

1 Publication by HMRC of information about tax avoidance schemes: removal of legal professional privilege exemption

- (1) In section 316C of FA 2004 (disclosure of tax avoidance schemes)—
 - (a) omit subsection (4A);
 - (b) in subsection (6)(b), after “representations” insert “, including any declaration under section 2 of [FA 2026],”.
- (2) In paragraph 36 of Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes)—
 - (a) omit sub-paragraph (4A);
 - (b) in sub-paragraph (6)(b), after “representations” insert “, including any declaration under section 2 of [FA 2026],”.
- (3) In section 86 of FA 2022 (publication of information about tax avoidance schemes)—
 - (a) omit subsection (3)(b) (and the “or” before it);
 - (b) in subsection (5)(b), after “representations” insert “, including any declaration under section 2 of [FA 2026],”;
 - (c) in subsection (6), after “representations” insert “, or declaration,”.

2 Declaration in relation to legally privileged material

- (1) This section applies where—
 - (a) HMRC has notified a lawyer that they intend to publish, or are considering publishing, information identifying the lawyer under a provision listed in subsection (5), and
 - (b) the lawyer—
 - (i) intends to make representations to the effect that the information should not be published, but
 - (ii) cannot substantiate those representations without disclosing the content of privileged communications.
- (2) A lawyer (whether or not the lawyer intending to make the representations) may make a declaration, to be provided alongside the representations, to the effect that—
 - (a) the representations are true, and
 - (b) the content of privileged communications would be sufficient (whether alone or with other information) to demonstrate this on the balance of probabilities.
- (3) When considering whether the information referred to in subsection (1)(a) may be published, HMRC and, in the context of proceedings, a court or tribunal must treat a declaration made under subsection (2) as conclusive evidence of the information contained in the declaration.
- (4) But subsection (3) does not apply if HMRC or the court or tribunal is satisfied that the declaration contains information that is incorrect.
- (5) The provisions are—
 - (a) section 316C of FA 2004 (disclosure of tax avoidance schemes);

- (b) paragraph 36 of Schedule 17 to F(No.2)A 2017 (disclosure of tax avoidance schemes: VAT and other indirect taxes);
 - (c) section 86 of FA 2022 (publication of information about tax avoidance schemes).
- (6) For the purposes of this section—
- (a) references to HMRC are to be read as references to an authorised officer of HMRC where the relevant provision listed in subsection (5) so requires,
 - (b) references to a lawyer are references to a person in respect of whose communications a claim to legal professional privilege, or (in Scotland) to confidentiality of proceedings as between client and professional legal adviser, could be maintained in legal proceedings, and
 - (c) a communication is “privileged” if such a claim could be maintained in respect of it.
- (7) The Treasury may by regulations make provision about—
- (a) the form and manner in which a declaration under subsection (2) is to be made, and
 - (b) the information to be contained in such a declaration.
- (8) Regulations under this section—
- (a) are to be made by statutory instrument, and
 - (b) may make different provision for different purposes.
- (9) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of the House of Commons.

3 Penalties for an incorrect declaration

- (1) Where a person carelessly or deliberately includes any incorrect information in a declaration under section 2(2), the person is liable to a penalty not exceeding £5,000.
- (2) Where—
- (a) a person (“A”) provides a declaration made by another person (“B”) under section 2(2) alongside representations made by A, and
 - (b) B carelessly or deliberately includes any incorrect information in the declaration,
- A is liable to a penalty not exceeding £5,000.
- (3) For the purposes of this section, incorrect information is carelessly given by a person if the information is incorrect because of a failure by the person to take reasonable care.

4 Penalties: procedure etc

- (1) Where a person is liable to a penalty under section 3—
- (a) HMRC may assess the penalty, and
 - (b) if they do so, they must notify the person.

- (2) A penalty under section 3 must be paid before the end of the period of 30 days beginning with the day on which the notification is issued.
- (3) An assessment of a penalty under section 3—
 - (a) is to be treated for procedural purposes in the same way as an assessment to tax, and
 - (b) may be enforced as if it were an assessment to tax.
- (4) A penalty may not be assessed after the later of—
 - (a) the end of the period of 6 years beginning with the day on which the declaration is made, and
 - (b) the end of the period of 12 months beginning with the day on which facts that in HMRC's opinion are sufficient to satisfy HMRC that the declaration contains information that is incorrect come to HMRC's knowledge.
- (5) For the purposes of this section, references to HMRC are to be read as references to an authorised officer of HMRC where the relevant provision listed in section 2(5) so requires.

5 Penalties: appeals etc

- (1) A person may appeal against—
 - (a) a decision of HMRC that a penalty under section 3 is payable by the person, or
 - (b) a decision of HMRC as to the amount of a penalty under section 3 payable by the person.
- (2) An appeal is to be treated in the same way as an appeal against an assessment to the tax in respect of which an advantage was sought under the arrangements to which the relevant provision in section 2(5) relates (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC's review of the decision or about determination of the appeal by the tribunal).
- (3) Section 4(2) does not apply so as to require a person to pay a penalty under section 3 before an appeal against the assessment of the penalty is determined.
- (4) On an appeal under subsection (1)(a) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.
- (5) On an appeal under subsection (1)(b) that is notified to the tribunal, the tribunal may—
 - (a) affirm HMRC's decision, or
 - (b) substitute for that decision another decision that HMRC had power to make.
- (6) For the purposes of this section, references to HMRC are to be read as references to an authorised officer of HMRC where the relevant provision listed in section 2(5) so requires.

6 Publication following an incorrect declaration

- (1) HMRC may publish information about a person where—
 - (a) the person has incurred a penalty under section 3, and
 - (b) the penalty has become final.
- (2) The information that may be published under this section 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, and
 - (d) any other information that HMRC consider it appropriate to publish in order to make clear the person's identity.
- (3) The information may be published in any way that HMRC consider appropriate.
- (4) For the purposes of this section and section 7 a penalty becomes “final”—
 - (a) if the penalty has been assessed and paragraph (b) does not apply, at the time when the period for any appeal or further appeal relating to the penalty expires or, if later, when any appeal or final appeal relating to the penalty is finally determined, or
 - (b) if a contract settlement has been made in relation to the penalty, at the time when the contract is made,and “contract settlement” means a contract between HMRC and the person under which HMRC undertake not to assess the penalty or (if it has been assessed) not to take proceedings to recover it.
- (5) Before publishing information under this section HMRC must—
 - (a) inform the person that they are considering doing so, and
 - (b) afford the person the opportunity to make representations about whether it should be published.

7 Time limits for publication

- (1) Publication of any information under section 6 on the basis of a penalty incurred by a person may not take place after the end of the period of 12 months beginning with the date on which the penalty became final.
- (2) Subsection (1) is not to be taken to prevent the re-publication, or continued publication, after the end of the period referred to in that subsection, of information published under section 6 before the end of the period.

8 Interpretation

In sections 1 to 7—

“arrangements” has the same meaning as it does in the relevant provision in section 2(5);

“authorised officer” means an officer of Revenue and Customs authorised by HMRC for the purposes of the relevant provision;

“HMRC” means His Majesty’s Revenue and Customs;

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.