
HM Revenue and Customs

Modernising Powers, Deterrents and Safeguards

Compliance Checks: The Next Stage

Draft Legislation and Commentary November 2008



Contents

Chapter	Subject	Page
1.	Introduction	3
2.	Commentary on the draft legislation	6
3.	Information and inspection powers: minor and consequential provision – draft legislation	11
4.	Explanatory Note to Information and inspection powers: minor and consequential provision	19
5.	Information and inspection powers: extension to further taxes etc – draft legislation	25
6.	Explanatory Note to Information and inspection powers: extension to further taxes etc	35

Chapter 1: Introduction

- 1.1 This document supplements the consultation document “Compliance Checks: The Next Stage”, which was published in November 2008¹.
- 1.2 Chapter 5 of that consultation document suggests that to align powers and improve safeguards the compliance checking framework introduced in Finance Act (FA) 2008 should be applied to a number of other taxes:
 - environmental taxes (aggregates levy, climate change levy and landfill tax);
 - insurance premium tax;
 - stamp duty land tax and stamp duty reserve tax;
 - inheritance tax; and
 - petroleum revenue tax.
- 1.3 The framework covers:
 - information and inspection powers (Schedule 36);
 - record-keeping rules (Schedule 37);
 - time limits for assessments and claims (Schedule 39).
- 1.4 This document contains indicative drafts for legislation on information and inspection powers which could underpin this approach. Legislation has not yet been drafted in respect of record-keeping rules and time limits but the intention would be to follow Schedules 37 and 39 FA 2008 very closely.
- 1.5 There are two draft Schedules and an overall commentary is in Chapter 2. Schedule 1 in Chapter 3 covers repeals of existing information and inspection powers. These are no longer required as a result of FA 2008 and their removal will simplify the legislation. It also contains minor and consequential amendments to Schedule 36 to FA 2008 and a new penalty (equivalent to section 98(2) TMA) for providing incorrect information. Explanatory Notes are in Chapter 4.
- 1.6 Schedule 2, together with clause 2, covers the extension of the FA 2008 information and inspection powers to other taxes and is in Chapter 5. Explanatory Notes are in Chapter 6.
- 1.7 The current intention is that the draft Schedule 1 would take effect on Royal Assent to the Finance Bill 2009. Draft Schedule 2 would be brought into effect under an order made by the Treasury. This would not be before April 2010. This will allow time for HMRC to ensure that

¹ Available at www.hmrc.gov.uk/consultations

adequate publicity and guidance for taxpayers is available. It will also provide time for the necessary training of HMRC and non HMRC staff. Any changes to HMRC computer systems could also be in place before the new law takes effect.

- 1.8 As well as answers to the specific questions posed in the commentary at paragraphs 2.10 and 2.21, HMRC welcome comments on the draft legislation in general, and suggestions for further improvement and alignment.
- 1.9 Further work will be carried out on the draft legislation, including consequential amendments and repeals.
- 1.10 In some places the draft legislation provides for rights of appeal. The current tax appeal tribunal structures are due to be replaced by Ministry of Justice tribunals set up under section 3 of the Tribunals, Courts and Enforcement Act 2007 (TCEA) with effect from 1 April 2009. The legislation has been drafted with this in mind, so it refers to tribunals without specifying either the new First-tier or Upper Tribunal. Rules will be made under TCEA about which level of tribunal is appropriate to an appeal.
- 1.11 An impact analysis of these suggestions was published alongside the consultation document. It is available on HMRC's website at www.hmrc.gov.uk/better-regulation/ia.

How to comment

- 1.12 HMRC would welcome comments on any aspect of this draft legislation. Specific questions are highlighted in the commentary. Comments should be received by **13 February 2009**. They may be made by email to: powers.review-of-hmrc@hmrc.gsi.gov.uk;
 - or by post to: HMRC review of powers: compliance checks, Room 1/72, 100 Parliament Street, London SW1A 2BQ;
 - or by fax to: 020 7147 2375.

This document can also be accessed from the HMRC internet site: www.hmrc.gov.uk/consultations/index.htm.

Hard copies are available from the above address. The Review team can be contacted by telephone on: 020 7147 3223.

Confidentiality

- 1.13 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 1.14 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, among other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.15 The Department will process your personal data in accordance with the DPA and, in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
- 1.16 Any FOIA queries should be directed to the Review team, using the contact details above.

The Government's Consultation Code of Practice

- 1.17 This consultation is being conducted in accordance with Government's Code of Practice on consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in the consultation document

Chapter 2: Commentary on the draft legislation

- 2.1 Schedule 36 to FA 2008 provides modernised and aligned information and inspection powers in relation to income tax (IT), capital gains tax (CGT) corporation tax (CT) and VAT as well as new safeguards. This legislation reflects work by the Review of HMRC's Powers, Deterrents and Safeguards. Options for extending Schedule 36 to other taxes is explored in the consultation document "Compliance Checks: The Next Stage" which also looks at the possibility of repealing legislation as a result of Schedule 36.
- 2.2 This document sets out two schedules of draft legislation relating to repeals and the extension and adaptation of Schedule 36, together with explanatory notes.

Simplifying legislation

- 2.3 Part 2 of Schedule 1 repeals a substantial number of existing information and inspection powers relating to IT, CGT and CT. The aim has been that Schedule 36 should provide HMRC's main powers of inspection and information. This represents alignment, helping both taxpayers and HMRC by putting all the powers in one place. This legislation does away with some specialised powers used to obtain narrowly focussed information. They will be replaced by Schedule 36 which may give powers to ask for a wider range of information in some instances but provides more explicit safeguards for the way in which HMRC ask for information.

Bringing other taxes into the new framework

- 2.4 Part 1 of Schedule 2, with clause 2, is designed to apply Schedule 36 to many of the other taxes and duties administered by HMRC. Once complete this will be a major piece of modernised cross-tax legislation.
- 2.5 The new taxes to which Schedule 36 will apply are: insurance premium tax (IPT), inheritance tax (IHT), stamp duty land tax (SDLT), stamp duty reserve tax (SDRT), petroleum revenue tax (PRT), aggregates levy (AGL), climate change levy (CCL), and landfill tax (LT).
- 2.6 Most of the current powers for these taxes are very similar to those now in Schedule 36, so adding them is comparatively straightforward. This is done by adding them into the definition of tax in the Schedule, and changing the definition of "statutory records" which underpins the right to inspect. Schedule 36 incorporates restrictions on taxes that have an enquiry window and these have been extended to stamp duty land tax.

Involved third parties

- 2.7 There are some information powers in a range of taxes which are not adequately covered by the powers in Schedule 36. To address these it has therefore been necessary to introduce a new concept of an “involved third party”.
- 2.8 This reflects the approach of the existing law to parties which are neither taxpayers (first parties) nor conventional third parties such as banks. But they are persons who are closely involved in a taxable event or transaction and are currently required to provide information about that activity, for example the insurance broker who is closely involved with setting up an insurance contract. The type of person differs from tax to tax but the concept is the same.
- 2.9 Schedule 2 modifies the power to ask involved third parties for information in order to check any person’s tax position by relaxing some of the normal rules that apply to third party requests. In order to maintain the effect of the existing law, “involved third parties” have been tightly defined for each tax involved, using the wording of the existing law. In some cases, HMRC will be able to inspect the premises of such parties, but in other cases involved third parties are excluded from this. Where HMRC asks for information (and for those where inspection is permitted) it must be reasonably required, and can only be for a “relevant tax” and for “relevant information” and “relevant documents”. Taken together these three elements restrict the power to the scope of the existing legislation.
- 2.10 In contrast to the position under the existing specialist powers relating to involved third parties there will now be rights of appeal against information notices. There is no appeal right against a requirement of a notice which calls for information or documents that are statutory records of the taxpayer or the involved third party. **HMRC would welcome views on the approach adopted for involved third parties and the safeguards applying to them.**

HMRC would welcome views on the approach taken to involved third parties.

Valuation

- 2.11 Schedule 2 also contains a valuation power which brings together several existing powers into a single aligned power.
- 2.12 Schedule 36 provided a power to enter and inspect business premises, which was new for IT, CGT and CT. It makes it clear that this power does not extend to parts of premises that are used solely as a dwelling.
- 2.13 There are currently no general powers to inspect when checking IT, CGT and CT but there are existing powers to inspect for the purposes

of valuing land and property. Such powers exist for IT, CGT and CT and also IHT, SDLT and SDRT. Inevitably, because of the nature of these taxes, these powers do apply to private property. For example, for IHT the valuation of houses which are part of a person's estate is an essential form of check.

- 2.14 If premises cannot be entered then there are situations where an accurate valuation cannot be produced. For example valuing property externally may lead to similar properties being given the same valuation despite the fact that internal features mean that the value of one property should be substantially different. This might result in the wrong amount of tax and, where internal features increase the value, it may encourage non-compliance on the basis that there is a tax advantage in refusing access.
- 2.15 In practice most taxpayers allow entry to non-business premises for valuation purposes because it often leads to quicker and more accurate valuation. There does however need to be a power to enter premises for valuation when there is no co-operation, notably in litigation cases and where there is opportunity to secure a tax advantage by refusing to allow access to premises.
- 2.16 The existing valuation powers have been reviewed and they need to be retained. Rather than leave them in the individual Acts concerned, the draft legislation takes this opportunity to update and align them into a single provision. Moving powers of inspection for valuation into Schedule 36 will make it easier for people to find the legislation and will make people more aware of their rights.
- 2.17 As was clear from both the consultation on Schedule 36 and the subsequent Finance Bill debates, any power to inspect must be proportionate and have appropriate safeguards. This is all the more true where a power to inspect private property is being suggested. HMRC recognises this and so the power is restricted in law to those taxes, in circumstances where such a power already exists and additional safeguards have been introduced.
- 2.18 The safeguards go beyond both those within the current legislation and those attaching to the inspection power in paragraph 10 of Schedule 36. A valuation inspection can only be carried out with either the agreement of the occupier or the tribunal. The law requires the occupier and the person whose tax position is being checked to be given a reasonable opportunity to make representations to the officer and for the tribunal to be given a summary of the representations made.
- 2.19 The valuation inspection must be reasonably required to check any person's tax position. As with the current law in section 110 TMA 1970, the officer must produce evidence of authority if challenged. This requirement has been applied to all visits using the new power and reflects HMRC's view that taxpayers require a higher level of

assurance where private premises are being inspected. There is no facility to make an unannounced visit.

2.20 The power to inspect businesses (paragraphs 10 and 11 of Schedule 36) can be used to carry out a valuation of a business asset. However, this can only be done where HMRC is valuing the asset to check that business's tax position. There are circumstances where the Schedule 36 inspection power and valuation power interact. Generally there are three main circumstances where HMRC will use the new valuation power instead:

- to value something on private premises;
- to value something on business premises that does not belong to that business; or
- where one building is partly private and partly business, and HMRC needs to value something in both the private and business part of the building. In this case, HMRC can use the valuation power to avoid having to give two separate notices for one visit.

2.21 Existing legislation requires a person who has custody or possession of premises to permit entry. The new legislation requires "the occupier" to agree to provide entry or to provide entry on receipt of a written notice which has been authorised by a tribunal. This new wording may however cause difficulties for example where there is no obvious occupier of the premises perhaps because they are vacant. **HMRC are continuing to consider this matter and would welcome views on whether the new wording will create a gap in the legislation.**

Question: Will the use of the term occupier in the valuation power cause a gap in legislation and are there alternatives ?

Corrections to FA 2008 legislation

2.22 Part 1 of Schedule 1 makes some minor amendments to Schedule 36. It also introduces a penalty into Schedule 36 to apply where any person deliberately or carelessly provides any incorrect documents or information in response to an information notice issued under Part 1 of Schedule 36. Such a penalty exists in section 98(2) TMA for fraudulently or negligently providing information etc under current information powers.

Taking account of Tax Law Rewrite

- 2.23 Some parts of this legislation are repealing/amending provisions that are currently being rewritten as part of the Tax Law Rewrite programme's Corporation Tax Bill, drafts of which have been released for comment. These measures have been included within the rewrite process for reasons of continuity and certainty, and any changes to the legislation will be drafted in the appropriate style so as to align with the remainder of that Bill. The clause numbers included in the draft legislation reflect the most up to date version of the Corporation Tax Bill and may differ from the version currently in the public domain.

Chapter 3: Information and inspection powers: minor and consequential provision – draft legislation

CLAUSE 1

1 Information and inspection powers: minor and consequential provision

In Schedule 1 –

Part 1 contains amendments of Schedule 36 to FA 2008, and

Part 2 contains repeals of other information and inspection powers and consequential provision.

SCHEDULES

SCHEDULE 1

Section 1

INFORMATION AND INSPECTION POWERS: MINOR AND CONSEQUENTIAL PROVISION

PART 1

AMENDMENTS OF SCHEDULE 36 TO FA 2008

- 1 Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- 2 (1) Paragraph 10(3) (power to inspect business premises etc) is amended as follows.
 - (2) In the definition of “business assets”, for “excluding documents” substitute “including documents that are trading stock but excluding other documents”.
 - (3) In the definition of “business documents”, omit “and” at the end of paragraph (b).
 - (4) Insert at the end “, and
“trading stock” has the same meaning as in Chapter 11A of Part 2 of ITTOIA 2005 (see section 172A of that Act).”
- 3 In paragraph 12(5) (carrying out inspections) –
 - (a) for “with the approval of” substitute “in respect of an inspection approved by”, and
 - (b) for “it is given with that approval” substitute “the inspection has been so approved”.
- 4 In paragraph 21(8) (restriction on giving taxpayer notices) –
 - (a) after “repayments” insert “of tax or withholding of income”, and
 - (b) after “64(2)” insert “or (2A)”.
- 5 After paragraph 37 insert –

“Information in connection with herd basis election

- 37A (1) This paragraph applies to a taxpayer notice given to a person carrying on a trade in relation to which a herd basis election is made if the notice refers only to information or documents that relate to –
 - (a) the animals kept for the purposes of the trade, or
 - (b) the products of those animals.

- (2) Paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) does not apply in relation to the notice.
- (3) “Herd basis election” means an election under Chapter 8 of Part 2 of ITTOIA 2005 or Chapter 8 of Part 3 of CTA 2009.

Information from persons liable to counteraction of tax advantage

- 37B (1) This paragraph applies to a taxpayer notice given to a person to whom a counteraction provision applies by reason of one or more transactions if the notice refers only to information or documents relating to the transaction (or, if there are two or more transactions, any of them).
 - (2) Paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) does not apply in relation to the notice.
 - (3) “Counteraction provision” means section 684 of ITA 2007 (person liable to counteraction of income tax advantage) and section 703 of ICTA (company liable to counteraction of corporation tax advantage).”
- 6 (1) Paragraph 39 (standard penalties) is amended as follows.
 - (2) In sub-paragraph (2), for “A person to whom this paragraph applies” substitute “The person”.
 - (3) In the heading—
 - (a) omit “*Standard*”, and
 - (b) insert at the end “*for failure to comply or obstruction*”.
 - 7 In the heading of paragraph 40 (daily default penalties), insert at the end “*for failure to comply or obstruction*”.
 - 8 After paragraph 40 insert—

“Penalties for inaccurate information and documents

- 40A (1) This paragraph applies if—
 - (a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and
 - (b) condition A or B is met.
- (1) Condition A is that the inaccuracy is careless or deliberate.
- (2) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- (3) Condition B is that the person—
 - (a) discovers the inaccuracy some time later, and
 - (b) fails to take reasonable steps to inform HMRC.
- (4) The person is liable to a penalty not exceeding £3,000.

- (5) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.”
- 9 (1) Paragraph 41 (power to change amount of penalties) is amended as follows.
- (2) In sub-paragraph (1), for “and 40(2)” substitute “, 40(2) and 40A(4)”.
- (3) Accordingly, in the heading omit “*standard and daily default*”.
- 10 (1) Paragraph 46 (assessment of penalty) is amended as follows.
- (2) In sub-paragraph (1)–
- (a) for “or 40” substitute “, 40 or 40A”,
- (b) omit “HMRC may”,
- (c) at the beginning of paragraph (a), insert “HMRC may”, and
- (d) at the beginning of paragraph (b), insert “if they do so, they must”.
- (3) In sub-paragraph (2), for “An assessment of a penalty under paragraph 39 or 40” substitute “The assessment”.
- (4) Accordingly, in the heading omit “*standard penalty or daily default*”.
- 11 (1) Paragraph 47 (right to appeal) is amended as follows.
- (2) In paragraph (a), for “or 40” substitute “, 40 or 40A”.
- (3) Accordingly, in the heading, omit “*standard penalty or daily default*”.
- 12 (1) Paragraph 49 (enforcement) is amended as follows.
- (2) In sub-paragraph (1), for “or 40” substitute “, 40 or 40A”.
- (3) In sub-paragraph (2), for “or 40” substitute “, 40 or 40A”.
- (4) Accordingly, in the heading, omit “*standard penalty or daily default*”.
- 13 (1) Paragraph 63 (tax) is amended as follows.
- (2) In sub-paragraph (3)–
- (a) omit “and” at the end of paragraph (a), and
- (b) for the words following paragraph (b) insert “, and
- (c) amounts listed in sub-paragraph (3A).”
- (3) After that sub-paragraph insert –
- “(3A) Those amounts are –
- (a) any amount that is recoverable under paragraph 5(2) of Schedule 11 to VATA 1994 (amounts shown on invoices as VAT), and
- (b) any amount that is treated as VAT by virtue of regulations under section 54 of VATA 1994 (farmers etc).”
- 14 (1) Paragraph 64 (tax position) is amended as follows.
- (2) In sub-paragraph (1)(c), after “with” insert “the person’s liability to pay”.
- (3) After sub-paragraph (2) insert –
- “(2A) References in this Schedule to a person’s tax position also include, where appropriate, a reference to the person’s position as regards

the withholding by the person of another person’s PAYE income (as defined in section 683 of ITEPA 2003).”

PART 2

REPEALS OF OTHER INFORMATION AND INSPECTION POWERS ETC

TMA 1970

- 15 TMA 1970 is amended as follows.
- 16 Omit section 12 (return to include information about chargeable gains).
- 17 Omit section 12AA(7)(b) (particulars to be included in partnership return (and the “and” before it)).
- 18 In section 12B(1) (records to be kept for purposes of returns), omit the words “(or under any of those sections as extended by section 12 of this Act)”.
- 19 Omit section 22 (power to obtain additional particulars for “surtax”).
- 20 Omit section 28 (power to obtain information about non-resident companies from shareholders).
- 21 In section 93(1)(a) (failure to make return), omit the words “(or either of those sections as extended by section 12 of this Act)”.
- 22 (1) In section 98 (special returns etc), the Table is amended as follows.
- (2) In the first column –
- (a) for the entry relating to section 217 of ICTA substitute “section 217(4);”;
 - (b) for the entry relating to section 226(3) and (4) of ICTA substitute “section 226(4);”;
 - (c) for the entry relating to section 250(6) and (7) of ICTA substitute “section 250(6);”;
 - (d) for the entry relating to paragraphs 2 to 4 of Schedule 12 to FA 1989 substitute “paragraphs 3 and 4 of Schedule 12 to the Finance Act 1989”.
- (3) In first column, omit the entries relating to –
- (a) sections 246H, 272(7), 708, 728, 755 and 774(5) of ICTA;
 - (b) paragraph 6 of Schedule 9 to ICTA;
 - (c) paragraph 14(5) of Schedule 15 to ICTA;
 - (d) paragraph 4 of Schedule 22 to ICTA;
 - (e) section 32 of FA 1973;
 - (f) paragraph 15(1) of Schedule 14 to FA 1984;
 - (g) paragraph 6(1) of Schedule 22 to FA 1985;
 - (h) regulations under section 57 of FA 1989;
 - (i) regulations under section 33 of FA 1991;
 - (j) sections 79(6), 169G(2) and 235 of TCGA 1992;
 - (k) paragraph 14 of Schedule 4ZA to TCGA 1992;
 - (l) paragraph 10 of Schedule 5 to TCGA 1992;
 - (m) regulations under section 589 of ITEPA 2003;
 - (n) sections 75(5), 128, 305 and 682A(1) of ITTOIA 2005;

- (o) section 271(2) of ITA 2007;
 - (p) regulations under section 330(5) of ITA 2007;
 - (q) sections 703, 788 and 862 of ITA 2007;
 - (r) paragraph 155(5) of Schedule 2 to ITA 2007;
 - (s) sections 126, 244 and 965(1) of CTA 2009.
- (4) In the second column, omit the entries relating to –
- (a) paragraph 2 of Schedule 22 to ICTA;
 - (b) paragraph 15(3) of Schedule 14 to FA 1984;
 - (c) regulations under section 57 of FA 1989;
 - (d) regulations under section 33 of FA 1991.
- 23 In Schedule 1A (claims not made in returns), in paragraph 2(5) –
- (a) in paragraph (b), at the end insert “and”, and
 - (b) omit paragraph (c) (and the “and” before it).

FA 1973

- 24 Omit section 32 of FA 1973 (power to obtain information as to arrangements for transferring relief etc).

ICTA

- 25 ICTA is amended as follows.
- 26 Omit section 217(1) to (3) (power to obtain information about distributions on demerger).
- 27 Omit section 226(3) (power to obtain information about purchases of own shares by unquoted trading company).
- 28 In section 234(9) (power to obtain information relating to distributions), for “2 to” substitute “3 and”.
- 29 Omit section 250(7) (power to obtain information about certain share capital).
- 30 Omit section 272(7) (power to obtain information about life policies).
- 31 Omit section 708 (power to obtain information from companies liable to counteraction of corporation tax advantage).
- 32 Omit section 728 (power to obtain information about accrued income profits).
- 33 Omit section 754(2B) and (2C) (power to obtain information for purpose of determining basis of apportionment of controlled foreign company’s chargeable profits).
- 34 Omit section 774(5) (power to obtain information about transactions between dealing company and associated company).
- 35 In Schedule 15 (qualifying policies), omit paragraph 14(5) (power to obtain information about connected policies).

FA 1989

- 36 In Schedule 12 to FA 1989, omit paragraph 2 (power to obtain information from close companies).

TCGA 1992

- 37 TCGA 1992 is amended as follows.
- 38 In section 169E(1) (meaning of “settlor”)
- (a) after “section” insert “and”, and
 - (b) omit “and section 169G”.
- 39 Omit section 169G(2) to (5) (power to obtain information about gifts to settlor-interested settlements etc).
- 40 Omit section 235 (power to obtain information from trustees of employee share ownership trust).
- 41 In Schedule 1 (application of exempt amount etc in cases involving settled property), omit paragraphs 1(7) and 2(9) (powers to obtain information from party to settlement).
- 42 In Schedule 4ZA (sub-fund settlements), omit paragraphs 14 to 16 (power to obtain information).
- 43 In Schedule 5 (attribution of gains to settlors with interest in non-resident or dual resident settlement), omit paragraph 10 (power to obtain information).

FA 1998

- 44 Schedule 18 to FA 1998 (company tax returns) is amended as follows.
- 45 Omit paragraph 13 (return to include information about chargeable gains).
- 46 In paragraph 77A(8) (claims in respect of overseas losses of non-resident companies), for “paragraph 27 (notice to produce documents etc for purposes of an enquiry)” substitute “paragraph 1 of Schedule 36 to the Finance Act 2008 (notice to taxpayer to produce documents etc)”.

FA 2002

- 47 In Schedule 18 to FA 2002 (relief for community amateur sports clubs), omit paragraph 12 (power to obtain information etc).

ITEPA 2003

- 48 In paragraph 37 of Schedule 7 to ITEPA 2003 (transitionals: retraining courses) –
- (a) in sub-paragraph (1)(c), omit “and (7)”, and
 - (b) in sub-paragraph (2), for “and (7) apply as if section 588(6)” substitute “applies as if it”.

ITTOIA 2005

- 49 ITTOIA 2005 is amended as follows.

- 50 Omit section 75(5) (power to obtain information from employers about retraining courses).
- 51 Omit section 128 (power to obtain information in connection with herd basis election).
- 52 Omit section 305 (power to obtain information about effective duration of lease).
- 53 Omit section 682A (power to obtain information from personal representatives and beneficiaries).
- 54 In Schedule 2 (transitionals and savings), in paragraph 71(1) (lease premiums: rules for determining effective duration of lease granted before 13 June 1969), for “to 305” substitute “and 304”.

ITA 2007

- 55 ITA 2007 is amended as follows.
- 56 Omit section 271(2) and (3) (power to obtain information about withdrawal or reduction of VCT relief).
- 57 Omit section 330(5) (power to make regulations for obtaining information about certain company reorganisations).
- 58 Omit section 703 (power to obtain information from persons liable to counteraction of income tax advantage).
- 59 Omit section 788 (power to obtain information relating to sales of occupation income).
- 60 Omit section 862 (power to inspect declarations made by deposit-taker or building society).
- 61 In Schedule 2 (transitionals and savings), omit paragraph 155(5) (power to obtain information from trustee of settlement).

CTA 2009

- 62 CTA 2009 is amended as follows.
- 63 Omit section 75(5) and (6) (power to obtain information about retraining courses).
- 64 Omit section 126 (power to obtain information in connection with herd basis election).
- 65 Omit section 244 (power to obtain information about effective duration of lease).
- 66 Omit section 965 (power to obtain information from personal representatives and beneficiaries).
- 67 In paragraph 21 of Schedule 2 (transitionals: training courses for employees), in sub-paragraph (1)(c) and (2)(c), omit “and (7)”.

Chapter 4: Explanatory Note

CLAUSE 1 AND SCHEDULE 1: INFORMATION AND INSPECTION POWERS: MINOR AND CONSEQUENTIAL PROVISION

SUMMARY

1. Clause 1 introduces Schedule 1 which contains amendments of Schedule 36 to Finance Act 2008 (“Schedule 36”), repeals other information and inspection powers and makes consequential provision.

DETAILS OF THE CLAUSE

2. This Clause introduces Schedule 1. Part 1 of the Schedule amends Schedule 36 to Finance Act 2008. Part 2 of the Schedule contains repeals of other information and inspection powers and consequential provisions.

DETAILS OF THE SCHEDULE

3. Part 1 contains the amendments to Schedule 36.
4. Paragraph 1 provides for Schedule 36 to be amended.
5. Sub-paragraph (1) of paragraph 2 provides for amendments to paragraph 10(3) of Schedule 36.
6. Sub-paragraph (2) amends the definition of “business assets” to make it clear that HMRC has no power to inspect documents other than statutory records unless they are trading stock.
7. Sub-paragraph (3) makes a consequential change to the definition of business documents as a result of sub-paragraph (2).
8. Sub-paragraph (4) inserts a definition of “trading stock” as a result of the change made by sub-paragraph (2).
9. Paragraph 3 amends paragraph 12(5) of Schedule 36. The existing paragraph refers to a notice being given with the approval of the

tribunal. Strictly speaking the tribunal approves the inspection rather than the notice and this change makes this clear.

10. Paragraph 4 makes a consequential amendment to paragraph 21(8) of Schedule 36 as a result of paragraph 14(3) below and makes it explicit that the checking of payroll giving does not require the opening of a formal enquiry into a tax return.
11. Paragraph 5 inserts new paragraphs 37A and 37B into Schedule 36. The existing powers to ask for information in relation to a herd basis election and counteraction provisions are being repealed and Schedule 36 will be used instead. No specific provision is required to achieve this since both concern income tax and corporation tax, to which Schedule 36 already applies.
12. The effect of paragraph 37A is that the restrictions on giving a taxpayer notice where a tax return had been made (paragraph 21 of Schedule 36) do not apply in relation to a taxpayer notice in relation to a herd basis election. Such a restriction would be inappropriate here since HMRC checks on herd basis elections are conducted outside the normal mechanism of a return and enquiry. Herd basis election rules are in Chapter 8 of Part 2 of ITTOIA 2005 (the Income Tax (Trading and Other Income Act) and Schedule 5 to ICTA 1988 (the Income and Corporation Taxes Act), (the latter provisions being rewritten in Corporation Tax Act 2009).
13. Paragraph 37B has a similar effect in relation to a taxpayer notice given to a person to whom a counteraction provision applies. Counteraction provision is defined in sub-paragraph (3).
14. Sub-paragraph (1) of paragraph 6 provides for amendments to paragraph 39 of Schedule 36.
15. Sub-paragraph (2) provides for some tidying, without any change of meaning.

16. Sub-paragraph (3) makes consequential amendments to the heading of paragraph 39 to reflect the introduction of a new penalty under paragraph 8 below.
17. Paragraph 7 makes a consequential amendment to the heading of paragraph 40 to reflect the introduction of a new penalty under paragraph 8 below.
18. Paragraph 8 inserts a new paragraph 40A into Schedule 36 which provides for a penalty to apply where a person carelessly or deliberately provides inaccurate information or produces inaccurate documents in response to an information notice. Such a penalty exists in section 98(2) of TMA (the Taxes Management Act) 1970 for notices under current information provisions but the replacement is being incorporated into Schedule 36.
19. Sub-paragraph (1) of paragraph 9 provides for amendments to paragraph 41 of Schedule 36 (power to change amount of penalties).
20. Sub-paragraph (2) inserts a reference to the new paragraph 40A.
21. Sub-paragraph (3) makes a consequential amendment to the heading of paragraph 41 to reflect the new penalty.
22. Sub-paragraph (1) of paragraph 10 provides for amendments to paragraph 46 of Schedule 36 (assessment of penalty).
23. Sub-paragraph (2) makes consequential amendments to reflect the new penalty. Sub-paragraphs (c) and (d) place a new obligation on HMRC. The effect is that where HMRC assess a penalty they must notify the person rather than having any discretion about whether or not to do so. This reflects the original policy intention.
24. Sub-paragraph (3) makes a consequential amendment to reflect the new penalty.
25. Sub-paragraph (4) makes a consequential amendment to the heading of paragraph 46 to reflect the new penalty.

26. Sub-paragraph (1) of paragraph 11 provides for amendments to paragraph 47 of Schedule 36 (right of appeal against penalty).
27. Sub-paragraph (2) makes an amendment to include the new penalty.
28. Sub-paragraph (3) makes a consequential amendment to the heading of paragraph 47 to reflect the new penalty.
29. Sub-paragraph (1) of paragraph 12 provides for amendments to paragraph 49 of Schedule 36 (enforcement of penalty).
30. Sub-paragraph (2) makes a consequential amendment to reflect the new penalty.
31. Sub-paragraph (3) makes a consequential amendment to reflect the new penalty.
32. Sub-paragraph (4) makes a consequential amendment to the heading of paragraph 49 to reflect the new penalty.
33. Sub-paragraph (1) of paragraph 13 provides for amendments to paragraph 63 of Schedule 36 (meaning of “tax”).
34. Sub-paragraph (2) makes a consequential amendment to reflect the insertion of a new paragraph 63(3A).
35. Sub-paragraph (3) inserts a new paragraph 63(3A) which amplifies the definition of VAT in paragraph 63(3). The new sub-paragraph (3A)(a) repeats what was previously in paragraph 63(3). The new sub-paragraph (3A)(b) represents new material. The effect is that Schedule 36 will apply for the purposes of amounts accounted for under a particular VAT scheme which are not VAT but are treated as if they were.
36. Sub-paragraph (1) of paragraph 14 provides for amendments to paragraph 64 of Schedule 36 (meaning of “tax position”).
37. Sub-paragraph (2) amends the definition of tax position in connection with claims, elections, applications and notices. The purpose of the

amendment is to narrow the scope of tax position so that it relates only to claims, etc, made by taxpayers themselves rather than documents given by a third person in connection with someone else's tax position. This is in line with the original policy intention, but clarifies the law.

38. Sub-paragraph (3) inserts a new sub-paragraph (2A) into paragraph 64. This makes it explicit that tax position includes matters relating to the withholding of income, for example, as part of payroll giving.
39. Part 2 of the Schedule lists repeals of other information and inspection powers and consequential amendments. These provisions are being repealed because now the intention is that Schedule 36 (with its modern safeguards) will be used instead.
40. Paragraphs 15 to 23 repeal or amend provisions in TMA 1970. Paragraph 22 omits many entries from the Table in section 98. In the main these are consequent on the repeal of an information provision under other paragraphs of this Part of the Schedule, but there is also an attempt to tidy up the Table by removing other entries that are redundant or for which the specific powers to which they relate are no longer needed.
41. Paragraph 24 repeals a provision in Finance Act (FA) 1973.
42. Paragraphs 25 to 35 repeal or amend provisions in ICTA 1988.
43. Paragraph 36 repeals a provision in FA 1989.
44. Paragraphs 37 to 43 repeal or amend provisions in TCGA 1992 (the Taxation of Capital Gains Act).
45. Paragraphs 44 to 46 repeal or amend provisions in FA 1998.
46. Paragraph 47 repeals a provision in FA 1989.

47. Paragraph 48 repeals a provision in ITEPA 2003 (the Income Tax (Earnings and Pensions Act)).
48. Paragraphs 49 to 54 repeal or amend provisions in ITTOIA 2005.
49. Paragraphs 55 to 61 repeal provisions in ITA 2007 (the Income Tax Act).
50. Paragraphs 62 to 67 repeal provisions in the draft Corporation Tax Act 2009 (CTA) which will replace existing information powers in ICTA. The CTA is the latest product of the Tax Law Rewrite programme and the Bill has been published. It is due to come into effect on 1 April 2009. These repeals are included here on the basis that CTA will become law before this legislation comes into effect.

Chapter 5: Information and inspection powers: extension to further taxes etc – draft legislation

CLAUSE 2

2 Information and inspection powers: extension to further taxes etc

- (1) In paragraph 63(1) of Schedule 36 to FA 2008 (information and inspection powers: meaning of “tax”), for paragraph (e) (and the “and” before it) substitute –
 - “(e) insurance premium tax,
 - (f) inheritance tax,
 - (g) stamp duty land tax,
 - (h) stamp duty reserve tax,
 - (i) petroleum revenue tax,
 - (j) aggregates levy,
 - (k) climate change levy,
 - (l) landfill tax, and
 - (m) relevant foreign tax,”.
- (2) In Schedule 2 –
 - Part 1 contains further amendments of that Schedule, and
 - Part 2 contains consequential provision.
- (3) The amendments made by this section and that Schedule come into force on such day as the Treasury may by order made by statutory instrument appoint.
- (4) An order under subsection (3) –
 - (a) may appoint different days for different purposes, and
 - (b) may contain transitional provision and savings.

SCHEDULE 2

Section 2

INFORMATION AND INSPECTION POWERS: EXTENSION TO FURTHER TAXES ETC

PART 1

AMENDMENTS OF SCHEDULE 36 TO FA 2008

1 Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.

2 In paragraph 5(4) (approval by tribunal of notices relating to persons whose identity is not known), for “give its approval for the purposes of this paragraph” substitute “approve the giving of a notice under this paragraph”.

3 After paragraph 10 insert –

“Power to inspect business premises etc of involved third parties

10A (1) An officer of Revenue and Customs may enter business premises of an involved third party (see paragraph 61A) and inspect –

- (a) the premises,
- (b) business assets that are on the premises, and
- (c) relevant documents that are on the premises,

if the inspection is reasonably required by the officer for the purpose of checking the position of any person as regards a relevant tax.

(2) The powers under this paragraph do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

(3) In relation to an involved third party, “relevant documents” and “relevant tax” are defined in paragraph 61A.”

4 (1) Paragraph 12 (carrying out inspections) is amended as follows.

(2) In sub-paragraph (1), for “this Part of this Schedule” substitute “paragraph 10, 10A or 11”.

(3) Accordingly, in the heading, insert at the end “*under paragraph 10, 10A or 11*”.

5 After that paragraph insert –

“Powers to inspect property for valuation etc

12A (1) An officer of Revenue and Customs may enter and inspect premises for the purpose of valuing the premises if the valuation is reasonably required for the purpose of checking any person’s position as regards income tax or corporation tax.

(2) An officer of Revenue and Customs may enter premises and inspect –

- (a) the premises, and
- (b) any other property on the premises,

for the purpose of valuing, measuring or determining the character of the premises or property.

- (3) Sub-paragraph (2) only applies if the valuation, measurement or determination is reasonably required for the purpose of checking any person's position as regards –
 - (a) capital gains tax,
 - (b) corporation tax in respect of chargeable gains,
 - (c) inheritance tax,
 - (d) stamp duty land tax, or
 - (e) stamp duty reserve tax.
- (4) Any persons who the officer considers are necessary to assist with the valuation, measurement or determination may enter and inspect the premises or property with the officer.

Carrying out inspections under paragraph 12A

- 12B (1) An inspection under paragraph 12A may be carried out only if condition A or B is satisfied.
 - (2) Condition A is that –
 - (a) the inspection is carried out at a time agreed to by the occupier of the premises, and
 - (b) the occupier of the premises has been given notice in writing of the agreed time of the inspection.
 - (3) Condition B is that –
 - (a) the inspection has been approved by the tribunal, and
 - (b) the occupier of the premises has been given at least 7 days' notice in writing of the time of the inspection.
 - (4) Where the tribunal approves an inspection under this paragraph, it may disapply the requirement in sub-paragraph (3)(b) if it is satisfied that the occupier of the premises cannot be identified.
 - (5) A notice under sub-paragraph (3)(b) must state the possible consequences of obstructing the officer in the exercise of the power.
 - (6) If a notice is given under this paragraph in respect of an inspection approved by the tribunal (see paragraph 13), it must state that the inspection has been so approved.
 - (7) An officer of Revenue and Customs seeking to carry out an inspection under paragraph 12A must produce evidence of authority to carry out the inspection if asked to do so by –
 - (a) the occupier of the premises, or
 - (b) any other person who appears to the officer to be in charge of the premises or property.”
- 6 (1) Paragraph 13 (approval of tribunal) is amended as follows.
- (2) In sub-paragraph (1), insert at the end “(and for the effect of obtaining such approval see paragraph 39 (penalties))”.
 - (3) In sub-paragraph (2), after “an inspection” insert “under paragraph 10, 10A or 11”.

(4) After that sub-paragraph insert—

“(3) The tribunal may not approve an inspection under paragraph 12A unless—

- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs,
- (b) the person whose tax position is the subject of the proposed inspection has been given a reasonable opportunity to make representations to the officer of Revenue and Customs about that inspection,
- (c) the occupier of the premises has been given a reasonable opportunity to make such representations,
- (d) the tribunal has been given a summary of any representations made, and
- (e) the tribunal is satisfied that, in the circumstances, the inspection is justified.

(4) Paragraphs (c) and (d) of sub-paragraph (3) do not apply if the tribunal is satisfied that the occupier of the premises cannot be identified.”

7 In paragraph 17(b) (power to record information), after “premises,” insert “property, goods,”.

8 (1) Paragraph 21 (restrictions on giving taxpayer notices) is amended as follows.

(2) In sub-paragraph (7), for “VAT position” substitute “position as regards any tax other than income tax, capital gains tax or corporation tax”.

(3) In the heading, insert at the end “*following tax return*”.

9 After that paragraph insert—

“Taxpayer notices following land transaction return

21A (1) Where a person has delivered a land transaction return under section 76 of FA 2003 (returns for purposes of stamp duty land tax) in respect of a transaction, a taxpayer notice may not be given for the purpose of checking that person’s stamp duty land tax position in relation to that transaction.

(2) Sub-paragraph (1) does not apply where, or to the extent that, any of conditions A to C is met.

(3) Condition A is that a notice of enquiry has been given in respect of—

- (a) the return, or
 - (b) a claim (or an amendment of a claim) made by the person in connection with the transaction,
- and the enquiry has not been completed.

(4) In sub-paragraph (3), “notice of enquiry” means a notice under paragraph 12 of Schedule 10, or paragraph 7 of Schedule 11A, to FA 2003.

- (5) Condition B is that an officer of Revenue and Customs has reason to suspect that –
 - (a) an amount that ought to have been assessed to stamp duty land tax in respect of the transaction may not have been assessed,
 - (b) an assessment to stamp duty land tax in respect of the transaction may be or have become insufficient, or
 - (c) relief from stamp duty land tax in respect of the transaction may be or have become excessive.
 - (6) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking that person’s position as regards a tax other than stamp duty land tax.”
- 10 After paragraph 34 insert –
- “Involved third parties*
- 34A (1) This paragraph applies to a third party notice or a notice under paragraph 5 if –
- (a) it is given to an involved third party (see paragraph 61A),
 - (b) it is given for the purpose of checking the position of a person as regards the relevant tax, and
 - (c) it refers only to relevant information or relevant documents.
- (2) Paragraph 3(1) (approval etc of third party notices) does not apply.
 - (3) Paragraph 4(1) (copying third party notices to taxpayer) does not apply.
 - (4) Paragraph 5(3) (approval of notices) does not apply, but an authorised officer of Revenue and Customs may ask for the approval of the tribunal to the giving of the notice.
 - (5) The involved third party may not appeal to the tribunal against a requirement in the notice to provide any information, or produce any document, that forms part of the involved third party’s statutory records.
 - (6) In relation to an involved third party, “relevant documents”, “relevant information” and “relevant tax” are defined in paragraph 61A.”
- 11 (1) Paragraph 35 (special cases: groups of undertakings) is amended as follows.
- (2) In sub-paragraph (4)(b) –
 - (a) for “paragraph 21” substitute “paragraphs 21 and 21A”, and
 - (b) for “applies” substitute “apply”.
 - (3) In sub-paragraph (5), insert at the end “, but an authorised officer of Revenue and Customs may ask for the approval of the tribunal to the giving of the notice.”
- 12 (1) Paragraph 37 (special cases: partnerships) is amended as follows.

(2) After subsection (2) insert—

“(2A) If a land transaction return has been delivered by any of the partners in respect of a transaction, paragraph 21A (restrictions where taxpayer has delivered land transaction return) has effect as if that return had been delivered by each of the partners.”

(3) In sub-paragraph (6), insert at the end “, but an authorised officer of Revenue and Customs may ask for the approval of the tribunal to the giving of the notice.”

13 After paragraph 61 insert—

“Involved third parties

61A (1) In this Schedule, “involved third party” means a person described in the first column of the Table below, subject to sub-paragraph (2).

(2) For the purposes of paragraph 10A, “involved third party” does not include a person described in item 7, 8 or 9 of that Table.

(3) In this Schedule, in relation to an involved third party, “relevant information”, “relevant document” and “relevant tax” have the meaning given in the corresponding entries in that Table.

	<i>Involved third party</i>	<i>Relevant information and relevant documents</i>	<i>Relevant tax</i>
1.	A person involved (in any capacity) in an insurance business (as defined for the purposes of Part 3 of FA 1994)	Information and documents relating to contracts of insurance entered into in the course of the business	Insurance premium tax
2.	A person who makes arrangements for persons to enter into contracts of insurance	Information and documents relating to the contracts	Insurance premium tax

	<i>Involved third party</i>	<i>Relevant information and relevant documents</i>	<i>Relevant tax</i>
3.	A person who – (a) is concerned in a business that is not an insurance business (as defined for the purposes of Part 3 of FA 1994), and (b) has been involved in the entry into a contract of insurance providing cover for any matter associated with that business	Information and documents relating to the contracts	Insurance premium tax
4.	A person involved (in any capacity) in subjecting aggregate to exploitation in the United Kingdom (as defined for the purposes of Part 2 of FA 2001) or in connected activities	Information and documents relating to matters in which the person is or has been involved	Aggregates levy
5.	A person involved (in any capacity) in making or receiving taxable commodities (as defined for the purposes of Schedule 6 to FA 2000) or in connected activities	Information and documents relating to matters in which the person is or has been involved	Climate change levy
6.	A person involved (in any capacity) with any landfill disposal (as defined for the purposes of Part 3 of FA 1996)	Information and documents relating to the disposal	Landfill tax
7.	A body approved by an officer of Revenue and Customs for the purpose of paying donations within the meaning of Part 12 of ITEPA 2003 (donations to charity: payroll giving) (see section 714 of that Act)	Information and documents relating to the donations	Income tax

	<i>Involved third party</i>	<i>Relevant information and relevant documents</i>	<i>Relevant tax</i>
8.	A plan manager (see section 696 of ITTOIA 2005 (managers of individual investment plans))	Information and documents relating to the plan, including investments which are or have been held under the plan	Income tax
9.	An account provider in relation to a child trust fund (as defined in section 3 of the Child Trust Funds Act 2004)	Information and documents relating to the fund, including investments which are or have been held under the fund	Income tax”.

- 14 (1) Paragraph 62 (meaning of “statutory records”) is amended as follows.
- (2) In sub-paragraph (1), for paragraph (b) substitute –
“(b) any other enactment relating to a tax”.
- (3) In sub-paragraph (2)(b), for “VATA 1994 or any other enactment relating to value added tax” substitute “any other enactment relating to a tax”.

PART 2

CONSEQUENTIAL PROVISION

TMA 1970

- 15 Omit sections 110 and 111 (valuation: powers to enter and inspect).

IHTA 1984

- 16 (1) IHTA 1984 is amended as follows.
- (2) Omit sections 219, 219A and 219B (powers to require information and documents).
- (3) Omit section 220 (power to inspect property).
- (4) In section 245A (failure to provide information etc) –
- (a) omit subsections (2) and (3),
 - (b) in subsection (4) –
 - (i) for “(1A)(b), (2)(b) or (3)(b)” substitute “or (1A)(b)”,
 - (ii) at the end of paragraph (a) insert “or”, and
 - (iii) omit paragraphs (b) and (c), and
 - (c) in subsection (5) –
 - (i) after “return” (in both places) insert “or”, and

(ii) omit “or to comply with a notice” (in both places).

FA 1993

- 17 In FA 1993, omit—
- (a) section 187 (petroleum revenue tax: return and information), and
 - (b) Schedule 21 (supplementary provisions about information).

FA 1994

- 18 In Schedule 7 to FA 1994 (insurance premium tax), omit paragraphs 2, 3 and 4(1).

FA 1996

- 19 In Schedule 5 to FA 1996 (landfill tax), omit—
- (a) paragraphs 1, 3 and 4, and
 - (b) paragraph 22(1)(a) (and the “or” after it).

FA 2000

- 20 In Schedule 6 to FA 2000 (climate change levy), omit paragraphs 124, 127, 128 and 129.

FA 2001

- 21 In Schedule 7 to FA 2001 (aggregates levy: information and evidence), omit paragraphs 1, 4, 5 and 6.

ITEPA 2003

- 22 In section 715 of ITEPA 2003 (regulations relating to payroll giving), omit subsection (3)(a)(i).

FA 2003

- 23 (1) Part 4 of FA 2003 (stamp duty land tax) is amended as follows.
- (2) In section 93 (information powers)—
 - (a) in subsection (2), omit the entries relating to all Parts of Schedule 13 apart from Parts 3, 4, 6 and 8,
 - (b) in subsection (3), omit “1, 2 or”, and
 - (c) in subsection (6), omit “1, 2 or”.
 - (3) Omit section 94 (power to inspect premises).
 - (4) In Schedule 10 (returns, enquiries etc), omit paragraphs 14 to 16.
 - (5) In Schedule 11A (claims not included in returns), omit paragraphs 8 to 10.
 - (6) In Schedule 13 (information powers)—
 - (a) omit paragraphs 1 to 13, 24 and 26 to 31,
 - (b) in paragraph 19, for “Parts 1 to” substitute “Part”,
 - (c) in paragraph 20(1), for “Parts 1 to 3 of this Schedule do” substitute “Part 3 of this Schedule does”,

- (d) in paragraph 21, omit sub-paragraphs (1) and (2),
- (e) in paragraph 22(1), omit “2 or”,
- (f) in paragraph 22(2), for “those Parts” substitute “that Part”,
- (g) in paragraph 23(1)–
 - (i) omit “1 or”, and
 - (ii) omit “, and as an alternative to delivering documents to comply with a notice under Part 2 of this Schedule,”,
- (h) in paragraph 25(1), omit “2 or”,
- (i) in paragraph 53(2)(a), for “1, 2, 3, or 5” substitute “3”,
- (j) in paragraph 53(2)(b), omit “1(3), 6(3), 11(3) or”, and
- (k) in paragraph 53(3), omit paragraph (b) (but not the “or” after it).

Child Trust Funds Act 2004 (c. 6)

- 24 (1) Section 15 of the Child Trust Funds Act 2004 (information from account providers etc) is amended as follows,
- (2) In subsection (1)–
- (a) omit “, or authorise officers of the Inland Revenue to require,”,
 - (b) for “relevant person” substitute “person who is or has been the account provider in relation to a child trust fund”, and
 - (c) for “a child trust fund” substitute “the child trust fund”.
- (3) Omit subsection (2).

ITTOIA 2005

- 25 Omit section 700 of ITTOIA 2005 (power to obtain information from managers of individual investment plans).

Chapter 6: Explanatory Note

CLAUSE 2 AND SCHEDULE 2: INFORMATION AND INSPECTION POWERS: EXTENSION TO FURTHER TAXES ETC

SUMMARY

1. Clause 2 introduces Schedule 2 which amends Schedule 36 to the Finance Act 2008 (“Schedule 36”) and extends HMRC’s powers to obtain information and inspect businesses to: insurance premium tax (IPT), inheritance tax (IHT), stamp duty land tax (SDLT), stamp duty reserve tax (SDRT), petroleum revenue tax (PRT), aggregates levy (AGL), climate change levy (CCL) and landfill tax (LT). The clause also provides for the Schedule to come into force on a day appointed by Treasury order, made by statutory instrument.

DETAILS OF THE CLAUSE

2. Subsection (1) makes substitutions to paragraph 63(1) of Schedule 36 which specifies the taxes to which Schedule 36 applies. That Schedule makes provision about the powers of HMRC officers to obtain information and inspect businesses in respect of income tax, (IT) capital gains tax (CGT), corporation tax (CT) and value added tax (VAT). The scope of the Schedule will now be widened to include the further taxes listed.
3. Subsection (2) states that Part 1 of Schedule 2 contains further amendments to Schedule 36 and that Part 2 contains consequential provision.
4. Subsection (3) provides that the amendments made by the clause and the Schedule will come into force on a day appointed by the Treasury by an order made by statutory instrument.
5. Subsection (4) provides that such an order may appoint different days for the commencement of different purposes and contain transitional provision and savings.

DETAILS OF THE SCHEDULE

6. Part 1 contains the amendments to Schedule 36.
7. Paragraph 1 provides for Schedule 36 to be amended.
8. Paragraph 2 substitutes words in paragraph 5(4) of Schedule 36 to give a more accurate expression or description of the power the tribunal has in relation to its approval of notices which relate to persons whose identity is not known.
9. Paragraph 3 inserts a new paragraph 10A into Schedule 36. This provides a power for HMRC to inspect business premises and assets and relevant documents on the premises. It is very closely modelled on the existing paragraph 10 of Schedule 36 but it now applies to an “involved third party” which is a new concept within Schedule 36. It allows HMRC to inspect the premises, assets and documents of certain involved third parties in order to check a person’s tax position, but only for a relevant tax. These new terms are defined by a new paragraph 61A which is inserted by paragraph 13 below.
10. Sub-paragraph (1) of paragraph 4 provides for amendments to paragraph 12 of Schedule 36 (carrying out inspections).
11. Sub-paragraph (2) makes a consequential amendment to reflect the insertion of paragraph 10A into Part 2 of Schedule 36.
12. Sub-paragraph (3) makes a further, similar consequential amendment.
13. Paragraph 5 inserts new paragraphs 12A and 12B into Schedule 36. New paragraph 12A(1) provides a power for HMRC to enter and inspect any premises for the purpose of valuing the premises with respect to income tax or corporation tax. “Premises” is defined in paragraph 58 of Schedule 36. An example of the use of this power will be when a dwelling is transferred to or made available to an employee in return for services. The power replaces and slightly widens that in section 110 TMA.

14. New paragraph 12A(2) provides a power for HMRC to enter premises and inspect the premises and any other property on the premises for the purpose of valuing, measuring or determining the character of the premises or property.
15. Under paragraph 12A(3) the power in sub-paragraph (2) only applies if the valuation etc is reasonably required to check any person's tax position as regards certain specified taxes: CGT, CT in respect of chargeable gains, IHT, SDLT or SDRT. This power replaces the powers in section 111 TMA, section 220 IHTA, section 94 FA 2003 and Regulation 111 of SI 1986/1711.
16. Paragraph 12A(4) allows for other persons to accompany the HMRC officer if necessary (for example an expert external valuer who may value an asset such as a rare painting).
17. New paragraph 12B sets restrictions on carrying out inspections for valuation purposes under paragraph 12A. The effect is that an inspection can only be carried out if one of two conditions is met. The occupier must have agreed the time of the inspection and have been given a written notice. Alternatively the inspection can be approved by the tribunal. In that case the occupier must be given at least 7 days notice in writing of the inspection, unless the tribunal disapplies this requirement because the occupier cannot be identified, for example when the property is vacant.
18. Paragraphs (5) and (6) of paragraph 12B mirror the rules in paragraph 12 of Schedule 36 about the content of the notice given at the time of inspection. In addition, sub-paragraph (7) requires that an officer must produce evidence of authority if required to do so.
19. Sub-paragraph (1) of paragraph 6 provides for amendments to paragraph 13(1) of Schedule 36 (approval of tribunal).
20. Sub-paragraph (2) inserts a cross-reference to paragraph 39 of Schedule 36 (penalties), for clarity.

21. Sub-paragraph (3) inserts a cross-reference. This has the effect that paragraph 13(2) (tribunal approval) only applies to inspections under paragraphs 10, 10A and 11.
22. Sub-paragraph (4) inserts a new sub-paragraph 13(3) which covers the tribunal's approval of inspections for the new paragraph 12A, in the same way that paragraph 13(2) covers tribunal approval of inspection under paragraphs 10, 10A and 11. It adds conditions at (b), (c) and (d) which only apply to inspections for valuation purposes. These provide for the person whose tax position is being checked and the occupier to be given a reasonable opportunity to make representations to the officer and for the tribunal to be given a summary of the representations made.
23. Paragraph 7 amends paragraph 17(b) of Schedule 36 so that the power to record information extends to recording information about property and goods.
24. Sub-paragraph (1) of paragraph 8 provides for amendments to paragraph 21 of Schedule 36 (restrictions on giving taxpayer notices).
25. Sub-paragraph (2) amends paragraph 21(7). Paragraph 21 restricts HMRC's power to ask for information to check an IT, CGT or CT tax position for a period for which a tax return has been submitted. This replicates the existing arrangements (the enquiry window). This restriction does not apply for checks in relation to VAT which does not have an equivalent enquiry mechanism.
26. This amendment has the effect that the rules which apply to VAT will now apply more widely, to all the taxes now being brought within the scope of Schedule 36. There is an exception of SDLT (for which, see below), as that tax does have an enquiry window.
27. Sub-paragraph (3) amends the heading of paragraph 21 in the light of the changes made in sub-paragraph (2).

28. Paragraph 9 inserts a new paragraph 21A into Schedule 36 to incorporate the SDLT enquiry window. This paragraph mirrors the existing paragraph 21 and provides the same restriction on asking for information in respect of SDLT as is provides for IT, CGT and CT.
29. Paragraph 10 inserts new paragraph 34A into Schedule 36. This introduces the concept of “involved third parties”.
30. New paragraph 34A is closely modelled on the existing paragraph 34 of Schedule 36 but it now applies to an involved third party. It allows HMRC to give such a person a third party or unknown taxpayer information notice in order to check any other person’s tax position, but only for relevant information, relevant documents and for a relevant tax.
31. Sub-paragraphs (2), (3), (4) and (5) disapply certain provisions of Schedule 36 which relate to third party notices. The effect of this is that involved third parties are treated as if they were first parties (taxpayers) rather than third parties in relation to approval and copying of notices. Similarly, an involved third party may not appeal against a requirement in a notice to provide information or documents which form part of their statutory records. Sub-paragraph (6) cross refers to definitions in new paragraph 61A (see below).
32. Sub-paragraph (1) of paragraph 11 provides for amendments to paragraph 35 of Schedule 36 (groups of undertakings).
33. Sub-paragraph (2) makes amendments to paragraph 35(4)(b) (which relates to restrictions on issuing a taxpayer notice where taxpayer has made a return) to reflect the insertion of the new paragraph 21A.
34. Sub-paragraph (3) amends paragraph 35(5) so that HMRC may seek tribunal approval to the issue of a notice in respect of groups of undertakings. Such approval is not required before a notice can be issued but no penalty can be charged unless approval has been given, so in some cases HMRC may decide to seek approval of a notice.

35. Sub-paragraph (1) of paragraph 12 provides for amendments to paragraph 37 of Schedule 36 (partnerships).
36. Sub-paragraph (2) makes amendments to paragraph 37 to reflect the insertion of the new paragraph 21A.
37. Sub-paragraph (3) amends paragraph 37(6) so that HMRC may seek tribunal approval to the issue of a notice in respect of partnerships. This is similar to the amendment made by paragraph 11(3) above.
38. Paragraph 13 inserts a new paragraph 61A into Schedule 36. This defines certain terms used in the new inspection and information powers which apply to involved third parties. It contains a table which sets out what the terms “involved third parties”, “relevant information and relevant documents” and “relevant tax” mean in nine different cases. Involved third parties are persons who have obligations under current legislation to provide information in relation to certain taxes in the same way as the taxpayer and are defined in line with the current legislation.
39. It is not always appropriate for HMRC to have the power to inspect the premises of involved third parties. Sub-paragraph (2) of the new paragraph 61A specifies which involved third parties may not be inspected.
40. Sub-paragraph (1) of paragraph 14 provides for amendments to paragraph 62 of Schedule 36. Paragraph 62 defines “statutory records” for the purpose of the information and inspection powers contained in Schedule 36 and presently reflects the scope of Schedule 36 as originally enacted by referring to records required to be kept under the Taxes Act or VAT legislation.
41. Sub-paragraph (2) replaces the reference to VAT legislation by a wider reference to any other tax legislation. This is a consequential amendment to reflect the changes made to the scope of the taxes now to be covered by Schedule 36.

42. Sub-paragraph (3) makes a similar consequential change.
43. Part 2 of the Schedule (paragraphs 15-25) covers consequential provisions. These are repeals of existing information and inspection powers which are replaced by the new provisions.
44. Paragraph 15 repeals inspection powers in TMA 1970 (the Taxes Management Act).
45. Paragraph 16 repeals information and inspection powers in IHTA 1984 (the Inheritance Tax Act) and makes consequential amendments to that Act.
46. Paragraph 17 repeals information powers in Finance Act (FA) 1993 concerning PRT.
47. Paragraph 18 repeals information and inspection powers in FA 1994 concerning IPT.
48. Paragraph 19 repeals information and inspection powers in FA 1996 concerning LT.
49. Paragraph 20 repeals information and inspection powers in FA 2000 concerning CCL.
50. Paragraph 21 repeals information and inspection powers in FA 2001 concerning AGL.
51. Paragraph 22 makes consequential amendments to ITEPA 2003 (the Income Tax (Earnings and Pensions Act)) in relation to payroll giving. An approved agency is an involved third party (see the seventh entry in the table in new paragraph 61A). The authority to make regulations allowing HMRC to call for information from a payer or agent is no longer required and is repealed.
52. Paragraph 23 repeals information and inspection powers in FA 2003 concerning SDLT and makes consequential amendments to that Act.

53. Paragraph 24 makes consequential amendments to the Child Trust Funds Act 2004. An account provider is an involved third party (see the ninth entry in the table in new paragraph 61A). The authority to make regulations allowing HMRC to call for information from other “relevant persons” is no longer required and is repealed.

54. Paragraph 25 makes consequential amendments to ITTOIA 2005 (the Income Tax (Trading and other Income Act)). A plan manager of an individual investment plan is an involved third party (see the eighth entry in the table in new paragraph 61A). The authority to make regulations allowing HMRC to call for information from an investor or plan manager is no longer required and is repealed.