



Finance (No. 2) Act 2017

2017 CHAPTER 32

PART 4

ADMINISTRATION, AVOIDANCE AND ENFORCEMENT

Avoidance etc

64 Errors in taxpayers' documents

- (1) Schedule 24 to FA 2007 (penalties for errors) is amended as set out in subsections (2) and (3).
- (2) After paragraph 3 insert—

“Errors related to avoidance arrangements

- 3A (1) This paragraph applies where a document of a kind listed in the Table in paragraph 1 is given to HMRC by a person (“P”) and the document contains an inaccuracy which—
- (a) falls within paragraph 1(2), and
 - (b) arises because the document is submitted on the basis that particular avoidance arrangements (within the meaning of paragraph 3B) had an effect which in fact they did not have.
- (2) It is to be presumed that the inaccuracy was careless, within the meaning of paragraph 3, unless—
- (a) the inaccuracy was deliberate on P’s part, or
 - (b) P satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that P took reasonable care to avoid inaccuracy.
- (3) In considering whether P took reasonable care to avoid inaccuracy, HMRC and (on an appeal notified to the tribunal) the tribunal must take no account of any evidence of any reliance by P on advice where the advice is disqualified.

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- (4) Advice is “disqualified” if any of the following applies—
- (a) the advice was given to P by an interested person;
 - (b) the advice was given to P as a result of arrangements made between an interested person and the person who gave the advice;
 - (c) the person who gave the advice did not have appropriate expertise for giving the advice;
 - (d) the advice took no account of P’s individual circumstances;
 - (e) the advice was addressed to, or given to, a person other than P;
- but this is subject to sub-paragraphs (5) and (7).
- (5) Where (but for this sub-paragraph) advice would be disqualified under any of paragraphs (a) to (c) of sub-paragraph (4), the advice is not disqualified under that paragraph if at the relevant time P—
- (a) has taken reasonable steps to find out whether the advice falls within that paragraph, and
 - (b) reasonably believes that it does not.
- (6) In sub-paragraph (4) “an interested person” means—
- (a) a person, other than P, who participated in the avoidance arrangements or any transaction forming part of them, or
 - (b) a person who for any consideration (whether or not in money) facilitated P’s entering into the avoidance arrangements.
- (7) Where (but for this sub-paragraph) advice would be disqualified under paragraph (a) of sub-paragraph (4) because it was given by a person within sub-paragraph (6)(b), the advice is not disqualified under that paragraph if—
- (a) the person giving the advice had appropriate expertise for giving it,
 - (b) the advice took account of P’s individual circumstances, and
 - (c) at the time when the question whether the advice is disqualified arises—
 - (i) Condition E in paragraph 3B(5) is met in relation to the avoidance arrangements, but
 - (ii) none of Conditions A to D in paragraph 3B(5) is or has at any time been met in relation to them.
- (8) If the document mentioned in sub-paragraph (1) is given to HMRC by P as a personal representative of a deceased person (“D”)—
- (a) sub-paragraph (4) is to be read as if—
 - (i) the references in paragraphs (a) and (b) to P were to P or D;
 - (ii) the reference in paragraph (d) to P were to D, and
 - (iii) the reference in paragraph (e) to a person other than P were to a person who is neither P nor D,
 - (b) sub-paragraph (6) is to be read as if—
 - (i) the reference in paragraph (a) to P were a reference to the person to whom the advice was given, and

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- (ii) the reference in paragraph (b) to P were to D (or, where P also participated in the avoidance arrangements, P or D), and
 - (c) sub-paragraph (7) is to be read as if the reference in paragraph (b) to P were to D.
 - (9) In this paragraph—
 - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
 - “the relevant time” means the time when the document mentioned in sub-paragraph (1) is given to HMRC;
 - “the tribunal” has the same meaning as in paragraph 17 (see paragraph 17(5A)).
- 3B
- (1) In paragraph 3A “avoidance arrangements” means, subject to sub-paragraph (3), arrangements which fall within sub-paragraph (2).
 - (2) Arrangements fall within this sub-paragraph if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.
 - (3) Arrangements are not avoidance arrangements for the purposes of paragraph 3A if (although they fall within sub-paragraph (2))—
 - (a) they are arrangements which accord with established practice, and
 - (b) HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice.
 - (4) If, at any time, any of Conditions A to E is met in relation to particular arrangements—
 - (a) for the purposes of this Schedule the arrangements are to be taken to fall within (and always to have fallen within) sub-paragraph (2), and
 - (b) in relation to the arrangements, sub-paragraph (3) (and the reference to it in sub-paragraph (1)) are to be treated as omitted.
- This does not prevent arrangements from falling within sub-paragraph (2) other than by reason of one or more of Conditions A to E being met.
- (5) Conditions A to E are as follows—
 - (a) Condition A is that the arrangements are DOTAS arrangements within the meaning given by section 219(5) and (6) of FA 2014;
 - (b) Condition B is that the arrangements are disclosable VAT arrangements or disclosable indirect tax arrangements for the purposes of Schedule 18 to FA 2016 (see paragraphs 8A to 9A of that Schedule);
 - (c) Condition C is that both of the following apply—
 - (i) P has been given a notice under a provision mentioned in sub-paragraph (6) stating that a tax advantage arising from the arrangements is to be counteracted, and

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- (ii) that tax advantage has been counteracted under section 209 of FA 2013;
 - (d) Condition D is that a follower notice under section 204 of FA 2014 has been given to P by reference to the arrangements (and not withdrawn) and—
 - (i) the necessary corrective action for the purposes of section 208 of FA 2014 has been taken in respect of the denied advantage, or
 - (ii) the denied advantage has been counteracted otherwise than as mentioned in sub-paragraph (i);
 - (e) Condition E is that a tax advantage asserted by reference to the arrangements has been counteracted (by an assessment, an amendment of a return or claim, or otherwise) on the basis that an avoidance-related rule applies in relation to P’s affairs.
- (6) The provisions referred to in sub-paragraph (5)(c)(i) are—
- (a) paragraph 12 of Schedule 43 to FA 2013 (general anti-abuse rule: notice of final decision);
 - (b) paragraph 8 or 9 of Schedule 43A to that Act (pooled or bound arrangements: notice of final decision);
 - (c) paragraph 8 of Schedule 43B to that Act (generic referrals: notice of final decision).
- (7) In sub-paragraph (5)(d) the reference to giving a follower notice to P includes giving a partnership follower notice in respect of a partnership return in relation to which P is a relevant partner; and for the purposes of this sub-paragraph—
- (a) “relevant partner” has the meaning given by paragraph 2(5) of Schedule 31 to FA 2014;
 - (b) a partnership follower notice is given “in respect of” the partnership return mentioned in paragraph 2(2)(a) or (b) of that Schedule.
- (8) For the purposes of sub-paragraph (5)(d) it does not matter whether the denied advantage has been dealt with—
- (a) wholly as mentioned in one or other of sub-paragraphs (i) and (ii) of sub-paragraph (5)(d), or
 - (b) partly as mentioned in one of those sub-paragraphs and partly as mentioned in the other;
- and “the denied advantage” has the same meaning as in Chapter 2 of Part 4 of FA 2014 (see section 208(3) of and paragraph 4(3) of Schedule 31 to that Act).
- (9) For the purposes of sub-paragraph (5)(e) a tax advantage has been “asserted by reference to” the arrangements if a return, claim or appeal has been made by P on the basis that the tax advantage results from the arrangements.
- (10) In this paragraph—
- “arrangements” has the same meaning as in paragraph 3A;
 - “avoidance-related rule” has the same meaning as in Part 4 of Schedule 18 to FA 2016 (see paragraph 25 of that Schedule);

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- a “tax advantage” includes—
 - (a) relief or increased relief from tax,
 - (b) repayment or increased repayment of tax,
 - (c) avoidance or reduction of a charge to tax or an assessment to tax,
 - (d) avoidance of a possible assessment to tax,
 - (e) deferral of a payment of tax or advancement of a repayment of tax,
 - (f) avoidance of an obligation to deduct or account for tax, and
 - (g) in relation to VAT, anything which is a tax advantage for the purposes of Schedule 18 to FA 2016 under paragraph 5 of that Schedule.”
- (3) In paragraph 18, after sub-paragraph (5) insert—
 - “(6) Paragraph 3A applies where a document is given to HMRC on behalf of P as it applies where a document is given to HMRC by P (and in paragraph 3B(9) the reference to P includes a person acting on behalf of P).”
- (4) In FA 2014, omit section 276 (which is superseded by the provision inserted by subsections (2) and (3)).
- (5) The amendments made by this section have effect in relation to any document of a kind listed in the Table in paragraph 1 of Schedule 24 to FA 2007 which—
 - (a) is given to HMRC on or after the day on which this Act is passed, and
 - (b) relates to a tax period that—
 - (i) begins on or after 6 April 2017, and
 - (ii) ends on or after the day on which this Act is passed.
- (6) In subsection (5) “tax period”, and the reference to giving a document to HMRC, have the same meaning as in Schedule 24 to FA 2007 (see paragraph 28 of that Schedule).

65 Penalties for enablers of defeated tax avoidance

Schedule 16 makes provision for penalties for persons who enable tax avoidance which is defeated.

66 Disclosure of tax avoidance schemes: VAT and other indirect taxes

- (1) Schedule 17 contains provision about the disclosure of tax avoidance schemes involving VAT or other indirect taxes.
- (2) In consequence of the provision made by Schedule 17, section 58A of, and Schedule 11A to, VATA 1994 (disclosure of VAT avoidance schemes) cease to have effect to require a person to disclose any scheme which—
 - (a) is first entered into by that person on or after 1 January 2018,
 - (b) constitutes notifiable arrangements under Schedule 17,
 - (c) implements proposals which are notifiable proposals under Schedule 17.
- (3) No scheme or proposed scheme may be notified to the Commissioners under paragraph 9 of Schedule 11A to VATA 1994 (voluntary notification of schemes) on or after 1 January 2018.

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- (4) This section and Schedule 17 come into force—
- (a) so far as is necessary for enabling the making of regulations under that Schedule, on the passing of this Act, and
 - (b) for all other purposes, on 1 January 2018.

67 Requirement to correct certain offshore tax non-compliance

Schedule 18 makes provision for and in connection with requiring persons to correct any offshore tax non-compliance subsisting on 6 April 2017.

68 Penalty for transactions connected with VAT fraud etc

- (1) VATA 1994 is amended as follows.
- (2) After section 69B (penalty for breach of record-keeping requirements imposed by directions) insert—

“69C Transactions connected with VAT fraud

- (1) A person (T) is liable to a penalty where—
 - (a) T has entered into a transaction involving the making of a supply by or to T (“the transaction”), and
 - (b) conditions A to C are satisfied.
- (2) Condition A is that the transaction was connected with the fraudulent evasion of VAT by another person (whether occurring before or after T entered into the transaction).
- (3) Condition B is that T knew or should have known that the transaction was connected with the fraudulent evasion of VAT by another person.
- (4) Condition C is that HMRC have issued a decision (“the denial decision”) in relation to the supply which—
 - (a) prevents T from exercising or relying on a VAT right in relation to the supply,
 - (b) is based on the facts which satisfy conditions A and B in relation to the transaction, and
 - (c) applies a relevant principle of EU case law (whether or not in circumstances that are the same as the circumstances in which any relevant case was decided by the European Court of Justice).
- (5) In this section “VAT right” includes the right to deduct input tax, the right to apply a zero rate to international supplies and any other right connected with VAT in relation to a supply.
- (6) The relevant principles of EU case law for the purposes of this section are the principles established by the European Court of Justice in the following cases—
 - (a) joined Cases C-439/04 and C-440/04 *Axel Kittel v. Belgian State; Belgium v. Recolta Recycling* (denial of right to deduct input tax), and

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- (b) Case C-273/11 (*b) Mecsek-Gabona Kft v Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága*) (denial of right to zero rate),

as developed or extended by that Court (whether before or after the coming into force of this section) in other cases relating to the denial or refusal of a VAT right in order to prevent abuses of the VAT system.

- (7) The penalty payable under this section is 30% of the potential lost VAT.
- (8) The potential lost VAT is—
- (a) the additional VAT which becomes payable by T as a result of the denial decision,
 - (b) the VAT which is not repaid to T as a result of that decision, or
 - (c) in a case where as a result of that decision VAT is not repaid to T and additional VAT becomes payable by T, the aggregate of the VAT that is not repaid and the additional VAT.
- (9) Where T is liable to a penalty under this section the Commissioners may assess the amount of the penalty and notify it to T accordingly.
- (10) No assessment of a penalty under this section may be made more than two years after the denial decision is issued.
- (11) The assessment of a penalty under this section may be made immediately after the denial decision is made (and notice of the assessment may be given to T in the same document as the notice of the decision).
- (12) Where by reason of actions involved in making a claim to exercise or rely on a VAT right in relation to a supply T—
- (a) is liable to a penalty for an inaccuracy under paragraph 1 of Schedule 24 to the Finance Act 2007 for which T has been assessed (and the assessment has not been successfully appealed against by T or withdrawn), or
 - (b) is convicted of an offence (whether under this Act or otherwise),
- those actions do not give rise to liability to a penalty under this section.

69D Penalties under section 69C: officers' liability

- (1) Where—
- (a) a company is liable to a penalty under section 69C, and
 - (b) the actions of the company which give rise to that liability were attributable to an officer of the company (“the officer”),
- the officer is liable to pay such portion of the penalty (which may be equal to or less than 100%) as HMRC may specify in a notice given to the officer (a “decision notice”).
- (2) Before giving the officer a decision notice HMRC must—
- (a) inform the officer that they are considering doing so, and
 - (b) afford the officer the opportunity to make representations about whether a decision notice should be given or the portion that should be specified.
- (3) A decision notice—

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- (a) may not be given before the amount of the penalty due from the company has been assessed (but it may be given immediately after that has happened), and
 - (b) may not be given more than two years after the denial decision relevant to that penalty was issued.
- (4) Where the Commissioners have specified a portion of the penalty in a decision notice given to the officer—
- (a) section 70 applies to the specified portion as to a penalty under section 69C,
 - (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
 - (c) section 76(9) applies as if the decision notice were an assessment notified under section 76, and
 - (d) a further decision notice may be given in respect of a portion of any additional amount assessed in an additional assessment.
- (5) HMRC may not recover more than 100% of the penalty through issuing decision notices in relation to two or more persons.
- (6) A person is not liable to pay an amount by virtue of this section if the actions of the company concerned are attributable to the person by reference to conduct for which the person has been convicted of an offence.
- In this subsection “conduct” includes omissions.
- (7) In this section “company” means a body corporate or unincorporated association but does not include a partnership, a local authority or a local authority association.
- (8) In its application to a body corporate other than a limited liability partnership “officer” means—
- (a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006),
 - (b) a manager, or
 - (c) a secretary.
- (9) In its application to a limited liability partnership “officer” means a member.
- (10) In its application in any other case, “officer” means—
- (a) a director,
 - (b) a manager,
 - (c) a secretary, or
 - (d) any other person managing or purporting to manage any of the company’s affairs.

69E Publication of details of persons liable to penalties under section 69C

- (1) The Commissioners may publish information about a person if—
- (a) in consequence of an investigation the person has been found liable to one or more penalties under section 69C (the amount of which has been assessed), and

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- (b) the potential lost VAT in relation to the penalty (or the aggregate of the potential lost VAT in relation to each of the penalties) exceeds £50,000.
- (2) The information that may be published under subsection (1) is—
- (a) the person’s name (including any trading name, previous name or pseudonym),
 - (b) the person’s address (or registered office),
 - (c) the nature of any business carried on by the person,
 - (d) the amount of the penalty or penalties in question,
 - (e) the periods or times to which the actions giving rise to the penalty or penalties relate,
 - (f) any other information that the Commissioners consider it appropriate to publish in order to make clear the person’s identity.
- (3) In a case where—
- (a) the requirements in subsection (1)(a) and (b) are met in relation to a penalty or penalties for which a company is liable,
 - (b) information about the company is published by virtue of this section,
 - (c) a person (“the officer”) has been given a decision notice under section 69D specifying a portion of the penalty (or, if there is more than one penalty, of any of the penalties) payable by the company as a portion which the officer is liable to pay, and
 - (d) the amount (or, if the decision notice specifies portions of more than one penalty, the aggregate amount) which the officer is liable to pay under the decision notice exceeds £25, 000,
- the Commissioners may publish information about the officer.
- (4) The information that may be published under subsection (3) is—
- (a) the officer’s name,
 - (b) the officer’s address,
 - (c) the officer’s position (or former position) in the company,
 - (d) the amount of any penalty imposed on the company of which a portion is payable by the officer under the decision notice and the portion so payable,
 - (e) the periods or times to which the actions giving rise to any such penalty relate,
 - (f) any other information that the Commissioners consider it appropriate to publish in order to make clear the officer’s identity.
- (5) Information published under this section may be published in any manner that the Commissioners consider appropriate.
- (6) Before publishing any information under this section the Commissioners must—
- (a) inform the person or officer to which it relates that they are considering doing so (in the case of an officer, on the assumption that they publish information about the company), and
 - (b) afford the person or officer the opportunity to make representations about whether it should be published.

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- (7) No information may be published under subsection (1) before the day on which the penalty becomes final or, where more than one penalty is involved, the latest day on which any of the penalties becomes final.
 - (8) No information may be published under subsection (1) for the first time after the end of the period of one year beginning with that day.
 - (9) No information may be published under subsection (3) before whichever is the later of—
 - (a) the day mentioned in subsection (7), and
 - (b) the day on which the decision notice given to the officer becomes final.
 - (10) No information may be published under subsection (3) for the first time after the end of the period of one year beginning with the later of the two days mentioned in subsection (9).
 - (11) No information may be published (or continue to be published) under subsection (1) or (3) after the end of the period of three years beginning with the day mentioned in subsection (7).
 - (12) For the purposes of this section a penalty or a decision notice becomes final when the time for any appeal or further appeal relating to it expires or, if later, any appeal or final appeal relating to it is finally determined.
 - (13) The Treasury may by regulations made by statutory instrument—
 - (a) amend subsection (1) to vary the amount for the time being specified in paragraph (b), or
 - (b) amend subsection (3) to vary the amount for the time being specified in paragraph (d).
 - (14) A statutory instrument containing regulations under subsection (13) is subject to annulment in pursuance of a resolution of the House of Commons.”
- (3) In section 70 (mitigation of penalties)—
- (a) in the heading, for “and 67” substitute “, 67, 69A and 69C”,
 - (b) in subsection (1) for “or 69A” substitute “, 69A or 69C”, and
 - (c) after subsection (4) insert—
 - “(5) In the application of subsections (3) and (4) in relation to a penalty under section 69C, subsection (4) has effect with the omission of paragraphs (b) and (c).”
- (4) In section 76 (assessment of amounts due by way of penalty etc), in subsection (1)(b) for “to 69B” (in both places) substitute “to 69C”.
- (5) In section 83(1) (appeals), after paragraph (n) insert—
- “(na) any liability to a penalty under section 69C, any assessment of a penalty under that section or the amount of such an assessment;
 - (nb) the giving of a decision notice under section 69D or the portion of a penalty assessed under section 69C which is specified in such a notice;”.
- (6) After paragraph 21 of Schedule 24 to FA 2007 (penalties for errors: double jeopardy) insert—

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“21ZA(1) A person is not liable to a penalty under paragraph 1 in respect of an inaccuracy if—

- (a) the inaccuracy involves a claim by the person to exercise or rely on a VAT right (in relation to a supply) that has been denied or refused by HMRC as mentioned in subsection (4) of section 69C of VATA 1994, and
- (b) the person has been assessed to a penalty under that section (and the assessment has not been successfully appealed against or withdrawn).

(2) In sub-paragraph (1)(a) “VAT right” has the same meaning as in section 69C of VATA 1994.”

(7) Section 69C does not apply in relation to transactions entered into before this section comes into force.