

---

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Part 3. (See end of Document for details)*

---

## SCHEDULES

### SCHEDULE 5

#### RECORDS RELATING TO TRANSFER PRICING

#### PART 3

#### AMENDMENTS RELATING TO CORPORATION TAX AND INCOME TAX

##### *Penalties for errors*

- 5 (1) Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- (2) In Part 1 (liability for penalty), after paragraph 3B insert—

##### *“Errors related to transfer pricing records*

- 3C (1) This paragraph applies where—
- (a) a document of a kind listed in the Table in paragraph 1 relating to a relevant tax period is given to HMRC by a person (“P”),
  - (b) the document contains an inaccuracy—
    - (i) which falls within paragraph 1(2), and
    - (ii) which involves the calculation of profits or losses in accordance with Part 4 of TIOPA 2010 (transfer pricing) for the purposes of that period, and
  - (c) the relevant person (whether or not P) failed to comply, in relation to specified relevant transfer pricing records that relate to the inaccuracy, with one or more of—
    - (i) section 12B of TMA 1970 (records to be kept for the purposes of returns),
    - (ii) paragraph 21 of Schedule 18 to FA 1998 (duty to keep and preserve records), and
    - (iii) an information notice (within the meaning of Schedule 36 to FA 2008 (information and inspection powers)).
- (2) It is to be presumed that the inaccuracy was careless, within the meaning of paragraph 3, unless—
- (a) the inaccuracy was deliberate on P’s part, or
  - (b) P satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that P took reasonable care to avoid the inaccuracy.
- (3) Sub-paragraphs (4) to (6) apply for the purposes of this paragraph.

---

*Changes to legislation: There are currently no known outstanding effects  
for the Finance (No. 2) Act 2023, Part 3. (See end of Document for details)*

---

- (4) “Relevant person”, in relation to a document of a kind listed in the Table in paragraph 1, means—
- (a) the person to whose tax liability the document relates,
  - (b) in the case of a return under section 8A of TMA 1970 (trustee’s return), a relevant trustee (within the meaning of that Act), or
  - (c) in the case of a partnership return, or a statement, declaration or accounts in connection with a partnership return, a person who was required by a notice under section 12AA of TMA 1970 (partnership return) to make and deliver a return in respect of relevant tax period.
- (5) “Relevant tax period” means a tax period—
- (a) in respect of which—
    - (i) the person mentioned in [sub-paragraph \(4\)\(a\)](#),
    - (ii) in the case mentioned in [sub-paragraph \(4\)\(b\)](#), the trustees of the trust concerned, or
    - (iii) in the case mentioned in [sub-paragraph \(4\)\(c\)](#), the partnership to which the partnership return relates,
together with one or more other enterprises, constitutes an MNE Group within the meaning of the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 ([S.I. 2016/237](#)) (see regulation 2(3) of those Regulations), and
  - (b) in respect of which the MNE Group meets the threshold requirement within the meaning of those Regulations (see regulations 3(2) to (4) of those Regulations).
- (6) Records are “specified relevant transfer pricing records” if—
- (a) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B of TMA 1970 or paragraph 21 of Schedule 18 to FA 1998 (duties to keep and preserve records), and
  - (b) the relevant person is required to keep and preserve those records under either or both of those provisions.”
- (3) In Part 4 (miscellaneous), in paragraph 18 (agency), in sub-paragraph (6)—
- (a) for “Paragraph 3A applies” substitute “Paragraphs 3A and 3C apply”;
  - (b) for “it applies” substitute “they apply”.

#### *Information and inspection powers*

- 6 (1) Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- (2) In Part 4 (restrictions on powers), in paragraph 21 (taxpayer notices following tax return)—
- (a) in sub-paragraph (3), for “D” substitute “E”;
  - (b) after sub-paragraph (8) insert—
    - “(8A) Condition E is that the notice is given for the purpose of obtaining any specified relevant transfer pricing information or documents.

---

*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Part 3. (See end of Document for details)*

---

(8B) For the purposes of Condition E, information or documents are “specified relevant transfer pricing information or documents” if—

- (a) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B of TMA 1970 or paragraph 21 of Schedule 18 to FA 1998 (duties to keep and preserve records), and
- (b) the relevant person is required to keep and preserve those records under either or both of those provisions.

(8C) For the purposes of [subsection \(8B\)](#), the “relevant person” means—

- (a) in the case of a tax return made in respect of a chargeable period under section 8A or 12AA of TMA 1970 (trustee’s and partnership returns)—
  - (i) the person, or
  - (ii) a person who was required by a notice under the section concerned to make and deliver the return;
- (b) in any other case, the person.”;

(3) In Part 6 (special cases), after paragraph 37B insert—

*“Specified relevant transfer pricing documents*

37C (1) This paragraph applies to an information notice given to a relevant person in an MNE Group (“A”) to the extent that the notice refers to specified relevant transfer pricing documents.

(2) Paragraph 18 (documents not in person’s possession or power) does not apply in relation to a specified relevant transfer pricing document that—

- (a) is not in A’s possession or power, but
- (b) is in the power or possession of another relevant person in the MNE Group concerned (“B”),

(and accordingly the information notice may require A to produce the document).

(3) For the purposes of this paragraph—

- (a) documents are “specified relevant transfer pricing documents” if—
  - (i) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B of TMA 1970 or paragraph 21 of Schedule 18 to FA 1998 (duties to keep and preserve records), and
  - (ii) A is required to keep and preserve those records under either or both of those provisions;
- (b) “MNE Group” has the same meaning as in the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 ([S.I. 2016/237](#)) (see regulation 2(3) of those Regulations);
- (c) “relevant person in an MNE Group” means—
  - (i) a company,

---

*Changes to legislation: There are currently no known outstanding effects  
for the Finance (No. 2) Act 2023, Part 3. (See end of Document for details)*

---

(ii) a trustee of a trust, or  
(iii) a partner in a partnership,  
where that company, the trustees or the partnership, together  
with one or more other enterprises, constitutes an MNE Group.”

**Changes to legislation:**

There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Part 3.