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SCHEDULES

SCHEDULE 36

INFORMATION AND INSPECTION POWERS

Modifications etc. (not altering text)

- C1 Sch. 36 applied (with modifications) (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/128), regs. 1(1), **28(2)(3)**
- C1 Sch. 36 applied (with modifications) (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/128), regs. 1(1), **55(1)(2)**
- C1 Sch. 36 applied (with modifications) (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009](#) (S.R. 2009/128), regs. 1(1), **56**
- C1 Sch. 36 applied (with modifications) (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009](#) (S.I. 2009/470), regs. 1(1), **33(2)(3)** (with reg. 1(4)(6))
- C1 Sch. 36 applied (with modifications) (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009](#) (S.I. 2009/470), regs. 1(1), **60(1)(2)** (with reg. 1(4)(6))
- C1 Sch. 36 applied (with modifications) (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009](#) (S.I. 2009/470), regs. 1(1), **61** (with reg. 1(4)(6))

[^{F1}PART 9

MISCELLANEOUS PROVISIONS AND INTERPRETATION

Textual Amendments

- F1 Words in Sch. 36 para. 40 cross-heading inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 47 para. 14**

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).

Commencement Information

- I1 Sch. 36 para. 56 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

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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.

Commencement Information

I2 Sch. 36 para. 57 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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 Taxes Acts” means—
- (a) TMA 1970,
 - (b) the Tax Acts, and
 - (c) TCGA 1992 and all other enactments relating to capital gains tax,^{F2}...
- “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) [^{F3}, and] .
- [^{F4}“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.]

Textual Amendments

- F2** Word in Sch. 36 para. 58 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), [art. 1\(2\)](#), [Sch. 1 para. 471\(15\)\(a\)](#)
- F3** Word in Sch. 36 para. 58 inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), [art. 1\(2\)](#), [Sch. 1 para. 471\(15\)\(b\)](#)
- F4** Words in Sch. 36 para. 58 inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), [art. 1\(2\)](#), [Sch. 1 para. 471\(15\)\(c\)](#)

Commencement Information

I3 Sch. 36 para. 58 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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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.

Commencement Information

I4 Sch. 36 para. 59 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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.

Commencement Information

I5 Sch. 36 para. 60 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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.

Commencement Information

I6 Sch. 36 para. 61 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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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.

Commencement Information

I7 Sch. 36 para. 62 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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, ^{F5} ...
 - (b) value added tax charged in accordance with the law of another member State ^{F6}, and
 - (c) amounts listed in sub-paragraph (3A).]
- [Those amounts are—
- ^{F7}(3A) (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).]

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- (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.

Textual Amendments

- F5** Word in Sch. 36 para. 63(3)(a) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 21\(2\)\(a\)](#)
- F6** Sch. 36 para. 63(3)(c) substituted for words (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 21\(2\)\(b\)](#)
- F7** Sch. 36 para. 63(3A) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 21\(3\)](#)

Commencement Information

- I8** Sch. 36 para. 63 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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 [^{F8}the person's liability to pay] any tax,
- and references to a person's position as regards a particular tax (however expressed) are to be interpreted accordingly.
- (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.
- [References in this Schedule to a person's tax position also include, where appropriate, ^{F9}(2A) 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).]
- (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.

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(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.]

Textual Amendments

F8 Words in Sch. 36 para. 64(1)(c) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 22\(2\)](#)

F9 Sch. 36 para. 64(2A) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 22\(3\)](#)

Commencement Information

I9 Sch. 36 para. 64 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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