



Finance Act 2022

2022 CHAPTER 3

PART 6 U.K.

MISCELLANEOUS AND FINAL

Avoidance

85 Winding-up petitions by an officer of Revenue and Customs U.K.

- (1) Subsection (2) applies where it appears to an officer of Revenue and Customs that it is expedient in the public interest, for the purposes of protecting the public revenue, that a relevant body should be wound up.
- (2) The officer may present a petition to the court for the winding up of the body.
- (3) On such a petition, the court may wind up the body if the court is of the opinion that it is just and equitable that it should be wound up.
- (4) In this section—
 - “court” means—
 - (a) the court having jurisdiction for the purposes of the Insolvency Act 1986, or
 - (b) in Northern Ireland, the High Court;
 - “indirect tax” has the same meaning as in Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes);
 - “relevant body” means a body, including a partnership, that—
 - (a) carries on a business as a promoter within the meaning of Part 5 of FA 2014 (promoters of tax avoidance schemes) as if, in sections 234 and 235 of that Part, references to—
 - (i) “tax” included value added tax and other indirect taxes, and
 - (ii) “tax advantage” included a tax advantage as defined for value added tax in paragraph 6, and for other indirect taxes in paragraph 7, of Schedule 17 to F(No.2)A 2017;

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- (b) is connected to a body within paragraph (a) (within the meaning of section 1122 of CTA 2010 (“connected” persons)).
- (5) If a petition is presented under subsection (2) for the winding up of a partnership, the court has jurisdiction, and the Insolvency Act 1986 (or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19))) has effect, as if the partnership were an unregistered company as defined by section 220 of that Act (or Article 184 of that Order).
- (6) The rules governing the practice and procedure (including fees) in respect of petitions under section 124A of the Insolvency Act 1986 or Article 104A of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) apply to petitions under this section, subject to any necessary modifications.

86 **Publication by HMRC of information about tax avoidance schemes** **U.K.**

- (1) If an authorised officer suspects that a proposal or arrangements are a relevant proposal or relevant arrangements the officer may arrange for the publication of any information (including documents) the officer considers appropriate for the purposes of—
- (a) informing taxpayers about risks associated with, or concerns the officer has about, the proposal or arrangements, or
 - (b) protecting the public revenue.
- (2) The information that may be published includes information (including documents) identifying or about any person—
- (a) who is or has been, or who the officer suspects is or has been—
 - (i) a promoter in relation to the proposal or arrangements,
 - (ii) a connected person in relation to the proposal or arrangements or to a person within sub-paragraph (i), or
 - (iii) a member of a promotion structure any member of which has or has had, or is suspected by the officer of having or having had, a role in relation to making the proposal or arrangements available for implementation, or
 - (b) who has or has had, or who the officer suspects has or has had, any other role in relation to making the proposal or arrangements available for implementation.
- (3) No information may be published under this section that identifies a person—
- (a) who is not within subsection (2), or
 - (b) where there are reasonable grounds for believing that the person’s role in relation to the proposal or arrangements is limited to activities subject to legal professional privilege.
- (4) Information may be published under this section in such manner as the officer considers appropriate, including by communicating it to particular persons.
- (5) If an authorised officer intends to publish information under this section that identifies a person, an officer of Revenue and Customs must—
- (a) notify the person, and
 - (b) give the person 30 days from that notification in which to make representations about whether or not the information should be published.

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- (6) Before arranging for the publication of information under this section identifying a person, an authorised officer must have regard to any representations received in accordance with subsection (5).
- (7) An authorised officer must amend or withdraw information published under this section if the officer subsequently considers it to be incorrect or misleading in a significant respect.
- (8) Nothing in this section authorises a disclosure of information if the disclosure would contravene the data protection legislation or would be prohibited by the investigatory powers legislation (but in determining whether a disclosure would do either of those things, the power conferred by this section is to be taken into account).
- (9) In subsection (8)—
 - “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
 - “the investigatory powers legislation” means Parts 1 to 7 and Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (10) Nothing in this section limits the circumstances in which information may be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.
- (11) For the purposes of this section, a person is a connected person in relation to a proposal or arrangements, or a person within subsection (2)(a)(i), if the person is—
 - (a) involved in the promotion of the proposal or arrangements;
 - (b) in the case of a proposal or arrangements that involve a trust, a settlor, trustee or beneficiary of the trust, or other person involved in the administration of the trust;
 - (c) a director, manager, secretary or other similar officer of the person within subsection (2)(a)(i);
 - (d) a person who controls or has significant influence over (within the meaning of Part 2 of Schedule 34 to FA 2014) the person within subsection (2)(a)(i);
 - (e) an employee or shareholder of the person within subsection (2)(a)(i).
- (12) In this section “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 section.
- (13) Expressions used in Part 5 of FA 2014 have the same meaning in this section as in that Part, unless the contrary intention appears (and, in particular, see sections 234 and 235 of FA 2014 for the meanings of “relevant proposal”, “relevant arrangements” and “promoter” and Schedule 33A to that Act for the meaning of “promotion structure”).

87 Freezing orders: England and Wales **U.K.**

- (1) Subsection (2) applies where —
 - (a) an application is made on behalf of HMRC to a court in England and Wales for a freezing order in relation to a relevant penalty (see section 90) before the penalty is determined, and
 - (b) the court considering the application is satisfied that HMRC have a good arguable case in relation to the penalty and—

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- (i) have commenced proceedings before the First-tier Tribunal in relation to it, or
 - (ii) intend to commence proceedings before the First-tier Tribunal in relation to it within the initial period.
- (2) The court is to determine the application as if it were being made immediately after the First-tier Tribunal had determined the penalty on the basis sought, or to be sought, by HMRC.
- (3) A freezing order granted by virtue of subsection (2) may not take effect unless HMRC commence proceedings before the First-tier Tribunal in relation to the penalty before the end of the initial period (whether before or after the making of the application for the order).
- (4) In this section, a “freezing order” is an order granted in accordance with rule 25.1(1)(f) of the Civil Procedure Rules.

88 Warrants for diligence on the dependence: Scotland **U.K.**

- (1) Subsection (2) applies where —
- (a) an application is made on behalf of HMRC to a court in Scotland for a warrant for diligence on the dependence under Part 1A of the Debtors (Scotland) Act 1987 in relation to a relevant penalty (see section 90) before the penalty is determined, and
 - (b) the court considering the application is satisfied that HMRC have a good arguable case in relation to the penalty and—
 - (i) have commenced proceedings before the First-tier Tribunal in relation to it, or
 - (ii) intend to commence proceedings before the First-tier Tribunal in relation to it within the initial period.
- (2) The court is to determine the application as if the relevant penalty were a contingent debt in terms of section 15C of the 1987 Act.
- (3) Execution of diligence on the dependence under a warrant granted under Part 1A of the 1987 Act in relation to a relevant penalty is not competent unless HMRC commence proceedings before the First-tier Tribunal in relation to the penalty before the end of the initial period (whether before or after the making of the application for the warrant).

89 Freezing injunctions: Northern Ireland **U.K.**

- (1) Subsection (2) applies where —
- (a) an application is made on behalf of HMRC to a court in Northern Ireland for a freezing injunction in relation to a relevant penalty (see section 90) before the penalty is determined, and
 - (b) the court considering the application is satisfied that HMRC have a good arguable case in relation to the penalty and—
 - (i) have commenced proceedings before the First-tier Tribunal in relation to it, or
 - (ii) intend to commence proceedings before the First-tier Tribunal in relation to it within the initial period.

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- (2) The court is to determine the application as if it were being made immediately after the First-tier Tribunal had determined the penalty on the basis sought, or to be sought, by HMRC.
- (3) A freezing injunction granted by virtue of subsection (2) may not take effect unless HMRC commence proceedings before the First-tier Tribunal in relation to the penalty before the end of the initial period (whether before or after the making of the application for the injunction).
- (4) In this section, a “freezing injunction” is an injunction granted in accordance with Order 29 of the Rules of the Court of Judicature (NI) 1980 (S.R. (N.I.) 1980 No. 346) or Order 14 of the County Court Rules (Northern Ireland) 1981 (S.R. (N.I.) 1981 No. 225), which restrains a party from—
 - (a) removing from the jurisdiction assets located there, or
 - (b) dealing with any assets, whether located within the jurisdiction or not.

90 Sections 87, 88 and 89: interpretation etc **U.K.**

- (1) This section applies for the purposes of sections 87, 88 and 89.
- (2) “HMRC” means “Her Majesty’s Revenue and Customs”.
- (3) A relevant penalty is a penalty that is to be determined by the First-tier Tribunal under—
 - (a) section 98C of TMA 1970 (disclosure of tax avoidance schemes);
 - (b) Schedule 35 to FA 2014 (promoters of tax avoidance schemes: penalties);
 - (c) Schedule 36 to FA 2008 (information and inspection powers) as it has effect in relation to Schedule 16 to F(No.2)A 2017 (penalties for enablers of defeated tax avoidance) (see Part 9 of Schedule 16 to F(No.2)A 2017);
 - (d) Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes).
- (4) The “initial period” is the period of 72 hours beginning with the time at which the application mentioned in section 87, 88 or 89, as the case may be, is determined.
- (5) In calculating the period of 72 hours in subsection (4), disregard the whole of any day that is—
 - (a) a Saturday,
 - (b) a Sunday,
 - (c) Christmas Day,
 - (d) Good Friday, or
 - (e) a bank holiday under the Banking and Financial Dealings Act 1971 in the part of the United Kingdom in which the application mentioned in section 87, 88 or 89, as the case may be, is made.

91 Penalties for facilitating avoidance schemes involving non-resident promoters **U.K.**

- (1) Schedule 13 makes provision for and about penalties for facilitating avoidance schemes involving non-resident promoters.

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- (2) In consequence of that Schedule, in Schedule 13 to FA 2020 (joint and several liability of company directors etc), in paragraph 5(6), after paragraph (e) insert—
- “(f) Schedule 13 to FA 2022 (penalties for facilitating avoidance schemes involving non-resident promoters).”

92 Electronic sales suppression penalties **U.K.**

Schedule 14 makes provision for and in connection with—

- (a) penalties for persons who engage in activities involving tools used, or capable of being used, to suppress electronic sales records, and
- (b) powers for Her Majesty’s Revenue and Customs to gather information in relation to such persons and such tools.

93 Tobacco products: tracing and security **U.K.**

- (1) TPDA 1979 is amended in accordance with subsections (2) to (4).
- (2) After section 8J insert—

“8JA Tracing and security: regulations

- (1) The Commissioners may by regulations—
 - (a) establish, and make provision about the operation of, a traceability system for tobacco products;
 - (b) require security features to be applied to tobacco products.
- (2) For the purposes of subsection (1)—
 - (a) a traceability system for tobacco products means a system under which the movements of tobacco products are recorded;
 - (b) security features applied to tobacco products are features that a unit pack, or the packaging containing more than one unit pack, of tobacco products must carry for the purpose of enabling the identification of the products and the verification of their authenticity.
- (3) Tracing and security regulations may (among other things)—
 - (a) require a unit pack, or the packaging containing more than one unit pack, of tobacco products to be marked with a unique code;
 - (b) confer functions on the Commissioners or other persons (including functions involving the exercise of a discretion);
 - (c) make provision by reference to things set out (whether by the Commissioners or other persons) in a notice given in accordance with the regulations;
 - (d) specify technical standards (including by making provision under paragraph (c));
 - (e) make provision about the processing of data (including provision about the recording, transmission, storing and accessing of data);
 - (f) impose, or enable the imposition of, restrictions or requirements on persons of a specified description;
 - (g) provide for the imposition of sanctions for failure to comply with such restrictions or requirements (see section 8JB);

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- (h) provide for appeals from, and reviews of, decisions taken under the regulations.
- (4) Regulations under subsection (3)(f) may, in particular—
- (a) specify, or provide for the specification of, equipment or other material for use in connection with a restriction or requirement imposed by or under the regulations;
 - (b) require persons of a specified description to provide such equipment or material to other persons of a specified description for specified purposes;
 - (c) make provision about the way in which such equipment or material is to be provided, including how any costs are to be met by persons providing or receiving it.
- (5) Tracing and security regulations may—
- (a) make provision generally in relation to tobacco products or only in relation to specified descriptions of tobacco products;
 - (b) make different provision for different areas;
 - (c) make provision by supplementing or otherwise amending relevant existing law;
 - (d) revoke relevant existing law.
- (6) The power to make regulations under this section is exercisable only where the Commissioners consider that doing so would facilitate the administration, collection or enforcement of the duty charged under section 2.
- (7) In this section and sections 8JB and 8JC—
- “relevant existing law” means—
 - (a) Chapter 2 of Part 1 of the Finance Act 1994 (customs and excise: appeals and penalties);
 - (b) the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (S.I. 2009/273);
 - (c) the Standardised Packaging of Tobacco Products Regulations 2015 (S.I. 2015/829);
 - (d) [Commission Delegated Regulation \(EU\) 2018/573](#) of 15 December 2017 on key elements of data storage contracts to be concluded as part of a traceability system for tobacco products;
 - (e) [Commission Implementing Regulation \(EU\) 2018/574](#) of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products;
 - (f) [Commission Implementing Decision \(EU\) 2018/576](#) of 15 December 2017 on technical standards for security features applied to tobacco products;
 - (g) the Tobacco Products (Traceability and Security Features) Regulations 2019 (S.I. 2019/594);
 - “specified” means specified by or under tracing and security regulations;
 - “traceability system for tobacco products” has the meaning given in subsection (2)(a);
 - “tracing and security regulations” means regulations under subsection (1);

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“unit pack” means the smallest individual packaging in which a tobacco product is, or is intended to be, presented for sale to a consumer (but not including any transparent wrapper).

8JB Tracing and security: sanctions

- (1) This section applies to tracing and security regulations that make provision for sanctions under section 8JA(3)(g).
- (2) The regulations may provide for the following kinds of sanction—
 - (a) the imposition of monetary penalties of such amounts, not exceeding £10,000, as are determined in accordance with the regulations;
 - (b) for tobacco products involved in a contravention of applicable law to be liable to forfeiture under the customs and excise Acts;
 - (c) the application by the Commissioners of measures to restrict or prohibit a person’s participation, or continued participation, in any part of a traceability system for tobacco products (including measures to deactivate, or require the deactivation of, any code issued to the person for the purposes of such a system or to prevent such a code from being issued or reissued).
- (3) Provision under subsection (2)(a) may (among other things)—
 - (a) provide for a penalty to be payable on the giving of a notice (“a penalty notice”) by such persons as are authorised by or under the regulations;
 - (b) specify matters to which such persons may or must have regard when determining whether to give a penalty notice;
 - (c) provide for the action to be taken if a monetary penalty is not paid in accordance with a penalty notice.
- (4) For the purposes of subsection (2)(b), tobacco products are “involved in a contravention of applicable law” if—
 - (a) the products do not comply with a requirement imposed under tracing and security regulations or under relevant existing law, or
 - (b) the products are found together with other products falling within paragraph (a).

8JC Tracing and security: disclosure of information

- (1) The Commissioners (or anyone acting on their behalf) may, for a purpose within subsection (3), disclose information to—
 - (a) a person on whom functions have been conferred by or under tracing and security regulations or relevant existing law;
 - (b) an authorised officer of such a person.
- (2) A person mentioned in subsection (1)(a) or (b) may, for a purpose within subsection (3), disclose information to the Commissioners (or anyone acting on their behalf).
- (3) A purpose is within this subsection if it is connected with—
 - (a) a function conferred by or under tracing and security regulations or relevant existing law, or

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- (b) the enforcement of a restriction or requirement imposed by or under tracing and security regulations or relevant existing law.
- (4) A person who receives information as a result of subsection (1) may not—
 - (a) use the information for a purpose other than a purpose within subsection (3), or
 - (b) further disclose the information,except with the consent of the Commissioners (which may be general or specific).
- (5) If—
 - (a) a person discloses information in contravention of subsection (4)(b), and
 - (b) the information relates to a person whose identity is specified in, or can be deduced from, the disclosure,section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of information in contravention of section 20(9) of that Act.
- (6) Nothing in this section authorises the making of a disclosure which would—
 - (a) contravene the data protection legislation, or
 - (b) be prohibited by the investigatory powers legislation.In determining whether a disclosure would do either of those things, the powers conferred by this section are to be taken into account.
- (7) In subsection (6)—
 - “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
 - “the investigatory powers legislation” means Parts 1 to 7 and Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (8) Nothing in this section limits the circumstances in which information may be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.
- (9) References in this section to an authorised officer of any person are to any person who has been designated by the principal as a person to and by whom information may be disclosed by virtue of this section.”
- (3) In section 9 (regulations), in subsection (1A) after “section” insert “8JA,”.
- (4) In section 10 (interpretation), in subsection (3), after ““the Commissioners”” insert—
““the customs and excise Acts””.
- (5) In Schedule 41 to FA 2008 (penalties for certain VAT and excise wrongdoing etc), in paragraph 15 (interaction with other penalties and late payment surcharges), after subparagraph (2) insert—
“(2A) If P has incurred a penalty under regulations under section 8JA(1) of TPDA 1979 (tracing and security regulations) in respect of conduct for which P is liable to a penalty under paragraph 4(1), the amount of the penalty under

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paragraph 4(1) is to be reduced by the amount of the penalty under those regulations.”

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