

BRITISH TAX REVIEW

2009 Number 5 489–652

FINANCE ACT ISSUE

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SWEET & MAXWELL

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Finance Act Notes

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Sections 95–98 and Schedules 47–50: changes to HMRC’s information and inspection powers, power to obtain contact details for debtors and record-keeping

Introduction

THIS group of sections and schedules has four purposes:

- (1) to amend (in some instances, merely by clarifying) the detail of the information and inspection regime instituted by Schedule 36 to the Finance Act 2008 (Schedule 36);
- (2) to extend HMRC’s powers in this area in various respects;
- (3) to create a new power for HMRC to obtain contact details for debtors; and
- (4) to elucidate the record-keeping obligations in relation to stamp duty land tax (SDLT) and certain other indirect taxes.¹

²⁷ Guidance Note fn.4, para.45.

²⁸ The survey, conducted in October 2009, also found that of 137 senior finance and tax figures from leading UK businesses, 41 per cent of companies polled said they had so far done nothing to achieve compliance, despite the fact only eight per cent are completely comfortable that their organisation could provide the necessary sign off, given their current arrangements. 84 per cent of firms polled believed that it will cost at least £50,000 to achieve compliance with SAO legislation. Eleven per cent of firms think it will cost £250,000 or more. See www.camagonline.co.uk/News/3206.aspx (accessed October 24, 2009).

²⁹ T. Lloyd, “2009 In-House Tax Survey”, fn.23.

^{LT} Companies; Consultation; Directors; Senior accounting officers; Penalties; Taxation administration; Tax avoidance

¹ The other relevant indirect taxes are aggregates levy, climate change levy and landfill tax.

Amendment and clarification of Schedule 36

The amendments and clarifications, which take effect in all cases from July 21, 2009,² may be divided into seven groups:

- The *Group 1* changes consist of three elements, each of which is related to the First-tier Tribunal's approval of the exercise of the HMRC powers.
- The *Group 2* change modifies the "reasonable belief condition precedent" to the power to inspect premises, goods and documents.
- The *Group 3* change extends HMRC's powers of inspection of documents to cover certain additional classes of documents.
- The *Group 4* changes extend the information powers in certain cases to cover instances where the taxpayer has made a return.
- The *Group 5* changes clarify and amend the position with respect to inquiries into the affairs of "multiple taxpayers" (partnerships and groups of companies).
- The *Group 6* change amends the penalties for failure to comply with notices in certain respects.
- The *Group 7* change clarifies and extends the key concept of "checking a person's tax position".

Each Group is discussed further below under the appropriate subheading.

Group 1 changes

Notification to the taxpayer of application to the First-tier Tribunal for approval. In some instances, the powers conferred by the Schedule 36 regime may not be exercised without the approval of the First-tier Tribunal, and in others the taxpayer has a right to appeal to that Tribunal against the issue of the notice unless its approval has been obtained to such issue.³ Significantly, the First-tier Tribunal's approval⁴ is mandatory before a "third party" notice (unless the taxpayer has consented to the issue of the notice) or a notice in relation to the tax affairs of unknown persons can be issued.⁵

The change effected by the Finance Act 2009 (FA 2009) clarifies that the HMRC officer conducting the relevant investigation need not notify the taxpayer or any other interested party of the intention to apply to the First-tier Tribunal for its approval.⁶

Dispensing with the need for First-tier Tribunal approval where the addressee is an "involved third party", and pensions matters. "Involved third parties" are those who are very closely

² The date on which Royal Assent was given to the Finance Bill 2009.

³ FA 2008, Sched.36, paras 3(1) and (2), 5, 29, 30 and 53 (imposing penalty in cases such as destruction of documents where the First-tier Tribunal has approved the notice).

⁴ Or the agreement of the taxpayer.

⁵ FA 2008, Sched.36, paras 3 and 5.

⁶ FA 2009, Sched.47, paras 2(2) and 3(2), inserting new subparas (2A) and (3A) into FA 2008, Sched.36, paras 3 and 5, respectively. No change has been made to the requirements in FA 2008, Sched.36, para.3(3)(c) and (e) (that the addressee of the notice, and (in the case of a third party notice) the taxpayer, have been told that the information or documents are required and been given a reasonable opportunity to make representations to HMRC and (in the case of a third party notice) that the taxpayer has been given a summary of the reasons why the information or documents are required). The change applies not only to approval of notices requiring information and documents, but also to approval by the First-tier Tribunal of inspection of premises—FA 2009, Sched.47, para.8, inserting new subpara.(1A) into FA 2008, Sched.36, para.13.

involved with the arrangements in respect of which the tax arises. For example, the plan manager is an involved third party in relation to an individual's investment plan. FA 2009 makes the provisions which apply to the issue of involved third party notices closer to those dealing with the taxpayer notices rather than those dealing with notices to other third parties: the HMRC officer need not obtain the consent of the taxpayer or the approval of the Tribunal before issuing the notice to the involved third party.⁷ However, the notices are necessarily confined to the "relevant documents" and "relevant information" which are identified in the table in paragraph 61A of Schedule 36 and relate to the substance of the role of the relevant third party.⁸ In connection with the individual's investment plan manager, for instance, the information and documents are relevant if they relate to the plan, including investments which are or have been held under the plan.⁹ A copy of the notice need not be served on the taxpayer. However the involved third party may appeal against the issue of the notice on any ground, not just the ground that to comply would be unduly onerous.¹⁰

In relation to a notice to an involved third party where the taxpayer is not identified, the HMRC officer may (but need not) obtain the approval of the tribunal to the issue of the notice and the issue can be appealed on any ground.¹¹ It should be noted however that an appeal may not be made against any involved third party notice where the information or documents required form part of the involved third party's statutory records, i.e. those he is required to keep for the purpose of any tax.¹²

As with involved third party notices, the officer of HMRC need not obtain the consent of the taxpayer concerned or the approval of the Tribunal to the issue of a notice relating to a pensions matter. A "pensions matter" for this purpose means any matter relating to: (i) a registered pension scheme; (ii) an annuity purchased with sums or assets held for the purposes of a registered pension scheme or a pre-2006 pension scheme; or (iii) an employer financed retirement benefits scheme.¹³ These terms are more fully defined in the new paragraph 34C of Schedule 36.¹⁴

The notice can be appealed on any ground but no appeal can be made against a notice to produce information or documents that form part of the third-party's statutory records. A copy of any notice issued in relation to a pensions matter must be provided to the scheme administrator in relation to a pension scheme or the responsible person in relation to an employer financed retirement benefits scheme.¹⁵

Rights of appeal. The background is that Schedule 36 conferred no express right of appeal against a decision of the First-tier Tribunal to issue a notice to produce documents and information.¹⁶ However, the Tribunals, Courts and Enforcement Act 2007 (TCEA) provides that all decisions of the First-tier Tribunal were capable of being appealed to

⁷ FA 2008, Sched.36, para.34A inserted by FA 2009, Sched.48, para.1.

⁸ FA 2008, Sched.36, para.61A was inserted by FA 2009, Sched.48, para.14.

⁹ FA 2008, Sched.36 para.61A (inserted by FA 2009, Sched.48 para.14), subpara.(2), Table, Item 2.

¹⁰ FA 2008, Sched.36, para.34A (as inserted by FA 2009, Sched.48, para.11), subpara.(2)(c).

¹¹ FA 2008, Sched.36, para.34A (as inserted by FA 2009, Sched.48, para.11), subpara.(3).

¹² FA 2008, Sched.36, para.34A (as inserted by FA 2009, Sched.48, para.11), subpara.(4).

¹³ FA 2008, Sched.36, para.34B (as inserted by FA 2009, Sched.48, para.11).

¹⁴ Inserted by FA 2009, Sched.48, para.11.

¹⁵ FA 2008, Sched.36, para.34B (as inserted by FA 2009, Sched.48, para.11), subpara.(3).

¹⁶ FA 2008, Sched.36, para.29(3).

the Upper Tribunal unless they were excluded decisions listed in section 11(5) TCEA.¹⁷ Schedule 36 is amended by the insertion of a new paragraph which eliminates the inconsistency between Schedule 36 and the TCEA by providing that there is no right of appeal against a decision of the First-tier Tribunal: (a) to approve the issue of a taxpayer notice, a third party notice or a notice in respect of persons whose identity is unknown; or (b) to disapply the requirement to send a copy of a third party notice to the taxpayer concerned; or (c) to approve an inspection of premises, goods or documents.¹⁸ The altered provision states that the decision of the First-tier Tribunal on these matters is “final”, though this should perhaps not be taken literally, since if it were there would be an ouster of the courts’ jurisdiction: there may be cases where the purported decision of the First-tier Tribunal is simply a nullity.¹⁹

The Group 2 change—modification of the “reasonable belief condition precedent” to the power to inspect premises, goods and documents

Prior to the FA 2009 changes, an HMRC officer had the right to inspect premises, any goods that were on premises, and any documents on the premises that appeared to the officer to relate to such goods where the officer “had reason to believe. . . that the *premises* were used” (writers’ italics) in connection with the supply of goods under taxable supplies or in connection with the acquisition of goods from other Member States under taxable acquisitions and the goods to be so supplied or acquired were on those premises, the “reasonable belief condition precedent”.²⁰ An amendment to paragraph 11(1) of Schedule 36 modifies the condition precedent so that the officer need only have reason to believe

¹⁷ There is a similar provision in TCEA, s.13 in relation to appeals from the Upper Tribunal to the Court of Appeal which may be relevant where an order is made for production as part of the proceedings in a complex case. A decision under FA 2008, Sched.36, para.29 is not listed as an excluded decision.

¹⁸ FA 2008, Sched.36, paras 6(4) and 13(3) inserted by FA 2009, Sched.47, paras 4 and 8(3), respectively.

¹⁹ See *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 per Lord Reid at 171: “It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word ‘jurisdiction’ has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive.”

²⁰ FA 2008, Sched.36, para.11(1). The writers refer to this as the *reasonable* belief condition precedent, because, despite the decision of the majority of the House of Lords (in *Liversidge v Anderson* [1942] AC 206) in relation to reg.18B of the Defence (General) Regulations 1939 (1939 St.R & O. No.927), the current position is that the “has reason [or reasonable cause] to believe” form of words imports objective “reasonableness”—see *Nakkuda Ali v MF de S Jayaratne* [1951] AC 66 (PC, on appeal from Sri Lanka (then Ceylon)) and *R. v Inland Revenue Commissioners Ex p. Rossminster Ltd* [1980] STC 42 (HL) per Lord Diplock at 55b: “. . . the time has come to acknowledge openly that the majority of this House in *Liversidge v Anderson* were expediently and, at that time, perhaps, excusably, wrong and the dissenting speech of Lord Atkin was right.”

that there are *documents relating to* goods to be supplied or acquired in the relevant manner on the premises.²¹

The Group 3 change—widening the classes of documents which HMRC may inspect

Prior to the FA 2009 changes HMRC had the power to inspect business premises, and “business assets” and “business documents” on those premises.²² The definition of “business assets” carved out all documents (although documents that formed part of the statutory records which related to the carrying on of the business were capable of being inspected).²³ FA 2009 extends the category of documents which can be inspected under this power to include documents that are trading stock for the purposes of the Income Tax (Trading and Other Income) Act 2005 and those which are plant for the purposes of Part 2 of the Capital Allowances Act 2001.²⁴

The Group 4 changes—issuing notices after receipt of a tax return

The background to this group of changes is that notices cannot in principle be given to produce documents or information, where the taxpayer has made a return for the chargeable period under investigation—HMRC must instead open an inquiry into the return.²⁵ FA 2009 provides that in three specific new cases a notice may be issued despite the taxpayer having made a return and HMRC need not open an inquiry into the return:

- (1) *Section 703 Income and Corporation Taxes Act 1988 and Section 684 Income Tax Act 2007 (transactions in securities)*. The restriction imposed by paragraph 21 of Schedule 36 to FA 2008 on the issue of a notice where a return had been filed (the paragraph 21 restriction) is overridden in relation to circumstances where it appears to an HMRC officer that either of these counteracting provisions may apply to cancel a tax advantage. The notice may require the production of documents or information in respect of the transactions giving rise to the tax advantage.²⁶
- (2) *The herd basis election*. HMRC are now no longer required to open a formal enquiry but may instead issue a taxpayer notice where a taxpayer has made a herd basis election and the information or documents relate to the animals kept for the purposes of the trade or their products.²⁷
- (3) *Indirect taxes*. The paragraph 21 restriction does not apply in respect of indirect taxes generally.²⁸ SDLT is however dealt with separately.²⁹ A general rule similar

²¹ FA 2008, Sched.36, para.11(1), as amended by FA 2009, Sched.47, para.6(2).

²² FA 2008, Sched.36, para.10(1).

²³ FA 2008, Sched.36, para.10(3).

²⁴ By including such documents within “business assets”, achieved by adding a new subpara.(4) to FA 2008, Sched.36, para.10—FA 2009, Sched. 47, para.5(3).

²⁵ FA 2008, Sched. 36, para. 21. The rule is qualified in certain respects—see FA 2008, Sched. 36, para. 21(3)–(8)

²⁶ FA 2008, Sched. 36, para. 37B (inserted by FA 2009, Sched. 47, para.12), subpara.(2).

²⁷ FA 2008, Sched. 36, para. 37A (inserted by FA 2009, Sched. 47, para.12), subpara.(2). A “herd basis election” is one made under ITTOIA, Pt. 2, Ch. 8 or CTA, Pt. 3, Ch. 8.

²⁸ FA 2008, Sched. 36, para. 21, as amended by FA 2009, Sched. 48, para. 8. See *Extension of powers: Extension of information powers to cover further taxes*, below.

²⁹ FA 2009, Sched.48, para.8(2) amending FA 2008, Sched.36, para.21(7).

to the paragraph 21 restriction is introduced, that where a land transaction return has been filed in relation to a transaction a taxpayer may not be given notice for the purpose of checking the taxpayer's SDLT position in relation to that land transaction.³⁰ The general rule is overridden if any of three conditions have been satisfied: (i) an enquiry is open in relation to the return or a claim made in connection with the return; or (ii) the officer has reason to suspect that insufficient SDLT has been assessed, or an assessed amount has become insufficient, or a relief has become excessive; or (iii) notice is given in respect of that person's position as regards another tax.³¹

The Group 5 changes—"multiple taxpayers"

Partnerships. Where a partner in a partnership has filed a return or made a claim or election under the Taxes Management Act 1970 (TMA), that return, claim or election has effect to prevent HMRC from issuing notices to any partner. Each partner is now treated as having made that return, claim or election.³² A partner who receives a notice in respect of the UK tax position of one or more of the other partners (whether or not identified) has the right to appeal on any grounds and not solely on the ground that to comply with the notice would be onerous.³³ The HMRC officer may, but need not, obtain the approval of the First-tier Tribunal to issue these notices. If approval is sought, a partner may not appeal against the issue of the notice on any ground.³⁴

Notices addressed to group undertakings for value added tax purposes. Parent undertakings for value added tax purposes that receive notices in respect of one or more subsidiary undertakings (whether or not identified³⁵) now have the right to appeal against the notice to the First-tier Tribunal on any grounds and not solely on the ground that to comply would be onerous. Where however the First-tier Tribunal has approved the issue of the notice, no appeal may be made against the decision to issue the notice.³⁶

The Group 6 changes—penalties for provision of inaccurate information and documents

Penalised conduct. Before FA 2009, penalties for the production of inaccurate information pursuant to an information notice issued under Part III of the TMA could previously be imposed where the person the subject to the notice had been negligent or fraudulent under section 98(2) TMA. Penalties may now be imposed where that person has either: (i) been careless or deliberate; or (ii) discovered the inaccuracy at a later date and fails to take reasonable steps to inform HMRC.³⁷

Date of assessment of penalty. The date by which a penalty must be assessed (in the case of a standard or daily default penalty for failure to comply with an information notice

³⁰ FA 2008, Sched.36, para.21A (inserted by FA 2009, Sched. 48, para.9), subpara.(1).

³¹ FA 2008, Sched.36, para.21A. (inserted by FA 2009, Sched.48, para.9), subparas (2)-(6).

³² FA 2008, Sched.36, para.37(2), as amended by FA 2009, Sched.47, para.11(2).

³³ FA 2008, Sched.36, para.37(5) and (6), as substituted by FA 2009, Sched.47, para.11(5) and (6).

³⁴ FA 2008, Sched. 36, para.30(3) (not amended by FA 2009, Sched.47).

³⁵ FA 2008, Sched.36, para.(4), as substituted by FA 2009, Sched.47, para.10(3).

³⁶ FA 2008, Sched.36, para.35(4A) (as inserted by FA 2009, Sched.47, para.10(3)) and FA 2008, Sched.36, para.35(5) (as amended by FA 2009, Sched.47, para.10(4)).

³⁷ FA 2008, Sched.36, para.40A (as inserted by FA 2009, Sched.47, para.15).

where the notice is appealable) is 12 months after the latest of the following: (i) the date on which the notice ought to have been complied with; (ii) the last date on which the appeal could have been brought but has not been brought; and (iii) the date on which an appeal has been determined or withdrawn.³⁸ An assessment of a penalty for providing inaccurate information must be made within 12 months of the inaccuracy first coming to the attention of the officer of HMRC and in any event within 6 years of the provision of the inaccurate information.³⁹

The Group 7 change—“tax position”

Clarifying words have been inserted to make clear that information notices issued in connection with a person’s tax position relate only to that person’s liability to pay tax including that person’s liability to withhold tax on behalf of another.⁴⁰

Extension of powers

Extension of information powers to cover further taxes

The class of taxes in respect of which information may be obtained under information notices is extended, from a date to be appointed, from income and corporation taxes, capital gains tax, value added tax and relevant foreign tax, to include certain other UK taxes.⁴¹

Power to inspect premises of involved third parties

An HMRC officer may, from a date to be appointed, enter business premises (for the purpose of inspecting premises, assets and relevant documents) not only of the person whose affairs are being investigated but also of “involved third parties”.⁴² The power to enter premises is only for the purpose of checking the tax position of any person or class of persons (whether or not identified) as regards any tax.

There is no right to inspect premises used exclusively for dwelling purposes.⁴³

General power of inspection of any premises for valuation and similar purposes

In addition to the power which HMRC previously enjoyed to enter premises to establish the annual value of land for the purpose of income tax and corporation tax under section

³⁸ FA 2008, Sched.36, para.46(3) as substituted by FA 2009, Sched.47, para.17(4). Where the notice is not appealable, the assessment must be made within 12 months of the addressee of the notice becoming liable to it—FA 2008, Sched.36, para.46(2) (as amended by FA 2009, Sched.47, para.17(3)).

³⁹ FA 2008, Sched.36, para.36(4) as inserted by FA 2009, Sched.47, para.17(4).

⁴⁰ FA 2008, Sched.36, para.64(1)(c) and (2A) as amended and inserted, respectively, by FA 2009, Sched.47, paras.22(2) and (3).

⁴¹ FA 2009, s.96(1). The additional taxes are insurance premium tax, inheritance tax, SDLT, stamp duty reserve tax, petroleum revenue tax, aggregates levy, climate change levy and landfill tax. “Relevant foreign tax” is tax which is the subject of exchange of information provisions under Directive 77/799 [1977] OJ L336, or under international tax enforcement arrangements under section 173 Finance Act 2006—FA 2008, Sched.36, para.63(1)(e).

⁴² FA 2008, Sched.36, para.10A inserted by FA 2009, Sched.48, para.3. See *Dispensing with the need for First-tier Tribunal approval where the addressee is an “involved third party”*, and *pensions matters*, above.

⁴³ FA 2008, Sched.36, para.10A(3) inserted by FA 2009, Sched.48 para.3.

110 TMA, HMRC will, from a date to be appointed, have power to enter (together with appropriate persons) to assist to value, measure or determine the character of the premises or property for the purpose of checking any person's position in respect of the following taxes: capital gains tax, corporation tax in respect of chargeable gains, inheritance tax, SDLT, or stamp duty reserve tax.⁴⁴

The inspection may occur either with the agreement of the occupier or person in control of the premises as to the time of the inspection or where the inspection has been approved by the First-tier Tribunal the relevant person has been given seven days written notice of the time of the inspection.⁴⁵

The notice must state that it has been approved by the Tribunal (where relevant) and the consequences of failure to comply with an approved notice. An officer who makes an inspection must provide evidence of authority to carry out the inspection if asked to do so. A liability to penalty may arise if a person obstructs an inspection approved by the Tribunal.⁴⁶ No penalty will be imposed where the "obstructor" has a reasonable excuse. An honest but incorrect belief that the inspection was unauthorised would seem capable of being a reasonable excuse.⁴⁷

The Tribunal may not approve an inspection for the purpose of valuation, measurement or determination of character of premises unless it is satisfied that the person whose tax position is concerned and the occupier (if identifiable) have been given the opportunity to make representations (a summary of which has been given to the Tribunal) and the inspection is justified.⁴⁸

Section 97 and Schedule 49 Finance Act 2009—powers to obtain contact details for debtors

Schedule 49 FA 2009 (Schedule 49) gives new powers to HMRC to obtain from third parties the contact details of a taxpayer who owes a determined amount to HMRC. The new provision supplements HMRC's information powers under Schedule 36. Unlike a third party notice under Schedule 36, an officer of HMRC do not require approval from the taxpayer or the First-tier Tribunal before issuing a notice requiring a third party to provide contact details. As with third party notices under Schedule 36, the recipient of a notice may appeal to the Tribunal within 30 days, but the grounds of appeal are limited to it being unduly onerous to comply with the notice.⁴⁹ Notices under Schedule 49 may only be issued to a company, a local authority or a local authority association and only in circumstances where the officer of HMRC reasonably believes that the third party has contact details and obtained those details in the course of carrying on a business. A "business" for these purposes includes a UK or overseas property business and a profession.⁵⁰ The restriction on third parties to whom a notice may be sent means that HMRC may not compel family members to provide contact details or, for example, a citizens advice bureau to do so. To require a lawyer to produce contact details of his

⁴⁴ FA 2008, Sched.36, para.12A, inserted by FA 2009, Sched.48, para.5.

⁴⁵ FA 2008, Sched.36, para.12B, inserted by FA 2009, Sched.48, para.5.

⁴⁶ FA 2008, Sched.36, para.39, as amended by FA 2009, Sched.48, para.13.

⁴⁷ "Reasonable excuse" is partly defined (negatively) in FA 2008, Sched.36, para.45 but that would not override the suggestion in the text about honest but incorrect belief.

⁴⁸ FA 2008, Sched.36, para.13(2A), as inserted by FA 2009, Sched.48, para.6(5).

⁴⁹ FA 2009, Sched.49, paras 1–3.

⁵⁰ FA 2009, Sched.49, paras 1(2) and 8.

or her client would seem to be a breach of legal professional privilege because the fact that a person has sought advice may be privileged. This should be contrasted with the circumstance in which a lawyer receives contact details from a non-client (e.g. an opposing litigant) which would seem not to be protected by legal professional privilege.

The officer giving the notice must specify a reasonable time for compliance. The penalty for non-compliance is £300, but there are no daily default penalties.

In consultation, HMRC's stated aim was to ensure that taxpayers owing debts to HMRC cannot escape payment by moving and failing to inform HMRC of their new address. Banks, utility companies and mobile phone companies were named as possible sources of contact details. HMRC have said they expect to make fewer than 5,000 requests per year but to recover about £7 million against a one-off IT cost of about £200,000.⁵¹ The provision takes effect from July 21, 2009.

Record-keeping obligations

These provisions come into force on a day specified by Treasury order.⁵² The duties to preserve records described below may be satisfied by “preserving [the records] in any form and by any means” or “preserving the information contained in [the records] in any form or by any means” but this is subject to “any conditions or exceptions specified in writing by [HMRC]”, not necessarily by statutory instrument or (it would seem) in any published form.⁵³

Insurance premium tax—duration and form of keeping records

The general rule is that records must be kept but for a period not exceeding six years. New paragraph 1(3)(b) and (c) of Schedule 7 to the Finance Act 1994 authorise HMRC to reduce the period for all purposes or for some only.⁵⁴

SDLT

The general rule, in paragraph 9 of Schedule 10 to the Finance Act 2003 (FA 2003), is that records in relation to land transactions must be kept for a minimum of six years. The period can be longer if the enquiry is still in progress or if an enquiry can still be made into the return. The period can be shortened as specified in writing by HMRC, and different periods can be specified for different purposes. There is also power to amend the documents and records that must be preserved.⁵⁵

⁵¹ See HMRC, *Payments, repayments and debt: the developing programme of work* (2007) at [5.25] and “Impact Assessment for: Payments, Repayments and Debt: The Next Stage” (April 14, 2009) (each available for download via www.hmrc.gov.uk/index.htm and www.hmrc.gov.uk/budget2009/powers-debt-2400.htm, respectively) (accessed September 13, 2009).

⁵² FA 2009, s.98(2).

⁵³ See FA 1994, Sched.7, para. 7(4) (insurance premium tax), FA 2003, Sched.10, para. 10, Sched. 11 para. 5 and Sched. 11A para.3A (SDLT), FA 2001, Sched.7, para. 2(4) (aggregates levy), FA 2000, Sched.6, para. 125(4) (climate change levy) and FA 1996, Sched.5, para. 2 (landfill tax), as substituted or amended by FA 2009, Sched.40 paras 1(3), 6, 10, 14, 16(2), 19(2) and 21, respectively.

⁵⁴ Inserted by FA 2009, Sched.50, para.1(2).

⁵⁵ FA 2003, Sched.10, para.9(4) inserted by FA 2009, Sched.50, para.5(4).

The same arrangements have effect in relation to land transactions which are not notifiable transactions and are therefore subject to Schedule 11 to FA 2003 (rather than Schedule 10).⁵⁶

Records in relation to claims not included in returns

The general rule is that information pertaining to such claims must be retained for a minimum period of six years. The period can be longer where an enquiry is still in progress at the end of the six-year period or where after the period an enquiry can still be made.⁵⁷

Regulations may be made to specify what records and supporting documents must be kept. Supporting documents are defined to include accounts, books, deeds, contracts, vouchers and receipts.⁵⁸

Closing reflections

The changes to the powers to issue notices seem to be aimed at enabling HMRC to issue notices quickly. Consents and prior notices need no longer be obtained from or given to a taxpayer before a third party notice and an “involved third party” notice may be issued, for example. This is consistent with the increased readiness on the part of HMRC to use the powers in their drive to reduce the so-called “tax gap”. HMRC’s power to obtain contact details of those who owe debts to HMRC should be of some assistance in achieving that objective. It is however welcome that the approval of the First-tier Tribunal is still required before non-involved third parties can be required to provide assistance to HMRC in the collection of tax. ^(LT)

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