
66 Sanctions for persistently unco-operative large businesses

- (1) - The Schedule contains provisions about sanctions for persistently unco-operative large businesses.
- (2) - Her Majesty's Revenue and Customs may not give a notice under the Schedule to the head of a group or sub-group, a company or a partner of a partnership before the beginning of its first financial year (as defined in the Schedule) beginning on or after the day on which this Act is passed.

SCHEDULE TO CLAUSE 66

SANCTIONS FOR PERSISTENTLY UNCO-OPERATIVE LARGE BUSINESSES -

PART 1 -

LARGE GROUPS FALLING WITHIN THIS SCHEDULE -

Persistent unco-operative behaviour linked to significant unresolved tax issues

- 1 (1) -A UK group that is a qualifying MNE Group or a qualifying group (a “qualifying UK group”) falls within this Schedule if –
 - (a) - the group has persistently engaged in unco-operative behaviour (see paragraphs 2 to 4),
 - (b) - some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the group or members of the group which are unresolved (see paragraph 5), and
 - (c) - there is a reasonable likelihood of further instances of the group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the group or members of the group.
- (2) -In this Schedule, the following terms have the same meaning as in the Schedule to section 65 –
 - “group”;
 - “head” (in relation to a group);
 - “member” (in relation to a group);
 - “qualifying group”;
 - “qualifying MNE Group”; -
 - “UK group”. -

Persistent unco-operative behaviour

- 2 (1) A qualifying UK group has “engaged in unco-operative behaviour” if –
 - (a) - a member of the group has satisfied either or both of the conditions listed in sub-paragraph (2), or
 - (b) - two or more of the members of the group, taken together, have satisfied either or both of those conditions.
- (2) -Those conditions are –
 - (a) - the behaviour condition (see paragraph 3);
 - (b) - the arrangements condition (see paragraph 4).
- (3) -A qualifying UK group has engaged in unco-operative behaviour “persistently” if –
 - (a) - a member of the group has done so persistently, or

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- (b) two or more members of the group, taken together, have done so - persistently.
 - (4) -References in this Schedule to doing something “persistently” include doing it on a sufficient number of occasions for it to be clear that it represents a pattern of behaviour.

The behaviour condition

- 3 (1) -A member of a qualifying UK group has, or two or more members of a qualifying UK group (taken together) have, “satisfied the behaviour condition” if it has, or they have, behaved in a manner which has delayed or otherwise hindered Her Majesty’s Revenue and Customs in the exercise of their functions in connection with determining the liability to UK taxation of the group or a member of the group.
- (2) -Factors which may indicate that a member of a qualifying UK group has behaved as described in sub-paragraph (1) include –
 - (a) - the extent to which Her Majesty’s Revenue and Customs have used statutory powers to obtain information relating to the qualifying UK group or members of the group;
 - (b) - the reasons why those powers have been used;
 - (c) - the number and seriousness of inaccuracies in, and omissions from, documents given to Her Majesty’s Revenue and Customs by or on behalf of the qualifying UK group or members of the group;
 - (d) - the extent to which, in dealings with Her Majesty’s Revenue and Customs, members of the group (or people acting on their behalf) have relied on interpretations of legislation relating to UK taxation which, at the time, are speculative.
- (3) -An interpretation of legislation relating to UK taxation is “speculative” if it is likely that a court or tribunal would disagree with it.
- (4) -In this Schedule, “UK taxation” means any tax, duty or other amount listed in paragraph 19 of the Schedule to section 65.

The arrangements condition

- 4 (1) -A member of a qualifying UK group has “satisfied the arrangements condition” if it is a party to a tax avoidance scheme.
- (2) -“Tax avoidance scheme” means –
 - (a) - arrangements in respect of which a notice has been given under paragraph 12 of Schedule 43 to FA 2013 (general anti-abuse rule: notice of final decision) stating that a tax advantage arising from the arrangements is to be counteracted;
 - (b) - arrangements which are notifiable arrangements for the purposes of Part 7 of FA 2004 (disclosure of tax avoidance schemes), other than arrangements in relation to which Her Majesty’s Revenue and Customs have given notice under section 312(6) of FA 2014 (notice that promoters not under duty to provide clients with prescribed information);
 - (c) - a scheme which is a notifiable scheme for the purposes of Schedule 11A to the Value Added Tax Act 1994 (disclosure of avoidance schemes).

Significant tax issue

- 5 (1) -There is a significant tax issue in respect of a qualifying UK group or a member of a qualifying UK group where—
- (a) - there is a disagreement between Her Majesty’s Revenue and Customs and a member of the group about an issue affecting the amount of the liability of the group or a member of the group to UK taxation,
 - (b) - the issue has been, or could be, referred to a court or tribunal to determine, and
 - (c) - as regards the amount of the liability, the difference between Her Majesty’s Revenue and Customs’ view and the view of the member is, or is likely to be, not less than £2 million.
- (2) -The reference in sub-paragraph (1)(a) to circumstances in which there is a disagreement include circumstances in which there is a reasonable likelihood of a disagreement.
- (3) -The Treasury may by regulations substitute a higher amount for the amount for the time being specified in sub-paragraph (1)(c).
- (4) -Regulations under this paragraph are to be made by statutory instrument.
- (5) -A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

Changes in the composition of a group

- 6 (1) -The references in paragraphs 2 to 5 to things done by a member of a qualifying UK group (“the group in question”)—
- (a) - include acts and omissions of a relevant body that is not a member of the group in question if they took place at a time when the relevant body was a member of a group headed by the body that is the head of the group in question;
 - (b) - do not include acts or omissions of a relevant body that is a member of the group in question if they took place at a time when the relevant body was not a member of a group headed by the body that is the head of the group in question.
- (2) -In this Schedule, “relevant body” has the same meaning as in the Schedule to section 65.

PART 2

NOTICES

Meaning of “designated HMRC officer”

- 7 - In this Schedule, “designated HMRC officer” means an officer of Revenue and Customs who has been designated by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of this Schedule.

Warning notice

- 8 (1) -A designated HMRC officer may give the head of a qualifying UK group a notice under this paragraph (a “warning notice”) if the officer considers that the group falls within this Schedule.
- (2) -The notice must set out the reasons why the officer considers that the qualifying UK group falls within this Schedule.

Withdrawal of warning notice

- 9 - A warning notice –
- (a) - may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the qualifying UK group, and
 - (b) - if not previously withdrawn, is to be treated as withdrawn at the end of the period of 15 months beginning with the day on which it was given.

Special measures notice

- 10 (1) -A designated HMRC officer may give the head of a qualifying UK group a notice under this paragraph (a “special measures notice”) if –
- (a) - the officer considers that the group falls within this Schedule,
 - (b) - the head of the group has been given a warning notice,
 - (c) - the period of 12 months beginning with the day on which the warning notice was given has expired,
 - (d) - the period of 15 months beginning with that day has not expired, and
 - (e) - the warning notice has not been withdrawn, -
- (see also paragraph 13). -
- (2) -When considering whether a qualifying UK group falls within this Schedule, a designated HMRC officer may consider any types of behaviour, whether or not they are mentioned in the warning notice given to the head of the group.
- (3) -When deciding whether to give a special measures notice, a designated HMRC officer must consider any representations made by a member of the qualifying UK group before the end of the period of 12 months beginning with the day on which the warning notice was given.
- (4) -The special measures notice must set out the reasons why the officer considers that the qualifying UK group falls within this Schedule.

Withdrawal of special measures notice

- 11 (1) -A special measures notice –
- (a) - may be withdrawn by a designated HMRC officer at any time by giving a further notice to the head of the qualifying UK group, and
 - (b) - if not previously withdrawn, is to be treated as withdrawn at the end of the period of 27 months beginning with the relevant day.
- (2) -“The relevant day” means the later of –
- (a) the day on which the special measures notice was given;
 - (b) the day on which it was last confirmed (see paragraph 12).

Confirmation of special measures notice

- 12 (1) -A designated HMRC officer may give the head of a qualifying UK group a notice under this paragraph confirming a special measures notice (a “confirmation notice”) if –
- (a) - the officer considers that the group falls within this Schedule,
 - (b) - the head of the group has been given a special measures notice,
 - (c) - the period of 24 months beginning with the relevant day has expired,
 - (d) - the period of 27 months beginning with that day has not expired, and
 - (e) - the special measures notice has not been withdrawn.
- (2) -When considering whether a qualifying UK group falls within this Schedule, a designated HMRC officer may consider any types of behaviour, whether or not they are mentioned in the special measures notice which is to be confirmed or any previous confirmation notice.
- (3) -“The relevant day” means the later of –
- (a) - the day on which the special measures notice was given;
 - (b) - the day on which it was last confirmed under this paragraph.
- (4) -The confirmation notice must set out the reasons why the officer considers that the qualifying UK group falls within this Schedule.
- (5) -When deciding whether to give a confirmation notice, a designated HMRC officer must consider any representations made by a member of the qualifying UK group before the end of the period of 24 months beginning with the relevant day.

Additional power to give special measures notice

- 13 (1) -A designated HMRC officer may give the head of a qualifying UK group a special measures notice in circumstances in which paragraph 10(1) is not satisfied if –
- (a) - the head of the group has been given a warning notice or a special measures notice,
 - (b) - that notice has been withdrawn by virtue of the operation of paragraph 9(b) or 11(1)(b),
 - (c) - during the period of 6 months beginning with the day on which it was withdrawn (“the withdrawal day”), the group has engaged in unco-operative behaviour (see paragraphs 2 to 4),
 - (d) - there is a reasonable likelihood that, if it had engaged in the behaviour before the notice was withdrawn, a designated HMRC officer would not have withdrawn it,
 - (e) - during the period of 7 months beginning with the withdrawal day, a designated HMRC officer has notified the head of the group that the power under this paragraph may be exercised in relation to the group, and
 - (f) - the period of 9 months beginning with the withdrawal day has not expired.
- (2) -When deciding whether to give a special measures notice in reliance on this paragraph, the designated HMRC officer must consider any representations made by a member of the qualifying UK group before the end of the period of 8 months beginning with the withdrawal day.

Circumstances in which notices are treated as having been given

- 14 - (1) Sub-paragraphs (2) and (3) apply where—
- (a) - a relevant body (“B1”) is given a warning notice, and
 - (b) - before the notice is withdrawn, B1 becomes a member of a group headed by another relevant body (“H1”).
- (2) -H1 is to be treated as having been given a warning notice on the day on which the warning notice was given to B1.
- (3) -A warning notice treated as given under sub-paragraph (2) is valid whether or not, on the day mentioned in that sub-paragraph, H1 was the head of a qualifying UK group that fell within this Schedule.
- (4) -Sub-paragraphs (5) to (7) apply where—
- (a) - a relevant body (“B2”) is given a special measures notice, and
 - (b) - before the notice is withdrawn, B2 becomes a member of a group headed by another relevant body (“H2”).
- (5) -H2 is to be treated as having been given a special measures notice on the day on which the special measures notice was given to B2.
- (6) -A special measures notice treated as given under sub-paragraph (5) is valid whether or not, on the day mentioned in that sub-paragraph, H2 was the head of a qualifying UK group that fell within this Schedule.
- (7) -Paragraph 15(1) does not by virtue of sub-paragraphs (5) and (6) of this paragraph apply to an inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of a person—
- (a) - at a time when the person was a member of a group headed by H2, but
 - (b) - before the day mentioned in sub-paragraph (5).
- (8) -Sub-paragraphs (9) and (10) apply where—
- (a) - a relevant body (“B3”) is given a confirmation notice, and
 - (b) - before the notice is withdrawn, B3 becomes a member of a group headed by another relevant body (“H3”).
- (9) -H3 is to be treated as having been given a confirmation notice on the day on which the confirmation notice was given to B3.
- (10) -A confirmation notice treated as given under sub-paragraph (9) is valid whether or not, on the day mentioned in that sub-paragraph, H3 was the head of a qualifying UK group that fell within this Schedule.
- (11) -The Treasury may by regulations make provision for warning notices, special measures notices and confirmation notices to be treated as having been given to relevant bodies in other circumstances described in the regulations.
- (12) -Regulations under this paragraph may, in particular—
- (a) - make provision about the validity of notices treated as given by virtue of the regulations;
 - (b) - make provision about the effect of paragraph 15(1) in cases involving such notices.
- (13) Regulations under this paragraph are to be made by statutory instrument.

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- (14) A statutory instrument containing regulations under this paragraph is - subject to annulment in pursuance of a resolution of the House of Commons.

PART 3

SANCTIONS

Liability for penalties for errors in documents given to HMRC

- 15 (1) -For the purposes of Schedule 24 to FA 2007 (penalties for errors), an inaccuracy in a document given to Her Majesty’s Revenue and Customs by or on behalf of a person is to be treated as being due to failure by the person to take reasonable care if –
- (a) - the document was given to Her Majesty’s Revenue and Customs at a time when the person was a member of a group subject to a special measures notice, and
 - (b) - the inaccuracy –
 - (i) - relates to a tax avoidance scheme (as defined in paragraph 4) entered into by the person at a time when the person was a member of a group subject to a special measures notice, or
 - (ii) - is, entirely or partly, attributable to an interpretation of legislation relating to UK taxation which, at the time the document was given to Her Majesty’s Revenue and Customs, was speculative.
- (2) -A group is “subject to a special measures notice” if a special measures notice –
- (a) - has been given to the head of the group, and
 - (b) - has not been withdrawn.
- (3) -An interpretation of legislation relating to UK taxation is “speculative” if it is likely that a court or tribunal would disagree with it.
- (4) -Sub-paragraph (1) does not apply to an inaccuracy if –
- (a) - it is deliberate on the part of the person or someone acting on the person’s behalf,
 - (b) - it is in fact due to a failure by the person or someone acting on the person’s behalf to take reasonable care, or
 - (c) - it is treated as due to such a failure by virtue of another enactment.
- 16 - In Schedule 24 to FA 2007 (penalties for errors), at the end of paragraph 3 (meaning of “careless” etc) insert –
- “(3) -Paragraph 15 of the Schedule to section 66 of FA 2016 (special measures for persistently unco-operative large businesses) provides for certain inaccuracies to be treated, for the purposes of this Schedule, as being due to a failure by P to take reasonable care.”

Publishing information

- 17 (1) -If a group is subject to a confirmed special measures notice, the Commissioners for Her Majesty’s Revenue and Customs (“the Commissioners”) may publish the following information –
- (a) the name of the group, including any previous name;

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- (b) the address or registered office of the head of the group; -
 - (c) any other information that the Commissioners consider it appropriate to publish in order to identify the group;
 - (d) - the fact that the group is subject to a confirmed special measures notice.
- (2) -A group is “subject to a confirmed special measures notice” if sub-paragraph (3) or (4) is satisfied.
- (3) -This sub-paragraph is satisfied if –
- (a) a special measures notice has been given to the head of the group and confirmed under paragraph 12, and
 - (b) the special measures notice has not been withdrawn.
- (4) -This sub-paragraph is satisfied if –
- (a) - a special measures notice has been given to the head of the group and confirmed under paragraph 12,
 - (b) - the notice has been withdrawn, and
 - (c) - a further special measures notice has been given to the head of the group under paragraph 13 in the period of 9 months beginning with the day on which the special measures notice mentioned in paragraph (a) was withdrawn.
- (5) -Before publishing the information, the Commissioners must –
- (a) - inform the head of the group that they are considering doing so, and
 - (b) - allow the head of the group a reasonable opportunity to make representations about whether the information should be published.
- (6) -If, after information about a group is published under this paragraph, the group ceases to be subject to a confirmed special measures notice, the Commissioners must publish a notice stating that the group is no longer subject to a confirmed special measures notice.
- (7) -A notice under sub-paragraph (6) must be published before the end of the period of 30 days beginning with the day on which the special measures notice is withdrawn.
- (8) -The Commissioners may publish information and notices under this paragraph in any manner they consider appropriate.

PART 4

APPLICATION OF THIS SCHEDULE TO OTHER LARGE BUSINESSES

Large sub-groups

- 18 (1) -A UK sub-group of a group described in sub-paragraph (2) (a “qualifying UK sub-group”) falls within this Schedule if –
- (a) - the sub-group has persistently engaged in unco-operative behaviour (see paragraphs 2 to 4),
 - (b) - some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the sub-group or members of the sub-group which are unresolved (see paragraph 5), and

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- (c) - there is a reasonable likelihood of further instances of the sub-group engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the sub-group or members of the sub-group.
 - (2) -The groups mentioned in sub-paragraph (1) are –
 - (a) - a qualifying MNE Group that is not a UK group;
 - (b) - a qualifying group that is not a UK group.
 - (3) -Paragraphs 2 to 6 of this Schedule apply in relation to a qualifying UK sub-group as they apply in relation to a qualifying UK group.
 - (4) -Paragraphs 7 to 13 of this Schedule apply in relation to the head of a qualifying UK sub-group as they apply in relation to the head of a qualifying UK group.
 - (5) -As applied by this paragraph, paragraphs 2 to 13 of this Schedule have effect as if references to a qualifying UK group (including in references to the head of a qualifying UK group or members of a qualifying UK group) were references to a qualifying UK sub-group.
 - (6) -In paragraphs 6, 14, 15 and 17, references to a group (including in references to the head of a group or members of a group) include a UK sub-group.
 - (7) -In paragraph 14, references to the head of a qualifying UK group include the head of a qualifying UK sub-group.
 - (8) -In this paragraph, “UK sub-group” and “head” (in relation to a UK sub-group) have the same meaning as in the Schedule to section 65.

Large companies

- 19 (1) -A company which is a qualifying company or an MNE company falls within this Schedule if –
 - (a) - the company has persistently engaged in unco-operative behaviour (see paragraphs 2 to 4),
 - (b) - some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the company which are unresolved (see paragraph 5), and
 - (c) - there is a reasonable likelihood of further instances of the company engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the company.
- (2) -Paragraphs 2 to 5 of this Schedule apply in relation to a qualifying company as they apply in relation to a qualifying UK group.
- (3) -Paragraphs 7 to 13 of this Schedule apply in relation to a qualifying company as they apply in relation to the head of a qualifying UK group.
- (4) -As applied by this paragraph, paragraphs 2 to 5 and 7 to 13 have effect as if references to a qualifying UK group, the head of a qualifying UK group or a member of a qualifying UK group were references to a qualifying company.
- (5) -Paragraph 15 applies in relation to a company as it applies in relation to a member of a group.

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- (6) Paragraph 17 applies in relation to a company as it applies in relation to a group.
- (7) -As applied by this paragraph, paragraphs 15 and 17 have effect as if references to a group, the head of a group or a member of a group were references to a company.
- (8) -In this paragraph –
“company” has the same meaning as in the Schedule to section 65;
“MNE company” means a company which –
(a) - is a member of a qualifying MNE Group that is not a UK group, but
(b) - is not a member of a UK sub-group of such an MNE Group;
“qualifying company” has the same meaning as in the Schedule to section 65.

Large partnerships

- 20 (1) - A qualifying partnership falls within this Schedule if –
(a) - the partnership has persistently engaged in unco-operative behaviour (see paragraphs 2 to 4),
(b) - some or all of the unco-operative behaviour has caused there to be, or contributed to there being, two or more significant tax issues in respect of the partnership which are unresolved (see paragraph 5), and
(c) - there is a reasonable likelihood of further instances of the partnership engaging in unco-operative behaviour in a manner which causes there to be, or contributes to there being, significant tax issues in respect of the partnership.
- (2) -Paragraphs 2 to 5 of this Schedule apply in relation to a qualifying partnership as they apply in relation to a qualifying UK group.
- (3) -Paragraphs 7 to 13 of this Schedule apply in relation to the representative partner of a qualifying partnership as they apply in relation to the head of a qualifying UK group.
- (4) -As applied by this paragraph, paragraphs 2 to 5 and 7 to 13 have effect as if –
(a) - references to a qualifying UK group were references to a qualifying partnership;
(b) - references to the head of a qualifying UK group were references to the representative partner of a qualifying partnership;
(c) - references to a member of a qualifying UK group were references to a partner of a qualifying partnership, acting in the person’s capacity as such.
- (5) -The Treasury may by regulations make provision for warning notices, special measures notices and confirmation notices to be treated as having been given to the representative partner of a partnership in circumstances described in the regulations.
- (6) -Sub-paragraphs (12) to (14) of paragraph 14 apply to regulations under this paragraph.

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- (7) -Paragraph 15 applies in relation to an inaccuracy in a document given to Her Majesty’s Revenue and Customs by a partner of a partnership, acting in the person’s capacity as such, as if –
- (a) - references to a group were references to a partnership;
 - (b) - references to the head of a group were references to the representative partner of a partnership;
 - (c) - references to a member of a group were references to a partner of a partnership.
- (8) -Paragraph 15 applies in relation to an inaccuracy in any other document given to Her Majesty’s Revenue and Customs on behalf of a partnership as if –
- (a) - references to a person included a partnership;
 - (b) - references to a group, or a member of a group, were references to a partnership;
 - (c) - references to the head of a group were references to the representative partner of a partnership.
- (9) -Paragraph 17 applies in relation to a partnership as it applies in relation to a group.
- (10) -As applied by this paragraph, paragraph 17 has effect as if –
- (a) - references to a group were references to a partnership;
 - (b) - references to the head of a group were references to the representative partner of a partnership.
- (11) -In this paragraph –
- “partnership” and “qualifying partnership” have the same meaning as in the Schedule to section 65;
 - “representative partner”, in relation to a partnership, means the partner who is required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to make and deliver returns to an officer of Her Majesty’s Revenue and Customs.

PART 5

DEFINED TERMS

This Table lists terms defined for the purposes of this Schedule.

<i>Term</i>	<i>Paragraph</i>
confirmation notice	paragraph 12
designated HMRC officer	paragraph 7
group	paragraph 1(2)
head (in relation to a group)	paragraph 1(2)
member (in relation to a group)	paragraph 1(2)
qualifying group	paragraph 1(2)
qualifying MNE Group	paragraph 1(2)

<i>Term</i>	<i>Paragraph</i>
qualifying UK group	paragraph 1(1)
relevant body	paragraph 6(2)
special measures notice	paragraph 10
UK group	paragraph 1(2)
UK taxation	paragraph 3(4)
warning notice	paragraph 8