal under paragraph 36 is given, the date on which the appeal is finally determined or withdrawn.
- (3) A penalty under this Schedule may be enforced as if it were income tax charged in an assessment and due and payable.

### **Textual Amendments**

- F19** Words in Sch. 23 para. 40(2)(a) omitted (15.9.2016) by virtue of Finance Act 2016 (c. 24), s. 177(4)

### *Power to change amount of penalties*

- 41 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sums for the time being specified in paragraphs 30(1), 31, 32(5) and 38(4) such other sums as appear to them to be justified by the change.
- (2) “Relevant date”, in relation to a specified sum, means—
- (a) the day on which this Act is passed, and
  - (b) each date on which the power conferred by sub-paragraph (1) has been exercised in relation to that sum.
- (3) Regulations under this paragraph do not apply to—
- (a) a failure which began before the date on which they come into force, or
  - (b) an inaccuracy in any data or document provided to HMRC before that date.

### *Double jeopardy*

- 42 The data-holder is not liable to a penalty under this Schedule in respect of anything in respect of which the data-holder has been convicted of an offence.



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## PART 5

### MISCELLANEOUS PROVISION AND INTERPRETATION

#### *Application of provisions of TMA 1970*

- 43 Subject to the provisions of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Schedule as they apply for the purposes of the Taxes Acts—
- (a) section 108 (responsibility of company officers),
  - (b) section 114 (want of form), and
  - (c) section 115 (delivery and service of documents).

#### *Regulations*

- 44 (1) Regulations under this Schedule are to be made by statutory instrument.
- (2) The first regulations to be made under paragraph 1(3) may not be made unless the instrument containing them has been laid in draft before, and approved by a resolution of, the House of Commons.
- (3) Subject to sub-paragraph (2), a statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

#### *Tax*

- 45 (1) In this Schedule “tax” means any or all of the following—
- (a) income tax,
  - (b) capital gains tax,
  - (c) corporation tax,
  - <sup>F20</sup>(ca) diverted profits tax,]
  - (d) VAT,
  - (e) insurance premium tax,
  - (f) inheritance tax,
  - (g) stamp duty land tax,
  - (h) stamp duty reserve tax,
  - (i) petroleum revenue tax,
  - (j) aggregates levy,
  - (k) climate change levy,
  - (l) landfill tax, and
  - (m) relevant foreign tax.
- (2) “Corporation tax” includes any amount assessable or chargeable as if it were corporation tax.
- (3) “VAT” means—
- (a) value added tax charged in accordance with VATA 1994, <sup>F21</sup> ...
  - <sup>F21</sup>(b) .....

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and includes any amount that is recoverable under paragraph 5(2) of Schedule 11 to VATA 1994 (amounts shown on invoices as VAT).

- (4) “Relevant foreign tax” means—
- (a) a tax of a member State <sup>F22</sup>... which is covered by the provisions for the exchange of information under the [<sup>F23</sup>Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation] (as amended from time to time), and
  - (b) any tax or duty which is imposed under the law of a territory in relation to which arrangements having effect by virtue of section 173 of FA 2006 (international tax enforcement arrangements) have been made and which is covered by the arrangements.

#### Textual Amendments

- F20** Sch. 23 para. 45(1)(ca) inserted (with effect in accordance with s. 116(1) of the amending Act) by [Finance Act 2015 \(c. 11\), s. 105\(1\)](#)
- F21** Sch. 23 para. 45(3)(b) and word omitted (31.12.2020) by virtue of [Taxation \(Cross-border Trade\) Act 2018 \(c. 22\), s. 57\(3\), Sch. 8 para. 120](#) (with savings and transitional provisions in S.I. 2019/105 (as amended by S.I. 2020/1495, regs. 1(2), 21), S.I. 2020/1545, Pt. 4 and 2020 c. 26, Sch. 2 para. 7(7)-(9)); S.I. 2020/1642, reg. 4(b) (with reg. 7)
- F22** Words in Sch. 23 para. 45(4)(a) omitted (31.12.2020) by virtue of [The Taxes \(Amendments\) \(EU Exit\) Regulations 2019 \(S.I. 2019/689\), regs. 1, 20\(3\)\(b\)](#) (with regs. 39-41); 2020 c. 1, Sch. 5 para. 1(1)
- F23** Words in Sch. 23 para. 45(4) substituted (1.1.2013) by [The European Administrative Co-Operation \(Taxation\) Regulations 2012 \(S.I. 2012/3062\), regs. 1\(1\), 6\(2\)](#)

#### Modifications etc. (not altering text)

- C4** [Sch. 23 para. 45\(1\)](#) modified (temp.) (with effect in accordance with [Sch. 10 para. 43](#) of the amending Act) (as amended (5.1.2023) by [S.I. 2022/1321, regs. 1, 2\(2\)](#)) by [Finance Act 2022 \(c. 3\), Sch. 10 para. 30\(2\)](#)

#### Statutory records

- 46 (1) For the purposes of this Schedule data form part of a data-holder's statutory records if they are data that the data-holder is required to keep and preserve under or by virtue of any enactment relating to tax.
- (2) Data cease to form part of a data-holder's statutory records when the period for which the data are required to be preserved under or by virtue of that enactment has expired.

#### General interpretation

- 47 In this Schedule—
- “address” includes an electronic address;
  - “body of persons” has the same meaning as in TMA 1970;
  - “chargeable period” means a tax year, accounting period or other period for which a tax is charged;
  - “charity” has the meaning given by paragraph 1(1) of Schedule 6 to FA 2010;
  - “the Commissioners” means the Commissioners for Her Majesty's Revenue and Customs;

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- “company” has the meaning given by section 288(1) of TCGA 1992;
- “data” includes information held in any form;
- “the data-holder”, in relation to a data-holder notice, means the person to whom the notice is addressed;
- “data-holder notice” is defined in paragraph 1;
- “dividend” includes any kind of distribution;
- “document” includes a copy of a document (see also section 114 of FA 2008);
- “employment”, “employee” and “employer” have the same meaning as in Parts 2 to 7 of ITEPA 2003 (see, in particular, sections 4 and 5 of that Act);
- “HMRC” means Her Majesty's Revenue and Customs;
- “local authority” has the meaning given in section 999 of ITA 2007;
- “provide” includes make available for inspection;
- “specify” includes describe;
- “securities” includes—
- (a) shares and stock,
  - (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, and
  - (c) warrants or other instruments entitling the holder to subscribe for or otherwise acquire anything within paragraph (a) or (b),
- issued by or on behalf of a person resident in, or a government or public or local authority of, any country (including a country outside the United Kingdom);
- “shares” is to be construed in accordance with [F<sup>24</sup>section 99] of TCGA 1992;
- “tax functions” means functions relating to tax;
- “the tribunal” means the First-tier Tribunal or, where determined by or under the Tribunal Procedure Rules, the Upper Tribunal.

#### Textual Amendments

**F24** Words in [Sch. 23 para. 47](#) substituted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Collective Investment Schemes and Offshore Funds \(Amendment of the Taxation of Chargeable Gains Act 1992\) Regulations 2017 \(S.I. 2017/1204\)](#), regs. 1(1), **15**

- 48 A reference in this Schedule to providing data includes—
- (a) preparing and delivering a return, statement or declaration, and
  - (b) providing documents.
- 49 (1) A reference in this Schedule to the carrying on of a business also includes—
- (a) the letting of property,
  - (b) the activities of a charity, and
  - (c) the activities of a government department, a local authority, a local authority association or any other public authority.
- (2) “Local authority association” has the meaning given in section 1000 of ITA 2007.

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### *Crown application*

- 50 This Schedule applies to the Crown but not to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947).

## **PART 6**

### CONSEQUENTIAL PROVISIONS

#### *TMA 1970*

- 51 (1) TMA 1970 is amended as follows.
- (2) Omit—
- (a) section 13 (persons in receipt of taxable income belonging to others),
  - (b) section 14 (return of lodgers and inmates),
  - (c) section 15 (return of employees' earnings etc),
  - (d) section 15A (non-resident's staff are UK client's employees for section 15 purposes),
  - (e) section 16 (fees, commissions etc),
  - (f) section 16A (agency workers),
  - (g) section 17 (interest paid or credited by banks, building societies etc without deduction of income tax),
  - (h) section 18 (interest paid without deduction of income tax),
  - (i) section 18A (other payments and licences etc),
  - (j) section 19 (information for purposes of charge on profits of UK property businesses or under Schedule A),
  - (k) section 21 (stock jobbers' transactions),
  - (l) section 23 (power to obtain copies of registers of securities),
  - (m) section 24 (power to obtain information as to income from securities),
  - (n) section 25 (issuing houses, stockbrokers, auctioneers etc),
  - (o) section 26 (nominee shareholders),
  - (p) section 27 (settled property),
  - (q) section 76 (protection for certain trustees, agents and receivers), and
  - (r) section 77I (information from petroleum licence-holders).
- (3) In the Table in section 98 (special returns etc), omit the entries (so far as they continue to have effect) relating to—
- (a) section 77I of TMA 1970,
  - (b) paragraph 2 of Schedule 15 to FA 1973,
  - (c) sections 42, 217(4), 226(4) and 768(9) of ICTA,
  - (d) paragraph 3 of Schedule 12 to FA 1989,
  - (e) sections 302B and 647 of ITTOIA 2005,
  - (f) section 241 of CTA 2009, and
  - (g) sections 728, 1046(5) to (7) and 1097(1) and (2) of CTA 2010.
- (4) In that Table—
- (a) for the entry relating to section 31 of CTA 2010 substitute the following entry— “Section 31(3) and (4) of CTA 2010. ”,

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- (b) for the entry relating to section 465 of CTA 2010 substitute the following entry— “ Section 465(3) and (4) of CTA 2010. ”, and
- (c) for the entry relating to section 1102 of CTA 2010 substitute the following entry— “ Section 1102(4) and (5) of CTA 2010. ”

(5) In section 103ZA (disapplication of sections 100 to 103)—

- (a) omit “or” at the end of paragraph (d), and
- (b) at the end of paragraph (e) insert “, or
- (f) Schedule 23 to FA 2011 (data-gathering powers).”

#### *FA 1973*

- 52 In Schedule 15 to FA 1973 (territorial extension of charge to tax: supplementary provisions), omit paragraph 2 so far as it continues to have effect (see section 381 of TIOPA 2010).

#### *FA 1974*

- 53 (1) In section 24 of FA 1974 (returns of persons treated as employees), for the words from “section 15” to the end substitute “ any notice given under section 8 of the Taxes Management Act 1970 to the person performing the duties (P) may require a return of P's income to include particulars of any general earnings paid to P. ”
- (2) Sub-paragraph (1) applies so far as section 24 of FA 1974 continues to have effect (see section 381 of TIOPA 2010).

#### *FA 1986*

- 54 In Schedule 18 to FA 1986 (securities: other provisions), omit paragraph 8(4) and (5).

#### *ICTA*

- 55 Omit the following provisions of ICTA so far as they continue to have effect (see section 1184 of CTA 2010 and section 381 of TIOPA 2010)—
- (a) section 42(7) (information required to decide whether to give provisional notice of determination),
  - (b) section 217(4) (information about person for whom chargeable payment is received),
  - (c) section 226(4) (information about purchase by unquoted trading company of its own shares),
  - (d) section 768(9) (information about change in ownership of company: disallowance of trading losses), and
  - (e) section 816(3) (disapplication of bank exemption).

#### *FA 1989*

- 56 In Schedule 12 to FA 1989 (close companies), omit paragraph 3 so far as it continues to have effect (see section 1184 of CTA 2010).

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#### *ITTOIA 2005*

- 57 (1) ITTOIA 2005 is amended as follows.
- (2) In Chapter 4 of Part 3 (profits of property businesses: lease premiums etc), omit section 302B(3) and (4).
- (3) In Chapter 5 of Part 5 (settlements: amounts treated as income of settlor), omit section 647.

#### *FA 2005*

- 58 In Schedule 2 to FA 2005 (alternative finance arrangements: further provisions), omit paragraph 2 so far as it continues to have effect (see section 1329 of CTA 2009).

#### *CRCA 2005*

- 59 In Schedule 2 to CRCA 2005 (functions of Commissioners and officers: restrictions etc), omit paragraph 2.

#### *FA 2008*

- 60 FA 2008 is amended as follows.
- 61 In section 39 (dormant bank and building society accounts), in subsection (1), omit paragraph (a).
- 62 (1) Schedule 36 (information and inspection powers) is amended as follows.
- (2) Omit paragraph 34A.
- (3) In paragraph 61A (involved third parties)—
- (a) in sub-paragraph (2), omit ““relevant information””,
  - (b) in each entry in the second column of the Table, for “Information and documents” substitute “ Documents ”, and
  - (c) accordingly, in the heading of that column, omit “information and relevant”.

#### *CTA 2009*

- 63 In Chapter 4 of Part 4 of CTA 2009 (profits of property businesses: lease premiums etc), omit section 241(3) and (4).

#### *CTA 2010*

- 64 (1) CTA 2010 is amended as follows.
- (2) Omit—
- (a) section 31(1) (companies with small profits: power to obtain information),
  - (b) section 465(1) (close companies: power to obtain information),
  - (c) section 728 (provision of information about ownership of shares etc),
  - (d) section 1046(5) to (7) (information about purchase by unquoted trading company of its own shares),
  - (e) section 1097 (information about person for whom chargeable payment is received), and

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(f) section 1102(2) (non-qualifying distributions etc: additional information).

<sup>F25</sup>(3) .....

**Textual Amendments**

**F25** Sch. 23 para. 64(3) omitted (with effect in accordance with Sch. 1 para. 73 of the amending Act) by virtue of Finance Act 2016 (c. 24), Sch. 1 para. 69(a)

**PART 7**

APPLICATION OF THIS SCHEDULE

- 65 (1) This Schedule—
- (a) comes into force on 1 April 2012, and
  - (b) applies from then on to relevant data with a bearing on any period (whether before, on or after that date), subject to paragraph 3(2).
- (2) The provisions repealed or otherwise amended by Part 6 of this Schedule continue to have effect in relation to notices given, or requests made, pursuant to any of the repealed provisions before 1 April 2012 as if the repeals and other amendments had not been made.

**Status:**

Point in time view as at 06/04/2023.

**Changes to legislation:**

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