



Finance (No. 2) Act 2017

2017 CHAPTER 32

PART 4

ADMINISTRATION, AVOIDANCE AND ENFORCEMENT

Reporting and record-keeping

60 Digital reporting and record-keeping for income tax etc

- (1) TMA 1970 is amended as set out in subsections (2) and (3).
- (2) After section 12B insert—

“Digital reporting and record-keeping

12C Digital reporting and record-keeping

Schedule A1 (digital reporting and record-keeping) has effect.”

- (3) Before Schedule 1AA insert—

“SCHEDULE A1

Section 12C

DIGITAL REPORTING AND RECORD-KEEPING

PART 1

APPLICATION

Application: persons

- 1 (1) This Schedule applies to a person within the charge to income tax who, otherwise than in partnership, carries on (or has carried on)—

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- (a) a trade, profession or vocation the profits of which are chargeable to income tax under Part 2 of ITTOIA 2005,
 - (b) a property business the profits of which are chargeable to income tax under Part 3 of ITTOIA 2005, or
 - (c) any other activity which may give rise to profits or other income chargeable to income tax under Part 2 or 3 of ITTOIA 2005.
- (2) This is subject to paragraph 2.
- 2 (1) This Schedule does not apply to—
- (a) the trustees of a charitable trust, or
 - (b) the trustees of an exempt unauthorised unit trust (within the meaning of the Unauthorised Unit Trusts (Tax) Regulations 2013 (S.I. 2013/2819)),
- unless the trustees elect for this Schedule to apply to them.
- (2) This Schedule does not apply to a person in respect of an excluded activity unless the person elects for this Schedule to apply to the person in respect of the excluded activity.
- (3) The following are excluded activities—
- (a) the underwriting business of a member of Lloyd’s (within the meaning of section 184 of the Finance Act 1993),
 - (b) holding shares in respect of which a distribution may be made which is chargeable to income tax under Part 3 of ITTOIA 2005 by virtue of section 548(6) of CTA 2010 (distributions to shareholders in real estate investment trusts), and
 - (c) participating in an open-ended investment company which may make distributions chargeable to income tax under Part 3 of ITTOIA 2005 by virtue of regulation 69Z18 of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) (property income distributions).
- (4) The Commissioners may by regulations make provision about elections under this paragraph and the withdrawal of such elections, including provision—
- (a) about how an election may be made or withdrawn, and
 - (b) about the period for which an election or withdrawal has effect.

Application: partnerships

- 3 (1) This Schedule applies to a partnership if one or more of the partners is within the charge to income tax.
- (2) This is subject to paragraph 4.
- 4 (1) If all the activities of a partnership which may give rise to profits or income are excluded activities, this Schedule does not apply to the partnership unless the partnership elects for this Schedule to apply to it.
- (2) The following are excluded activities—
- (a) the underwriting business of a Lloyd’s partnership (as defined in section 184(1) of the Finance Act 1993),

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- (b) holding shares in respect of which a distribution may be made which is chargeable to income tax under Part 3 of ITTOIA 2005 by virtue of section 548(6) of CTA 2010 (distributions to shareholders in real estate investment trusts), and
 - (c) participating in an open-ended investment company which may make distributions chargeable to income tax under Part 3 of ITTOIA 2005 by virtue of regulation 69Z18 of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) (property income distributions).
- (3) The Commissioners may by regulations make provision about elections under this paragraph and the withdrawal of such elections, including provision—
- (a) about how an election may be made or withdrawn, and
 - (b) about the period for which an election or withdrawal has effect.

Nominated partners

- 5
- (1) Requirements imposed by regulations under this Schedule on a partnership are to be met by a nominated partner.
 - (2) A “nominated partner” is a partner nominated for the purposes of this Schedule—
 - (a) by the partners, or
 - (b) by the Commissioners.
 - (3) A nomination, or a revocation of a nomination, by the partners does not have effect until notice of the revocation or nomination is given to HMRC.
 - (4) The Commissioners may by regulations make provision about nominations and the revocation of nominations, including provision about the circumstances in which the Commissioners may nominate a partner.
 - (5) In this Act references to a nominated partner are to a partner nominated for the purposes of this Schedule.

PART 2

DIGITAL REPORTING AND RECORD-KEEPING

Interpretation

- 6
- In this Part of this Schedule “business”—
- (a) in relation to a person to whom this Schedule applies (see paragraphs 1 and 2), means the activity by virtue of which this Schedule applies to the person (and if more than one, means each of them), and
 - (b) in relation to a partnership to which this Schedule applies (see paragraphs 3 and 4), means any activity of the partnership.

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Periodic updates

- 7
- (1) The Commissioners may by regulations require a person or partnership to whom this Schedule applies to provide to HMRC, by electronic communications, specified information about the business of the person or partnership.
 - (2) The information which may be specified includes any information (“financial information”) relevant to calculating profits, losses or income of the business, including information about receipts and expenses.
 - (3) The regulations may require information to be provided at or for specified intervals, times or periods.
 - (4) The regulations may not require financial information about the business to be provided more often than once every 3 months.

End of period statement

- 8
- (1) The Commissioners may by regulations require a person to whom this Schedule applies to provide to HMRC, by electronic communications, a statement containing specified information about the person’s business in relation to each relevant period.
 - (2) “Relevant period” means—
 - (a) in relation to a business the profits or income of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, a basis period (see Chapter 15 of that Part), and
 - (b) otherwise, a tax year.
 - (3) The information which may be specified includes any information relevant to calculating profits, losses or income of the business for the relevant period, including information about receipts and expenses.
 - (4) Regulations under this paragraph may require the statement to include a declaration to the effect that the information included in it is correct and complete.
 - (5) An end of period statement for a tax year must be provided to HMRC at or before—
 - (a) the time at which the person delivers a return under section 8 or 8A for the tax year (see section 8(7)(c) and 8A(7)(c)), or
 - (b) if earlier, the end of 31 January following the tax year.
 - (6) In this Act—
 - (a) references to an end of period statement are to a statement required by regulations under this paragraph;
 - (b) references to an end of period statement for a tax year are to an end of period statement for that tax year or, where the relevant period is a basis period, for the basis period for that tax year.

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Facility for complying with notice to file under section 8 or 8A

- 9 The Commissioners may by regulations make provision for the establishment and use of a facility enabling a person to whom this Schedule applies to file or deliver, by electronic communications—
- (a) anything which under section 8(1AB) may be required to be filed or delivered by a notice to file under section 8;
 - (b) anything which under section 8A(1AB) may be required to be filed or delivered by a notice to file under section 8A.

Partnership return

- 10 (1) The Commissioners may by regulations require a partnership to which this Schedule applies to provide to HMRC, by electronic communications, a return containing specified information about the partnership's business in relation to each tax year.
- (2) The information which may be specified includes any information which is or may be required to be included in a section 12AA partnership return, including information in respect of any partners within the charge to corporation tax.
- (3) In particular, the information which may be specified includes the information required to be included in a section 12AA partnership return by section 12AB (partnership statements).
- (4) Regulations under this paragraph may require the return to include a declaration to the effect that the information included in it is correct and complete.
- (5) A Schedule A1 partnership return for a tax year must be provided to HMRC on or before 31 January following the tax year.
- (6) In this Act—
- (a) references to a Schedule A1 partnership return are to a return required by regulations under this paragraph, and
 - (b) references to a partnership statement, in relation to a Schedule A1 partnership return, are to information required to be included in the return by virtue of sub-paragraph (3).
- (7) In the Taxes Acts, unless the contrary intention appears, a reference (whether general or specific) to a return under, or a return required under, this Act includes a reference to a Schedule A1 partnership return.

Record-keeping

- 11 (1) The Commissioners may by regulations require a person or partnership to whom this Schedule applies to—
- (a) keep specified records relating to the business in electronic form, and
 - (b) preserve those records in electronic form for a specified period.

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- (2) The records which may be specified are any records the Commissioners consider relevant to ascertaining information required to be provided by regulations under this Part of this Schedule.
 - (3) A requirement imposed by regulations under this paragraph is in addition to, and not in place of, any other requirement that the person or partnership keep and preserve records (or keep and preserve records in a particular form).
 - (4) Paragraph 5(1) (requirements imposed on partnership to be met by nominated partner) does not apply to requirements imposed by regulations under this paragraph.
- 12
- (1) This paragraph applies where requirements imposed by regulations under paragraph 11 for any period are not complied with.
 - (2) The person, or in the case of a partnership each relevant partner, is liable for a penalty.
 - (3) “Relevant partner” means any person who was a partner in the partnership at any time during the period in question.
 - (4) The amount of the penalty must not exceed £3,000.
 - (5) A person or relevant partner is not liable to a penalty under this paragraph in relation to a period if the person or relevant partner is liable to a penalty under section 12B(5) in relation to that period.

Electronic communications and records: supplementary powers

- 13
- (1) This paragraph applies to regulations under paragraphs 7, 8, 9, 10 and 11.
 - (2) The regulations may (amongst other things) make provision—
 - (a) as to the electronic form to be taken by information provided and records kept or preserved,
 - (b) requiring persons to prepare and keep records of information provided by means of electronic communications,
 - (c) for the production of the contents of records kept or preserved in accordance with regulations under this Part of this Schedule,
 - (d) as to conditions that must be complied with in connection with the use of electronic communications or the keeping or preservation of electronic records,
 - (e) for treating information as not having been provided or records as not having been kept or preserved unless conditions are complied with,
 - (f) for determining the time at which and person by whom information is taken to have been delivered, and
 - (g) for authenticating information or records.
 - (3) The regulations may also make provision (which may include provision for the application of conclusive or other presumptions) about the manner of proving for any purpose—
 - (a) whether any use of electronic communications is to be taken as having resulted in the provision of information,

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- (b) the time at which information was provided,
 - (c) the person by whom information was provided,
 - (d) the contents of any information provided,
 - (e) the contents of any records, and
 - (f) any other matter for which provision may be made by the regulations.
- (4) The regulations may allow or require use to be made of intermediaries in connection with—
- (a) the provision of information by means of electronic communications, and
 - (b) the authentication or security of anything transmitted by any such means.
- (5) The regulations may—
- (a) allow any authorisation or requirement for which the regulations may provide to be given by means of a specific or general direction given by the Commissioners, and
 - (b) provide that the conditions of an authorisation or requirement are to be taken to be satisfied only where the Commissioners are satisfied as to specified matters.
- (6) The regulations may provide—
- (a) that information provided must meet standards of accuracy and completeness set by specific or general directions given by the Commissioners, and
 - (b) that failure to meet those standards may be treated as a failure to provide the information, or as a failure to comply with the requirements of the regulations.

PART 3

EXEMPTIONS

Exemption for the digitally excluded

- 14 (1) The Commissioners must by regulations make provision—
- (a) for a person to be exempt from requirements imposed by regulations under paragraphs 7, 8 and 11 if the Commissioners are satisfied that the person is digitally excluded, and
 - (b) for a partnership to be exempt from requirements imposed by regulations under paragraphs 7, 10 and 11 if the Commissioners are satisfied that the partnership is digitally excluded.
- (2) A person is digitally excluded if the digital exclusion condition is met in relation to the person.
- (3) A partnership is digitally excluded if the digital exclusion condition is met in relation to each partner.
- (4) The digital exclusion condition is met in relation to a person or partner if—

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- (a) the person or partner is a practising member of a religious society or order whose beliefs are incompatible with using electronic communications or keeping electronic records, or
- (b) for any reason (including age, disability or location) it is not reasonably practicable for the person or partner to use electronic communications or to keep electronic records.

Further exemptions

- 15 (1) The Commissioners may by regulations make provision for further exemptions.
- (2) The exemptions for which provision may be made include exemptions based on income or other financial criteria.

PART 4

SUPPLEMENTARY PROVISION

Appeals

- 16 (1) An appeal may be brought against any decision made by the Commissioners, or by an officer of Revenue and Customs, under regulations under this Schedule.
- (2) Notice of an appeal under this paragraph must be given to HMRC within 30 days after the day on which notice of the decision is given.
- (3) The notice of appeal must—
- (a) be in writing, and
 - (b) specify the grounds of appeal.

Interpretation

- 17 Any power in this Schedule to require the provision of information includes power to require the provision of accounts, statements and documents relating to that information.

Regulations

- 18 (1) Regulations under this Schedule may—
- (a) make provision which applies generally or only for specified cases or purposes;
 - (b) make different provision for different cases or purposes;
 - (c) include incidental, supplemental, consequential, saving, transitional or transitory provision;
 - (d) make provision for matters to be specified by the Commissioners in accordance with the regulations.
- (2) Sub-paragraph (1)(d) does not apply to any interval, time or period specified by virtue of paragraph 7(3) (which may be specified only by the regulations).

- (3) Regulations under this Schedule may make provision for a person or partnership to whom this Schedule applies, but who would not otherwise be subject to a requirement imposed by the regulations, to elect to be subject to that requirement.
 - (4) Regulations under this Schedule may provide that, for the purposes of any provision of this Schedule or of the regulations, a change in the accounting date of a business is to be disregarded (and its period of account determined accordingly).
 - (5) The power to make regulations under this Schedule is exercisable by statutory instrument.
 - (6) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.”
- (4) Subsections (1) to (3) come into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (5) Regulations under subsection (4) may appoint different days for different purposes.

61 Digital reporting and record-keeping for income tax etc: further amendments

- (1) Schedule 14 contains provision amending TMA 1970 and other Acts.
- (2) The Commissioners for Her Majesty’s Revenue and Customs may by regulations amend or modify any provision of the Taxes Acts in consequence of the provision made by section 60 or Schedule 14.
- (3) Regulations under subsection (2) may make transitional, transitory or saving provision.
- (4) Regulations under subsection (2) must be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (6) Subsections (1) to (5) and Schedule 14 come into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (7) Regulations under subsection (6) may appoint different days for different purposes.

62 Digital reporting and record-keeping for VAT

- (1) Schedule 11 to VATA 1994 (administration, collection and enforcement) is amended as set out in subsections (2) to (4).
- (2) In paragraph 2 (accounting and payment)—
 - (a) in sub-paragraph (1) for “and the making of returns” substitute “, the making of returns and the submission of information”;
 - (b) after sub-paragraph (11) insert—

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- “(11A) Regulations under this paragraph may include incidental, supplemental, consequential, saving, transitional or transitory provision.”
- (3) In paragraph 6 (duty of taxable person to keep records)—
- (a) omit sub-paragraph (4);
 - (b) at the end insert—
 - “(5) The Commissioners may by regulations make provision about the form in which, and means by which, records are to be kept and preserved.
 - (6) Regulations under sub-paragraph (5) may—
 - (a) make different provision for different cases;
 - (b) provide for any provision of the regulations to be subject to conditions or exceptions specified in writing by the Commissioners;
 - (c) include incidental, supplemental, consequential, saving, transitional or transitory provision.
 - (7) If regulations under sub-paragraph (5) make provision requiring records to be kept or preserved in electronic form they must make provision for a taxable person to be exempt from those requirements for any month (“the current month”) if—
 - (a) the value of the person’s taxable supplies, in the period of one year ending with the month before the current month, was less than the VAT threshold, and
 - (b) the person was not subject to those requirements in the month before the current month.
 - (8) The regulations may modify the exemption for cases where a business or part of a business carried on by a taxable person is transferred to another person as a going concern.
 - (9) The “VAT threshold” means the amount specified in paragraph 1(1) (a) of Schedule 1 on the first day of the current month.
 - (10) Regulations under sub-paragraph (5) requiring records to be kept or preserved in electronic form may (among other things) make provision—
 - (a) as to the electronic form in which records are to be kept or preserved,
 - (b) for the production of the contents of records kept or preserved in accordance with the regulations,
 - (c) as to conditions that must be complied with in connection with the keeping or preservation of electronic records,
 - (d) for treating records as not having been kept or preserved unless conditions are complied with,
 - (e) for authenticating records,
 - (f) about the manner of proving for any purpose the contents of any records (including provision for the application of conclusive or other presumptions).

Status: This is the original version (as it was originally enacted).

- (11) Regulations under sub-paragraph (5) requiring records to be kept or preserved in electronic form may—
- (a) allow any authorisation or requirement for which the regulations may provide to be given by means of a specific or general direction given by the Commissioners,
 - (b) provide that the conditions of an authorisation or requirement are to be taken to be satisfied only where the Commissioners are satisfied as to specified matters.”
- (4) In paragraph 6A (power to direct keeping of records), for sub-paragraph (7) substitute—
- “(7) Regulations under paragraph 6(5) apply for the purposes of this paragraph as they apply for the purposes of paragraph 6.”
- (5) In section 83(1) of VATA 1994 (appealable decisions), for paragraph (zc) substitute—
- “(zc) a decision of the Commissioners about the application of any provision of regulations under paragraph 2 or 6 of Schedule 11, or of regulations under section 135 or 136 of the Finance Act 2002 relating to VAT, which—
- (i) requires returns to be made or information to be submitted by electronic communications, or
 - (ii) requires records to be kept or preserved in electronic form, (including in particular a decision as to whether such a requirement applies and a decision to impose a penalty).”
- (6) Subsections (3)(a) and (4) of this section come into force when the first regulations under paragraph 6(5) of Schedule 11 to VATA 1994 come into force.
- (7) Regulations under paragraph 6(5) of Schedule 11 to VATA 1994 may not make provision requiring records to be kept or preserved in electronic form which has effect before 1 April 2019.

Enquiries

63 Partial closure notices

Schedule 15 makes provision for partial closure notices in respect of enquiries under sections 9A, 12ZM and 12AC of TMA 1970 and Schedule 18 to FA 1998.

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—

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“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.
- (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

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- (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
 - (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—

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- (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
 - (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;

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- (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);
 - 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.

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- (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.
- (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).

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- (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
 - (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

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- (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—
- (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.

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- (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
 - (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.

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- (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.
- (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).

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- (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—
- “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.

Information

69 Data-gathering from money service businesses

- (1) In Part 2 of Schedule 23 to FA 2011 (data-gathering powers: relevant data-holders), after paragraph 13C insert—

“Money service businesses

- 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,

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- (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.
 - (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), or
 - (b) resulting from Part 2 of Schedule 3 to that Act (exercise of passport rights by EEA firms).
 - (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.”
- (2) This section applies in relation to relevant data with a bearing on any period (whether before, on or after the day on which this Act is passed).