

1 Data-gathering

Schedule 1 contains provision about data-holders providing data to HMRC.

SCHEDULE 1

Section 1

DATA-GATHERING

PART 1

PROVISION OF DATA ETC

Requirement to provide data

- 1 (1) The Treasury may by regulations require a relevant data-holder to provide to HMRC on an ongoing basis any data specified for that type of relevant data-holder in the regulations.
- (2) Regulations under this paragraph may require data to be provided –
 - (a) in relation to recurring intervals or periods;
 - (b) within a period specified in the regulations;
 - (c) in the form and manner specified in the regulations.
- (3) The power in sub-paragraph (1) is exercisable only to assist with the efficient and effective discharge of HMRC's tax functions.
- (4) Regulations under this paragraph may not require a relevant data-holder to provide data for the purpose of HMRC checking the data-holder's own tax position.
- (5) Sub-paragraph (4) does not –
 - (a) prevent regulations from requiring a relevant data-holder to provide data about a matter mentioned in paragraph 14(3)(a) of Schedule 23 to FA 2011 (beneficial ownership of certain payments etc), or
 - (b) limit the use that may be made of data obtained under this Schedule (see section 17(1) of CRCA 2005).
- (6) In this Schedule "relevant data-holder" has the same meaning as in Schedule 23 to FA 2011 (data-gathering powers) (see Part 2 of that Schedule).

Data within possession or power

- 2 (1) A person is not required by regulations under paragraph 1 to provide data to HMRC unless it is within the person's possession or power.
- (2) The Treasury may by regulations require a relevant-data holder to make reasonable efforts to obtain any identifying information that the data-holder would, but for sub-paragraph (1), be required to provide to HMRC.
- (3) Regulations under sub-paragraph (2) must specify the identifying information to which they relate.
- (4) In this Schedule "identifying information" means any information which identifies a person or an account including, in particular, a company's registered number, a national insurance number, a unique taxpayer reference, a VAT registration number or any other unique government-issued identifier associated with a person or account.

Due diligence and record-keeping

- 3 Where a person is required by regulations under paragraph 1 to provide data to HMRC, the person must—
- (a) take steps specified in regulations made by the Treasury to verify the data before providing it to HMRC,
 - (b) keep a record of—
 - (i) the data, and
 - (ii) the steps take by the person under paragraph (a) in relation to the data, and
 - (c) preserve those records for a period specified in regulations made by the Treasury.

Provision of data to other persons

- 4 Where a relevant data-holder is required by regulations under paragraph 1 to provide HMRC with data in respect of another person, the data-holder must also provide the data to that other person—
- (a) within the period specified in regulations made by the Treasury, and
 - (b) in the form set out in a notice published by HMRC.

Notification to HMRC

- 5 (1) A person must notify HMRC if they are required by regulations under paragraph 1 to provide data to HMRC.
- (2) A notification under this paragraph must be given—
- (a) within the period specified in regulations made by the Treasury, and
 - (b) in the form and manner set out in a notice published by HMRC.

Compliance

- 6 (1) Where an officer of Revenue and Customs reasonably suspects that a person is not complying with their obligations under this Part of this Schedule, or regulations made under it, the officer may by notice require the person to provide such information as the officer reasonably requires in order to determine whether the person is complying with such obligations.
- (2) Information required by a notice under this paragraph must be provided—
- (a) within the period set out in the notice, being a period of no less than 30 days, and
 - (b) in the form and manner set out in the notice.

PART 2

PENALTIES AND APPEALS

Penalties for failure to provide data etc

- 7 If a person fails to comply with a requirement in regulations under paragraph 1 (requirement to provide data etc) or paragraph 2 (data within possession or power), the person is liable –
- (a) to a penalty not exceeding £5,000, and
 - (b) if the failure continues after notice of an assessment of a penalty under paragraph (a) is issued, to a penalty or penalties not exceeding £600 for each subsequent day on which the failure continues.

Penalties for failure to apply due diligence procedures

- 8 (1) If a person fails to comply with a requirement in paragraph 3(a) (due diligence), the person is liable to a penalty not exceeding £100.
- (2) Where the failure relates to verifying data about more than one person or account, a penalty is payable in respect of each person or account.

Penalties for failure to keep or preserve records

- 9 If a person fails to comply with a requirement in paragraph 3(b) or (c) (record-keeping), the person is liable to a penalty not exceeding £5,000.

Penalties for failure to provide data to other persons

- 10 If a person fails to comply with a requirement in paragraph 4 (provision of data to other persons), the person is liable –
- (a) to a penalty not exceeding £5,000, and
 - (b) if the failure continues after notice of an assessment of a penalty under paragraph (a) is issued, to a penalty or penalties not exceeding £600 for each subsequent day on which the failure continues.

Penalties for failure to notify

- 11 If a person fails to comply with a requirement in paragraph 5 (notification to HMRC), the person is liable to a penalty not exceeding £1,000.

Penalties for failure to provide information

- 12 If a person fails to comply with a requirement in paragraph 6 (compliance), the person is liable –
- (a) to a penalty not exceeding £5,000, and
 - (b) if the failure continues after notice of an assessment of a penalty under paragraph (a) is issued, to a penalty or penalties not exceeding £600 for each subsequent day on which the failure continues.

Penalties for inaccurate or incomplete data

- 13 (1) If a person, in purported compliance with a requirement in regulations under paragraph 1, provides inaccurate or incomplete data to HMRC, the person is liable to a penalty not exceeding £100 where –
- (a) the inaccuracy or incompleteness is deliberate,
 - (b) the inaccuracy or incompleteness is due to a failure to take reasonable care, or
 - (c) the person discovers the inaccuracy or incompleteness some time later and fails to take reasonable steps to inform HMRC.
- (2) Where the inaccuracy or incompleteness relates to data about more than one person or account, a penalty is payable in respect of each person or account.

Reasonable excuse

- 14 (1) Liability to a penalty under paragraphs 7 to 12 does not arise if the person satisfies an officer of Revenue and Customs or, on an appeal notified to the tribunal, the tribunal that there is a reasonable excuse for the failure.
- (2) For the purposes of this paragraph none of the following is a reasonable excuse –
- (a) that there is an insufficiency of funds to do something;
 - (b) that a person relies upon another person to do something.
- (3) If a person had a reasonable excuse for a failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Duplication of liability to penalties

- 15 (1) A person cannot be liable to penalties under any two or more of paragraphs 8 (failure to apply due diligence procedures), 9 (failure to keep or preserve records) and 13 (inaccurate or incomplete data) in respect of the same act or omission.
- (2) Where, apart from sub-paragraph (1), a person would be so liable, the person is liable to a penalty in respect of that act or omission under whichever one of paragraphs 8, 9 or 13 is, in the opinion of an officer of Revenue and Customs, correct or appropriate in the circumstances.

Double jeopardy

- 16 A person is not liable to a penalty under this Schedule in respect of anything in respect of which the person has been convicted of an offence.

Failure to comply with time limit

- 17 A failure to do anything required to be done within a limited period of time does not give rise to liability to a penalty under this Schedule if the

thing was done within such further time (if any) as an officer of Revenue and Customs may have allowed.

Assessment of penalties

- 18 (1) An officer of Revenue and Customs may make an assessment imposing a penalty under any of paragraphs 7 to 13 and setting it at such amount as, in the opinion of the officer, is correct or appropriate.
- (2) Notice of an assessment of a penalty under this paragraph must—
- (a) be given to the person liable to the penalty, and
 - (b) state the date on which it is issued and the time within which an appeal against the assessment may be made.
- (3) Subject to sub-paragraph (4), after a notice of assessment of a penalty under this paragraph has been given, the assessment must not be altered except on appeal.
- (4) If it is discovered by an officer of Revenue and Customs that the amount of a penalty under paragraph 7(b), 10(b) or 12(b) which has been assessed under this paragraph is or has become insufficient, the officer may make an assessment in a further amount so that the penalty is set at the amount which, in the opinion of that officer, is correct or appropriate.

Time limits and treatment of penalties

- 19 (1) An assessment of a penalty under paragraph 7, 9, 10, 11 or 12 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.
- (2) An assessment of a penalty under paragraph 8 or 13 must be made—
- (a) within the period of 12 months beginning with the date on which the inaccuracy, incompleteness or failure first came to the attention of an officer of Revenue and Customs, and
 - (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.
- (3) A penalty assessed under paragraph 18 is due and payable at the end of the period of 30 days beginning with the day on which the notice of assessment is issued.
- (4) A penalty assessed under paragraph 18 is to be treated for all purposes as if it were tax charged in an assessment and due and payable.

Appeals

- 20 (1) A person may appeal against a penalty assessment under paragraph 18—
- (a) on the grounds that liability to the penalty does not arise, or
 - (b) as to the amount of the penalty.
- (2) Notice of an appeal must—
- (a) state the grounds of appeal, and

- (b) be given in writing to HMRC before the end of the period of 30 days beginning with the date on which notice of the assessment under paragraph 18 was issued.
- (3) Subject to sub-paragraph (4), the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this paragraph as they have effect in relation to an appeal against an assessment to income tax.
- (4) On an appeal under this paragraph that is notified to the tribunal, the tribunal may –
 - (a) if it appears that no liability to a penalty has arisen, set the assessment aside,
 - (b) if the amount assessed appears to be appropriate, confirm the assessment,
 - (c) if the amount assessed appears to be excessive, reduce it to such other amount (including nil) as the tribunal considers appropriate, or
 - (d) if the amount assessed appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the tribunal considers appropriate.

PART 3

GENERAL

Power to change amount of penalties

- 21 The Treasury may by regulations amend any of paragraphs 7 to 13 so as to increase or reduce the amount of a penalty for the time being specified under those paragraphs.

Regulations

- 22 (1) Regulations under this Schedule may –
- (a) make different provision for different purposes;
 - (b) provide for exceptions to any requirement imposed by the regulations;
 - (c) make provision by reference to –
 - (i) things set out in a notice published by HMRC (as revised or replaced from time to time) in accordance with the regulations;
 - (ii) a document as amended from time to time;
 - (d) make consequential, supplementary, incidental, transitional or saving provision.
- (2) Regulations under this Schedule are to be made by statutory instrument.
- (3) A statutory instrument containing regulations under Part 1 of this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

- (4) A statutory instrument containing regulations under paragraph 21 (power to change amount of penalties) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

Application of provisions of TMA 1970

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

Interpretation

- 24 In this Schedule—
- “HMRC” means His Majesty’s Revenue and Customs;
 - “tax” has the same meaning as in Schedule 23 to FA 2011 (see paragraph 45 of that Schedule);
 - “tribunal” means the First-tier Tribunal or Upper Tribunal as determined under Tribunal Procedure Rules.