

SCHEDULES

SCHEDULE 36

Section 113

INFORMATION AND INSPECTION POWERS

PART 1

POWERS TO OBTAIN INFORMATION AND DOCUMENTS

Power to obtain information and documents from taxpayer

- 1 (1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”)—
- (a) to provide information, or
 - (b) to produce a document,
- if the information or document is reasonably required by the officer for the purpose of checking the taxpayer’s tax position.
- (2) In this Schedule, “taxpayer notice” means a notice under this paragraph.

Power to obtain information and documents from third party

- 2 (1) An officer of Revenue and Customs may by notice in writing require a person—
- (a) to provide information, or
 - (b) to produce a document,
- if the information or document is reasonably required by the officer for the purpose of checking the tax position of another person whose identity is known to the officer (“the taxpayer”).
- (2) A third party notice must name the taxpayer to whom it relates, unless the First-tier Tribunal has approved the giving of the notice and disapplied this requirement under paragraph 3.
- (3) In this Schedule, “third party notice” means a notice under this paragraph.

Approval etc of taxpayer notices and third party notices

- 3 (1) An officer of Revenue and Customs may not give a third party notice without—
- (a) the agreement of the taxpayer, or
 - (b) the approval of the First-tier Tribunal.
- (2) An officer of Revenue and Customs may ask for the approval of the First-tier Tribunal to the giving of any taxpayer notice or third party notice (and for the effect of obtaining such approval see paragraphs 29, 30 and 53 (appeals against notices and offence)).

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- (3) The First-tier Tribunal may not approve the giving of a taxpayer notice or third party notice unless—
- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs,
 - (b) the Tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
 - (c) the person to whom the notice is addressed has been told that the information or documents referred to in the notice are required and given a reasonable opportunity to make representations to an officer of Revenue and Customs,
 - (d) the First-tier Tribunal has been given a summary of any representations made by that person, and
 - (e) in the case of a third party notice, the taxpayer has been given a summary of the reasons why an officer of Revenue and Customs requires the information and documents.
- (4) Paragraphs (c) to (e) of sub-paragraph (3) do not apply to the extent that the First-tier Tribunal is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.
- (5) Where the First-tier Tribunal approves the giving of a third party notice under this paragraph, it may also disapply the requirement to name the taxpayer in the notice if it is satisfied that the officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax.

Copying third party notice to taxpayer

- 4 (1) An officer of Revenue and Customs who gives a third party notice must give a copy of the notice to the taxpayer to whom it relates, unless the First-tier Tribunal has disapplied this requirement.
- (2) The First-tier Tribunal may not disapply that requirement unless—
- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs, and
 - (b) the Tribunal is satisfied that the officer has reasonable grounds for believing that giving a copy of the notice to the taxpayer might prejudice the assessment or collection of tax.

Power to obtain information and documents about persons whose identity is not known

- 5 (1) An authorised officer of Revenue and Customs may by notice in writing require a person—
- (a) to provide information, or
 - (b) to produce a document,
- if the condition in sub-paragraph (2) is met.
- (2) That condition is that the information or document is reasonably required by the officer for the purpose of checking the UK tax position of—
- (a) a person whose identity is not known to the officer, or
 - (b) a class of persons whose individual identities are not known to the officer.
- (3) An officer of Revenue and Customs may not give a notice under this paragraph without the approval of the First-tier Tribunal.

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- (4) The First-tier Tribunal may not give its approval for the purpose of this paragraph unless it is satisfied that—
- (a) the notice would meet the condition in sub-paragraph (2),
 - (b) there are reasonable grounds for believing that the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with any provision of the Taxes Acts, VATA 1994 or any other enactment relating to value added tax charged in accordance with that Act,
 - (c) any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of UK tax, and
 - (d) the information or document to which the notice relates is not readily available from another source.
- (5) In this paragraph “UK tax” means any tax other than relevant foreign tax and value added tax charged in accordance with the law of another member State.

Notices

- 6 (1) In this Schedule, “information notice” means a notice under paragraph 1, 2 or 5.
- (2) An information notice may specify or describe the information or documents to be provided or produced.
- (3) If an information notice is given with the approval of the First-tier Tribunal, it must state that it is given with that approval.

Complying with notices

- 7 (1) Where a person is required by an information notice to provide information or produce a document, the person must do so—
- (a) within such period, and
 - (b) at such time, by such means and in such form (if any),
- as is reasonably specified or described in the notice.
- (2) Where an information notice requires a person to produce a document, it must be produced for inspection—
- (a) at a place agreed to by that person and an officer of Revenue and Customs, or
 - (b) at such place as an officer of Revenue and Customs may reasonably specify.
- (3) An officer of Revenue and Customs must not specify a place that is used solely as a dwelling.
- (4) The production of a document in compliance with an information notice is not to be regarded as breaking any lien claimed on the document.

Producing copies of documents

- 8 (1) Where an information notice requires a person to produce a document, the person may comply with the notice by producing a copy of the document, subject to any conditions or exceptions set out in regulations made by the Commissioners.
- (2) Sub-paragraph (1) does not apply where—
- (a) the notice requires the person to produce the original document, or

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- (b) an officer of Revenue and Customs subsequently makes a request in writing to the person for the original document.
- (3) Where an officer of Revenue and Customs requests a document under subparagraph (2)(b), the person to whom the request is made must produce the document—
 - (a) within such period, and
 - (b) at such time and by such means (if any),
 as is reasonably requested by the officer.

Restrictions and special cases

- 9 This Part of this Schedule has effect subject to Parts 4 and 6 of this Schedule.

PART 2

POWERS TO INSPECT BUSINESSES ETC

Power to inspect business premises etc

- 10 (1) An officer of Revenue and Customs may enter a person's business premises and inspect—
- (a) the premises,
 - (b) business assets that are on the premises, and
 - (c) business documents that are on the premises,
- if the inspection is reasonably required for the purpose of checking that person's tax position.
- (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 this Schedule—
- “business assets” means assets that an officer of Revenue and Customs has reason to believe are owned, leased or used in connection with the carrying on of a business by any person, excluding documents,
 - “business documents” means documents (or copies of documents)—
 - (a) that relate to the carrying on of a business by any person, and
 - (b) that form part of any person's statutory records, and
 - “business premises”, in relation to a person, means premises (or any part of premises) that an officer of Revenue and Customs has reason to believe are (or is) used in connection with the carrying on of a business by or on behalf of the person.

Power to inspect premises used in connection with taxable supplies etc

- 11 (1) This paragraph applies where an officer of Revenue and Customs has reason to believe that—
- (a) premises are used in connection with the supply of goods under taxable supplies and goods to be so supplied are on those premises,

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- (b) premises are used in connection with the acquisition of goods from other member States under taxable acquisitions and goods to be so acquired are on those premises, or
 - (c) premises are used as a fiscal warehouse.
- (2) An officer of Revenue and Customs may enter the premises and inspect—
 - (a) the premises,
 - (b) any goods that are on the premises, and
 - (c) any documents on the premises that appear to the officer to relate to such goods.
- (3) 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.
- (4) Terms used both in sub-paragraph (1) and in VATA 1994 have the same meaning in that sub-paragraph as they have in that Act.

Carrying out inspections

- 12
- (1) An inspection under this Part of this Schedule may be carried out only—
 - (a) at a time agreed to by the occupier of the premises, or
 - (b) if sub-paragraph (2) is satisfied, at any reasonable time.
 - (2) This sub-paragraph is satisfied if—
 - (a) the occupier of the premises has been given at least 7 days' notice of the time of the inspection (whether in writing or otherwise), or
 - (b) the inspection is carried out by, or with the agreement of, an authorised officer of Revenue and Customs.
 - (3) An officer of Revenue and Customs seeking to carry out an inspection under sub-paragraph (2)(b) must provide a notice in writing as follows—
 - (a) if the occupier of the premises is present at the time the inspection is to begin, the notice must be provided to the occupier,
 - (b) if the occupier of the premises is not present but a person who appears to the officer to be in charge of the premises is present, the notice must be provided to that person, and
 - (c) in any other case, the notice must be left in a prominent place on the premises.
 - (4) The notice referred to in sub-paragraph (3) must state the possible consequences of obstructing the officer in the exercise of the power.
 - (5) If a notice referred to in sub-paragraph (3) is given with the approval of the First-tier Tribunal (see paragraph 13), it must state that it is given with that approval.

Approval of First-tier Tribunal

- 13
- (1) An officer of Revenue and Customs may ask the First-tier Tribunal to approve an inspection under this Part of this Schedule.
 - (2) The First-tier Tribunal may not approve an inspection unless—
 - (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs, and
 - (b) the Tribunal is satisfied that, in the circumstances, the inspection is justified.

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Restrictions and special cases

- 14 This Part of this Schedule has effect subject to Parts 4 and 6 of this Schedule.

PART 3

FURTHER POWERS

Power to copy documents

- 15 Where a document (or a copy of a document) is produced to, or inspected by, an officer of Revenue and Customs, such an officer may take copies of, or make extracts from, the document.

Power to remove documents

- 16 (1) Where a document is produced to, or inspected by, an officer of Revenue and Customs, such an officer may—
- (a) remove the document at a reasonable time, and
 - (b) retain it for a reasonable period,
- if it appears to the officer to be necessary to do so.
- (2) Where a document is removed in accordance with sub-paragraph (1), the person who produced the document may request—
- (a) a receipt for the document, and
 - (b) if the document is reasonably required for any purpose, a copy of the document,
- and an officer of Revenue and Customs must comply with such a request without charge.
- (3) The removal of a document under this paragraph is not to be regarded as breaking any lien claimed on the document.
- (4) Where a document removed under this paragraph is lost or damaged, the Commissioners are liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.
- (5) In this paragraph references to a document include a copy of a document.

Power to mark assets and to record information

- 17 The powers under Part 2 of this Schedule include—
- (a) power to mark business assets, and anything containing business assets, for the purpose of indicating that they have been inspected, and
 - (b) power to obtain and record information (whether electronically or otherwise) relating to the premises, assets and documents that have been inspected.

PART 4

RESTRICTIONS ON POWERS

Documents not in person's possession or power

- 18 An information notice only requires a person to produce a document if it is in the person's possession or power.

Types of information

- 19 (1) An information notice does not require a person to provide or produce—
- (a) information that relates to the conduct of a pending appeal relating to tax or any part of a document containing such information, or
 - (b) journalistic material (as defined in section 13 of the Police and Criminal Evidence Act 1984 (c. 60)) or information contained in such material.
- (2) An information notice does not require a person to provide or produce personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984) or information contained in such records, subject to sub-paragraph (3).
- (3) An information notice may require a person—
- (a) to produce documents, or copies of documents, that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records ("personal information"), and
 - (b) to provide any information contained in such records that is not personal information.

Old documents

- 20 An information notice may not require a person to produce a document if the whole of the document originates more than 6 years before the date of the notice, unless the notice is given by, or with the agreement of, an authorised officer.

Taxpayer notices

- 21 (1) Where a person has made a tax return in respect of a chargeable period under section 8, 8A or 12AA of TMA 1970 (returns for purpose of income tax and capital gains tax), a taxpayer notice may not be given for the purpose of checking that person's income tax position or capital gains tax position in relation to the chargeable period.
- (2) Where a person has made a tax return in respect of a chargeable period under paragraph 3 of Schedule 18 to FA 1998 (company tax returns), a taxpayer notice may not be given for the purpose of checking that person's corporation tax position in relation to the chargeable period.
- (3) Sub-paragraphs (1) and (2) do not apply where, or to the extent that, any of conditions A to D is met.
- (4) Condition A is that a notice of enquiry has been given in respect of—
- (a) the return, or

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- (b) a claim or election (or an amendment of a claim or election) made by the person in relation to the chargeable period in respect of the tax (or one of the taxes) to which the return relates (“relevant tax”),
and the enquiry has not been completed.
- (5) In sub-paragraph (4), “notice of enquiry” means a notice under—
 - (a) section 9A or 12AC of, or paragraph 5 of Schedule 1A to, TMA 1970, or
 - (b) paragraph 24 of Schedule 18 to FA 1998.
- (6) 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 relevant tax for the chargeable period may not have been assessed,
 - (b) an assessment to relevant tax for the chargeable period may be or have become insufficient, or
 - (c) relief from relevant tax given for the chargeable period may be or have become excessive.
- (7) 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 VAT position.
- (8) Condition D is that the notice is given for the purpose of obtaining any information or document that is required (or also required) for the purpose of checking the person’s position as regards any deductions or repayments referred to in paragraph 64(2) (PAYE etc).

Deceased persons

- 22 An information notice given for the purpose of checking the tax position of a person who has died may not be given more than 4 years after the person’s death.

Privileged communications between professional legal advisers and clients

- 23 (1) An information notice does not require a person—
- (a) to provide privileged information, or
 - (b) to produce any part of a document that is privileged.
- (2) For the purpose of this Schedule, information or a document is privileged if it is information or a document in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications as between client and professional legal adviser, could be maintained in legal proceedings.
- (3) The Commissioners may by regulations make provision for the resolution by the First-tier Tribunal of disputes as to whether any information or document is privileged.
- (4) The regulations may, in particular, make provision as to—
- (a) the custody of a document while its status is being decided, and
 - (b) the procedures to be followed.

Auditors

- 24 (1) An information notice does not require a person who has been appointed as an auditor for the purpose of an enactment—

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- (a) to provide information held in connection with the performance of the person's functions under that enactment, or
- (b) to produce documents which are that person's property and which were created by that person or on that person's behalf for or in connection with the performance of those functions.

(2) Sub-paragraph (1) has effect subject to paragraph 26.

Tax advisers

- 25 (1) An information notice does not require a tax adviser—
- (a) to provide information about relevant communications, or
 - (b) to produce documents which are the tax adviser's property and consist of relevant communications.

(2) Sub-paragraph (1) has effect subject to paragraph 26.

(3) In this paragraph—

“relevant communications” means communications between the tax adviser and—

- (a) a person in relation to whose tax affairs he has been appointed, or
- (b) any other tax adviser of such a person,

the purpose of which is the giving or obtaining of advice about any of those tax affairs, and

“tax adviser” means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of that person).

Auditors and tax advisers: supplementary

- 26 (1) Paragraphs 24(1) and 25(1) do not have effect in relation to—
- (a) information explaining any information or document which the person to whom the notice is given has, as tax accountant, assisted any client in preparing for, or delivering to, HMRC, or
 - (b) a document which contains such information.

(2) In the case of a notice given under paragraph 5, paragraphs 24(1) and 25(1) do not have effect in relation to—

- (a) any information giving the identity or address of a person to whom the notice relates or of a person who has acted on behalf of such a person, or
- (b) a document which contains such information.

(3) Paragraphs 24(1) and 25(1) are not disapplied by sub-paragraph (1) or (2) if the information in question has already been provided, or a document containing the information in question has already been produced, to an officer of Revenue and Customs.

- 27 (1) This paragraph applies where paragraph 24(1) or 25(1) is disapplied in relation to a document by paragraph 26(1) or (2).

(2) An information notice that requires the document to be produced has effect as if it required any part or parts of the document containing the information mentioned in paragraph 26(1) or (2) to be produced.

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Corresponding restrictions on inspection of business documents

- 28 An officer of Revenue and Customs may not inspect a business document under Part 2 of this Schedule if or to the extent that, by virtue of this Part of this Schedule, an information notice given at the time of the inspection to the occupier of the premises could not require the occupier to produce the document.

PART 5

APPEALS AGAINST INFORMATION NOTICES

Right to appeal against taxpayer notice

- 29 (1) Where a taxpayer is given a taxpayer notice, the taxpayer may appeal to the First-tier Tribunal against the notice or any requirement in the notice.
- (2) Sub-paragraph (1) does not apply to a requirement in a taxpayer notice to provide any information, or produce any document, that forms part of the taxpayer's statutory records.
- (3) Sub-paragraph (1) does not apply if the First-tier Tribunal approved the giving of the notice in accordance with paragraph 3.

Right to appeal against third party notice

- 30 (1) Where a person is given a third party notice, the person may appeal to the First-tier Tribunal against the notice or any requirement in the notice on the ground that it would be unduly onerous to comply with the notice or requirement.
- (2) Sub-paragraph (1) does not apply to a requirement in a third party notice to provide any information, or produce any document, that forms part of the taxpayer's statutory records.
- (3) Sub-paragraph (1) does not apply if the First-tier Tribunal approved the giving of the notice in accordance with paragraph 3.

Right to appeal against notice given under paragraph 5

- 31 Where a person is given a notice under paragraph 5, the person may appeal to the First-tier Tribunal against the notice or any requirement in the notice on the ground that it would be unduly onerous to comply with the notice or requirement.

Procedure

- 32 (1) Notice of an appeal under this Part of this Schedule must be given—
- (a) in writing,
- (b) before the end of the period of 30 days beginning with the date on which the information notice is given, and
- (c) to the officer of Revenue and Customs by whom the information notice was given.
- (2) Notice of an appeal under this Part of this Schedule must state the grounds of appeal.
- (3) On an appeal the First-tier Tribunal may—

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- (a) confirm the information notice or a requirement in the information notice,
 - (b) vary the information notice or such a requirement, or
 - (c) set aside the information notice or such a requirement.
- (4) Where the First-tier Tribunal confirms or varies the information notice or a requirement, the person to whom the information notice was given must comply with the notice or requirement—
 - (a) within such period as is specified by the Tribunal, or
 - (b) if the Tribunal does not specify a period, within such period as is reasonably specified in writing by an officer of Revenue and Customs following the Tribunal's decision.
- (5) A decision by the First-tier Tribunal on an appeal under this Part of this Schedule is final.
- (6) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.

Special cases

- 33 This Part of this Schedule has effect subject to Part 6 of this Schedule.

PART 6

SPECIAL CASES

Supply of goods or services etc

- 34 (1) This paragraph applies to a taxpayer notice or third party notice that refers only to information or documents that form part of any person's statutory records and relate to—
 - (a) the supply of goods or services,
 - (b) the acquisition of goods from another member State, or
 - (c) the importation of goods from a place outside the member States in the course of carrying on a business.
- (2) Paragraph 3(1) (requirement for consent to, or approval of, third party notice) does not apply to such a notice.
- (3) Where a person is given such a notice, the person may not appeal to the First-tier Tribunal against the notice or any requirement in the notice.
- (4) Sections 5, 11 and 15 of, and Schedule 4 to, VATA 1994, and any orders made under those provisions, apply for the purposes of this paragraph as if it were part of that Act.

Groups of undertakings

- 35 (1) This paragraph applies where an undertaking is a parent undertaking in relation to another undertaking (a subsidiary undertaking).

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- (2) Where a third party notice is given to any person for the purpose of checking the tax position of the parent undertaking and any of its subsidiary undertakings, paragraph 2 only requires the notice to state this and name the parent undertaking.
- (3) In relation to such a notice—
 - (a) in paragraphs 3 and 4 (approval etc of notices and copying third party notices to taxpayer), the references to the taxpayer have effect as if they were references to the parent undertaking, but
 - (b) in paragraph 30(2) (no appeal in relation to taxpayer’s statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking and each of its subsidiary undertakings.
- (4) Where a third party notice is given to the parent undertaking for the purpose of checking the tax position of one or more subsidiary undertakings—
 - (a) paragraphs 3(1) and 4(1) (approval etc of notices and copying third party notices to taxpayer) do not apply to the notice, but
 - (b) paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) applies as if the notice was a taxpayer notice or taxpayer notices given to the subsidiary undertaking or each of the subsidiary undertakings.
- (5) Where a notice is given under paragraph 5 to the parent undertaking for the purpose of checking the tax position of one or more subsidiary undertakings whose identities are not known to the officer giving the notice, sub-paragraph (3) of that paragraph (approval of First-tier Tribunal) does not apply.
- (6) Where a third party notice or a notice under paragraph 5 is given to the parent undertaking for the purpose of checking the tax position of one or more subsidiary undertakings, the parent undertaking may not appeal against a requirement in the notice to produce any document that forms part of the statutory records of the parent undertaking or any of its subsidiary undertakings.
- (7) In this paragraph “parent undertaking”, “subsidiary undertaking” and “undertaking” have the same meaning as in the Companies Acts (see sections 1161 and 1162 of, and Schedule 7 to, the Companies Act 2006 (c. 46)).

Change of ownership of companies

- 36 (1) Sub-paragraph (2) applies where it appears to the Commissioners that—
- (a) there has been a change in the ownership of a company, and
 - (b) in connection with that change a person (“the seller”) may be or become liable to be assessed and charged to corporation tax under section 767A or 767AA of ICTA.
- (2) Paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) does not apply in relation to a taxpayer notice given to the seller.
 - (3) Section 769 of ICTA applies for the purposes of determining when there has been a change in the ownership of a company.

Partnerships

- 37 (1) This paragraph applies where a business is carried on by two or more persons in partnership.
- (2) If a tax return has been made by any of the partners under section 12AA of TMA 1970 (partnership returns) in respect of a chargeable period—
- (a) paragraph 21 (restrictions where taxpayer has made tax return) has effect as if that return had been made by each of the partners in respect of that chargeable period, and
 - (b) for the purpose of that paragraph, Condition A is met in relation to a partner if a notice of enquiry has been given, and an enquiry has not been completed, in respect of that return or any other return mentioned in paragraph 21(1) or (2) made by the partner in respect of the chargeable period in question.
- (3) Where a third party notice is given to any person (other than one of the partners) for the purpose of checking the tax position of more than one of the partners (in their capacity as such), paragraph 2 only requires the notice to state this and give a name in which the partnership is registered for any purpose.
- (4) In relation to such a notice—
- (a) in paragraphs 3 and 4 (approval etc of notices and copying third party notices to taxpayer), the references to the taxpayer have effect as if they were references to at least one of the partners, and
 - (b) in paragraph 30(2) (no appeal in relation to taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to each of the partners.
- (5) Where a third party notice is given to one of the partners for the purpose of checking the tax position of one or more of the other partners (in their capacity as such), paragraphs 3(1) and 4(1) (approval etc of notices and copying third party notices to taxpayer) do not apply.
- (6) Where a notice is given under paragraph 5 to one of the partners for the purpose of checking the tax position of one or more of the other partners whose identities are not known to the officer giving the notice, sub-paragraph (3) of that paragraph (approval of First-tier Tribunal) does not apply.
- (7) Where a third party notice or a notice under paragraph 5 is given to one of the partners for the purpose of checking the tax position of one or more of the other partners, that partner may not appeal against a requirement in the notice to produce any document that forms part of that partner's statutory records.

Application to the Crown

- 38 This Schedule (other than Part 8) applies to the Crown, but not to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947 (c. 44)).

Status: This is the original version (as it was originally enacted).

PART 7

PENALTIES

Standard penalties

- 39 (1) This paragraph applies to a person who—
- (a) fails to comply with an information notice, or
 - (b) deliberately obstructs an officer of Revenue and Customs in the course of an inspection under Part 2 of this Schedule that has been approved by the First-tier Tribunal.
- (2) A person to whom this paragraph applies is liable to a penalty of £300.
- (3) The reference in this paragraph to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, a document in breach of paragraph 42 or 43.

Daily default penalties

- 40 (1) This paragraph applies if the failure or obstruction mentioned in paragraph 39(1) continues after the date on which a penalty is imposed under that paragraph in respect of the failure or obstruction.
- (2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.

Power to change amount of standard and daily default penalties

- 41 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sums for the time being specified in paragraphs 39(2) and 40(2) such other sums as appear to them to be justified by the change.
- (2) In sub-paragraph (1) “relevant date” means—
- (a) the date on which this Act is passed, and
 - (b) each date on which the power conferred by that sub-paragraph has been exercised.
- (3) Regulations under this paragraph do not apply to any failure or obstruction which began before the date on which they come into force.

Concealing, destroying etc documents following information notice

- 42 (1) A person must not conceal, destroy or otherwise dispose of, or arrange for the concealment, destruction or disposal of, a document that is the subject of an information notice addressed to the person (subject to sub-paragraphs (2) and (3)).
- (2) Sub-paragraph (1) does not apply if the person acts after the document has been produced to an officer of Revenue and Customs in accordance with the information notice, unless an officer of Revenue and Customs has notified the person in writing that the document must continue to be available for inspection (and has not withdrawn the notification).

- (3) Sub-paragraph (1) does not apply, in a case to which paragraph 8(1) applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was produced in accordance with that paragraph unless, before the expiry of that period, an officer of Revenue and Customs made a request for the original document under paragraph 8(2)(b).

Concealing, destroying etc documents following informal notification

- 43 (1) A person must not conceal, destroy or otherwise dispose of, or arrange for the concealment, destruction or disposal of, a document if an officer of Revenue and Customs has informed the person that the document is, or is likely, to be the subject of an information notice addressed to that person (subject to sub-paragraph (2)).
- (2) Sub-paragraph (1) does not apply if the person acts after—
- (a) at least 6 months has expired since the person was, or was last, so informed, or
 - (b) an information notice has been given to the person requiring the document to be produced.

Failure to comply with time limit

- 44 A failure by a person to do anything required to be done within a limited period of time does not give rise to liability to a penalty under paragraph 39 or 40 if the person did it within such further time, if any, as an officer of Revenue and Customs may have allowed.

Reasonable excuse

- 45 (1) Liability to a penalty under paragraph 39 or 40 does not arise if the person satisfies HMRC or (on appeal) the First-tier Tribunal that there is a reasonable excuse for the failure or the obstruction of an officer of Revenue and Customs.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
 - (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and
 - (c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.

Assessment of standard penalty or daily default penalty

- 46 (1) Where a person becomes liable for a penalty under paragraph 39 or 40, HMRC may—
- (a) assess the penalty, and
 - (b) notify the person.
- (2) An assessment of a penalty under paragraph 39 or 40 must be made within 12 months of the relevant date.

Status: This is the original version (as it was originally enacted).

- (3) In sub-paragraph (2) “the relevant date” means—
- (a) in a case involving an information notice against which a person may appeal, the later of—
 - (i) the end of the period in which notice of an appeal against the information notice could have been given, and
 - (ii) if notice of an appeal against the information notice is given, the date on which the appeal is determined or withdrawn, and
 - (b) in any other case, the date on which the person became liable to the penalty.

Right to appeal against standard penalty or daily default penalty

- 47 A person may appeal to the First-tier Tribunal against any of the following decisions of an officer of Revenue and Customs—
- (a) a decision that a penalty is payable by that person under paragraph 39 or 40, or
 - (b) a decision as to the amount of such a penalty.

Procedure on appeal against standard penalty or daily default penalty

- 48 (1) Notice of an appeal under paragraph 47 must be given—
- (a) in writing,
 - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 46 was issued, and
 - (c) to HMRC.
- (2) Notice of an appeal under paragraph 47 must state the grounds of appeal.
- (3) On an appeal under paragraph 47(a), the First-tier Tribunal may confirm or cancel the decision.
- (4) On an appeal under paragraph 47(b), the First-tier Tribunal may—
- (a) confirm the decision, or
 - (b) substitute for the decision another decision that the officer of Revenue and Customs had power to make.
- (5) Subject to this paragraph and paragraph 49, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.

Enforcement of standard penalty or daily default penalty

- 49 (1) A penalty under paragraph 39 or 40 must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 46 was issued, or
 - (b) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) A penalty under paragraph 39 or 40 may be enforced as if it were income tax charged in an assessment and due and payable.

Tax-related penalty

- 50 (1) This paragraph applies where—
- (a) a person becomes liable to a penalty under paragraph 39,
 - (b) the failure or obstruction continues after a penalty is imposed under that paragraph,
 - (c) an officer of Revenue and Customs has reason to believe that, as a result of the failure or obstruction, the amount of tax that the person has paid, or is likely to pay, is significantly less than it would otherwise have been,
 - (d) before the end of the period of 12 months beginning with the relevant date (within the meaning of paragraph 46), an officer of Revenue and Customs makes an application to the Upper Tribunal for an additional penalty to be imposed on the person, and
 - (e) the Upper Tribunal decides that it is appropriate for an additional penalty to be imposed.
- (2) The person is liable to a penalty of an amount decided by the Upper Tribunal.
- (3) In deciding the amount of the penalty, the Upper Tribunal must have regard to the amount of tax which has not been, or is not likely to be, paid by the person.
- (4) Where a person becomes liable to a penalty under this paragraph, HMRC must notify the person.
- (5) Any penalty under this paragraph is in addition to the penalty or penalties under paragraph 39 or 40.
- (6) In the application of the following provisions, no account shall be taken of a penalty under this paragraph—
- (a) section 97A of TMA 1970 (multiple penalties),
 - (b) paragraph 12(2) of Schedule 24 to FA 2007 (interaction with other penalties), and
 - (c) paragraph 15(1) of Schedule 41 (interaction with other penalties).

Enforcement of tax-related penalty

- 51 (1) A penalty under paragraph 50 must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.
- (2) A penalty under paragraph 50 may be enforced as if it were income tax charged in an assessment and due and payable.

Double jeopardy

- 52 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.

PART 8

OFFENCE

Concealing etc documents following information notice

- 53 (1) A person is guilty of an offence (subject to sub-paragraphs (2) and (3)) if—
- (a) the person is required to produce a document by an information notice,
 - (b) the First-tier Tribunal approved the giving of the notice in accordance with paragraph 3 or 5, and
 - (c) the person conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, that document.
- (2) Sub-paragraph (1) does not apply if the person acts after the document has been produced to an officer of Revenue and Customs in accordance with the information notice, unless an officer of Revenue and Customs has notified the person in writing that the document must continue to be available for inspection (and has not withdrawn the notification).
- (3) Sub-paragraph (1) does not apply, in a case to which paragraph 8(1) applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was so produced unless, before the expiry of that period, an officer of Revenue and Customs made a request for the original document under paragraph 8(2)(b).

Concealing etc documents following informal notification

- 54 (1) A person is also guilty of an offence (subject to sub-paragraph (2)) if the person conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of a document after the person has been informed by an officer of Revenue and Customs in writing that—
- (a) the document is, or is likely, to be the subject of an information notice addressed to that person, and
 - (b) an officer of Revenue and Customs intends to seek the approval of the First-tier Tribunal to the giving of the notice under paragraph 3 or 5 in respect of the document.
- (2) A person is not guilty of an offence under this paragraph if the person acts after—
- (a) at least 6 months has expired since the person was, or was last, so informed, or
 - (b) an information notice has been given to the person requiring the document to be produced.

Fine or imprisonment

- 55 A person who is guilty of an offence under this Part of this Schedule is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

PART 9

MISCELLANEOUS PROVISIONS AND INTERPRETATION

Application of provisions of TMA 1970

- 56 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), and
 - (c) section 115 (delivery and service of documents).

Regulations under this Schedule

- 57 (1) Regulations made by the Commissioners or the Treasury under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

General interpretation

- 58 In this Schedule—
- “checking” includes carrying out an investigation or enquiry of any kind,
 - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,
 - “document” includes a part of a document (except where the context otherwise requires),
 - “enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)),
 - “HMRC” means Her Majesty’s Revenue and Customs,
 - “premises” includes—
 - (a) any building or structure,
 - (b) any land, and
 - (c) any means of transport,
 - “the TMA 1970,
the Tax Acts, and
TMA 1970,
the Tax Acts, and
Taxes Acts” means—
 - (a) TMA 1970,
 - (b) the Tax Acts, and
 - (c) TCGA 1992 and all other enactments relating to capital gains tax, and
 - “taxpayer”, in relation to a taxpayer notice or a third party notice, has the meaning given in paragraph 1(1) or 2(1) (as appropriate).

Status: This is the original version (as it was originally enacted).

Authorised officer of Revenue and Customs

- 59 A reference in a provision of this Schedule to an authorised officer of Revenue and Customs is a reference to an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for the purpose of that provision.

Business

- 60 (1) In this Schedule (subject to regulations under this paragraph), references to carrying on a business include—
- (a) the letting of property,
 - (b) the activities of a charity, and
 - (c) the activities of a government department, a local authority, a local authority association and any other public authority.
- (2) In sub-paragraph (1)—
- “charity” means a body of persons or trust established for charitable purposes only,
 - “local authority” has the meaning given in section 999 of ITA 2007, and
 - “local authority association” has the meaning given in section 1000 of that Act.
- (3) The Commissioners may by regulations provide that for the purposes of this Schedule—
- (a) the carrying on of an activity specified in the regulations, or
 - (b) the carrying on of such an activity (or any activity) by a person specified in the regulations,
- is or is not to be treated as the carrying on of a business.

Chargeable period

- 61 In this Schedule “chargeable period” means—
- (a) in relation to income tax or capital gains tax, a tax year, and
 - (b) in relation to corporation tax, an accounting period.

Statutory records

- 62 (1) For the purposes of this Schedule, information or a document forms part of a person’s statutory records if it is information or a document which the person is required to keep and preserve under or by virtue of—
- (a) the Taxes Acts, or
 - (b) VATA 1994 or any other enactment relating to value added tax charged in accordance with that Act,
- subject to the following provisions of this paragraph.
- (2) To the extent that any information or document that is required to be kept and preserved under or by virtue of the Taxes Acts—
- (a) does not relate to the carrying on of a business, and
 - (b) is not also required to be kept or preserved under or by virtue of VATA 1994 or any other enactment relating to value added tax,

it only forms part of a person's statutory records to the extent that the chargeable period or periods to which it relates has or have ended.

- (3) Information and documents cease to form part of a person's statutory records when the period for which they are required to be preserved by the enactments mentioned in sub-paragraph (1) has expired.

Tax

- 63 (1) In this Schedule, except where the context otherwise requires, “tax” means all or any of the following—
- (a) income tax,
 - (b) capital gains tax,
 - (c) corporation tax,
 - (d) VAT, and
 - (e) relevant foreign tax,
- and references to “a tax” are to be interpreted accordingly.
- (2) In this Schedule “corporation tax” includes any amount assessable or chargeable as if it were corporation tax.
- (3) In this Schedule “VAT” means—
- (a) value added tax charged in accordance with VATA 1994, and
 - (b) value added tax charged in accordance with the law of another member State,
- and includes any amount that is recoverable under paragraph 5(2) of Schedule 11 to VATA 1994 (amounts shown on invoices as VAT).
- (4) In this Schedule “relevant foreign tax” means—
- (a) a tax of a member State, other than the United Kingdom, which is covered by the provisions for the exchange of information under the Directive of the Council of the European Communities dated 19 December 1977 No. [77/799/EEC](#) (as amended from time to time), and
 - (b) any tax or duty which is imposed under the law of a territory in relation to which arrangements having effect by virtue of section 173 of FA 2006 (international tax enforcement arrangements) have been made and which is covered by the arrangements.

Tax position

- 64 (1) In this Schedule, except as otherwise provided, “tax position”, in relation to a person, means the person's position as regards any tax, including the person's position as regards—
- (a) past, present and future liability to pay any tax,
 - (b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any tax, and
 - (c) claims, elections, applications and notices that have been or may be made or given in connection with any tax,
- and references to a person's position as regards a particular tax (however expressed) are to be interpreted accordingly.

Status: This is the original version (as it was originally enacted).

- (2) References in this Schedule to a person's tax position include, where appropriate, a reference to the person's position as regards any deductions or repayments of tax, or of sums representing tax, that the person is required to make—
 - (a) under PAYE regulations,
 - (b) under Chapter 3 of Part 3 of FA 2004 or regulations made under that Chapter (construction industry scheme), or
 - (c) by or under any other provision of the Taxes Acts.
- (3) References in this Schedule to the tax position of a person include the tax position of—
 - (a) a company that has ceased to exist, and
 - (b) an individual who has died.
- (4) References in this Schedule to a person's tax position are to the person's tax position at any time or in relation to any period, unless otherwise stated.

PART 10

CONSEQUENTIAL PROVISIONS

TMA 1970

- 65 TMA 1970 is amended as follows.
- 66 Omit section 19A (power to call for documents for purposes of enquiries).
- 67 Omit section 20 (power to call for documents of taxpayer and others).
- 68 (1) Section 20B (restrictions on powers to call for documents under ss20 and 20A) is amended as follows.
 - (2) In the heading, for “**ss 20 and**” substitute “**section**”.
 - (3) In subsection (1)—
 - (a) omit “under section 20(1), (3) or (8A), or”,
 - (b) omit “(or, in the case of section 20(3), to deliver or make available”,
 - (c) omit “, or to furnish the particulars in question”, and
 - (d) omit “section 20(7) or (8A) or, as the case may be,”.
 - (4) Omit subsections (1A) and (1B).
 - (5) In subsection (2), omit from the beginning to “taxpayer; and”.
 - (6) In subsection (3)—
 - (a) omit “under section 20(1) or (3) or”, and
 - (b) omit “section 20(3) and (4) and”.
 - (7) In subsection (4)—
 - (a) omit “section 20(1) or”, and
 - (b) omit “, and as an alternative to delivering documents to comply with a notice under section 20(3) or (8A)”.
 - (8) Omit subsections (5), (6) and (7).

- (9) In subsection (8), omit “section 20(3) or (8A) or”.
- (10) Omit subsections (9) to (14).
- 69 (1) Section 20BB (falsification etc. of documents) is amended as follows.
- (2) In subsection (1)(a), omit “20 or”.
- (3) In subsection (2)(b), omit “or, in a case within section 20(3) or (8A) above, inspected”.
- 70 (1) Section 20D (interpretation) is amended as follows.
- (2) In subsection (2), for “sections 20 and” substitute “section”.
- (3) Omit subsection (3).
- 71 In section 29(6)(c) (assessment where loss of tax discovered), omit “, whether in pursuance of a notice under section 19A of this Act or otherwise”.
- 72 Omit section 97AA (failure to produce documents under section 19A).
- 73 In section 98 (penalties), in the Table—
- (a) in the first column, omit the entry for section 767C of ICTA, and
- (b) in the second column, omit the entry for section 28(2) of F(No.2)A 1992.
- 74 In section 100(2) (exclusions from provisions relating to determination of penalties under the Taxes Acts), insert at the end “or
- (g) Schedule 36 to the Finance Act 2008.”
- 75 (1) Section 107A (relevant trustees) is amended as follows.
- (2) In subsection (2)(a), for “, 95 or 97AA” substitute ‘or 95’.
- (3) In subsection (3)(a), omit “or 97AA(1)(b)”.
- 76 In section 118 (interpretation), in the definition of “tax”, omit “20,”.
- 77 In Schedule 1A (claims etc. not included in returns), omit paragraphs 6 and 6A (power to call for documents for purposes of enquiries and power to appeal against notice to produce documents).

National Savings Bank Act 1971 (c. 29)

- 78 In section 12(3) (secrecy), for the words from “and of section 20(3)” to the end substitute “and of Schedule 36 to the Finance Act 2008 (powers of officers of Revenue and Customs to obtain information and documents and inspect business premises)”.

ICTA

- 79 ICTA is amended as follows.
- 80 In section 767B (change of company ownership: supplementary), in subsection (4), for “, 767AA and 767C” substitute “and 767AA”.
- 81 Omit section 767C (change in company ownership: information).
- 82 In section 769 (rules for ascertaining change in ownership of company)—
- (a) in subsections (1) and (5), omit “, 767C”, and

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- (b) in subsections (2A) and (9), for “, 767AA or 767C” substitute “or 767AA”.

FA 1990

- 83 In section 125 of FA 1990 (information for tax authorities in other member States)—
- (a) omit subsections (1) and (2),
 - (b) in subsection (3), for “the Directive mentioned in subsection (1) above” substitute “the Directive of the Council of the European Communities dated 19 December 1977 No. [77/799/EEC](#) (the “1977 Directive”)”,
 - (c) in subsection (4), for “such as is mentioned in subsection (1) above” substitute “which is covered by the provisions for the exchange of information under the 1977 Directive”, and
 - (d) in subsection (6), omit the words from the beginning to “passed,”.

Social Security Administration Act 1992 (c. 5)

- 84 In section 110ZA of the Social Security Administration Act 1992 (Class 1, 1A, 1B or 2 contributions: powers to call for documents etc), for subsections (1) and (2) substitute—
- “(1) Schedule 36 to the Finance Act 2008 (information and inspection powers) applies for the purpose of checking a person’s position as regards relevant contributions as it applies for the purpose of checking a person’s tax position, subject to the modifications in subsection (2).
 - (2) That Schedule applies as if—
 - (a) references to any provision of the Taxes Acts were to any provision of this Act or the Contributions and Benefits Act relating to relevant contributions,
 - (b) references to prejudice to the assessment or collection of tax were to prejudice to the assessment of liability for, and payment of, relevant contributions,
 - (c) the reference to information relating to the conduct of a pending appeal relating to tax were a reference to information relating to the conduct of a pending appeal relating to relevant contributions, and
 - (d) paragraphs 21, 35(4)(b), 36 and 37(2) of that Schedule (restrictions on giving taxpayer notice where taxpayer has made tax return) were omitted.”

Social Security Administration (Northern Ireland) Act 1992 (c. 8)

- 85 In section 104ZA of the Social Security Administration (Northern Ireland) Act 1992 (Class 1, 1A, 1B or 2 contributions: powers to call for documents etc), for subsections (1) and (2) substitute—
- “(1) Schedule 36 to the Finance Act 2008 (information and inspection powers) applies for the purpose of checking a person’s position as regards relevant contributions as it applies for the purpose of checking a person’s tax position, subject to the modifications in subsection (2).
 - (2) That Schedule applies as if—

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- (a) references to any provision of the Taxes Acts were to any provision of this Act or the Contributions and Benefits Act relating to relevant contributions,
- (b) references to prejudice to the assessment or collection of tax were to prejudice to the assessment of liability for, and payment of, relevant contributions,
- (c) the reference to information relating to the conduct of a pending appeal relating to tax were a reference to information relating to the conduct of a pending appeal relating to relevant contributions, and
- (d) paragraphs 21, 35(4)(b), 36 and 37(2) of that Schedule (restrictions on giving taxpayer notice where taxpayer has made tax return) were omitted.”

F(No.2)A 1992

- 86 Omit section 28(1) to (3) (powers of inspection).

VATA 1994

- 87 (1) Schedule 11 to VATA 1994 is amended as follows.
- (2) In paragraph 7 (furnishing information and producing documents), omit sub-paragraphs (2) to (9).
 - (3) In paragraph 10 (entry and search of premises and persons), omit sub-paragraphs (1) to (2A).

FA 1998

- 88 In Schedule 18 to FA 1998 (company tax returns), omit paragraphs 27, 28 and 29 (notice to produce documents etc. for purposes of enquiry into company tax return, power to appeal against such notices and penalty for failure to produce documents etc).

FA 1999

- 89 In section 13(5) (gold), omit paragraph (c).

Tax Credits Act 2002 (c. 21)

- 90 In section 25 of the Tax Credits Act 2002 (payments of working tax credit by employers), omit subsections (3) and (4).

FA 2006

- 91 Omit section 174 of FA 2006 (international tax enforcement arrangements: information powers).

Other repeals

- 92 In consequence of the preceding provisions of this Part of this Schedule, omit the following—
- (a) section 126 of FA 1988,

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- (b) sections 142(2), (3), (4), (6)(a), (7), (8) and (9) and 144(3), (5) and (7) of FA 1989,
- (c) sections 187 and 255 of, and paragraph 29 of Schedule 19 to, FA 1994,
- (d) paragraph 6 of Schedule 1 to the Civil Evidence Act 1995 (c. 38),
- (e) paragraph 17 of Schedule 3, paragraph 3 of Schedule 19 and paragraph 2 of Schedule 22 to FA 1996,
- (f) section 115 of, and paragraphs 36 and 42(6) and (7) of Schedule 19 to, FA 1998,
- (g) section 15(3) of FA 1999,
- (h) paragraphs 21 and 38(4) of Schedule 29 to FA 2001,
- (i) section 20 of FA 2006, and
- (j) paragraph 350 of Schedule 1 to ITA 2007.