



# Finance (No. 2) Act 2017

## 2017 CHAPTER 32

### PART 4

#### ADMINISTRATION, AVOIDANCE AND ENFORCEMENT

##### *Reporting and record-keeping*

#### **60 Digital reporting and record-keeping for income tax etc**

- (1) TMA 1970 is amended as set out in subsections (2) and (3).
- (2) After section 12B insert—

*“Digital reporting and record-keeping*

#### **12C Digital reporting and record-keeping**

Schedule A1 (digital reporting and record-keeping) has effect.”

- (3) Before Schedule 1AA insert—

“SCHEDULE A1

Section 12C

#### DIGITAL REPORTING AND RECORD-KEEPING

### PART 1

#### APPLICATION

##### *Application: persons*

- 1 (1) This Schedule applies to a person within the charge to income tax who, otherwise than in partnership, carries on (or has carried on)—

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- (a) a trade, profession or vocation the profits of which are chargeable to income tax under Part 2 of ITTOIA 2005,
  - (b) a property business the profits of which are chargeable to income tax under Part 3 of ITTOIA 2005, or
  - (c) any other activity which may give rise to profits or other income chargeable to income tax under Part 2 or 3 of ITTOIA 2005.
- (2) This is subject to paragraph 2.
- 2 (1) This Schedule does not apply to—
- (a) the trustees of a charitable trust, or
  - (b) the trustees of an exempt unauthorised unit trust (within the meaning of the Unauthorised Unit Trusts (Tax) Regulations 2013 (S.I. 2013/2819)),
- unless the trustees elect for this Schedule to apply to them.
- (2) This Schedule does not apply to a person in respect of an excluded activity unless the person elects for this Schedule to apply to the person in respect of the excluded activity.
- (3) The following are excluded activities—
- (a) the underwriting business of a member of Lloyd’s (within the meaning of section 184 of the Finance Act 1993),
  - (b) holding shares in respect of which a distribution may be made which is chargeable to income tax under Part 3 of ITTOIA 2005 by virtue of section 548(6) of CTA 2010 (distributions to shareholders in real estate investment trusts), and
  - (c) participating in an open-ended investment company which may make distributions chargeable to income tax under Part 3 of ITTOIA 2005 by virtue of regulation 69Z18 of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) (property income distributions).
- (4) The Commissioners may by regulations make provision about elections under this paragraph and the withdrawal of such elections, including provision—
- (a) about how an election may be made or withdrawn, and
  - (b) about the period for which an election or withdrawal has effect.

*Application: partnerships*

- 3 (1) This Schedule applies to a partnership if one or more of the partners is within the charge to income tax.
- (2) This is subject to paragraph 4.
- 4 (1) If all the activities of a partnership which may give rise to profits or income are excluded activities, this Schedule does not apply to the partnership unless the partnership elects for this Schedule to apply to it.
- (2) The following are excluded activities—
- (a) the underwriting business of a Lloyd’s partnership (as defined in section 184(1) of the Finance Act 1993),

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- (b) holding shares in respect of which a distribution may be made which is chargeable to income tax under Part 3 of ITTOIA 2005 by virtue of section 548(6) of CTA 2010 (distributions to shareholders in real estate investment trusts), and
  - (c) participating in an open-ended investment company which may make distributions chargeable to income tax under Part 3 of ITTOIA 2005 by virtue of regulation 69Z18 of the Authorised Investment Funds (Tax) Regulations 2006 (S.I. 2006/964) (property income distributions).
- (3) The Commissioners may by regulations make provision about elections under this paragraph and the withdrawal of such elections, including provision—
- (a) about how an election may be made or withdrawn, and
  - (b) about the period for which an election or withdrawal has effect.

#### *Nominated partners*

- 5
- (1) Requirements imposed by regulations under this Schedule on a partnership are to be met by a nominated partner.
  - (2) A “nominated partner” is a partner nominated for the purposes of this Schedule—
    - (a) by the partners, or
    - (b) by the Commissioners.
  - (3) A nomination, or a revocation of a nomination, by the partners does not have effect until notice of the revocation or nomination is given to HMRC.
  - (4) The Commissioners may by regulations make provision about nominations and the revocation of nominations, including provision about the circumstances in which the Commissioners may nominate a partner.
  - (5) In this Act references to a nominated partner are to a partner nominated for the purposes of this Schedule.

## **PART 2**

### DIGITAL REPORTING AND RECORD-KEEPING

#### *Interpretation*

- 6
- In this Part of this Schedule “business”—
- (a) in relation to a person to whom this Schedule applies (see paragraphs 1 and 2), means the activity by virtue of which this Schedule applies to the person (and if more than one, means each of them), and
  - (b) in relation to a partnership to which this Schedule applies (see paragraphs 3 and 4), means any activity of the partnership.

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*Periodic updates*

- 7
- (1) The Commissioners may by regulations require a person or partnership to whom this Schedule applies to provide to HMRC, by electronic communications, specified information about the business of the person or partnership.
  - (2) The information which may be specified includes any information (“financial information”) relevant to calculating profits, losses or income of the business, including information about receipts and expenses.
  - (3) The regulations may require information to be provided at or for specified intervals, times or periods.
  - (4) The regulations may not require financial information about the business to be provided more often than once every 3 months.

*End of period statement*

- 8
- (1) The Commissioners may by regulations require a person to whom this Schedule applies to provide to HMRC, by electronic communications, a statement containing specified information about the person’s business in relation to each relevant period.
  - (2) “Relevant period” means—
    - (a) in relation to a business the profits or income of which are chargeable to income tax under Chapter 2 of Part 2 of ITTOIA 2005, a basis period (see Chapter 15 of that Part), and
    - (b) otherwise, a tax year.
  - (3) The information which may be specified includes any information relevant to calculating profits, losses or income of the business for the relevant period, including information about receipts and expenses.
  - (4) Regulations under this paragraph may require the statement to include a declaration to the effect that the information included in it is correct and complete.
  - (5) An end of period statement for a tax year must be provided to HMRC at or before—
    - (a) the time at which the person delivers a return under section 8 or 8A for the tax year (see section 8(7)(c) and 8A(7)(c)), or
    - (b) if earlier, the end of 31 January following the tax year.
  - (6) In this Act—
    - (a) references to an end of period statement are to a statement required by regulations under this paragraph;
    - (b) references to an end of period statement for a tax year are to an end of period statement for that tax year or, where the relevant period is a basis period, for the basis period for that tax year.

*Facility for complying with notice to file under section 8 or 8A*

- 9 The Commissioners may by regulations make provision for the establishment and use of a facility enabling a person to whom this Schedule applies to file or deliver, by electronic communications—
- (a) anything which under section 8(1AB) may be required to be filed or delivered by a notice to file under section 8;
  - (b) anything which under section 8A(1AB) may be required to be filed or delivered by a notice to file under section 8A.

*Partnership return*

- 10 (1) The Commissioners may by regulations require a partnership to which this Schedule applies to provide to HMRC, by electronic communications, a return containing specified information about the partnership's business in relation to each tax year.
- (2) The information which may be specified includes any information which is or may be required to be included in a section 12AA partnership return, including information in respect of any partners within the charge to corporation tax.
- (3) In particular, the information which may be specified includes the information required to be included in a section 12AA partnership return by section 12AB (partnership statements).
- (4) Regulations under this paragraph may require the return to include a declaration to the effect that the information included in it is correct and complete.
- (5) A Schedule A1 partnership return for a tax year must be provided to HMRC on or before 31 January following the tax year.
- (6) In this Act—
- (a) references to a Schedule A1 partnership return are to a return required by regulations under this paragraph, and
  - (b) references to a partnership statement, in relation to a Schedule A1 partnership return, are to information required to be included in the return by virtue of sub-paragraph (3).
- (7) In the Taxes Acts, unless the contrary intention appears, a reference (whether general or specific) to a return under, or a return required under, this Act includes a reference to a Schedule A1 partnership return.

*Record-keeping*

- 11 (1) The Commissioners may by regulations require a person or partnership to whom this Schedule applies to—
- (a) keep specified records relating to the business in electronic form, and
  - (b) preserve those records in electronic form for a specified period.

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- (2) The records which may be specified are any records the Commissioners consider relevant to ascertaining information required to be provided by regulations under this Part of this Schedule.
  - (3) A requirement imposed by regulations under this paragraph is in addition to, and not in place of, any other requirement that the person or partnership keep and preserve records (or keep and preserve records in a particular form).
  - (4) Paragraph 5(1) (requirements imposed on partnership to be met by nominated partner) does not apply to requirements imposed by regulations under this paragraph.
- 12
- (1) This paragraph applies where requirements imposed by regulations under paragraph 11 for any period are not complied with.
  - (2) The person, or in the case of a partnership each relevant partner, is liable for a penalty.
  - (3) “Relevant partner” means any person who was a partner in the partnership at any time during the period in question.
  - (4) The amount of the penalty must not exceed £3,000.
  - (5) A person or relevant partner is not liable to a penalty under this paragraph in relation to a period if the person or relevant partner is liable to a penalty under section 12B(5) in relation to that period.

*Electronic communications and records: supplementary powers*

- 13
- (1) This paragraph applies to regulations under paragraphs 7, 8, 9, 10 and 11.
  - (2) The regulations may (amongst other things) make provision—
    - (a) as to the electronic form to be taken by information provided and records kept or preserved,
    - (b) requiring persons to prepare and keep records of information provided by means of electronic communications,
    - (c) for the production of the contents of records kept or preserved in accordance with regulations under this Part of this Schedule,
    - (d) as to conditions that must be complied with in connection with the use of electronic communications or the keeping or preservation of electronic records,
    - (e) for treating information as not having been provided or records as not having been kept or preserved unless conditions are complied with,
    - (f) for determining the time at which and person by whom information is taken to have been delivered, and
    - (g) for authenticating information or records.
  - (3) The regulations may also make provision (which may include provision for the application of conclusive or other presumptions) about the manner of proving for any purpose—
    - (a) whether any use of electronic communications is to be taken as having resulted in the provision of information,

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- (b) the time at which information was provided,
  - (c) the person by whom information was provided,
  - (d) the contents of any information provided,
  - (e) the contents of any records, and
  - (f) any other matter for which provision may be made by the regulations.
- (4) The regulations may allow or require use to be made of intermediaries in connection with—
- (a) the provision of information by means of electronic communications, and
  - (b) the authentication or security of anything transmitted by any such means.
- (5) The regulations may—
- (a) allow any authorisation or requirement for which the regulations may provide to be given by means of a specific or general direction given by the Commissioners, and
  - (b) provide that the conditions of an authorisation or requirement are to be taken to be satisfied only where the Commissioners are satisfied as to specified matters.
- (6) The regulations may provide—
- (a) that information provided must meet standards of accuracy and completeness set by specific or general directions given by the Commissioners, and
  - (b) that failure to meet those standards may be treated as a failure to provide the information, or as a failure to comply with the requirements of the regulations.

### PART 3

#### EXEMPTIONS

##### *Exemption for the digitally excluded*

- 14 (1) The Commissioners must by regulations make provision—
- (a) for a person to be exempt from requirements imposed by regulations under paragraphs 7, 8 and 11 if the Commissioners are satisfied that the person is digitally excluded, and
  - (b) for a partnership to be exempt from requirements imposed by regulations under paragraphs 7, 10 and 11 if the Commissioners are satisfied that the partnership is digitally excluded.
- (2) A person is digitally excluded if the digital exclusion condition is met in relation to the person.
- (3) A partnership is digitally excluded if the digital exclusion condition is met in relation to each partner.
- (4) The digital exclusion condition is met in relation to a person or partner if—

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- (a) the person or partner is a practising member of a religious society or order whose beliefs are incompatible with using electronic communications or keeping electronic records, or
- (b) for any reason (including age, disability or location) it is not reasonably practicable for the person or partner to use electronic communications or to keep electronic records.

*Further exemptions*

- 15 (1) The Commissioners may by regulations make provision for further exemptions.
- (2) The exemptions for which provision may be made include exemptions based on income or other financial criteria.

**PART 4**

SUPPLEMENTARY PROVISION

*Appeals*

- 16 (1) An appeal may be brought against any decision made by the Commissioners, or by an officer of Revenue and Customs, under regulations under this Schedule.
- (2) Notice of an appeal under this paragraph must be given to HMRC within 30 days after the day on which notice of the decision is given.
- (3) The notice of appeal must—
- (a) be in writing, and
  - (b) specify the grounds of appeal.

*Interpretation*

- 17 Any power in this Schedule to require the provision of information includes power to require the provision of accounts, statements and documents relating to that information.

*Regulations*

- 18 (1) Regulations under this Schedule may—
- (a) make provision which applies generally or only for specified cases or purposes;
  - (b) make different provision for different cases or purposes;
  - (c) include incidental, supplemental, consequential, saving, transitional or transitory provision;
  - (d) make provision for matters to be specified by the Commissioners in accordance with the regulations.
- (2) Sub-paragraph (1)(d) does not apply to any interval, time or period specified by virtue of paragraph 7(3) (which may be specified only by the regulations).



- (3) Regulations under this Schedule may make provision for a person or partnership to whom this Schedule applies, but who would not otherwise be subject to a requirement imposed by the regulations, to elect to be subject to that requirement.
  - (4) Regulations under this Schedule may provide that, for the purposes of any provision of this Schedule or of the regulations, a change in the accounting date of a business is to be disregarded (and its period of account determined accordingly).
  - (5) The power to make regulations under this Schedule is exercisable by statutory instrument.
  - (6) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.”
- (4) Subsections (1) to (3) come into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (5) Regulations under subsection (4) may appoint different days for different purposes.

## **61 Digital reporting and record-keeping for income tax etc: further amendments**

- (1) Schedule 14 contains provision amending TMA 1970 and other Acts.
- (2) The Commissioners for Her Majesty’s Revenue and Customs may by regulations amend or modify any provision of the Taxes Acts in consequence of the provision made by section 60 or Schedule 14.
- (3) Regulations under subsection (2) may make transitional, transitory or saving provision.
- (4) Regulations under subsection (2) must be made by statutory instrument.
- (5) A statutory instrument containing regulations under subsection (2) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the House of Commons.
- (6) Subsections (1) to (5) and Schedule 14 come into force on such day as the Treasury may by regulations made by statutory instrument appoint.
- (7) Regulations under subsection (6) may appoint different days for different purposes.

## **62 Digital reporting and record-keeping for VAT**

- (1) Schedule 11 to VATA 1994 (administration, collection and enforcement) is amended as set out in subsections (2) to (4).
- (2) In paragraph 2 (accounting and payment)—
  - (a) in sub-paragraph (1) for “and the making of returns” substitute “, the making of returns and the submission of information”;
  - (b) after sub-paragraph (11) insert—

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- “(11A) Regulations under this paragraph may include incidental, supplemental, consequential, saving, transitional or transitory provision.”
- (3) In paragraph 6 (duty of taxable person to keep records)—
- (a) omit sub-paragraph (4);
  - (b) at the end insert—
    - “(5) The Commissioners may by regulations make provision about the form in which, and means by which, records are to be kept and preserved.
    - (6) Regulations under sub-paragraph (5) may—
      - (a) make different provision for different cases;
      - (b) provide for any provision of the regulations to be subject to conditions or exceptions specified in writing by the Commissioners;
      - (c) include incidental, supplemental, consequential, saving, transitional or transitory provision.
    - (7) If regulations under sub-paragraph (5) make provision requiring records to be kept or preserved in electronic form they must make provision for a taxable person to be exempt from those requirements for any month (“the current month”) if—
      - (a) the value of the person’s taxable supplies, in the period of one year ending with the month before the current month, was less than the VAT threshold, and
      - (b) the person was not subject to those requirements in the month before the current month.
    - (8) The regulations may modify the exemption for cases where a business or part of a business carried on by a taxable person is transferred to another person as a going concern.
    - (9) The “VAT threshold” means the amount specified in paragraph 1(1) (a) of Schedule 1 on the first day of the current month.
    - (10) Regulations under sub-paragraph (5) requiring records to be kept or preserved in electronic form may (among other things) make provision—
      - (a) as to the electronic form in which records are to be kept or preserved,
      - (b) for the production of the contents of records kept or preserved in accordance with the regulations,
      - (c) as to conditions that must be complied with in connection with the keeping or preservation of electronic records,
      - (d) for treating records as not having been kept or preserved unless conditions are complied with,
      - (e) for authenticating records,
      - (f) about the manner of proving for any purpose the contents of any records (including provision for the application of conclusive or other presumptions).

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- (11) Regulations under sub-paragraph (5) requiring records to be kept or preserved in electronic form may—
- (a) allow any authorisation or requirement for which the regulations may provide to be given by means of a specific or general direction given by the Commissioners,
  - (b) provide that the conditions of an authorisation or requirement are to be taken to be satisfied only where the Commissioners are satisfied as to specified matters.”
- (4) In paragraph 6A (power to direct keeping of records), for sub-paragraph (7) substitute—
- “(7) Regulations under paragraph 6(5) apply for the purposes of this paragraph as they apply for the purposes of paragraph 6.”
- (5) In section 83(1) of VATA 1994 (appealable decisions), for paragraph (zc) substitute—
- “(zc) a decision of the Commissioners about the application of any provision of regulations under paragraph 2 or 6 of Schedule 11, or of regulations under section 135 or 136 of the Finance Act 2002 relating to VAT, which—
- (i) requires returns to be made or information to be submitted by electronic communications, or
  - (ii) requires records to be kept or preserved in electronic form, (including in particular a decision as to whether such a requirement applies and a decision to impose a penalty).”
- (6) Subsections (3)(a) and (4) of this section come into force when the first regulations under paragraph 6(5) of Schedule 11 to VATA 1994 come into force.
- (7) Regulations under paragraph 6(5) of Schedule 11 to VATA 1994 may not make provision requiring records to be kept or preserved in electronic form which has effect before 1 April 2019.