

Treasury
Customs and Excise Division

Notice 1002 MAN

Annex G

Information Powers, Penalties Etc



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Isle of Man
Government

Reilts Ellan Vannin

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Isle of Man
Government

Reilrys Ellan Vannin

FINANCE ACT 2008

SCHEDULE 36

INFORMATION AND INSPECTION POWERS

PART 1

POWERS TO OBTAIN INFORMATION AND DOCUMENTS

Power to obtain information and documents from taxpayer

- 1 (1) An officer 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 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 Tribunal has approved the giving of the notice and disappplied 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 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 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)).

(2A) An application for approval under this paragraph may be made without notice (except as required under sub-paragraph (3)).

- (3) The 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,
- (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,
- (d) the 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 requires the information and documents.

(4) Paragraphs (c) to (e) of sub-paragraph (3) do not apply to the extent that the Tribunal is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.

(5) Where the 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 who gives a third party notice must give a copy of the notice to the taxpayer to whom it relates, unless the Tribunal has disapplied this requirement.

(2) The Tribunal may not disapply that requirement unless—

- (a) an application for approval is made by, or with the agreement of, an authorised officer, 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 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 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 may not give a notice under this paragraph without the approval of the Tribunal.

(3A) An application for approval under this paragraph may be made without notice.

(4) The Tribunal may not approve the giving of a notice under 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 law (including the law of a territory outside the Island) relating to value added tax,
- (c) any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of tax, and
- (d) the information or document to which the notice relates is not readily available from another source.

(5) ...Omitted.

Power to obtain information about persons whose identity can be ascertained

5A. (1) An authorised officer may by notice in writing require a person to provide relevant information about another person (“the taxpayer”) if conditions A to D are met.

(2) Condition A is that the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer.

(3) Condition B is that –

- (a) the taxpayer’s identity is not known to the officer, but
- (b) the officer holds information from which the taxpayer’s identity can be ascertained.

(4) Condition C is that the officer has reason to believe that –

- (a) the person will be able to ascertain the taxpayer’s identity from the information held by the officer, and
- (b) the person obtained relevant information about the taxpayer in the course of carrying on a business.

(5) Condition D is that the taxpayer’s identity cannot readily be ascertained by other means from the information held by the officer.

(6) “Relevant information” means all or any of the following –

- (a) name,
- (b) last known address, and
- (c) date of birth (in the case of an individual).

(7) This paragraph applies for the purposes of checking the tax position of a class of persons as for the purposes of checking the tax position of a single person (and references to “the taxpayer” are to be read accordingly).

(8) This paragraph applies for the purpose of checking the tax position of a taxpayer as regards periods of tax liabilities arising (whether before, on or after the day on which this paragraph came into operation).

Notices

6 (1) In this Schedule, “information notice” means a notice under paragraph 1, 2, 5 or 5A.

(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 Tribunal, it must state that it is given with that approval.

(4) A decision of the tribunal under paragraph 3, 4 or 5 is final.

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, or

(b) at such place as an officer may reasonably specify.

(3) An officer 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 Treasury.

(2) Sub-paragraph (1) does not apply where—

(a) the notice requires the person to produce the original document, or

(b) an officer subsequently makes a request in writing to the person for the original document.

(3) Where an officer 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 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 has reason to believe are owned, leased or used in connection with the carrying on of a business by any person (but see subparagraph (4)),

“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 has reason to believe are (or is) used in connection with the carrying on of a business by or on behalf of the person.

(4) For the purposes of this Schedule, “business assets” does not include documents other than trading stock.

(4A) In this Schedule, “trading stock” means –

- (a) any property which is sold in the ordinary course of the trade or would be sold if it were mature or its manufacture, preparation or construction were complete; or materials used in the manufacture, preparation or construction of any such property; and

- (b) includes also any services performed in the ordinary course of the trade –
 - (i) the performance of which is wholly or partly completed at the time of the cessation; and
 - (ii) for which it would be reasonable to expect that a charge would be made if there were no cessation and, in the case of partly completed services, their performance were fully completed,and any article produced, and any material used, in the performance of any such services.

(4B) In this Schedule references to the sale or transfer of trading stock include the sale or transfer of any benefits and rights which accrue, or might reasonably be expected to accrue, from the performance of any such services.

Power to inspect premises used in connection with taxable supplies etc

- 11 (1) This paragraph applies where an officer 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 or documents relating to such goods are on those premises,
 - (b) premises are used in connection with the acquisition of goods from member States under taxable acquisitions and goods to be so acquired or documents relating to such goods are on those premises, or
 - (c) premises are used as or in connection with a fiscal warehouse.
- (2) An officer 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 the supply of goods under taxable supplies, the acquisition of goods from member States other than the United Kingdom under taxable acquisitions or fiscal warehousing.
- (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 this paragraph and in the Value Added Tax Act 1996 have the same meaning here 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.
- (3) An officer 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 in respect of an inspection approved by the Tribunal (see paragraph 13), it must state that the inspection has been so approved.

Approval of Tribunal

- 13 (1) An officer may ask the Tribunal to approve an inspection under this Part of this Schedule.
- (1A) An application for approval under this paragraph may be made without notice.
 - (2) The Tribunal may not approve an inspection unless—
 - (a) an application for approval is made by, or with the agreement of, an authorised officer, and
 - (b) the Tribunal is satisfied that, in the circumstances, the inspection is justified.
 - (3) A decision of the tribunal under this paragraph is final.

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, 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, 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 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 Treasury 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 Powers and Procedures Act 1998 (c.9)) 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 15 of the Police Powers and Procedures Act 1998) or information contained in such records, subject to subparagraph (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 ...Omitted.

Deceased persons

22 ...Omitted.

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 as between client and professional legal adviser, could be maintained in legal proceedings.

(3) The Treasury 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—

- (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, Treasury, 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.
- 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.

Corresponding restrictions on inspection of business documents

28 An officer 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 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 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 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 Tribunal approved the giving of the notice in accordance with paragraph 3.

Right to appeal against notice given under paragraph 5 or 5A

31 Where a person is given a notice under paragraph 5 or 5A, the person may appeal to the 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 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 Tribunal may—

- (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 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 following the Tribunal's decision.
- (5) A decision by the Tribunal on an appeal under this Part of this Schedule is final.
- (6) ...Omitted.

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 *a* 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 Tribunal against the notice or any requirement in the notice.
- (4) Sections 5, 11 and 15 of, and Schedule 5 to, the Value Added Tax Act 1996, 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).
- (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,
- (a) paragraph 2(2) only requires the notice to state this and name the parent undertaking, and
 - (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement and naming the parent undertaking.

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- (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 more than one subsidiary undertakings—
- (a) paragraph 2(2) only requires the notice to state this, and
 - (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement.
- (4A) In relation to such a notice –
- (a) in paragraph 3 (approval etc of notices), sub-paragraphs (1) and (3)(e) do not apply,
 - (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply,
 - (c) paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made return) applies as if the notice was a taxpayer notice or taxpayer notices given to each subsidiary undertaking (or, if the notice names the subsidiary undertakings to which it relates, to each of those undertakings),
 - (d) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds, and
 - (e) 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 or any of its 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,
- (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, the officer to obtain the approval of the tribunal, and
 - (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds, but 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.
- (6) ...Omitted.
- (7) Sub-paragraphs (8) to (12) define "undertaking" and related terms for the purposes of this paragraph.
- (8) "Undertaking" means –
-

- (a) a body corporate or partnership, or
- (b) an unincorporated association carrying on a trade or business, with or without a view to profit.

(9) An undertaking is a parent undertaking in relation to another undertaking, a subsidiary undertaking, if –

- (a) it holds a majority of the voting rights in the undertaking, or
- (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors, or
- (c) it has the right to exercise a dominant influence over the undertaking –
 - (i) by virtue of provisions contained in the undertaking's articles, or
 - (ii) by virtue of a control contract, or
- (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking.

(10) For the purposes of sub-paragraph (9), an undertaking shall be treated as a member of another undertaking –

- (a) if any of its subsidiary undertakings is a member of that undertaking, or
- (b) if any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(11) An undertaking is also a parent undertaking in relation to another undertaking, a subsidiary undertaking, if –

- (a) it has the power to exercise, or actually exercises, dominant influence or control over it, or
- (b) it and the subsidiary undertaking are managed on a unified basis.

(12) A parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings; and references to its subsidiary undertakings shall be construed accordingly.

Change of ownership of companies

36 ...Omitted.

Partnerships

37 (1) This paragraph applies where a business is carried on by two or more persons in partnership.

(2) ...Omitted.

(3) ...Omitted.

- (4) In relation to a third party notice given to a person other than one of the partners—
- (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 any of the partners in the partnership.
- (5) In relation to a third party notice 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) –
- (a) in paragraph 3 (approval etc of notices), sub-paragraphs (1) and (3)(e) do not apply,
 - (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply,
 - (c) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds, and
 - (d) 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 any of the partners in the partnership.
- (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,
- (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, the officer to obtain the approval of the tribunal, and
 - (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds, but the partner to whom the notice is given may not appeal against a requirement in the notice to produce any document that forms part of that partner's statutory records.
- (7) ...Omitted.

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)).

PART 7 PENALTIES

Penalties for failure to comply or obstruction

- 39 (1) This paragraph applies to a person who—
- (a) fails to comply with an information notice, or
 - (b) deliberately obstructs an officer in the course of an inspection under Part 2 of this Schedule that has been approved by the Tribunal.

(2) The person 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 for failure to comply or obstruction

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.

Penalties for inaccurate information and documents

40A. (1) This paragraph applies if –

(a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and

(b) condition A, B or C is met.

(2) Condition A is that the inaccuracy is careless or deliberate.

(3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.

(3A) Condition B is that the person knows of the inaccuracy at the time the information is provided or the document produced but does not inform the Treasury at that time.

(4) Condition C is that the person –

(a) discovers the inaccuracy some time later, and

(b) fails to take reasonable steps to inform Treasury.

(5) The person is liable to a penalty not exceeding £3,000.

(6) Where the information or document contains more than one inaccuracy a penalty is payable for each inaccuracy.

Power to change amount of 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, it may by regulations substitute for the sums for the time being specified in paragraphs 39(2), 40(2) and 40A(5) such other sums as appear to it to be justified by the change.

(2) In sub-paragraph (1), in relation to a specified sum, “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 in relation to that sum.

(3) Regulations under this paragraph do not apply to

- (a) any failure or obstruction which began before the date on which they come into force, or
- (b) an inaccuracy in any information or document provided to Treasury before that date.

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 in accordance with the information notice, unless an officer 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 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 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 may have allowed.

Reasonable excuse

45 (1) Liability to a penalty under paragraph 39 or 40 does not arise if the person satisfies Treasury or (on appeal) the Tribunal that there is a reasonable excuse for the failure or the obstruction of an officer.

(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 penalty

46 (1) Where a person becomes liable for a penalty under paragraph 39, 40 or 40A,—

- (a) the Treasury may assess the penalty, and
- (b) if it does so, it must notify the person.

(2) An assessment of a penalty under paragraph 39 or 40 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to sub-paragraph (3).

(3) In a case involving an information notice against which a person may appeal, an assessment of a penalty under paragraph 39 or 40 must be made within the period of 12 months beginning with the latest of the following –

- (a) the date on which the person became liable to the penalty,
- (b) the end of the period in which notice of an appeal against the information notice could have been given, and
- (c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.

(4) An assessment of a penalty under paragraph 40A must be made –

- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer, and
- (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.

Right to appeal against penalty

47 A person may appeal to the Tribunal against any of the following decisions of an officer—

- (a) a decision that a penalty is payable by that person under paragraph 39, 40 or 40A, or
- (b) a decision as to the amount of such a penalty.

Procedure on appeal against 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 the Treasury.

- (2) Notice of an appeal under paragraph 47 must state the grounds of appeal.
- (3) On an appeal under paragraph 47(a), the Tribunal may confirm or cancel the decision.
- (4) On an appeal under paragraph 47(b), the Tribunal may—
 - (a) confirm the decision, or
 - (b) substitute for the decision another decision that the officer had power to make.
- (5) ...Omitted.

Enforcement of penalty

- 49 (1) A penalty under paragraph 39, 40 or 40A 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, 40 or 40A may be enforced as if it were tax charged in an assessment and due and payable.

Increased daily default penalty

- 49A. (1) This paragraph applies if –
- (a) a penalty under paragraph 40 is assessed under paragraph 46 in respect of a person's failure to comply with a notice under paragraph 5,
 - (b) the failure continues for more than 30 days beginning with the date on which notification of that assessment was issued, and
 - (c) the person has been told that an application may be made under this paragraph for an increased daily penalty to be imposed.
- (2) If this paragraph applies, an officer may make an application to the tribunal for an increased daily penalty to be imposed on the person.
- (3) If the tribunal decides that an increased daily penalty should be imposed, then for each applicable day (see paragraph 49B) on which the failure continues –
- (a) the person is not liable to a penalty under paragraph 40 in respect of the failure, and
 - (b) the person is liable instead to a penalty under this paragraph of an amount determined by the tribunal.
- (4) The tribunal may not determine an amount exceeding £1,000 for each applicable day.
- (5) But subject to that, in determining the amount the tribunal must have regard to –
- (a) the likely cost to the person of complying with the notice,

- (b) any benefits to the person of not complying with it, and
- (c) any benefits to anyone else resulting from the person's non-compliance.

(6) Paragraph 41 applies in relation to the sum specified in subparagraph (4) as it applies in relation to the sums mentioned in paragraph 41(1).

49B. (1) If a person becomes liable to a penalty under paragraph 49A, the Treasury must notify the person.

(2) The notification must specify the day from which the increased penalty is to apply.

(3) That day and any subsequent day is an "applicable day" for the purposes of paragraph 49A(3).

49C. (1) A penalty under paragraph 49A must be paid before the end of the period of 30 days beginning with the date on which the notification under paragraph 49B is issued.

(2) A penalty under paragraph 49A may be enforced as if it were value added 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 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 makes an application to the Tribunal for an additional penalty to be imposed on the person, and
- (e) the 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 Tribunal.

(3) In deciding the amount of the penalty, the 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, the Treasury must notify the person.

(5) Any penalty under this paragraph is in addition to the penalty or penalties under paragraph 39 or 40.

(6) ...Omitted.

(7) In sub-paragraph (1)(d) "the relevant date" means –

- (a) in a case involving an information notice against which a person may appeal, the latest of –
 - (i) the date on which the person became liable to the penalty under paragraph 39,
 - (ii) the end of the period in which notice of an appeal against the information notice could have been given, and
 - (iii) if notice of such an appeal 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 a penalty under paragraph 39.

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 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 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 in accordance with the information notice, unless an officer 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 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 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 intends to seek the approval of the 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 £5000, and
- (b) on conviction on information, 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 ...Omitted.

Regulations under this Schedule

57 Regulations under this Schedule shall not come into operation until they are approved by Tynwald.

General interpretation

58 In this Schedule—

“checking” includes carrying out an investigation or enquiry of any kind,

“document” includes a part of a document (except where the context otherwise requires),

“enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1976 (c. 30)),

“officer” has the same meaning as in section 184(1) of the Customs and Excise Management Act 1986 (c.34),

“premises” includes—

- (a) any building or structure,
- (b) any land, and

- (c) any means of transport,

“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).

Authorised officer of Revenue and Customs

59 ...Omitted.

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,

(3) The Treasury 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 ...Omitted.

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) ...omitted
- (b) the Value Added Tax Act 1996 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 is required to be kept and preserved under or by virtue of the Value Added Tax Act 1996 or any other enactment relating to value added tax it only forms part of a person's statutory records to the extent that the 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) ...omitted,
- (b) ...omitted,
- (c) ...omitted,
- (d) VAT, and
- (e) relevant foreign tax,

and references to "a tax" are to be interpreted accordingly.

(2) ...Omitted.

(3) In this Schedule "VAT" means—

- (a) value added tax charged in accordance with the Value Added Tax Act 1996,
- (b) value added tax charged in accordance with the law of a member State, and
- (c) amounts listed in sub-paragraph (3A).

(3A) Those amounts are –

- (a) any amount that is recoverable under paragraph 5(2) of Schedule 12 to the Value Added Tax Act 1996 (amounts shown on invoices as VAT), and
- (b) any amount that is treated as VAT by virtue of regulations under section 54 of the Value Added Tax Act 1996 (farmers etc).

(4) In this Schedule "relevant foreign tax" means—

- (a) a tax of a member State, 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), as it has effect in the Island, and
- (b) ...Omitted.

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 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) ...Omitted.

(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 ...Omitted.

66 ...Omitted.

67 ...Omitted.

68 ...Omitted.

69 ...Omitted.

70 ...Omitted.

71 ...Omitted.

72 ...Omitted.

73 ...Omitted.

74 ...Omitted.

75 ...Omitted.

76 ...Omitted.

77 ...Omitted.

National Savings Bank Act 1971 (c. 29)

78 ...Omitted.

ICTA

79 ...Omitted.

80 ...Omitted.

81 ...Omitted.

82 ...Omitted.

FA 1990

83 ...Omitted.

Social Security Administration Act 1992 (c. 5)

84 ...Omitted.

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

85 ...Omitted.

F(No.2)A 1992

86 ...Omitted.

Value Added Tax Act 1996

87 (1) Schedule 12 to the Value Added Tax Act 1996 is amended as follows.

(2) In paragraph 9 (furnishing information and producing documents), omit sub-paragraphs (2) to (9).

(3) In paragraph 12 (entry and search of premises and persons), omit subparagraphs (1) to (2A).

FA 1998

88 ...Omitted.

FA 1999

89 ...Omitted.

Tax Credits Act 2002 (c. 21)

90 ...Omitted.

FA 2006

91 ...Omitted.

Other repeals

92 ...Omitted.

FINANCE ACT 2008

SCHEDULE 41

PENALTIES: FAILURE TO NOTIFY AND CERTAIN VAT AND EXCISE WRONGDOING

Failure to notify etc

1 A penalty is payable by a person (P) where P fails to comply with an obligation specified in the Table below (a "relevant obligation").

Tax to which obligation relates	Obligation
Value added tax	Obligations under paragraphs 5, 6, 7 and 14(2) and (3) of Schedule 2 to the Value Added Tax Act 1996 (obligations to notify liability to register and notify material change in nature of supplies made by person exempted from registration).
Value added tax	Obligations under paragraphs 5, 6 and 13(3) of Schedule 2A to the Value Added Tax Act 1996 (obligation to notify liability to register and notify material changes in nature of supplies made by person exempted from registration).
Finance Act 2008 (c. 9)	Schedule 41 — Penalties: failure to notify and certain VAT and excise wrongdoing
Value added tax	Obligation under paragraph 3 of Schedule 3 to the Value Added Tax Act 1996 (obligation to notify liability to register).
Value added tax	Obligations under paragraphs 3 and 8(2) of Schedule 4 to the Value Added Tax Act 1996 (obligations to notify liability to register and notify acquisition affecting exemption from registration).
Value added tax	Obligations under paragraphs 3, 4 and 7(2) and (3) of Schedule 3A to the Value Added Tax Act 1996 (obligations to notify liability to register and notify relevant change in supplies made by person exempted from registration).

Tax to which obligation relates	Obligation
Value added tax	Obligation under regulations under paragraph 2(4) of Schedule 12 to the Value Added Tax Act 1996 (obligation to give notification of acquisition of goods from another member State).
Air passenger duty	Obligation under section 33(4) of Finance Act 1994 (as it has effect in the Island) (obligation to give notice of liability to register to operate chargeable aircraft).
Alcohol liquor duties	Obligation to be authorised and registered to obtain and use duty stamps under regulations under paragraph 4 of Schedule 2A to the Alcoholic Liquor Duties Act 1986 (duty stamps).
Alcohol liquor duties	Obligations under sections 11(1), 42(1), 50(2), 51(2) and 58(2) of the Alcoholic Liquor Duties Act 1986 (obligations to hold licence to manufacture spirits, register to brew beer, hold licence to produce wine or made-wine and register to make cider).
Alcohol liquor duties	Obligation to have plant and processes approved for the manufacture of spirits under regulations under section 14(6) of the Alcoholic Liquor Duties Act 1986 (distillers' warehouses).
Tobacco products duty	Obligation to manufacture tobacco products only on premises registered under regulations under section 6 of the Tobacco Products Duty Act 1986 (management of tobacco products duty).
Hydrocarbon oil duties	Obligation to make entry of premises intended to be used for production of oil under regulations under section 24 of the Hydrocarbon Oil Duties Act 1986 (administration and enforcement).
Excise duties	Obligation to receive, deposit or hold duty suspended excise goods only in premises approved under regulations under section 93 of Customs and Excise Management Act 1986 (approval of warehouses).

Tax to which obligation relates	Obligation
Excise duties	Obligation to receive duty suspended excise goods only if approved or registered (or approved and registered) as a Registered Consignee under regulations under section 107A or 107B of Customs and Excise Management Act 1986 (registered excise dealers and shippers etc).
Excise duties	Obligation to receive, deposit or hold duty suspended excise goods only if approved or registered (or approved and registered) as a registered owner, a duty representative, a registered mobile operator or a fiscal representative of a registered mobile operator or an authorised warehousekeeper under regulations under section 107A or 107B of Customs and Excise Management Act 1986 (registered excise dealers and shippers etc).
Excise duties	Obligation to dispatch excise goods under duty suspension arrangements upon their release for free circulation in accordance with Article 79 of Council Regulation 2913/92/EEC only if approved or registered (or approved and registered) as a Registered Consignor under regulations under sections 107A or 107B of the Customs and Excise Management Act 1986 (registered excise dealers and shippers etc).
General betting duty	Obligations under paragraph 2 of the Third Schedule to the Betting Act 1970 (obligation to notify intention to carry on general betting business and make entry of, or notify, premises).
Pool betting duty	Obligations under section 1 of the Pool Betting (Isle of Man) Act 1970 (obligation to hold permit for carrying on pool betting business).

Issue of invoice showing VAT by unauthorised person

2 (1) A penalty is payable by a person (P) where P makes an unauthorised issue of an invoice showing VAT.

(2) P makes an unauthorised issue of an invoice showing VAT if P—

- (a) is an unauthorised person, and
 - (b) issues an invoice showing an amount as being value added tax or as including an amount attributable to value added tax.
- (3) In sub-paragraph (2)(a) “an unauthorised person” means anyone other than—
- (a) a person registered under the Value Added Tax Act 1996,
 - (b) a body corporate treated for the purposes of section 43 of that Act as a member of a group,
 - (c) a person treated as a taxable person under regulations under section 46(4) of that Act,
 - (d) a person authorised to issue an invoice under regulations under paragraph 2(12) of Schedule 12 to that Act, or
 - (e) a person acting on behalf of the Crown.
- (4) This paragraph has effect in relation to any invoice which—
- (a) for the purposes of any provision made under subsection (3) of section 54 of the Value Added Tax Act 1996 shows an amount as included in the consideration for any supply, and
 - (b) either fails to comply with the requirements of any regulations under that section or is issued by a person who is not for the timebeing authorised to do so for the purposes of that section,

as if the person issuing the invoice were an unauthorised person and that amount were shown on the invoice as an amount attributable to value added tax.

Putting product to use that attracts higher duty

Provision under which assessment may be made	Subject-matter of provision
Alcoholic Liquor Duties Act 1986	section 7(4) Spirits for use for medical or scientific purposes.
Alcoholic Liquor Duties Act 1986	section 9(4) Spirits for use in art or manufacture.
Alcoholic Liquor Duties Act 1986	section 10(3) Imported goods not for human consumption containing spirits.

3 (1) A penalty is payable by a person (“P”) where P does an act which enables Treasury to assess an amount as duty due from P under any of the provisions in the Table below (a “relevant excise provision”).

Hydrocarbon Oil Duties Act 1986	section 10(3) Duty-free oil.
Hydrocarbon Oil Duties Act 1986	section 13(1A) Rebated heavy oil.
Hydrocarbon Oil Duties Act 1986	section 13AB(1)(a) or (2)(a) Kerosene.
Hydrocarbon Oil Duties Act 1986	section 13AD(2) Kerosene.
Hydrocarbon Oil Duties Act 1986	section 13ZB(1) Heating oil etc.
Hydrocarbon Oil Duties Act 1986	section 14(4) Light oil for use as furnace oil.
Hydrocarbon Oil Duties Act 1986	section 14D(1) Rebated biodiesel or bioblend.
Hydrocarbon Oil Duties Act 1986	section 14F(2) Rebated heavy oil or bioblend.
Hydrocarbon Oil Duties Act 1986	section 23(1B) Road fuel gas on which no duty paid.
Hydrocarbon Oil Duties Act 1986	section 24(4A) Duty-free and rebated oil.

(2) A penalty is payable by a person (“P”) where P supplies a product knowing that it will be used in a way which enables Treasury to assess an amount as duty due from another person under a relevant excise provision.

Handling goods subject to unpaid excise duty

- 4 (1) A penalty is payable by a person (P) where—
- (a) after the excise duty point for any goods which are chargeable with a duty of excise, P acquires possession of the goods or is concerned in carrying, removing, depositing, keeping or otherwise dealing with the goods, and
 - (b) at the time when P acquires possession of the goods or is so concerned, a payment of duty on the goods is outstanding and has not been deferred.

(2) In sub-paragraph (1)—

“excise duty point” has the meaning given by section 143A of the Customs and Excise Management Act 1986, and

“goods” has the meaning given by section 184(1) of the Customs and Excise Management Act 1986.

Degrees of culpability

5 (1) A failure by P to comply with a relevant obligation is—

(a) “deliberate and concealed” if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the obligation, and

(b) “deliberate but not concealed” if the failure is deliberate but P does not make arrangements to conceal the situation giving rise to the obligation.

(2) The making by P of an unauthorised issue of an invoice showing VAT is—

(a) “deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and

(b) “deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.

(3) The doing by P of an act which enables Treasury to assess an amount of duty as due from P under a relevant excise provision is—

(a) “deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and

(b) “deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.

(4) P’s acquiring possession of, or being concerned in dealing with, goods on which a payment of duty is outstanding and has not been deferred is—

(a) “deliberate and concealed” if it is done deliberately and P makes arrangements to conceal it, and

(b) “deliberate but not concealed” if it is done deliberately but P does not make arrangements to conceal it.

Amount of penalty: standard amount

6 (1) The penalty payable under any of paragraphs 1, 2, 3(1) and 4 is—

(a) for a deliberate and concealed act or failure, 100% of the potential lost revenue,

(b) for a deliberate but not concealed act or failure, 70% of the potential lost revenue, and

(c) for any other case, 30% of the potential lost revenue.

- (2) The penalty payable under paragraph 3(2) is 100% of the potential lost revenue.
- (3) Paragraphs 7 to 11 define “the potential lost revenue”.

Potential lost revenue

7 (1) “The potential lost revenue” in respect of a failure to comply with a relevant obligation is as follows.

- (2) ...Omitted.
- (3) ...Omitted.
- (4) ...Omitted.

(5) In any case where the failure is a failure to comply with the obligation under paragraph 2(4) of Schedule 12 to the Value Added Tax Act 1996, the potential lost revenue is the value added tax on the acquisition to which the failure relates.

(6) In the case of any other relevant obligation relating to value added tax, the potential lost revenue is the amount of the value added tax (if any) for which P is, or but for any exemption from registration would be, liable for the relevant period (see sub-paragraph (7)), but subject to sub-paragraph (8).

(7) “The relevant period” is—

- (a) in relation to a failure to comply with paragraph 14(2) or (3) of Schedule 2 to the Value Added Tax Act 1996, paragraph 8(2) of Schedule 4 to that Act or paragraph 7(2) or (3) of Schedule 3A to that Act, the period beginning on the date of the change or alteration concerned and ending on the date on which Treasury received notification of, or otherwise became fully aware of, that change or alteration, and
- (b) in relation to a failure to comply with an obligation under any other provision, the period beginning on the date with effect from which P is required in accordance with that provision to be registered and ending on the date on which Treasury received notification of, or otherwise became fully aware of, P’s liability to be registered.

(8) But the amount mentioned in sub-paragraph (6) is reduced—

- (a) if the amount of the tax mentioned in that sub-paragraph includes tax on an acquisition of goods from a member State, by the amount of any VAT which Treasury are satisfied has been paid on the supply in pursuance of which the goods were acquired under the law of that member State, and
- (b) if the amount of that tax includes tax chargeable by virtue of section 7(4) of the Value Added Tax Act 1996 on a supply, by the amount of any VAT which Treasury are satisfied has been paid on that supply under the law of a member State.

(9) In the case of a relevant obligation under any provision relating to air passenger duty, the potential lost revenue is the amount of the tax (if any) for which P is liable for the period—

- (a) beginning on the date with effect from which P is required in accordance with that provision to be registered, and

- (b) ending on the date on which Treasury received notification of, or otherwise became fully aware of, P's liability to be registered.

(10) In the case of a failure to comply with a relevant obligation relating to any other tax, the potential lost revenue is the amount of any tax which is unpaid by reason of the failure.

8 In the case of the making of an unauthorised issue of an invoice showing VAT, the potential lost revenue is the amount shown on the invoice as value added tax or the amount to be taken as representing value added tax.

9 In the case of—

- (a) the doing of an act which enables Treasury to assess an amount of duty as due under a relevant excise provision, or
- (b) supplying a product knowing that it will be used in a way which enables Treasury to assess an amount as duty due from another person under a relevant excise provision,

the potential lost revenue is the amount of the duty which may be assessed as due.

10 In the case of acquiring possession of, or being concerned in dealing with, goods the payment of duty on which is outstanding and has not been deferred, the potential lost revenue is an amount equal to the amount of duty due on the goods.

11 (1) In calculating potential lost revenue in respect of a relevant act or failure on the part of P no account is to be taken of the fact that a potential loss of revenue from P is or may be balanced by a potential over-payment by another person (except to the extent that an enactment requires or permits a person's tax liability to be adjusted by reference to P's).

(2) In this Schedule "a relevant act or failure" means—

- (a) a failure to comply with a relevant obligation,
- (b) the making of an unauthorised issue of an invoice showing VAT,
- (c) the doing of an act which enables Treasury to assess an amount of duty as due under a relevant excise provision or supplying a product knowing that it will be used in a way which enables Treasury to assess an amount as duty due from another person under a relevant excise provision, or
- (d) acquiring possession of, or being concerned in dealing with, goods the payment of duty on which is outstanding and has not been deferred.

Reductions for disclosure

12 (1) Paragraph 13 provides for reductions in penalties under paragraphs 1 to 4 where P discloses a relevant act or failure.

(2) P discloses a relevant act or failure by—

- (a) telling Treasury about it,
- (b) giving Treasury reasonable help in quantifying the tax unpaid by reason of it, and
- (c) allowing Treasury access to records for the purpose of checking how much tax is so unpaid.

- (3) Disclosure of a relevant act or failure—
 - (a) is “unprompted” if made at a time when the person making it has no reason to believe that Treasury have discovered or are about to discover the relevant act or failure, and
 - (b) otherwise, is “prompted”.
- (4) In relation to disclosure “quality” includes timing, nature and extent.

13 (1) Where a person who would otherwise be liable to a 100% penalty has made an unprompted disclosure, Treasury shall reduce the 100% to a percentage, not below 30%, which reflects the quality of the disclosure.

(2) Where a person who would otherwise be liable to a 100% penalty has made a prompted disclosure, Treasury shall reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure.

(3) Where a person who would otherwise be liable to a 70% penalty has made an unprompted disclosure, Treasury shall reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure.

(4) Where a person who would otherwise be liable to a 70% penalty has made a prompted disclosure, Treasury shall reduce the 70% to a percentage, not below 35%, which reflects the quality of the disclosure.

(5) Where a person who would otherwise be liable to a 30% penalty has made an unprompted disclosure, Treasury shall reduce the 30%—

- (a) if the penalty is under paragraph 1 and Treasury become aware of the failure less than 12 months after the time when tax first becomes unpaid by reason of the failure, to a percentage (which may be 0%), or
- (b) in any other case, to a percentage not below 10%,

which reflects the quality of the disclosure.

(6) Where a person who would otherwise be liable to a 30% penalty has made a prompted disclosure, Treasury shall reduce the 30% —

- (a) if the penalty is under paragraph 1 and Treasury become aware of the failure less than 12 months after the time when tax first becomes unpaid by reason of the failure, to a percentage not below 10%, or
- (b) in any other case, to a percentage not below 20%,

which reflects the quality of the disclosure.

Special reduction

14 (1) If Treasury thinks it right because of special circumstances, it may reduce a penalty under any of paragraphs 1 to 4.

- (2) In sub-paragraph (1) “special circumstances” does not include—
 - (a) ability to pay, or

- (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—
 - (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

Interaction with other penalties and late payment surcharges

15 (1) The amount of a penalty for which P is liable under any of paragraphs 1 to 4 shall be reduced by the amount of any other penalty incurred by P, or any surcharge for late payment of tax imposed on P, if the amount of the penalty or surcharge is determined by reference to the same tax liability.

(2) If P is liable to a penalty under section 9 of the Finance Act 1994 (as it has effect in the Island) in respect of a failure to comply with a relevant obligation, the amount of any penalty payable under paragraph 1 in respect of the failure is to be reduced by the amount of the penalty under that section.

(3) Where penalties are imposed under paragraph 3(1) and (2) in respect of the same act or use, the aggregate of the amounts of the penalties must not exceed 100% of the potential lost revenue.

Assessment

16 (1) Where P becomes liable for a penalty under any of paragraphs 1 to 4 Treasury shall—

- (a) assess the penalty,
- (b) notify P, and
- (c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under any of paragraphs 1 to 4 must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

- (3) An assessment—
 - (a) shall be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Act),
 - (b) may be enforced as if it were an assessment to tax, and
 - (c) may be combined with an assessment to tax.

(4) An assessment of a penalty under any of paragraphs 1 to 4 must be made before the end of the period of 12 months beginning with—

- (a) the end of the appeal period for the assessment of tax unpaid by reason of the relevant act or failure in respect of which the penalty is imposed, or
- (b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the relevant act or failure is ascertained.

(5) In sub-paragraph (4)(a) "appeal period" means the period during which—

- (a) an appeal could be brought, or
- (b) an appeal that has been brought has not been determined or withdrawn.

(6) Subject to sub-paragraph (4), a supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of potential lost revenue.

(7) The references in this paragraph to "an assessment to tax" are, in relation to a penalty under paragraph 2, a demand for recovery.

Appeal

17 (1) P may appeal against a decision of Treasury that a penalty is payable by P.

(2) P may appeal against a decision of Treasury as to the amount of a penalty payable by P.

18 (1) An appeal is to be brought to the Tribunal.

(2) Sub-paragraph (1) does not apply –

- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
- (b) in respect of any other matter expressly provided for by this Act.

19 (1) On an appeal under paragraph 17(1) the Tribunal may affirm or cancel Treasury's decision.

(2) On an appeal under paragraph 17(2) the Tribunal may—

- (a) affirm Treasury's decision, or
- (b) substitute for Treasury's decision another decision that Treasury had power to make.

(3) If the Tribunal substitutes its decision for Treasury's, the Tribunal may rely on paragraph 14—

- (a) to the same extent as Treasury (which may mean applying the same percentage reduction as Treasury to a different starting point), or
- (b) to a different extent, but only if the Tribunal thinks that Treasury's decision in respect of the application of paragraph 14 was flawed.

(4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

Reasonable excuse

20 (1) Liability to a penalty under any of paragraphs 1, 2, 3(1) and 4 does not arise in relation to an act or failure which is not deliberate if P satisfies Treasury or (on appeal) the Tribunal that there is a reasonable excuse for the act or failure.

- (2) For the purposes of sub-paragraph (1)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant act or failure, and
 - (c) where P had a reasonable excuse for the relevant act or failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the relevant act or failure is remedied without unreasonable delay after the excuse ceased.

Agency

21 (1) In paragraph 1 the reference to a failure by P includes a failure by a person who acts on P's behalf; but P is not liable to a penalty in respect of any failure by P's agent where P satisfies Treasury or (on appeal) the Tribunal that P took reasonable care to avoid the failure.

(2) In paragraph 2 the reference to the making by P of an unauthorised issue of an invoice showing VAT includes the making of such an unauthorised issue by a person who acts on P's behalf; but P is not liable to a penalty in respect of any action by P's agent where P satisfies Treasury or (on appeal) the Tribunal that P took reasonable care to avoid it.

(3) In paragraph 3(1) the reference to the doing by P of an act which enables Treasury to assess an amount as duty due from P under a relevant excise provision includes the doing of such an act by a person who acts on P's behalf; but P is not liable to a penalty in respect of any action by P's agent where P satisfies Treasury or (on appeal) the Tribunal that P took reasonable care to avoid it.

(4) In paragraph 4 the reference to P acquiring possession of, or being concerned in dealing with, goods the payment of duty on which is outstanding and has not been deferred includes a person who acts on P's behalf doing so; but P is not liable to a penalty in respect of any action by P's agent where P satisfies Treasury or (on appeal) the Tribunal that P took reasonable care to avoid it.

Companies: officers' liability

22 (1) Where a penalty under any of paragraphs 1, 2, 3(1) and 4 is payable by a company for a deliberate act or failure which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as Treasury may specify by written notice to the officer.

(2) Sub-paragraph (1) does not allow Treasury to recover more than 100% of a penalty.

(3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership "officer" means—

- (a) a director (including a shadow director),
- (aa) a manager, and
- (b) a secretary.

(3A) In the application of sub-paragraph (1) to a limited liability partnership, "officer" means a member.

- (4) In the application of sub-paragraph (1) in any other case "officer" means—
- (a) a director,
 - (b) a manager,
 - (c) a secretary,
 - (ca) a registered agent of a limited liability company, and
 - (d) any other person managing or purporting to manage any of the company's affairs.

(5) Where Treasury have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)—

- (a) paragraph 14 applies to the specified portion as to a penalty,
- (b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,
- (c) paragraph 16(3) to (5) and (7) apply as if the notice were an assessment of a penalty,
- (d) a further notice may be given in respect of a portion of any additional amount assessed in a supplementary assessment in respect of the penalty under paragraph 16(6),
- (e) paragraphs 17 to 19 apply as if HMRC had decided that a penalty of the amount of the specified portion is payable by the officer, and
- (f) paragraph 23 applies as if the officer were liable to a penalty.

(6) In this paragraph "company" means any body corporate or unincorporated association, but does not include a partnership, a local authority or a local authority association.

Double jeopardy

23 P is not liable to a penalty under any of paragraphs 1 to 4 in respect of a failure or action in respect of which P has been convicted of an offence.

Interpretation

24 (1) This paragraph applies for the construction of this Schedule.

(2) ...Omitted.

(3) "Tax", includes duty.

(4) An expression used in relation to value added tax has the same meaning as in the Value Added Tax Act 1996.

Consequential repeals

25 In consequence of this Schedule the following provisions are omitted—

(a) ...omitted,

-
- (b) section 178A of the Customs and Excise Management Act 1986,
 - (c) in the Alcoholic Liquor Duties Act 1986—
 - (i) in section 42(6), “which shall be calculated by reference to the amount of duty charged on the beer produced”,
 - (ii) ...omitted,
 - (iii) ...omitted,
 - (iv) in section 58(4), “which shall be calculated by reference to the amount of duty charged on the cider made”,
 - (d) in the Hydrocarbon Oil Duties Act 1986—
 - (i) section 13AD(4)(a) and (b), and
 - (ii) section 14F(4)(a) and (b),
 - (e) in Finance Act 1994 (as it has effect in the Island)—
 - (i) section 33(6),
 - (ii) ...omitted,
 - (iii) ...omitted,
 - (f) section 67 of the Value Added Tax Act 1996,
 - (g) ...omitted,
 - (h) ...omitted,
 - (i) ...omitted,
 - (j) ...omitted,
 - (k) ...omitted,
 - (l) ...omitted.

FINANCE ACT 2009

SCHEDULE 46

DUTIES OF SENIOR ACCOUNTING OFFICERS OF QUALIFYING COMPANIES

Main duty of senior accounting officer

1 (1) The senior accounting officer of a qualifying company must take reasonable steps to ensure that the company establishes and maintains appropriate tax accounting arrangements.

(2) The senior accounting officer of a qualifying company must, in particular, take reasonable steps—

- (a) to monitor the accounting arrangements of the company, and
- (b) to identify any respects in which those arrangements are not appropriate tax accounting arrangements.

Certificate for Treasury

2 (1) The senior accounting officer of a qualifying company must provide the Treasury with a certificate for each financial year of the company.

(2) The certificate must—

- (a) state whether the company had appropriate tax accounting arrangements throughout the financial year, and
- (b) if it did not, give an explanation of the respects in which the accounting arrangements of the company were not appropriate tax accounting arrangements.

(3) The certificate must be provided—

- (a) by such means and in such form as is reasonably specified by an officer of customs and excise, and
- (b) not later than the end of the period for filing the company's accounts for the financial year (or such later time as an officer of customs and excise may have allowed).

(4) A certificate may relate to more than one qualifying company.

Notifying Treasury of name of senior accounting officer

3 (1) For each financial year a qualifying company must ensure that the Treasury is notified of the name of each person who was its senior accounting officer at any time during the year.

(2) The notification must be given—

- (a) by such means and in such form as is reasonably specified by an officer of customs and excise, and
- (b) not later than the end of the period for filing the company's accounts for the financial year (or such later time as an officer of customs and excise may

have allowed for providing the certificate for the financial year under paragraph 2).

- (3) A notification may relate to more than one qualifying company.

Penalty for failure to comply with main duty

4 (1) This paragraph applies if a senior accounting officer fails to comply with paragraph 1 at any time in a financial year.

- (2) The senior accounting officer is liable to a penalty of £5,000.

(3) A person is not liable to more than one penalty under this paragraph in respect of the same company and the same financial year.

Penalties for failure to provide certificate etc

5 (1) This paragraph applies if a senior accounting officer—

- (a) fails to provide a certificate in accordance with paragraph 2, or
- (b) provides a certificate in accordance with that paragraph that contains a careless or deliberate inaccuracy.

- (2) The senior accounting officer is liable to a penalty of £5,000.

(3) For the purposes of this Schedule, an inaccuracy is careless if the inaccuracy is due to a failure by the senior accounting officer to take reasonable care.

(4) An inaccuracy in a certificate that was neither careless nor deliberate when the certificate was given is to be treated as careless if the senior accounting officer—

- (a) discovered the inaccuracy some time later, and
- (b) did not take reasonable steps to inform the Treasury.

More than one senior accounting officer

6 (1) This paragraph applies if the identity of the senior accounting officer of a company changes.

(2) If (but for this sub-paragraph) more than one person would be liable to a penalty under paragraph 4 in respect of a financial year of the company, only the one who became the senior accounting officer latest in the year is liable to such a penalty.

(3) If a person who is or has been the senior accounting officer of the company complies, or purports to comply, with paragraph 2 in respect of a financial year, no other person is liable to a penalty under paragraph 5 in respect of that company and that financial year.

(4) A person who is replaced as the senior accounting officer of the company before the last day for compliance with paragraph 2 in respect of a financial year is not liable to a penalty under paragraph 5(1)(a) for failing to comply with that paragraph in respect of that company and that financial year.

Penalty for failure to notify Treasury of name of senior accounting officer

7 A qualifying company is liable to a penalty of £5,000 if, for a financial year, the Treasury is not notified of the name or names of its senior accounting officer or officers in accordance with paragraph 3.

Reasonable excuse

8 (1) Liability to a penalty for a failure to comply with this Schedule does not arise if the senior accounting officer or qualifying company satisfies Treasury or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.

(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, and
- (c) where the person had a reasonable excuse for the failure but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalties

9 (1) Where a senior accounting officer or a qualifying company becomes liable for a penalty under this Schedule—

- (a) the Treasury may assess the penalty, and
- (b) if it does so, it must notify the officer or company liable for the penalty.

(2) An assessment of a penalty under this Schedule for a failure in respect of a financial year, or an inaccuracy in a certificate for a financial year, may not be made—

- (a) more than 6 months after the failure or inaccuracy first comes to the attention of an officer of customs and excise, or
- (b) more than 6 years after the end of the period for filing the company's accounts for the financial year.

(3) The Treasury may not assess a person who is the senior accounting officer of a company ("C") as liable to a penalty under paragraph 4 or 5 for a financial year ("the relevant financial year") if—

- (a) at any time in the relevant financial year the person was the senior accounting officer of another company that was a member of the same group as C, and
- (b) the Treasury has assessed the person as liable, as the senior accounting officer of the other company, to a penalty under that paragraph for a financial year that ends on a day in the relevant financial year.

(4) The Treasury may not assess a company ("C") as liable to a penalty under paragraph 7 for a financial year ("the relevant financial year") if—

- (a) C was a member of a group at the end of that year, and
- (b) the Treasury has assessed another company that was a member of the same group as C at that time as liable to a penalty under that paragraph—
 - (i) for its financial year ending on the same day as the relevant financial year, or
 - (ii) if its financial year does not end on that day, for its financial year ending last before that day.

Appeal

- 10 (1) A person may appeal against a decision of the Treasury that a penalty is payable by that person.
- (2) Notice of an appeal 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 9 was issued, and
 - (c) to the Treasury.
- (3) Notice of an appeal must state the grounds of appeal.
- (4) On an appeal that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (5) ...Omitted.

Enforcement of penalties

- 11 (1) A penalty under this Schedule must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 9 was issued, or
 - (b) if a notice of 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 this Schedule may be enforced as if it were value added tax charged in an assessment and due and payable.

Power to change amount of penalties

- 12 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, it may by regulations substitute for the sums for the time being specified in paragraphs 4, 5 and 7 such other sums as appear to it to be justified by the change.
- (2) In sub-paragraph (1), in relation to a specified sum, "relevant date" means—
- (a) the date on which this Schedule comes into operation, and

- (b) in relation to that sum, each date on which the power conferred by that sub-paragraph has been exercised.
- (3) Regulations under this paragraph do not apply to—
 - (a) a failure that occurs in respect of a financial year of a company that begins before the date on which they come into force, or
 - (b) an inaccuracy in a certificate that was provided to Treasury in respect of such a financial year.

13 ...Omitted.

Meaning of “appropriate tax accounting arrangements”

- 14 (1) “Appropriate tax accounting arrangements” means accounting arrangements that enable the company’s relevant liabilities to be calculated accurately in all material respects.
- (2) “Accounting arrangements” includes arrangements for keeping accounting records.
 - (3) “Relevant liabilities”, in relation to a company, means liabilities in respect of—
 - (a) value added tax;
 - (b) customs duties; and
 - (c) excise duties.

Meaning of “qualifying company”

- 15 (1) A company is a qualifying company in relation to a financial year if the qualification test was satisfied in the previous financial year (subject to any regulations under sub-paragraph (8)).
- (2) The qualification test is that the company satisfied either or both of the following requirements—
- | | | |
|----|------------------------------|------------------------|
| 1. | Relevant turnover | More than £200 million |
| 2. | Relevant balance sheet total | More than £2 billion. |
- (3) If the company was not a member of a group at the end of the previous financial year—
- (a) “relevant turnover” means the company’s turnover, and
 - (b) “relevant balance sheet total” means the company’s balance sheet total.
- (4) If the company was a member of a group at the end of the previous financial year—
- (a) “relevant turnover” means the aggregate turnover of the company (“C”) and any other company that was a member of the same group as C at the end of C’s previous financial year, and
 - (b) “relevant balance sheet total” means the aggregate balance sheet totals of C and any such company.

(5) If the financial year of a company that was a member of the same group as C does not end on the same day as C's previous financial year, the figures for that company that are to be included in the aggregate figures are the figures for that company's financial year ending last before the end of C's previous financial year.

(6) "Turnover", in relation to a company, means the amounts derived from the provision of goods and services falling within the company's ordinary activities, after deduction of –

- (a) trade discounts,
- (b) value added tax, and
- (c) any other taxes based on the amounts so derived.

(7) "Balance sheet total", in relation to a company and a financial year, means the aggregate of the amounts shown as assets in the company's balance sheet as at the end of the financial year.

(8) The Treasury may by regulations provide that a company of a description specified in the regulations is not a qualifying company for the purposes of this Schedule.

Meaning of "senior accounting officer"

16 (1) "Senior accounting officer", in relation to a company that is not a member of a group, means the director or officer who, in the company's reasonable opinion, has overall responsibility for the company's financial accounting arrangements.

(2) "Senior accounting officer", in relation to a company that is a member of a group, means the group director or officer who, in the company's reasonable opinion, has overall responsibility for the company's financial accounting arrangements.

(3) "Group director or officer", in relation to a company, means a director or officer of the company or of a relevant body that is a member of the same group as the company.

(4) A person may be the senior accounting officer of more than one company.

Regulations

17 (1) Regulations under this Schedule are to be made by *statutory document*.

(2) A statutory document containing regulations under this Schedule must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting before it is laid, or the following sitting, resolves that the document should be annulled, it shall cease to have effect.

Other definitions

18 (1) In this Schedule—

"company" has the same meaning as in section 1 of the Companies Act 2006 but does not include a company that is an open-ended investment company (within the meaning of the Collective Investment Schemes Act 2008) or an investment trust (a company the income of which must be derived wholly or mainly from shares or securities);

"financial year" has the meaning given in sub-paragraph (2A);

"period of filing" has the meaning given in sub-paragraphs (1A) and (1B);

“relevant body” means a company or other body corporate, or a limited liability company, but does not include a limited liability partnership;

“tribunal” means the VAT and Duties Tribunal.

(1A) Notwithstanding that there may be no statutory obligation on the company to file its accounts with the Financial Supervision Commission, “period of filing” means –

- (a) for a private company, 9 months after the end of the relevant accounting reference period; and
- (b) for a public company, 6 months after the end of that period.

(1B) However, if the relevant accounting reference period is the company’s first and is a period of more than 12 months, the period is –

- (a) 9 months or 6 months, as the case may be, from the first anniversary of the incorporation of the company; or
- (b) 3 months after the end of the accounting reference period;

whichever last expires;

(2) For the purposes of this Schedule—

- (a) a relevant body is a member of a group if—
 - (i) another relevant body is its 51 % subsidiary, or
 - (ii) it is a 51% subsidiary of another relevant body, and
- (b) two relevant bodies are members of the same group if—
 - (i) one is a 51% subsidiary of the other, or
 - (ii) both are 51 % subsidiaries of a third relevant body.

(2A) For the purposes of this Schedule a company’s financial year is determined as follows –

- (a) its first financial year –
 - (i) begins with the first day of its first accounting reference period, and
 - (ii) ends with the last day of that period or such other date, not more than 7 days before or after the end of that period, as the directors may determine;
- (b) subsequent financial years –
 - (i) begin with the day immediately following the end of the company’s previous financial year, and
 - (ii) end with the last day of its next accounting reference period or such other date, not more than 7 days before or after the end of that period, as the directors may determine;

-
- (c) in relation to an undertaking that is not a company, references in this Schedule to its financial year are to any period in respect of which a profit and loss account of the undertaking is required to be made up (by its constitution or by the law under which it is established), whether that period is a year or not;
 - (d) the directors of a parent company must secure that, except where in their opinion there are good reasons against it, the financial year of each of its subsidiary undertakings coincides with the company's own financial year.

(3) For the purposes of this Schedule, a company is a 51% subsidiary if more than 50% of its ordinary share capital is owned directly or indirectly by another company.

(4) It applies as if references in that section to a body corporate were to a relevant body.

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SCHEDULE 49

POWERS TO OBTAIN CONTACT DETAILS FOR DEBTORS

Requirement for contact details for debtor

1. (1) This Schedule applies where –
 - (a) a sum is payable by a person (“the debtor”) to the Treasury under of by virtue of an enactment or under a contract settlement,
 - (b) an officer reasonably requires contact details for the debtor for the purpose of collecting that sum,
 - (c) the officer has reasonable grounds to believe that a person (“the third party”) has any such details, and
 - (d) the condition in sub-paragraph (2) is met.
- (2) That condition is that -
 - (a) the third party is a company, a local authority or a local authority association, or
 - (b) the officer has reasonable grounds to believe that the third party obtained the details in the course of carrying on a business.
- (3) This Schedule does not apply if –
 - (a) the third party is a charity and obtained the details in the course of providing services free of charge, or
 - (b) the third party is not a charity but obtained the details in the course of providing services on behalf of a charity that are free of charge to the recipient of the service.

Power to obtain details

2. (1) An officer may by notice in writing require the third party to provide the details.
- (2) The notice must name the debtor.

Complying with notices

3. If a notice is given to the third party under this Schedule, the third party must provide the details –
 - (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.

Right to appeal

4. (1) The third party may appeal 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) Paragraph 32 of Schedule 36 to the Finance Act 2008 (procedure on appeal to tribunal), as it has effect in the Island, applies to an appeal under this paragraph as it applies to an appeal relating to a notice under that Schedule.

Penalty

5. (1) This paragraph applies if the third party fails to comply with the notice.

(2) The third party is liable to a penalty of £300.

(3) Paragraphs 44 to 49 and 52 of Schedule 36 to the Finance Act 2008 (assessment and enforcement of penalties etc) apply in relation to a penalty under this paragraph as they apply in relation to a penalty under paragraph 39(1)(a) of that Schedule (and references in those provisions to an information notice include a notice under this Schedule).

Power to change amount of penalty

6. (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 sum for the time being specified in paragraph 5 such other sum as appears to them to be justified by the change.

(2) In sub-paragraph (1) "relevant date" means –

(a) 1 November 2009, 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 which began before the date on which they come into force.

(4) Regulations made by the Treasury under this paragraph are to be made by statutory document.

(5) A statutory document containing regulations under this paragraph must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting before it is laid, or the following sitting, resolves that the document should be annulled, it shall cease to have effect.

Application of provisions of TMA 1970

7. ...Omitted.

General interpretation

8. In this Schedule –

"business" includes –

(a) a profession;

"charity" means a company, body of persons or trust established for charitable purposes only;

“contact details”, in relation to a person, means the person’s address and any other information about how the person may be contacted;

“contract settlement” means an agreement made in connection with any person’s liability to make a payment to the Treasury under or by virtue of an enactment;

“enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1976);

“officer” has the same meaning as in section 184(1) of the Customs and Excise Management Act 1986.

FINANCE ACT 2009

SCHEDULE 55

PENALTY FOR FAILURE TO MAKE RETURNS ETC

Penalty for failure to make returns etc

1. (1) A penalty is payable by a person ("P") where P fails to make or deliver a return, or to deliver any other document, specified in the Table below on or before the filing date.

(2) Paragraphs 2 to 13J set out –

(a) the circumstances in which a penalty is payable, and

(b) subject to paragraphs 14 to 17, the amount of the penalty.

(3) If P's failure falls within more than one paragraph of this Schedule, P is liable to a penalty under each of those paragraphs (but this is subject to paragraph 17(3)).

(4) In this Schedule –

"filing date", in relation to a return or other document, means the date by which it is required to be made or delivered to the Treasury;

"penalty date", in relation to a return or other document, means the date on which a penalty is first payable for failing to make or deliver it (that is to say, the day after the filing date).

(5) In the provisions of this Schedule which follow the Table –

(a) any reference to a return includes a reference to any other document specified in the Table, and

(b) any reference to making a return includes a reference to delivering a return or to delivering any such document.

	Tax to which return etc relates	Return or other document
1	Value added tax	Return under regulations under paragraph 2 of Schedule 12 to the Value Added Tax Act 1996.
2	Air passenger duty	Return under regulations under section 38 of the Finance Act 1994 (of Parliament), as it has effect in the Island.
3	Alcoholic liquor duties	Return under regulations under section 12, 44, 52 or 58 of the Alcoholic Liquor Duties Act 1986.
4	Tobacco products duty	Return under regulations under section 6 of the Tobacco Products Duty Act 1986.

5	Hydrocarbon oil duties	Return under regulations under section 24 of the Hydrocarbon Oil Duties Act 1986.
6	Excise duties	Return under regulations under section 94 of the Customs and Excise Management Act 1986.
7	Excise duties	Return under regulations under section 107A or 107B of the Customs and Excise Management Act 1986.
7A	Machine games duty	Return under regulations under paragraph 18 of Schedule 24 to the Finance Act 2012 (of Parliament), as it has effect in the Island.
8	General betting duty	Omitted.
9	Pool betting duty	Omitted.
10	Lottery duty	Return under regulations under section 28(1) of the Finance Act 1993 (of Parliament), as it has effect in the Island.
11	Gambling duty	Returns under regulations under section 15 (returns) of the Gambling Duty Act 2012.
12	Excise duties	Return under regulations under section 61A of the Customs and Excise Management Act 1986.

Amount of penalty: occasional returns and returns for periods of 6 months or more

2. (1) Paragraphs 3 to 6 apply in the case of –
- (a) a return falling within any of items 1 to 11 which relates to a period of 6 months or more; and
 - (b) a return falling within item 1 which relates to a transitional period for the purposes of the annual accounting scheme.
- (2) In sub-paragraph (1)(b), a transitional period for the purposes of the annual accounting scheme is a prescribed accounting period (within the meaning of section 25(1) of the Value Added Tax Act 1996 which –
- (a) ends on the day immediately preceding the date indicated by the Treasury in a notification of authorisation under regulation 50 of the Value Added Tax Regulations 1996 (admission to annual accounting scheme); or
 - (b) begins on a day immediately following the end of the last period of 12 months for which such an authorisation has effect.
3. P is liable to a penalty under this paragraph of £100.

-
4. (1) P is liable to a penalty under this paragraph if (and only if) –
- (a) P's failure continues after the end of the period of 3 months beginning with the penalty date,
 - (b) the Treasury decides that such a penalty should be payable, and
 - (c) the Treasury gives notice to P specifying the date from which the penalty is payable.
- (2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).
- (3) The date specified in the notice under sub-paragraph (1)(c) –
- (a) may be earlier than the date on which the notice is given, but
 - (b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).
5. (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.
- (2) The penalty under this paragraph is the greater of –
- (a) 5% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
6. (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.
- (2) Where, by failing to make the return, P deliberately withholds information which would enable or assist the Treasury to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).
- (3) If the withholding of the information is deliberate and concealed, the penalty is the greater of –
- (a) 100% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
- (4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of –
- (a) 70% of any liability to tax which would have been shown in the return in question, and
 - (b) £300.
- (5) In any case not falling within paragraph (2), the penalty under this paragraph is the greater of –
-

- (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

Amount of penalty: CIS returns

- 7. ...Omitted.
- 8. ...Omitted.
- 9. ...Omitted.
- 10. ...Omitted.
- 11. ...Omitted.
- 12. ...Omitted.
- 13. ...Omitted.

Amount of penalty: returns for periods between 2 and 6 months

13A. (1) Paragraphs 13B to 13E apply in the case of a return falling within any of items 1 to 11 in the Table which relates to a period of less than 6 months but more than 2 months.

(2) But those paragraphs do not apply in the case of a return mentioned in paragraph 2(1)(c).

13B. (1) P is liable to a penalty under this paragraph of £100.

(2) In addition, a penalty period begins to run on the penalty date for the return.

(3) The penalty period ends with the day 12 months after the filing date for the return, unless it is extended under paragraph 13C(2)(c) or 13H(2)(c).

13C. (1) This paragraph applies if –

- (a) a penalty period has begun under paragraph 13B or 13G because P has failed to make a return (“return A”), and
- (b) before the end of the period, P fails to make another return (“return B”) falling within the same item in the Table as return A.

(2) In such a case –

- (a) paragraph 13B(1) and (2) do not apply to the failure to make return B, but
- (b) P is liable to a penalty under this paragraph for that failure, and
- (c) the penalty period that has begun is extended so that it ends with the day 12 months after the filing date for return B.

(3) The amount of the penalty under this paragraph is determined by reference to the number of returns that P has failed to make during the penalty period.

(4) If the failure to make return B is P's first failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £200.

(5) If the failure to make return B is P's second failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £300.

(6) If the failure to make return B is P's third or a subsequent failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £400.

(7) For the purposes of this paragraph –

(a) in accordance with sub-paragraph (1)(b), the references in sub-paragraphs (3) to (6) to a return are references to a return falling within the same item in the Table as returns A and B, and

(b) a failure to make a return counts for the purposes of those sub-paragraphs if (but only if) the return relates to a period of less than 6 months.

(8) A penalty period may be extended more than once under sub-paragraph (2)(c).

13D. (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this paragraph is the greater of –

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

13E. (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist the Treasury to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of –

(a) 100% of any liability to tax which would have been shown in the return in question, and

(b) £300.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of –

(a) 70% of any liability to tax which would have been shown in the return in question, and

(b) £300.

(5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of –

- (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

Amount of penalty: returns for periods of 2 months or less

13F. (1) Paragraphs 13G to 13J apply in the case of a return falling within any of items 1 to 11 in the Table which relates to a period of 2 months or less.

(2) But those paragraphs do not apply in the case of a return mentioned in paragraph 2(1)(c).

13G. (1) P is liable to a penalty under this paragraph of £100.

(2) In addition, a penalty period begins to run on the penalty date for the return.

(3) The penalty period ends with the day 12 months after the filing date for the return, unless it is extended under paragraph 13C(2) or 13H(2)(c).

13H. (1) This paragraph applies if –

- (a) a penalty period has begun under paragraph 13B or 13G because P has failed to make a return (“return A”), and
- (b) before the end of the period, P fails to make another return (“return B”) falling within the same item in the Table as return A.

(2) In such a case –

- (a) paragraph 13G(1) and (2) do not apply to the failure to make return B, but
- (b) P is liable to a penalty under this paragraph for that failure, and
- (c) the penalty period that has begun is extended so that it ends with the day 12 months after the filing date for return B.

(3) The amount of the penalty under this paragraph is determined by reference to the number of returns that P has failed to make during the penalty period.

(4) If the failure to make return B is P's first, second, third, fourth or fifth failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £100.

(5) If the failure to make return B is P's sixth or a subsequent failure to make a return during the penalty period, P is liable, at the time of the failure, to a penalty of £200.

(6) For the purposes of this paragraph –

- (a) in accordance with sub-paragraph (1)(b), the references in sub-paragraphs (3) to (5) to a return are references to a return falling within the same item in the Table as returns A and B, and
- (b) a failure to make a return counts for the purposes of those sub-paragraphs if (but only if) the return relates to a period of less than 6 months.

(7) A penalty period may be extended more than once under sub-paragraph (2)(c).

13I. (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this paragraph is the greater of –

- (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

13J. (1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P deliberately withholds information which would enable or assist the Treasury to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of information is deliberate and concealed, the penalty is the greater of –

- (a) 100% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of –

- (a) 70% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

(5) In any case not falling within sub-paragraph (2), the penalty under this paragraph is the greater of –

- (a) 5% of any liability to tax which would have been shown in the return in question, and
- (b) £300.

Reductions for disclosure

14. (1) Paragraph 15 provides for reductions in the penalty under paragraph 6(3) or (4) or 11(3) or (4), or 13E(3) or (4) or 13J(3) or (4) where P discloses information which has been withheld by a failure to make a return ("relevant information").

(2) P discloses relevant information by –

- (a) telling the Treasury about it,
- (b) giving the Treasury reasonable help in quantifying any tax unpaid by reason of its having been withheld, and
- (c) allowing the Treasury access to records for the purpose of checking how much tax is so unpaid.

- (3) Disclosure of relevant information –
 - (a) is “unprompted” if made at a time when P has no reason to believe that the Treasury has discovered or is about to discover the relevant information, and
 - (b) otherwise, is “prompted”.
- (4) In relation to disclosure “quality” includes timing, nature and extent.

15. (1) Where a person who would otherwise be liable to a 100% penalty has made an unprompted disclosure, the Treasury must reduce the 100% to a percentage, not below 30%, which reflects the quality of the disclosure.

(2) Where a person who would otherwise be liable to a 100% penalty has made a prompted disclosure, the Treasury must reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure.

(3) Where a person who would otherwise be liable to a 70% penalty has made an unprompted disclosure, the Treasury must reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure.

(4) Where a person who would otherwise be liable to a 70% penalty has made a prompted disclosure, the Treasury must reduce the 70% to a percentage, not below 35%, which reflects the quality of the disclosure.

- (5) But the Treasury must not under this paragraph –
 - (a) reduce a penalty under paragraph 6(3) or (4) below £300, or
 - (b) reduce a penalty under sub-paragraphs (3) or (4) of either of paragraphs 13E or 13J below the amount set by paragraph (b) of that sub-paragraph (as the case may be).

Special reduction

16. (1) If the Treasury thinks it right because of special circumstances, it may reduce a penalty under any paragraph of this Schedule.

- (2) In sub-paragraph (1) “special circumstances” does not include –
 - (a) ability to pay, or
 - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to –
 - (a) staying a penalty, and
 - (b) agreeing a compromise in relation to proceedings for a penalty.

Interaction with other penalties and late payment surcharges

17. (1) Where P is liable for a penalty under any paragraph of this Schedule which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.

- (2) In sub-paragraph (1) the reference to “any other penalty” does not include –
 - (a) a penalty under any other paragraph of this Schedule, or
 - (b) a penalty under Schedule 56 (penalty for late payment of tax) of this Act.

(3) Where P is liable for a penalty under more than one paragraph of this Schedule which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.

Assessment

18. (1) Where P is liable for a penalty under any paragraph of this Schedule the Treasury must –

- (a) assess the penalty,
- (b) notify P, and
- (c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under any paragraph of this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty under any paragraph of this Schedule –

- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),
- (b) may be enforced as if it were an assessment to tax, and
- (c) may be combined with an assessment to tax.

(4) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return.

(5) A replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of the liability to tax which would have been shown in a return.

19. (1) An assessment of a penalty under any paragraph of this Schedule in respect of any amount must be made on or before the later of date A and (where it applies) date B.

(2) Date A is the last day of the period of 2 years beginning with the filing date.

(3) Date B is the last day of the period of 12 months beginning with –

- (a) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
- (b) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil.

(4) In sub-paragraph (3)(a) “appeal period” means the period during which –

- (a) an appeal could be brought, or
 - (b) an appeal that has been brought has not been determined or withdrawn.
- (5) Sub-paragraph (1) does not apply to a re-assessment under paragraph 24(2)(b).

Appeal

20. (1) P may appeal against a decision of the Treasury that a penalty is payable by P.
- (2) P may appeal against a decision of the Treasury as to the amount of a penalty payable by P.
21. (1) An appeal under paragraph 20 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to the Treasury, about the Treasury review of the decision or about determination of the appeal by the VAT and Duties Tribunal).
- (2) Sub-paragraph (1) does not apply –
- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
 - (b) in respect of any other matter expressly provided for by this Act.
22. (1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel the Treasury's decision.
- (2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may –
- (a) affirm the Treasury's decision, or
 - (b) substitute for the Treasury's decision another decision that the Treasury had power to make.
- (3) If the tribunal substitutes its decision for the Treasury's, the tribunal may rely on paragraph 16 –
- (a) to the same extent as the Treasury (which may mean applying the same percentage reduction as the Treasury to a different starting point), or
 - (b) to a different extent, but only if the tribunal thinks that the Treasury's decision in respect of the application of paragraph 16 was flawed.
- (4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (5) In this paragraph "tribunal" means the VAT and Duties Tribunal (as appropriate by virtue of paragraph 21(1)).

Reasonable excuse

23. (1) If P satisfies the Treasury or (on appeal) the VAT and Duties Tribunal that there is a reasonable excuse for a failure to make a return –
- (a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure; and

- (b) the failure does not count for the purposes of paragraph 13B(2), 13C, 13G(2) and 13H.
- (2) For the purposes of sub-paragraph (1) –
- (a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,
 - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
 - (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Determination of penalty geared to tax liability where no return made

24. (1) References to a liability to tax which would have been shown in a return are references to the amount which, if a complete and accurate return had been delivered on the filing date, would have been shown to be due or payable to the taxpayer in respect of the tax concerned for the period to which the return relates.

(2) In the case of a penalty which is assessed at a time before P makes the return to which the penalty relates –

- (a) the Treasury is to determine the amount mentioned in sub-paragraph (1) to the best of the Treasury's information and belief, and
 - (b) if P subsequently makes a return, the penalty must be re-assessed by reference to the amount of tax shown to be due and payable in that return (but subject to any amendments or corrections to the return).
- (3) ...Omitted.

Partnerships

25. ...Omitted.

Double jeopardy

26. P is not liable to a penalty under any paragraph of this Schedule in respect of a failure or action in respect of which P has been convicted of an offence.

Interpretation

27. (1) This paragraph applies for the construction of this Schedule.
- (2) The withholding of information by P is –
- (a) "deliberate and concealed" if P deliberately withholds the information and makes arrangements to conceal the fact that the information has been withheld, and
 - (b) "deliberate but not concealed" if P deliberately withholds the information but does not make arrangements to conceal the fact that the information has been withheld.

(3) ...Omitted.

(4) ...Omitted.

(5) ...Omitted.

FINANCE ACT 2009

SCHEDULE 56

PENALTY FOR FAILURE TO MAKE PAYMENTS ON TIME

Penalty for failure to pay tax

1. (1) A penalty is payable by a person ("P") where P fails to pay an amount of tax specified in column 3 of the Table below on or before the date specified in column 4.

(2) Paragraphs 3 to 8J set out –

(a) the circumstances in which a penalty is payable, and

(b) subject to paragraph 9, the amount of the penalty.

(3) If P's failure falls within more than one provision of this Schedule, P is liable to a penalty under each of those provisions.

(4) In the following provisions of this Schedule, the "penalty date", in relation to an amount of tax, means the date on which a penalty is first payable for failing to pay the amount (that is to say, the day after the date specified in or for the purposes of column 4 of the Table).

(5) Sub-paragraph (4) is subject to paragraph 2A.

	Tax to which payment relates	Amount of tax payable	Date after which penalty is incurred
1	Value added tax	Amount payable under section 25(1) of the Value Added Tax Act 1996 (except an amount falling within item 2, 13 or 14).	The date determined – (a) by or under regulations under section 25 of the Value Added Tax Act 1996; or (b) in accordance with an order made under section 28 of that Act.
2	Value added tax	Amount payable under section 25(1) of the Value Added Tax Act 1996 which is an instalment of an amount due in respect of a period of 9 months or more ("amount A").	The date on or before which P must pay any balancing payment or other outstanding payment due in respect of amount A.

3	Air passenger duty	Amount payable under regulations under section 38 of the Finance Act 1994 (of Parliament) (except an amount falling within items 12, 13 or 14).	The date determined by or under regulations under section 38 of the Finance Act 1994 (of Parliament) as the date by which the amount must be paid.
4	Alcoholic liquor duties	Amount payable under regulations under sections 12, 44, 52 or 58 of the Alcoholic Liquor Duties Act 1986 (except an item falling within items 12, 13 or 14).	The date determined under regulations under sections 12, 44, 52 or 58 of the Alcoholic Liquor Duties Act 1986 as the date by which the amount must be paid.
5	Tobacco products duty	Amount payable under regulations under section 6 of the Tobacco Products Duty Act 1986 (except an item falling within items 12, 13 or 14).	The date determined under regulations under section 6 of the Tobacco Products Duty Act 1986 as the date by which the amount must be paid.
6	Hydrocarbon oil duties	Amount payable under regulations made under sections 24 or 27 of the Hydrocarbon Oil Duties Act 1986 (except an item falling within items 12, 13 or 14).	The date determined under regulations under sections 24 or 27 of the Hydrocarbon Oil Duties Act 1986 as the date by which the amount must be paid.
6A	Machine games duty	Amount payable under paragraph 6 of Schedule 24 to the Finance Act 2012 (of Parliament), as it has effect in the Island, (except an amount falling within items 12 to 14).	The date determined by or under regulations under paragraph 19 of Schedule 24 to the Finance Act 2012 (of Parliament), as it has effect in the Island, as the date by which the amount must be paid.
7	...Omitted.		
8	...Omitted.		
9	Lottery duty	Amount payable under section 26 of the Finance Act 1993 (of Parliament) (except an item falling within items 12, 13 or 14).	The date determined – (a) by section 26 of the Finance Act 1993 (of Parliament); or (b) by or under regulations made under that section as the date by which the amount must be paid.

10	Gambling duty	Amount payable under sections 12 or 13 (payment of gambling duty) of the Gambling Duty Act 2012.	The date determined under regulations under section 15 (returns) of the Gambling Duty Act 2012 as the date by which the amount must be paid.
10A	Excise duties	Amount payable under regulations under section 61A of the Customs and Excise Management Act 1986.	The date determined by or under regulations under section 61A of the Customs and Excise Management Act 1986 as the date by which the amount must be paid.
11	Value added tax	Amount assessed under section 73(1) of the Value Added Tax Act 1996 in the absence of a return.	The date by which the amount would have been required to be paid if it had been shown in the return.
12	Tax falling within any of items 3 to 11.	Amount assessed under section 12(1) of the Finance Act 1994 (of Parliament) in the absence of a return.	The date by which the amount would have been required to have been paid if it had been shown in the return.
13	Tax falling within any of items 1 to 11	Amount shown in an amendment or correction of a return showing an amount falling within any of items 1 to 11.	The date falling 30 days after – – (a) the date by which the amount must be paid; or (b) the date on which the amendment or correction is made, whichever is the later.
14	Tax falling within any of items 1 to 11.	Amount shown in an assessment or determination made by the Treasury in circumstances other than those set out in paragraph 2.	The date falling 30 days after – – (a) the date by which the amount must be paid; or (b) the date on which the assessment or determination is made, whichever is the later.

Assessments and determinations in default of return

2. The circumstances referred to in item 14 are where –
 - (a) P or another person is required to make or deliver a return falling within any item in the Table in Schedule 55,
 - (b) that person fails to make or deliver the return on or before the date by which it is required to be made or delivered, and
 - (c) if the return had been made or delivered as required, the return would have shown that an amount falling within any of items 1 and 1 was due and payable.

Amount of penalty: occasional amounts and amounts in respect of periods of 6 months or more

3. (1) This paragraph applies in the case of –
 - (a) a payment of tax falling within any of items 2 or 12 to 14 in the Table,
 - (b) ...omitted,
 - (c) ...omitted,
 - (d) a payment of tax within item 1 which relates to a transitional period for the purposes of the annual accounting scheme.

(1A) In sub-paragraph (1)(d), a transitional period for the purposes of the annual accounting scheme is a prescribed accounting period (within the meaning of section 25(1) of the Value Added Tax Act 1996) which –

- (a) ends on the immediately preceding date indicated by the Treasury in a notification of authorisation under regulation 50 of the Value Added Tax Regulations 1996 (admission to annual accounting scheme); or
 - (b) begins on the day immediately following the end of the last period of 12 months for which such an authorisation has effect.
- (2) P is liable to a penalty of 5% of the unpaid tax.
- (3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.
- (4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

4. ...Omitted.

Amount of penalty: PAYE and CIS amounts

5. ...Omitted.
6. ...Omitted.
7. ...Omitted.
8. ...Omitted.

Amount of penalty: amounts in respect of periods between 2 and 6 months

8A. (1) Paragraphs 8B to 8E apply in the case of a payment of tax falling within any of items 1 and 3 to 11 in the Table which relates to a period of less than 6 months but more than 2 months.

(2) But those paragraphs do not apply in the case of a payment mentioned in paragraph 3 (1)(d).

(3) Paragraph 8K sets out how payments on account of VAT (item 6A) are to be treated for the purposes of paragraphs 8B to 8E.

8B. (1) A penalty period begins to run on the penalty date for the payment of tax.

(2) The penalty period ends with the day 12 months after the date specified in or for the purposes of column 4 for the payment, unless it is extended under paragraph 8C(2)(c) or 8H(2)(c).

8C (1) This paragraph applies if –

- (a) a penalty period has begun under paragraph 8B or 8G because P has failed to make a payment (“payment A”), and
- (b) before the end of the period, P fails to make another payment (“payment B”) falling within the same item in the Table as payment A.

(2) In such a case –

- (a) paragraph 8B(1) does not apply to the failure to make payment B,
- (b) P is liable to a penalty under this paragraph for that failure, and
- (c) the penalty period that has begun is extended so that it ends with the day 12 months after the date specified in or for the purposes of column 4 for payment B.

(3) The amount of the penalty under this paragraph is determined by reference to the number of defaults that P has made during the penalty period.

(4) If the default is P's first default during the penalty period, P is liable, at the time of the default, to a penalty of 2% of the amount of the default.

(5) If the default is P's second during the penalty period, P is liable, at the time of the default, to a penalty of 3% of the amount of the default.

(6) If the default is P's third or subsequent default during the penalty period, P is liable, at the time of the default, to a penalty of 4% of the amount of the default.

(7) For the purposes of this paragraph –

- (a) P makes a default when P fails to pay an amount of tax in full on or before the date on which it becomes due and payable;
- (b) in accordance with sub-paragraph (1)(b), the references in sub-paragraphs (3) to (6) to a default are references to a default in relation to the tax to which payments A and B relate;

- (c) a default counts for the purposes of those sub-paragraphs if (but only if) the period to which the payment relates is less than 6 months;
- (d) the amount of a default is the amount which P fails to pay.

(8) A penalty period may be extended more than once under sub-paragraph (2)(c).

8D. If any amount of tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

8E. If any amount of the tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

Amount of penalty: amounts in respect of periods of 2 months or less

8F. (1) Paragraphs 8G to 8J apply in the case of a payment of tax falling within any of items 1 and 3 to 11 in the Table which relates to a period of 2 months or less.

(2) But those paragraphs do not apply in the case of a payment mentioned in paragraph 3 (1)(d).

8G. (1) A penalty period begins to run on the penalty date for the payment of tax.

(2) The penalty period ends with the day 12 months after the date specified in or for the purposes of column 4 for the payment, unless it is extended under paragraph 8C(2)(c) or 8H(2)(c).

8H. (1) This paragraph applies if –

- (a) a penalty period has begun under paragraph 8B or 8G because P has failed to make a payment (“payment A”), and
- (b) before the end of the period, P fails to make another payment (“payment B”) falling within the same item in the Table as payment A.

(2) In such a case –

- (a) paragraph 8G(1) does not apply to the failure to make payment B,
- (b) P is liable to a penalty under this paragraph for that failure, and
- (c) the penalty period that has begun is extended so that it ends with the day 12 months after the date specified in or for the purposes of column 4 for payment B.

(3) The amount of the penalty under this paragraph is determined by reference to the number of defaults that P has made during the penalty period.

(4) If the default is P's first, second or third default during the penalty period, P is liable, at the time of the default, to a penalty of 1% of the amount of the default.

(5) If the default is P's fourth, fifth or sixth default during the penalty period, P is liable, at the time of the default, to a penalty of 2% of the amount of the default.

(6) If the default is P's seventh, eighth or ninth default during the penalty period, P is liable, at the time of the default, to a penalty of 3% of the amount of the default.

(7) If the default is P's tenth or a subsequent default during the penalty period, P is liable, at the time of the default, to a penalty of 4% of the amount of the default.

(8) For the purposes of this paragraph –

- (a) P makes a default when P fails to pay an amount of tax in full on or before the date on which it becomes due and payable;
- (b) in accordance with sub-paragraph (1)(b), the references in sub-paragraphs (3) to (7) to a default are references to a default in relation to the tax to which payments A and B relate;
- (c) a default counts for the purposes of those sub-paragraphs if (but only if) the period to which the payment relates is less than 6 months;
- (d) the amount of a default is the amount which P fails to pay.

(9) A penalty period may be extended more than once under sub-paragraph (2)(c).

8I. If any amount of the tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

8J. If any amount of the tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

Calculation of unpaid VAT: treatment of payments on account

8K. (1) Where P is required, by virtue of an order under section 28 of the Value Added Tax Act 1996, to make any payment on account of VAT –

- (a) each payment is to be treated for the purposes of this Schedule as relating to the prescribed accounting period in respect of which it is to be paid (and not as relating to the interval between the dates on which payments on account are required to be made), and
- (b) the amount of tax unpaid in respect of the prescribed accounting period is the total of the amounts produced by paragraphs (a) and (b) of sub-paragraph (3).

(2) In determining that total –

- (a) if there is more than one amount of POAD or POAT, those amounts are to be added together, and
- (b) if the amount produced by sub-paragraph (3)(b) is less than zero, that amount is to be disregarded.

(3) The amounts are –

- (a) POAD – POAT; and
- (b) BPD – BPT.

(4) In this paragraph –

“POAD” is the amount of any payment on account due in respect of the prescribed accounting period,

“POAT” is the amount of any payment on account paid on time (that is, on or before the date on which it was required to be made),

“BPD” (which is the balancing payment due in respect of the prescribed accounting period) is equal to; and

“BPT” (which is the amount paid on time in satisfaction of any liability to pay BPD) is equal to.

- (5) In sub-paragraph (4) –

“PAPD” is the amount of VAT due in respect of the prescribed accounting period,

“PAPP” is the total amount paid, on or before the last day on which P is required to make payment in respect of that period, in satisfaction of any liability to pay PAPD, and

“POAP” is the total amount paid, on or before that day (but whether or not paid on time), in satisfaction of any liability to pay POAD.

Special reduction

9. (1) If the Treasury thinks it right because of special circumstances, it may reduce a penalty under any paragraph of this Schedule.

- (2) In sub-paragraph (1) “special circumstances” does not include –

- (a) ability to pay, or
- (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to –

- (a) staying a penalty, and
- (b) agreeing a compromise in relation to proceedings for a penalty.

Suspension of penalty during currency of agreement for deferred payment

10. (1) This paragraph applies if –

- (a) P fails to pay an amount of tax when it becomes due and payable,
- (b) P makes a request to the Treasury that payment of the amount of tax be deferred, and
- (c) the Treasury agrees that payment of that amount may be deferred for a period (“the deferral period”).

(2) If P would (apart from this sub-paragraph) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under any paragraph of this Schedule for failing to pay that amount, P is not liable to that penalty.

- (3) But if –

- (a) P breaks the agreement (see sub-paragraph (4)), and

- (b) the Treasury serves on P a notice specifying any penalty to which P would become liable apart from sub-paragraph (2),

P becomes liable, at the date of the notice, to that penalty.

- (4) P breaks an agreement if –

- (a) P fails to pay the amount of tax in question when the deferral period ends, or
- (b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.

(5) If the agreement mentioned in sub-paragraph (1)(c) is varied at any time by a further agreement between P and the Treasury, this paragraph applies from that time to the agreement as varied.

Assessment

11. (1) Where P is liable for a penalty under any paragraph of this Schedule the Treasury must –

- (a) assess the penalty,
- (b) notify P, and
- (c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under any paragraph of this Schedule must be paid before the end of the period of 30 days beginning with the day on which notice of the assessment of the penalty is issued.

- (3) An assessment of a penalty under any paragraph of this Schedule –

- (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),
- (b) may be enforced as if it were an assessment to tax, and
- (c) may be combined with an assessment to tax.

(4) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of tax which was due or payable.

(4A) A replacement assessment may be made in respect of a penalty if an earlier assessment operated by reference to an overestimate of an amount of tax which was due or payable.

(5) A supplementary assessment may be made in respect of a penalty under paragraph 6 if –

- (a) notice of the assessment of the penalty was issued before the end of the tax year, and
- (b) before the end of the year, P makes a further default (so that the penalty for the earlier default is increased).

12. (1) An assessment of a penalty under any paragraph of this Schedule in respect of any amount must be made on or before the later of date A and (where it applies) date B.
- (2) Date A is the last day of the period of 2 years beginning with the date specified in or for the purposes of column 4 of the Table (that is to say, the last date on which payment may be made without incurring a penalty).
- (3) Date B is the last day of the period of 12 months beginning with –
- (a) the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or
 - (b) if there is no such assessment, the date on which that amount of tax is ascertained.
- (4) In sub-paragraph (3)(a) “appeal period” means the period during which –
- (a) an appeal could be brought, or
 - (b) an appeal that has been brought has not been determined or withdrawn.

Appeal

13. (1) P may appeal against a decision of the Treasury that a penalty is payable by P.
- (2) P may appeal against a decision of the Treasury as to the amount of a penalty payable by P.
14. (1) An appeal under paragraph 13 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to the Treasury, about the Treasury review of the decision or about determination of the appeal by the VAT and Duties Tribunal).
- (2) Sub-paragraph (1) does not apply –
- (a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or
 - (b) in respect of any other matter expressly provided for by this Act.
15. (1) On an appeal under paragraph 13(1) that is notified to the tribunal, the tribunal may affirm or cancel the Treasury’s decision.
- (2) On an appeal under paragraph 13(2) that is notified to the tribunal, the tribunal may –
- (a) affirm the Treasury’s decision, or
 - (b) substitute for the Treasury’s decision another decision that the Treasury had power to make.
- (3) If the tribunal substitutes its decision for the Treasury’s, the tribunal may rely on paragraph 9 –
- (a) to the same extent as the Treasury (which may mean applying the same percentage reduction as the Treasury to a different starting point), or

-
- (b) to a different extent, but only if the tribunal thinks that the Treasury's decision in respect of the application of paragraph 9 was flawed.

(4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

- (5) In this paragraph "tribunal" means the VAT and Duties Tribunal.

Reasonable excuse

16. (1) If P satisfies the Treasury or (on appeal) the VAT and Duties Tribunal that there is a reasonable excuse for a failure to make a payment –

- (a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure; and
- (b) the failure does not count as a default for the purposes of paragraphs 6, 8B, 8C, 8G and 8H.

(2) For the purposes of sub-paragraph (1) –

- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
- (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
- (c) where P has a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Double jeopardy

17. P is not liable to a penalty under any paragraph of this Schedule in respect of a failure or action in respect of which P has been convicted of an offence.

Interpretation

18. ...Omitted.

FINANCE ACT 2011

SCHEDULE 23

DATA-GATHERING POWERS

PART 1

POWER TO OBTAIN DATA

Power to give notice

- 1 (1) An officer may by notice in writing require a relevant data-holder to provide relevant data.
- (2) Part 2 of this Schedule sets out who is a relevant data-holder.
- (3) In relation to a relevant data-holder, "relevant data" means data of a kind specified for that type of data-holder in regulations made by the Treasury.
- (4) The data that a relevant data-holder may be required to provide—
- (a) may be general data or data relating to particular persons or matters, and
 - (b) may include personal data (such as names and addresses of individuals).
- (5) A notice under this paragraph is referred to as a data-holder notice.

Purpose of power

- 2 (1) The power in paragraph 1(1) is exercisable to assist with the efficient and effective discharge of the Treasury's tax functions—
- (a) whether a particular function or more generally, and
 - (b) whether involving a particular taxpayer or taxpayers generally.
- (2) It is additional to and is not limited by other powers that the Treasury may have to obtain data (for example, in Schedule 36 to FA 2008).
- (3) But it may not be used (in place of the power in paragraph 1 of that Schedule) to obtain data required for the purpose of checking the relevant data-holder's own tax position.
- (4) Sub-paragraph (3) does not prevent use of the power in paragraph 1(1) of this Schedule to obtain data about a matter mentioned in paragraph 14(3)(a) (beneficial ownership of certain payments etc).
- (5) Nothing in this paragraph limits the use that may be made of data that have been obtained under this Schedule.

Specifying relevant data

- 3 (1) A data-holder notice must specify the relevant data to be provided.
- (2) Relevant data may not be specified in a data-holder notice unless an officer has reason to believe that the data could have a bearing on chargeable or other periods ending on or after the applicable day.

(3) The applicable day is the first day of the period of 4 years ending with the day on which the notice is given.

Compliance

4 (1) Relevant data specified in a data-holder notice must be provided by such means and in such form as is reasonably specified in the notice.

(2) If the notice specifies that the data are to be provided by sending them somewhere, the data must be sent to such address and within such period as is reasonably specified in the notice.

(3) If the notice specifies that the data are to be provided by making documents available for inspection somewhere, the documents must be made available for inspection at such place and time as is—

- (a) reasonably specified in the notice, or
- (b) agreed between an officer and the data-holder.

(4) A place used solely as a dwelling may not be specified under sub-paragraph (3)(a).

(5) A data-holder notice requiring the provision of specified documents requires the documents to be provided only if they are in the data-holder's possession or power.

(6) A power in this paragraph to specify something in a notice includes power to specify it in a document referred to in the notice.

Approval by tribunal

5 (1) An officer may ask for the approval of the tribunal before giving a data-holder notice.

(2) This does not require an officer to do so (but see paragraph 28(3) for the effect of obtaining approval).

(3) An application for approval under this paragraph may be made without notice (except as required under sub-paragraph (4)).

(4) The tribunal may not approve the giving of a data-holder notice unless—

- (a) the application for approval is made by, or with the agreement of, an authorised officer,
- (b) the tribunal is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
- (c) the data-holder has been told that the data are to be required and given a reasonable opportunity to make representations to an officer, and
- (d) the tribunal has been given a summary of any representations made by the data-holder.

(5) Paragraphs (c) and (d) of sub-paragraph (4) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice any purpose for which the data are required.

(6) A decision by the tribunal under this paragraph is final.

(7) "Authorised officer" means an officer who is, or is a member of a class of officers who are, authorised by the Treasury for the purposes of this paragraph.

Power to copy documents

6 An officer may take copies of or make extracts from any document provided pursuant to a data-holder notice.

Power to retain documents

7 (1) If an officer thinks it reasonable to do so, the Treasury may retain documents provided pursuant to a data-holder notice for a reasonable period.

(2) While a document is being retained, the data-holder may, if the document is reasonably required for any purpose, request a copy of it.

(3) The retention of a document under this paragraph is not to be regarded as breaking any lien claimed on the document.

(4) If a document retained under this paragraph is lost or damaged, the Treasury is liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.

PART 2

RELEVANT DATA-HOLDERS

Introduction

8 (1) This Part of this Schedule sets out who is a relevant data-holder for the purposes of this Schedule.

(2) Descriptions of the various types of data-holder are to be read as including anyone who was previously of such a description.

Salaries, fees, commission etc

9 ... Omitted

10 ... Omitted

11 ... Omitted

Interest etc

12 ... Omitted

Income, assets etc belonging to others

13 A person who (in whatever capacity) is in receipt of money or value of or belonging to another is a relevant data-holder.

Payments derived from securities

14 ... Omitted

15 ... Omitted

Grants and subsidies out of public funds

16 (1) A person by whom a payment out of public funds is made by way of grant or subsidy is a relevant data-holder.

(2) For these purposes, a payment is a payment out of public funds if it is provided directly or indirectly by—

- (a) the Crown,
- (b) any government, public or local authority whether in the Island or elsewhere, or
- (c) any EU institution.

Licences, approvals etc

17 (1) A person by whom licences or approvals are issued or a register is maintained is a relevant data-holder.

(2) "Register" includes—

- (a) any record or list that a local authority maintains, and
- (b) any record or list that any other person is required or permitted to maintain by or under an enactment.

Rent and other payments arising from land

18 (1) Each of the following is a relevant data-holder—

- (a) a lessee (or successor in title of a lessee),
- (b) an occupier of land,
- (c) a person having the use of land, and
- (d) a person who, as agent, manages land or is in receipt of rent or other payments arising from land.

(2) The reference to a person who manages land includes a person who markets property to potential tenants, searches for tenants or provides similar services.

Dealing etc in securities

19 ... Omitted

Dealing in other property

20 Each of the following is a relevant data-holder—

- (a) the committee or other person or body of persons responsible for managing a clearing house for any terminal market in commodities,
- (b) an auctioneer,

- (c) a person carrying on a business of dealing in any description of tangible movable property, and
- (d) a person carrying on a business of acting as an agent or intermediary in dealings in any description of tangible movable property.

Lloyd's

21 A person who is registered as managing agent at Lloyd's in relation to a syndicate of underwriting members of Lloyd's is a relevant data-holder.

Investment plans etc

22 ... Omitted

Petroleum activities

23 ... Omitted

Insurance activities

24 ... Omitted

Environmental activities

25 ... Omitted

Settlements

26 ... Omitted

Charities

27 A charity is a relevant data-holder.

PART 3

APPEALS AGAINST DATA-HOLDER NOTICES

Right of appeal

28 (1) The data-holder may appeal against a data-holder notice, or any requirement in such a notice, on any of the following grounds—

- (a) it is unduly onerous to comply with the notice or requirement,
- (b) the data-holder is not a relevant data-holder, or
- (c) data specified in the notice are not relevant data.

(2) Sub-paragraph (1)(a) does not apply to a requirement to provide data that form part of the data-holder's statutory records.

(3) Sub-paragraph (1) does not apply if the tribunal approved the giving of the notice in accordance with paragraph 5.

Procedure for appeal

- 29 (1) Notice of an appeal under paragraph 28 must be given—
- (a) in writing,
 - (b) before the end of the period of 30 days beginning with the date on which the data-holder notice was given, and
 - (c) to the officer by whom the data-holder notice was given.
- (2) It must state the grounds of appeal.
- (3) On an appeal that is notified to the tribunal, the tribunal may confirm, vary or set aside the data-holder notice or a requirement in it.
- (4) If the tribunal confirms or varies the notice or a requirement in it, the data-holder 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 following the tribunal's decision.
- (5) A decision by the tribunal under this Part is final.
- (6) ... Omitted

PART 4

PENALTIES

Penalties for failure to comply

- 30 (1) If the data-holder fails to comply with a data-holder notice, the data-holder is liable to a penalty of £300.
- (2) A reference in this Schedule to failing to comply with a data-holder notice includes—
- (a) concealing, destroying or otherwise disposing of a material document, or
 - (b) arranging for any such concealment, destruction or disposal.
- (3) A document is a material document if, at the time when the data-holder acts—
- (a) the data-holder has received a data-holder notice requiring the dataholder to provide the document or data contained in the document, or
 - (b) the data-holder has not received such a notice but has been informed by an officer that the data-holder will do so or is likely to do so.
- (4) A document is not a material document by virtue of sub-paragraph (3)(a) if the data-holder notice has already been complied with, unless—
- (a) the data-holder has been notified in writing by an officer that the data-holder must continue to preserve the document, and

- (b) the notification has not been withdrawn.

(5) A document is not a material document by virtue of sub-paragraph (3)(b) if more than 6 months have elapsed since the data-holder was (or was last) informed.

Daily default penalties for failure to comply

31 If—

- (a) a penalty under paragraph 30 is assessed, and
- (b) the failure in question continues after the data-holder has been notified of the assessment,

the data-holder is liable to a further penalty, for each subsequent day on which the failure continues, of an amount not exceeding £60 for each such day.

Penalties for inaccurate information or documents

32 (1) This paragraph applies if—

- (a) in complying with a data-holder notice, the data-holder provides inaccurate data, and
- (b) condition A, B or C is met.

(2) Condition A is that the inaccuracy is—

- (a) due to a failure by the data-holder to take reasonable care, or
- (b) deliberate on the data-holder's part.

(3) Condition B is that the data-holder knows of the inaccuracy at the time the data are provided but does not inform the Treasury at that time.

(4) Condition C is that the data-holder—

- (a) discovers the inaccuracy some time later, and
- (b) fails to take reasonable steps to inform the Treasury.

(5) If this paragraph applies, the data-holder is liable to a penalty not exceeding £3,000.

Failure to comply with time limit

33 A failure to do anything required to be done within a limited period of time does not give rise to liability under paragraph 30 or 31 if the thing was done within such further time (if any) as an officer may have allowed.

Reasonable excuse

34 (1) Liability to a penalty under paragraph 30 or 31 does not arise if the data-holder satisfies the Treasury or (on an appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of this paragraph—

- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the data-holder's control,
- (b) if the data-holder relies on another person to do anything, that is not a reasonable excuse unless the data-holder took reasonable care to avoid the failure,
- (c) if the data-holder had a reasonable excuse for the failure but the excuse has ceased, the data-holder is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Assessment of penalties

35 (1) If the data-holder becomes liable to a penalty under paragraph 30, 31 or 32, the Treasury may assess the penalty.

(2) If it does so, it must notify the data-holder.

(3) An assessment of a penalty under paragraph 30 or 31 must be made within the period of 12 months beginning with the latest of the following—

- (a) the date on which the data-holder became liable to the penalty,
- (b) the end of the period in which notice of an appeal against the data-holder notice (or a requirement in it) could have been given, and
- (c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.

(4) An assessment of a penalty under paragraph 32 must be made—

- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer, and
- (b) within the period of 6 years beginning with the date on which the data-holder became liable to the penalty.

Right to appeal against penalty

36 The data-holder may appeal against a decision by an officer—

- (a) that a penalty is payable under paragraph 30, 31 or 32, or
- (b) as to the amount of such a penalty.

Procedure on appeal against penalty

37 (1) Notice of an appeal under paragraph 36 must be given—

- (a) in writing,
- (b) before the end of the period of 30 days beginning with the date on which notification under paragraph 35 was given, and
- (c) to the Treasury.

(2) It must state the grounds of appeal.

(3) On an appeal under paragraph 36(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.

(4) On an appeal under paragraph 36(b) that is notified to the tribunal, the tribunal may—

(a) confirm the decision, or

(b) substitute for the decision another decision that the officer had power to make.

(5) ... Omitted

Increased daily default penalty

38 (1) This paragraph applies if—

(a) a penalty under paragraph 31 is assessed under paragraph 35,

(b) the failure in respect of which that assessment is made continues for more than 30 days beginning with the date on which notification of that assessment is given, and

(c) the data-holder has been told that an application may be made under this paragraph for an increased daily penalty to be imposed.

(2) If this paragraph applies, an officer may make an application to the tribunal for an increased daily penalty to be imposed on the data-holder.

(3) If the tribunal decides that an increased daily penalty should be imposed, then for each applicable day (see paragraph 39) on which the failure continues—

(a) the data-holder is not liable to a penalty under paragraph 31 in respect of the failure, and

(b) the data-holder is liable instead to a penalty under this paragraph of an amount determined by the tribunal.

(4) The tribunal may not determine an amount exceeding £1,000 for each applicable day.

(5) But subject to that, in determining the amount the tribunal must have regard to—

(a) the likely cost to the data-holder of complying with the data-holder notice,

(b) any benefits to the data-holder of not complying with it, and

(c) any benefits to anyone else resulting from the data-holder's noncompliance.

39 (1) If a data-holder becomes liable to a penalty under paragraph 38, the Treasury must notify the data-holder.

(2) The notification must specify the day from which the increased penalty is to apply.

(3) That day and any subsequent day is an "applicable day" for the purposes of paragraph 38(3).

Enforcement of penalties

40 (1) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the date mentioned in sub-paragraph (2).

(2) That date is—

- (a) the date on which notification under paragraph 35 or 39 is given in respect of the penalty, or
- (b) if (in the case of a penalty under paragraph 30, 31 or 32) a notice of appeal under paragraph 36 is given, the date on which the appeal is finally determined or withdrawn.

(3) A penalty under this Schedule may be enforced as if it were tax charged in an assessment and due and payable.

Power to change amount of 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, it may by regulations substitute for the sums for the time being specified in paragraphs 30(1), 31, 32(5) and 38(4) such other sums as appear to it to be justified by the change.

(2) "Relevant date", in relation to a specified sum, means—

- (a) the day on which this Schedule comes into operation in the Island, and
- (b) each date on which the power conferred by sub-paragraph (1) has been exercised in relation to that sum.

(3) Regulations under this paragraph do not apply to—

- (a) a failure which began before the date on which they come into force, or
- (b) an inaccuracy in any data or document provided to the Treasury before that date.

Double jeopardy

42 The data-holder is not liable to a penalty under this Schedule in respect of anything in respect of which the data-holder has been convicted of an offence.

PART 5

MISCELLANEOUS PROVISION AND INTERPRETATION

Application of provisions of TMA 1970

43 ... Omitted

Regulations

44 ... Omitted

Tax

45 (1) In this Schedule "tax" means any or all of the following—

- (a) ... omitted
 - (b) ... omitted
 - (c) ... omitted
 - (d) VAT,
 - (e) ... omitted
 - (f) ... omitted
 - (g) ... omitted
 - (h) ... omitted
 - (i) ... omitted
 - (j) ... omitted
 - (k) ... omitted
 - (l) ... omitted
 - (m) relevant foreign tax.
- (2) ... Omitted
- (3) "VAT" means—
- (a) value added tax charged in accordance with Value Added Tax Act 1996, and
 - (b) value added tax charged in accordance with the law of a member State,

and includes any amount that is recoverable under paragraph 5(2) of Schedule 12 to Value Added Tax Act 1996 (amounts shown on invoices as VAT).

- (4) "Relevant foreign tax" means—
- (a) a tax of a member State, other than the Island, which is covered by the provisions for the exchange of information under the Directive of the Council of the European Communities No. 77/799/EEC (as amended from time to time), and
 - (b) ... Omitted

Statutory records

46 (1) For the purposes of this Schedule data form part of a data-holder's statutory records if they are data that the data-holder is required to keep and preserve under or by virtue of any enactment relating to tax.

(2) Data cease to form part of a data-holder's statutory records when the period for which the data are required to be preserved under or by virtue of that enactment has expired.

General interpretation

47 In this Schedule—

“address” includes an electronic address;

“chargeable period” means a tax year, accounting period or other period for which a tax is charged;

“charity” has the meaning given by section 14 of the Charities Act 1962 (Vol. XIX, p.632);

“data” includes information held in any form;

“the data-holder”, in relation to a data-holder notice, means the person to whom the notice is addressed;

“data-holder notice” is defined in paragraph 1;

“dividend” includes any kind of distribution;

“document” includes a copy of a document (see also section 114 of FA 2008);

“FA 2008” means the Finance Act 2008 (c.9 of Parliament);

“officer” has the same meaning as in section 184(1) of the Customs and Excise Management Act 1986 (c.34);

“provide” includes make available for inspection;

“specify” includes describe;

“securities” includes—

- (a) shares and stock,
- (b) debentures, including debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness, and
- (c) warrants or other instruments entitling the holder to subscribe for or otherwise acquire anything within paragraph (a) or (b),

issued by or on behalf of a person resident in, or a government or public or local authority of, any country (including a country outside the Island);

“tax functions” means functions relating to tax;

“the tribunal” means the VAT and Duties Tribunal.

48 A reference in this Schedule to providing data includes—

- (a) preparing and delivering a return, statement or declaration, and
- (b) providing documents.

49 (1) A reference in this Schedule to the carrying on of a business also includes—

- (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 or any other public authority.

(2) ... Omitted

Crown application

50 This Schedule applies to the Crown but not to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947).

PART 6

CONSEQUENTIAL PROVISIONS

TMA 1970

51 ... Omitted

FA 1973

52 ... Omitted

FA 1974

53 ... *Omitted*

FA 1986

54 ... Omitted

ICTA

55 ... Omitted

FA 1989

56 ... Omitted

ITTOIA 2005

57 ... Omitted

FA 2005

58 ... Omitted

CRCA 2005

59 ... Omitted

FA 2008

60 ... Omitted

61 ... Omitted

62 ... Omitted

CTA 2009

63 ... Omitted

CTA 2010

64 ... Omitted

PART 7

APPLICATION OF THIS SCHEDULE

65 ... Omitted

2012 No. 847

TAXES

The Data-gathering Powers (Relevant Data) Regulations 2012

Made

14th March 2012

Coming into force

1st April 2012

A draft of these Regulations was laid before, and approved by a resolution of, the House of Commons under paragraph 44(2) of Schedule 23 to the Finance Act 2011.

Accordingly the Treasury make the following Regulations in exercise of the power conferred by paragraph 1(3) of Schedule 23 to the Finance Act 2011.

Citation, commencement and interpretation

1. These Regulations may be cited as the Data-gathering Powers (Relevant Data) Regulations 2012.
2. In these Regulations “Schedule 23” means Schedule 23 to the Finance Act 2011.

Salaries, fees, commission etc

3. ... Omitted.
4. ... Omitted.

Interest etc

5. ... Omitted.
6. ... Omitted.
7. ... Omitted.
8. ... Omitted.
9. ... Omitted.
10. ... Omitted.

Income, assets etc belonging to others

11. The relevant data for a data-holder of the type described in paragraph 13 of Schedule 23 are—
 - (a) information relating to the money or value received; and
 - (b) the name and address of the beneficial owner of the money or value.

Payments derived from securities

12. ... Omitted.

13. ... Omitted.

Grants and subsidies out of public funds

14. The relevant data for a data-holder of the type described in paragraph 16 of Schedule 23 are—

- (a) the name and address of the person to whom the payment has been made or on whose behalf the payment has been received;
- (b) the amount of the payment so made or received; and
- (c) the address of any property in respect of which the payment has been made.

Licences, approvals etc

15. The relevant data for a data-holder of the type described in paragraph 17 of Schedule 23 are—

- (a) the name and address of anyone who is or has been the holder of a licence or approval or to whom an entry in the register relates or related;
- (b) particulars of the licence, approval or entry;
- (c) information relating to any application for such a licence or approval or for entry on that register.

Rent and other payments arising from land

16. (1) The relevant data for a data-holder of the type described in paragraph 18 of Schedule 23 are—

- (a) information relating to the terms applying to the lease, occupation or use of land;
- (b) information relating to any consideration given for the grant or assignment of the tenancy;
- (c) information relating to any person on whose behalf the land is managed or the payments received, including particulars of payments arising from the land.

(2) In this regulation—

- (a) "lease" includes an agreement for a lease, and any tenancy, but does not include a mortgage or heritable security;
- (b) "lessee" includes a successor in title of a lease; and
- (c) in relation to Scotland, "assignment" means an assignation.

Dealing etc in securities

17. ... Omitted.

Dealing in other property

18. The relevant data for a data-holder of the type described in paragraph 20 of Schedule 23 are—

- (a) particulars of any transactions effected through a clearing house;
- (b) particulars of any transaction which meets the following conditions—
 - (i) the transaction is effected by or through that person;

- (ii) in the transaction, an asset which is tangible moveable property is disposed of; and
- (iii) the amount or value of the consideration for the disposal exceeds, in the hands of the recipient, £6,000.

Lloyd's

19. The relevant data for a data-holder of the type described in paragraph 21 of Schedule 23 are information and documents relating to, and to the activities of, the syndicate of underwriting members of Lloyd's.

Investment plans etc

20. ... Omitted.

Petroleum activities

21. ... Omitted.

Insurance activities

22. ... Omitted.

Environmental activities

23. ... Omitted.

Settlements

24. ... Omitted.

Charities

25. ... Omitted.

Michael Fabricant
James Duddridge
Two of the Lords Commissioners of Her Majesty's Treasury

14th March 2012

FINANCE ACT 2012

SCHEDULE 24

Section 191(3)

MACHINE GAMES DUTY

Part 1

Imposition of Duty

The duty

1 A duty of excise, to be known as machine games duty, is to be charged on the playing of dutiable machine games in the Island.

Dutiable machine games

2 (1) A "machine game" is a game (whether of skill or chance or both) played on a machine for a prize.

(2) A machine game is "dutiable" if—

- (a) the prize or at least one of the prizes that can be won from playing the game on the machine is or includes cash, and
- (b) the maximum amount of cash that a player can win from playing the game on the machine exceeds the lowest charge payable for playing the game on the machine.

(3) "Cash" means money or anything that may reasonably be considered to equate to money, including—

- (a) anything that can be used in the same way as if it were money, and
- (b) anything that allows a person to obtain money on demand or otherwise represents a promise to pay a person money on demand.

(4) The things mentioned in sub-paragraph (3) include—

- (a) anything of an intangible nature (such as points), and
- (b) anything that a person has as a result of the taking of any step by someone else (such as the crediting of an account).

(5) If an adult would reasonably assume that a machine game satisfies the tests in sub-paragraph (2)(a) and (b) (taking into account the way in which the game is presented and all the other circumstances of the case), the game is taken to be a dutiable machine game, whether or not it does in fact satisfy those tests.

(6) In identifying for the purposes of this paragraph the lowest charge payable for playing a game, any offer that waives or permits a player to pay less than the charge that the player would be required to pay without the offer is disregarded.

(7) Paragraph 3 makes further provision about what counts as a dutiable machine game for the purposes of this Schedule.

- 3 (1) A game that would otherwise be a dutiable machine game does not count as one if—
- (a) it involves betting on future real events,
 - (b) ... omitted
 - (c) lottery duty is charged under section 24 of the Finance Act 1993 (of Parliament), as it has effect in the Island, on the taking of a ticket or chance in it, or
 - (d) *is a real game of chance that is non-virtual and which is played on premises licensed under section 3 of the Casino Act 1986.*
- (2) ... omitted
- (3) A game consisting of several stages counts as a dutiable machine game if—
- (a) at least one stage would (if played on its own) be a dutiable machine game, or
 - (b) the stages (taken together) amount to a dutiable machine game.
- (4) If more than one game can be played on a given machine, each game is to be considered separately in deciding whether it is a dutiable machine game.
- 4 The Treasury may by order specify criteria to be taken into account in deciding—
- (a) whether a particular game (or class of game) falls within the definitions in paragraph 2 (1) and (2), and
 - (b) what counts as a single go at playing a particular game (or class of game).

Types of machine

5 ...Omitted

How the duty is charged

- 6 (1) Machine games duty is charged on a taxable person's total net takings in an accounting period for each type of machine.
- (2) The amount of duty is found by applying the standard rate as a percentage of the person's total net takings in the accounting period.
- (3) ...Omitted.
- (4) The person's "total net takings" in the accounting period are the sum of the person's net takings in the period for all the relevant machines.
- (5) The person's "net takings" in the period for each relevant machine are determined in accordance with paragraphs 7 and 8.
- (6) ...Omitted
- (7) For the meaning of "relevant machine" in relation to a taxable person and an accounting period, see paragraph 50.

Net takings per machine

- 7 (1) A taxable person's net takings in an accounting period for a relevant machine are—
- (a) the takings, less
 - (b) the payouts.
- (2) The takings are the charges that become due at any material time from players for playing dutiable machine games on that machine (irrespective of when the games are played or the prizes are paid out).
- (3) The payouts are the prizes (whether cash or non-cash) that are paid out at any material time to players as a result of playing dutiable machine games on that machine (irrespective of when the games are played or the charges become due).
- (4) Sub-paragraph (3) does not include prizes paid out to—
- (a) a person who is a registrable person in respect of the premises where the machine is located,
 - (b) a representative or employee of such a person at those premises, or
 - (c) a person acting for or at the direction of a person within paragraph (a).
- (5) Sub-paragraph (3) does not include prizes paid out unlawfully (for example, a prize paid out to a child or young person in breach of a condition attached to a certificate issued pursuant to section 3 of the Gaming (Amendment) Act 1984).
- (6) If it is not reasonably practicable to attribute charges and prizes to dutiable machine games or to apportion them between dutiable machine games and other games or other activities, any attribution or apportionment is to be done on a just and reasonable basis.
- (7) "Material time" means any time in the accounting period when the person is liable for machine games duty in respect of the machine.
- (8) The Treasury may by regulations make provision about the point in time at which a charge is taken to become due, or a prize is taken to be paid out, for the purposes of this paragraph.
- (9) If a machine game is played in pursuance of an offer that permits the player to pay nothing or less than the charge that the player would be required to pay without the offer, the charge (if any) is treated as becoming due when the player plays the game.
- (10) A prize that is paid out using a system involving redemption tickets, points or anything similar is taken to be paid out when the prize is redeemed (rather than when the means of redemption is issued or communicated to the winner).
- (11) Sub-paragraphs (9) and (10) do not limit the power in sub-paragraph (8).
- 8 (1) In calculating the takings and the payouts under paragraph 7, the following amounts are to be left out of account—
- (a) amounts arising from playing dutiable machine games on a domestic occasion, and
 - (b) amounts arising in any other circumstances specified by the Treasury by order.

-
- (2) The power in sub-paragraph (1)(b)—
- (a) may be exercised generally or in relation to particular cases or kinds of case, and
 - (b) may include provision requiring specified conditions to be met before amounts are left out of account.

The rates

9 The standard rate is 15%.

Negative amounts of duty

10 ...Omitted.

Who is liable

11 (1) A person is liable for machine games duty in respect of a machine at any time if at the time—

- (a) the person is responsible for the premises where the machine is located (see paragraph 12),
- (b) the machine is available there for use by others for playing dutiable machine games on it, and
- (c) the machine is not an excluded dual-use machine (see paragraph 13).

(2) If, at any time, there is more than one person who satisfies sub-paragraph (1)(a) to (c) in respect of a machine, each of them is jointly and severally liable for the duty.

(3) A person who is liable for machine games duty in accordance with this paragraph is referred to as a “taxable person”.

Responsible for premises

12 (1) This paragraph sets out who is “responsible” for premises for the purposes of paragraph 11.

(2) If a person is registered in respect of premises, that person is responsible for the premises.

(3) A person is “registered” at any time in respect of premises if at the time there is an entry in force for that person in the MGD register in respect of those premises.

(4) If no-one is registered in respect of premises, any person who is a registrable person in respect of the premises or a representative of such a person is responsible for the premises.

(5) Paragraphs 20 to 24 make further provision about registration and registrable persons.

Excluded dual-use machines

13 (1) A machine is an “excluded dual-use machine” if—

- (a) it is capable of being used both for playing machine games and for some other purpose that is not related to playing machine games, and

- (b) condition A or B is met.
- (2) Condition A is that the machine is not designed, adapted or presented in such a way as to—
 - (a) facilitate its use for playing dutiable machine games, or
 - (b) draw attention to the possibility of its use for playing such games.
- (3) Condition B is that the machine is so designed, adapted or presented but the person mentioned in paragraph 11(1) does not know, and could not reasonably be expected to know, that it is.
- (4) References to a machine being “adapted” include a machine to which anything has been done, including the installation of computer software on it.
- (5) The Treasury may by order specify criteria to be taken into account in deciding whether a machine falls within the definition in sub-paragraph (1).
- (6) The Treasury may by order amend this paragraph.

Accounting periods

- 14
- (1) An accounting period for machine games duty is a period of 3 consecutive months.
 - (2) The first day of an accounting period is such day as the Treasury may direct.
 - (3) A direction under sub-paragraph (2) may apply generally or only to a particular case or class of case.
 - (4) The Treasury may agree with a registered person to make either or both of the following changes for the purposes of that person’s liability to machine games duty—
 - (a) to treat specified periods (whether longer or shorter than 3 months) as accounting periods,
 - (b) to begin accounting periods on days other than those applying by virtue of sub-paragraph (2).
 - (5) The Treasury may by direction make transitional arrangements for periods (whether of 3 months or otherwise) to be treated as accounting periods where—
 - (a) a person becomes or ceases to be registered, or
 - (b) an agreement under sub-paragraph (4) begins or ends.
 - (6) If there is reason to believe that a person who is liable for machine games duty may not discharge that liability as it falls due from time to time—
 - (a) the Treasury may by direction specify shorter periods to be treated as accounting periods for the purposes of that person’s liability to machine games duty,
 - (b) any such direction continues to have effect until it is withdrawn by the Treasury (unless otherwise specified in the direction), and
 - (c) withdrawal of a direction does not prevent the giving of further directions in respect of the same person.

Valuing prizes

- 15 (1) This paragraph applies in valuing prizes for the purposes of this Schedule (including in determining the maximum amount of cash that can be won from playing a machine game).
- (2) The value of a prize includes any portion that—
- (a) represents a refund of the charge payable for playing the game, or
 - (b) is calculated by reference to the amount of any such charge.
- (3) The value of a prize in the form of something that is reasonably considered to equate to money is equal to the amount of money to which the thing is reasonably considered to equate.
- (4) For a prize in the form of a currency other than sterling or in the form of something that is reasonably considered to equate to such a currency—
- (a) the value of the prize is, in relation to any day, the sterling equivalent of that currency determined by reference to the London closing rate for that currency for the previous day, and
 - (b) for the purposes of paragraph 7(3), the day in relation to which the value is assessed is the last day of the relevant accounting period.
- (5) The value of a prize other than cash depends on the person (“A”) from whom the person paying out the prize (“B”) obtained it—
- (a) if A was not connected with B when B obtained the prize from A, the value is the cost to B of obtaining the prize from A,
 - (b) if A was connected with B when B obtained the prize from A, the value is the smaller of—
 - (i) the cost to B of obtaining the prize from A, and
 - (ii) the amount that it would have cost B, at the time B obtained the prize, to obtain it from a person not connected with B.
- (6) Whether A is connected with B is to be determined in accordance with section 119C of the Income Tax Act 1970.
- (7) If the value of a prize other than cash cannot reasonably be determined in accordance with sub-paragraph (5), the value of the prize is such amount as is just and reasonable.
- (8) For the purposes of sub-paragraph (5), an amount paid by way of value added tax on the acquisition of a thing is to be treated as part of its cost (whether or not the amount is taken into account for the purpose of a credit or refund).
- (9) The Treasury may by regulations make further provision about the way in which prizes are to be valued for the purposes of this Schedule.
- (10) This paragraph applies to a part of a prize as it applies to a whole prize, and references to a prize are to be read accordingly.

Valuing charges

16 (1) This paragraph applies in determining for the purposes of this Schedule the amount of a charge (or the highest or lowest charge) payable or due for playing a machine game.

(2) If the amount of a charge in money's worth cannot be determined, it is assumed to be such amount as is just and reasonable.

(3) If a composite charge is payable or due for the opportunity to play a machine game more than once, the amount of the charge payable or due for each individual go is to be determined on a just and reasonable basis.

(4) If a composite charge is payable or due for the opportunity to play a machine game and for something else, the amount of the charge payable or due for playing the game is to be determined on a just and reasonable basis.

(5) The Treasury may by regulations make further provision about the way in which the amount of charges is to be determined for the purposes of this Schedule.

(6) Sub-paragraph (7) applies if—

- (a) a dutiable machine game is played in pursuance of an offer that permits the player to pay nothing or less than the charge that the player would have been required to pay without the offer,
- (b) the offer was made available to the player by way of winnings from an activity in respect of which another duty of excise or value added tax is charged, and
- (c) the value of the offer is deductible in calculating the amount of that other duty or value added tax payable in respect of that activity.

(7) The amount of the charge due from the player for playing the dutiable machine game is taken for the purposes of paragraph 7 to be the amount that the player would have been required to pay without the offer.

(8) Regulations under sub-paragraph (5) may include provision extending or modifying the circumstances in which sub-paragraph (7) applies.

Collection and management

17 The Treasury are responsible for the collection and management of machine games duty.

Returns

18 (1) The Treasury may make regulations requiring registrable persons to make returns to the Treasury in respect of relevant machines.

(2) Regulations under this paragraph may in particular make provision about—

- (a) liability to make a return,
- (b) timing,
- (c) form,
- (d) content,

- (e) method of making (including provision requiring returns to be made electronically),
- (f) declarations,
- (g) authentication, and
- (h) when a return is to be treated as made.

Assessment and payment

- 19 (1) The Treasury may make regulations about payment of machine games duty.
- (2) The regulations may in particular make provision about—
- (a) timing,
 - (b) instalments,
 - (c) methods of payment (including provision requiring payments to be made electronically),
 - (d) when payment is to be treated as made, and
 - (e) the process and effect of assessments by the Treasury of amounts due.
- (3) Subject to regulations under this paragraph, section 12 of Finance Act 1994 (assessment) (as it has effect in the Island) applies in relation to liability to pay machine games duty.

Registration

- 20 (1) The Treasury must maintain a register of those responsible for premises where relevant machines are located.
- (2) The register is to be known as the MGD register.
- (3) A person must not make a relevant machine available for use by others for playing dutiable machine games on it unless a registrable person (whether that person or someone else) is registered in respect of the premises where the machine is located.
- (4) Paragraph 21 identifies who is a registrable person in respect of premises.
- (5) This paragraph does not apply in relation to a relevant machine if it is reasonable to expect that the only takings and the only payouts in respect of the machine would be amounts that would be left out of account by virtue of paragraph 8.

Registrable persons

- 21 (1) If a person holds a relevant licence or certificate that permits the operation of relevant machines in respect of premises, then that person is a registrable person in respect of those premises.
- (2) ...Omitted.
- (3) If the premises are a stall at a travelling fair, each of the following is a registrable person in respect of the premises—

-
- (a) the holder of the stall, and
 - (b) the person in charge of the fair.
- (4) For premises not falling within any of the preceding sub-paragraphs, each person listed in sub-paragraph (5) is a registrable person in respect of the premises.
- (5) The persons are—
- (a) a person required to hold a relevant licence or permit in respect of the premises,
 - (b) an owner, lessee or occupier of the premises,
 - (c) a person who is responsible to the owner, lessee or occupier for the management of the premises,
 - (d) a person who is responsible for controlling the use of machines that are made available on the premises for use by others for playing dutiable machine games on them, and
 - (e) a person who is responsible for controlling the admission of persons to the premises or for providing persons resorting to the premises with goods or services.
- (6) “Relevant licence or permit” is defined in paragraph 22.
- (7) ...Omitted.
- (8) “Travelling fair” means a fair—
- (a) consisting wholly or principally of the provision of amusements,
 - (b) provided wholly or principally by persons who travel from place to place for the purpose of providing such fairs, and
 - (c) held at a place no part of which has been used for the provision of such a fair on more than 27 days in the same calendar year.
- 22 (1) A “relevant licence or permit” is –
- (a) a certificate pursuant to section 3 of the Gaming (Amendment) Act 1984;
 - (b) a licence issued under section 5 of the Gaming (Amendment) Act 1984;
 - (c) a licence issued under section 3 of the Casino Act 1986; or
 - (d) a licence issued pursuant to section 15 of the Gaming, Betting and Lotteries Act 1988.
- (2) ...Omitted.
- (3) ...Omitted.

Compulsory registration

- 23 (1) Sub-paragraph (2) applies if—

- (a) it appears to the Treasury that a relevant machine is being made available by anyone at premises for use by others for playing dutiable machine games on it, and
 - (b) no-one is registered in respect of the premises.
- (2) The Treasury may give a notice under this paragraph to any person it believes to be a registrable person in respect of the premises.
- (3) The notice is referred to as a "registration notice".
- (4) A person to whom a registration notice is given may appeal to an appeal tribunal against the notice.
- (5) The appeal may be made on either or both of the following grounds—
 - (a) that the person is not a registrable person in respect of the premises,
 - (b) that relevant machines are not being made available at the premises for use by others for playing dutiable machine games on them.
- (6) The appeal must be made within the period of 30 days beginning with the date of the registration notice.
- (7) If—
 - (a) no appeal is made within that period, or
 - (b) an appeal made within that period is dismissed or withdrawn, the Treasury may proceed to register the person in respect of the premises (unless another person has since become registered in respect of them).
- (8) Registration under this paragraph is treated as made with effect from the date of the registration notice.

Procedure for registration, de-registration etc

- 24
- (1) The Treasury may make regulations about registration.
 - (2) Regulations under this paragraph may in particular make provision about—
 - (a) the procedure for applying for registration (including provision requiring applications to be made electronically),
 - (b) the timing of applications,
 - (c) the information to be provided,
 - (d) the giving of registration notices and the making of appeals against them,
 - (e) the procedure for compulsory registration under paragraph 23,
 - (f) notification of changes to the register,
 - (g) de-registration, and
 - (h) re-registration after a person ceases to be registered.

(3) The regulations may permit the Treasury to make registration, or continued registration, subject to conditions.

(4) Those conditions may in particular require—

- (a) the provision of security for the payment of machine games duty, and
- (b) (in the case of a non-Island person) the appointment of a representative in the Island with responsibility for discharging liability to machine games duty.

(5) In sub-paragraph (4) “non-Island person” means a person who—

- (a) in the case of an individual, is not usually resident in the Island,
- (b) in the case of a body corporate, does not have an established place of business in the Island, and
- (c) in any other case, does not include an individual who is usually resident in the Island.

(6) The regulations may include provision for the registration of groups of persons; and may provide for the modification of the provisions of this Part of this Schedule in their application to groups.

(7) The modifications may, for example, include a modification ensuring that, where a representative member of a group is registered in place of the members, each member will be jointly and severally liable for the duty payable by the representative member on behalf of the group.

Publication of register

25 (1) The MGD register is to contain such details of those who are entered on the register and of the premises in respect of which they are registered as the Treasury thinks fit.

(2) The Treasury may publish the register (or a part of it).

(3) ...Omitted.

(4) ...Omitted.

(5) ...Omitted.

Profit-sharers

26 (1) Sub-paragraph (2) applies if—

- (a) it appears to the Treasury that machine games duty may be chargeable in respect of a machine,
- (b) no-one is registered in respect of the premises where the machine is located, and
- (c) either—
 - (i) the Treasury does not know the identity of any of those responsible for the premises (see paragraph 12), or

(ii) the Treasury does know the identity of one or more such persons but none of them is in the Island.

(2) The Treasury may give a notice under this paragraph to any person it believes to be beneficially entitled to a share of the machine's takings.

(3) The notice must inform the person to whom it is given ("P") that P will become liable to pay a share of the duty in accordance with this paragraph unless, within the specified period—

- (a) P provides the Treasury with sufficient information to identify a person in the Island who is responsible for the premises, or
- (b) P satisfies the Treasury that, when P became beneficially entitled to a share of the machine's takings, P took all reasonable steps to ascertain that a registrable person was registered in respect of the premises.

(4) The specified period is—

- (a) such period of 30 days or more as is specified in the notice, or
- (b) such other period as may be agreed between the Treasury and P.

(5) If P fails to satisfy sub-paragraph (3)(a) or (b) within the specified period, the Treasury may assess to the best of its judgement an amount equal to P's share of the machine games duty that would have been due in respect of the machine for an accounting period on the assumptions set out in sub-paragraph (6).

(6) The assumptions are—

- (a) that P had been liable for machine games duty in respect of the machine in the accounting period in accordance with paragraph 11,
- (b) that the machine had been the only machine in respect of which P was so liable, and
- (c) that the dutiable machine games in respect of which P is beneficially entitled to a share of the takings had been the only dutiable machine games played on the machine.

(7) P's share is a percentage equal to the share of the machine's takings to which P is beneficially entitled.

(8) An assessment under this paragraph may relate to more than one machine, more than one set of premises and more than one accounting period.

(9) But it may not relate to a period that began more than 4 years before the date of the assessment.

(10) An amount assessed under this paragraph is deemed to be an amount of machine games duty assessed under section 12 of the Finance Act 1994 (of Parliament), as it has effect in the Island and due from P in accordance with regulations under paragraph 19 of this Schedule.

(11) P is not entitled to any repayment from the Treasury of an amount assessed under this paragraph if the Treasury subsequently identifies a person responsible for the premises.

(12) But if, after P has paid such an amount, the Treasury make an assessment under section 12 of the Finance Act 1994 (of Parliament), as it has effect in the Island, of an amount of machine games duty due from another person in respect of the same takings from the same machine for the same accounting period, account must be taken in that assessment of the amount paid by P.

Reviews and appeals

27 (1) The decisions mentioned in sub-paragraph (2) are to be treated as if they were listed in subsection (2) of section 13A of the Finance Act 1994 (of Parliament), as it has effect in the Island, (customs and excise reviews and appeals: meaning of "relevant decision") and, accordingly, as if they were relevant decisions for the purposes mentioned in subsection (1) of that section.

(2) The decisions are—

- (a) a decision of the Treasury to refuse a request for an agreement under paragraph 14,
- (b) a decision to give a direction under that paragraph,
- (c) a decision not to give such a direction,
- (d) a decision of the Treasury under regulations by virtue of paragraph 24(2),
- (e) a decision of the Treasury about security by virtue of paragraph 24(4)(a), and
- (f) a decision of the Treasury about the appointment of an Island representative by virtue of paragraph 24(4)(b).

Interest

28 ...Omitted

Penalties and enforcement

29 ..Omitted

30 ...Omitted

31 ...Omitted

32 ...Omitted

33 ...Omitted

34 ...Omitted

35 (1) Contravention of a provision mentioned in sub-paragraph (2) attracts a penalty under section 9 of the Finance Act 1994 (of Parliament), as it has effect in the Island, (penalties) and also attracts daily penalties under that section.

(2) The provisions are—

- (a) any provision of regulations made under paragraph 18,
- (b) any provision of regulations made under paragraph 19,

- (c) paragraph 20(3), and
- (d) any provision of regulations made under paragraph 24.

Forfeiture

- 36 (1) A machine is liable to forfeiture if—
- (a) an officer of customs and excise finds it on any premises,
 - (b) the officer is satisfied that it is being, has been or is about to be made available on the premises for use by others for playing dutiable machine games on it, and
 - (c) condition A or B is met.
- (2) Condition A is that—
- (a) no-one is registered in respect of the premises, and
 - (b) there is a serious risk that any machine games duty chargeable in respect of the machine would not be paid.
- (3) Condition B is that the officer is satisfied that an amount of machine games duty has become due and payable in respect of the machine, but has not been paid.

Offences

- 37 (1) A person commits an offence if the person is knowingly concerned in, or in the taking of steps with a view to, the fraudulent evasion (by that person or any other person) of any machine games duty.
- (2) A person guilty of an offence under this paragraph is liable –
- (a) on conviction on information, to custody for a term not exceeding 7 years or a fine, or both;
 - (b) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding the maximum amount, or both.
- (3) The maximum amount is the greater of—
- (a) £5,000, and
 - (b) three times the duty or other amount that is unpaid or the payment of which is sought to be avoided.
- (4) ...Omitted
- (5) Section 32 of the Gambling Duty Act 2012 (offences by bodies corporate) has effect for the purposes of any offence under this paragraph as it has effect for the purposes of the offences mentioned in that section.

Protection of officers

- 38 Section 26 of the Gambling Duty Act 2012 applies in relation to machine games duty as it applies in relation to *gambling duty*.

Orders and regulations

- 39 (1) This paragraph applies to orders and regulations under this Part of this Schedule.
- (2) Orders and regulations—
- (a) may make provision that applies generally or only for specified purposes,
 - (b) may make different provision for different purposes, and
 - (c) may include transitional provision and savings.
- (3) Regulations may confer a discretion on the Treasury.
- (4) Any regulations or order made under this Part of this Schedule shall be laid before Tynwald as soon as may be after being made, and if Tynwald at the sitting before which such regulations or order are so laid resolves that the regulations shall be annulled the regulations or order shall thereupon cease to have effect.

Transitional provision

- 40 (1) The Treasury may by notice direct that regulations under paragraph 24 (procedure for registration, de-registration etc) are to apply in relation to the period before the go-live date with the modifications specified in the notice.
- (2) A notice under sub-paragraph (1) must be published by the Treasury.
- (3) For a person who, on the go-live date, is responsible for premises where a relevant machine is located, the first accounting period is to be the period beginning with that day and ending with—
- (a) the day before the day on which the next accounting period is to begin by virtue of a direction given under paragraph 14(2), or
 - (b) such other day as is necessary to give effect to an agreement made under paragraph 14(4).

Consequential amendments

- 41 ...Omitted
- 42 ...Omitted
- 43 ...Omitted
- 44 ...Omitted
- 45 ...Omitted
- 46 ...Omitted
- 47 ...Omitted
- 48 ...Omitted
- 49 ...Omitted

Interpretation

50 In this Part of this Schedule—

“appeal tribunal” means the VAT and Duties Tribunal;

“cash” has the meaning given in paragraph 2 (and “non-cash” is to be read accordingly);

“charge”, in relation to a game, means a charge or deduction in money or money’s worth, however it is described or levied and whether it becomes due before or after the game is played;

“dutable machine game” has the meaning given in paragraph 2, subject to paragraphs 3 and 4;

“game” does not include a sport;

“the go-live date” is defined in paragraph 66(5);

“Island” includes the territorial sea of the Island;

“machine” means any apparatus, whether mechanical, electric or electronic, or which uses or applies mechanical power, electrical power or both;

“machine game” has the meaning given in paragraph 2;

“MGD register” has the meaning given in paragraph 20;

“money” means money in sterling or any other currency;

“payouts” means prizes paid out to players as a result of playing dutable machine games on a machine;

“the payouts”, in relation to a particular taxable person and accounting period, has the meaning given in paragraph 7;

“premises” includes any place, any means of transport and any stall or other moveable structure;

“prize”, in relation to a game—

- (a) means a prize in the form of cash or non-cash (or both), however it is described or paid out and whether it is a prize provided by a person making the game available or is winnings of money staked, but
- (b) a benefit consisting of nothing more than the opportunity to play the game again does not count as a prize;

“registered” has the meaning given in paragraph 12 (and “registration” is to be read accordingly);

“registrable person” has the meaning given in paragraph 21;

“relevant machine” means—

- (a) a machine in respect of which machine games duty is or will be chargeable, or

(b) in relation to a particular taxable person and accounting period, a machine in respect of which that person is liable for machine games duty in that period;

“representative” means a personal representative, trustee in bankruptcy, receiver or liquidator or any other person acting in a representative capacity;

“specified” includes described;

“takings” means charges due from players for playing dutiable machine games on a machine;

“the takings”, in relation to a particular taxable person and accounting period, has the meaning given in paragraph 7;

“taxable person” has the meaning given in paragraph 11;

“total net takings” has the meaning given in paragraph 6;

“Treasury” means the Department of that name established under section 1 of the Government Departments Act 1987.

51 (1) This Part of this Schedule is to be read in accordance with this paragraph.

(2) A person “plays” a game if the person participates in the game—

(a) whether or not there are other participants in the game, and

(b) whether or not a computer generates images or data taken to represent the actions of other participants in the game.

(3) A reference to the charge (or the lowest or highest charge) payable for playing a machine game—

(a) is a reference to the charge (or the lowest or highest charge) payable for a single go at playing the game, and

(b) includes any charge that entitles the person paying it to play a machine game or to play it at a reduced rate (even if the charge is ostensibly a charge for something else).

(4) A reference to “paying” a charge is to be read, in the case of a charge in money’s worth, as a reference to the provision of the thing, or performance of the service, in money’s worth.

(5) A reference to a prize (or the maximum amount of cash) that can be won from playing a machine game is a reference to a prize (or the maximum amount of cash) that can be won from a single go at playing the game.

(6) A reference to “paying out” a prize is to be read, in the case of a prize in money’s worth, as a reference to the provision of the thing, or performance of the service, in money’s worth.

(7) A reference to the premises where a machine is located or made available includes, in the case of a portable machine, the premises where the machine is issued to those wanting to play dutiable machines games on it.

52 The imposition or payment of machine games duty does not make lawful anything that is otherwise unlawful.

Part 2

Removal of Amusement Machine Licence Duty

Part 2 – articles 53 to 62 ... omitted

Part 3

VAT Exemption

Part 3 – articles 63 to 65 ... omitted

Part 4

Miscellaneous

Application

66 (1) ...Omitted

(2) ...Omitted

(3) ...Omitted

(4) ...Omitted

(5) A reference in this Schedule to the "go-live date" is to 1 February 2013.

67 (1) The Treasury may by regulations make transitional or saving provision in connection with the introduction of machine games duty.

(2) The power in sub-paragraph (1) is without prejudice to—

(a) ...omitted;

(b) any power in this Schedule apart from this paragraph to make transitional or saving provision in connection with the matters mentioned in sub-paragraph (1).

(3) Regulations under this paragraph shall be laid before Tynwald as soon as may be after they are made and if Tynwald at the sitting before which such regulations are so laid resolves that the regulations shall be annulled the regulations shall thereupon ceased to have effect.

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