

**1 Electronic sales suppression penalties**

- (1) Schedule 1 makes provision for penalties to which persons may be liable for engaging in activities involving tools used, or capable of being used, to suppress electronic sales records.
- (2) Schedule 1 also makes provision about the powers available to HMRC to gather information in relation to such persons and such tools.

## ELECTRONIC SALES SUPPRESSION

## PART 1

## INTRODUCTORY

*Meaning of “electronic sales suppression tool” etc*

- 1 (1) This paragraph defines “electronic sales suppression tool” and related terms for the purposes of this Schedule.
- (2) An “electronic sales suppression tool” is a tool which meets both of the following conditions—
  - (a) the first condition is that the tool must be capable (whether by itself or in combination with, or as part of, any other thing) of suppressing relevant electronic sales records;
  - (b) the second condition is that it must be reasonable to assume that the main function of the tool, or one of its main functions, is to suppress relevant electronic sales records.
- (3) A “relevant electronic sales record” is a record which—
  - (a) is required by or under any legislation relating to a tax to be kept, and
  - (b) comprises or includes information that is or would be (but for the use of a tool that meets the first condition in sub-paragraph (2)) recorded by an electronic point of sales system.
- (4) An “electronic point of sale system” is any tool or combination of tools used to record information in electronic form about transactions involving the sale of goods or services.
- (5) A relevant electronic sales record is suppressed if any information it comprises or includes is dealt with in such a way (whether by being falsified, manipulated, hidden, obfuscated, destroyed or prevented from being created) as to fail to record a matter accurately.
- (6) References in this Schedule to a “tool” include a physical device, software, computer code or other data in digital form (wherever held), or any other thing.
- (7) An “electronic sales suppression penalty” is a penalty under this Schedule.

## PART 2

## LIABILITY TO A PENALTY

*Penalty for making an electronic sales suppression tool*

- 2 A person who makes an electronic sales suppression tool (including modifying a tool that is not an electronic sales suppression tool so that it becomes an electronic sales suppression tool) is liable to a penalty.

*Penalty for supplying an electronic sales suppression tool*

- 3 (1) A person (“P”) who supplies an electronic sales suppression tool to another person or other persons is liable to a penalty.
- (2) Liability to a penalty under this paragraph does not arise if P satisfies HMRC or (on appeal) the tribunal that P was unaware that the tool P supplied to the other person or persons was an electronic sales suppression tool.

*Penalty for promoting use of a tool to suppress an electronic sales record*

- 4 (1) A person is liable to a penalty for each occasion on which the person promotes the use of a tool to suppress a relevant electronic sales record (whether or not the suppression of relevant electronic sales records is the main function, or one of the main functions, of the tool).
- (2) A person promotes the use of a tool to suppress a relevant electronic sales record if the person communicates information about the tool to another person with a view to that other person, or any other person, using the tool to suppress a relevant electronic sales record.

*Amount of a penalty under paragraph 2, 3 or 4*

- 5 (1) The amount of a penalty to which a person is liable under paragraph 2, 3 or 4 is such amount, not exceeding £50,000, as an authorised HMRC officer considers appropriate.
- (2) In determining the amount of a penalty under paragraph 2, 3 or 4, the officer –
- (a) must take into account any matter specified in a notice published by HMRC, so far as that matter is relevant, and
  - (b) may take into account any other matter, so far as the officer considers it appropriate to do so.
- (3) “Authorised HMRC officer” means an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for the purposes of this paragraph.

*Penalty for possession etc of an electronic sales suppression tool*

- 6 (1) A person (“P”) is liable to a penalty not exceeding £1,000 if –
- (a) P is in possession of, or has otherwise obtained access to, an electronic sales suppression tool, and
  - (b) condition 1 or 2 applies.
- (2) Condition 1 is that –
- (a) HMRC has notified P in writing that an officer of Revenue and Customs has reason to believe that P is in possession of, or has otherwise obtained access to, an electronic sales suppression tool, and
  - (b) P has not, within the period of 30 days beginning with the day on which the notice is given, satisfied an officer of Revenue and Customs that P is not (or is no longer) in possession of, and does not otherwise have access to, an electronic sales suppression tool.

- (3) Condition 2 is that P has been assessed to an electronic sales suppression penalty within the period of five years ending with the first day on which an officer of Revenue and Customs has reason to believe that P may be liable to a penalty under this paragraph.
- (4) For the purposes of this paragraph and paragraph 7—
  - (a) a person is in possession of an electronic sales suppression tool if the person possesses the tool in any manner;
  - (b) a person has access to an electronic sales suppression tool if the tool is available to the person to use to suppress a relevant electronic sales record;
  - (c) a person obtains access to an electronic sales suppression tool if the person takes any steps to have access to the tool.
- (5) Accordingly, a person may be in possession of, or otherwise have access to, an electronic sales suppression tool whether or not—
  - (a) the person owns the tool,
  - (b) the person only has access to the tool remotely, or
  - (c) other persons also have access to the tool.
- (6) Liability to a penalty under this paragraph does not arise if P has been assessed to a penalty under paragraph 2 or 3 in respect of the electronic sales suppression tool that P is in possession of, or has otherwise obtained access to.
- (7) Liability to a penalty under this paragraph does not arise if P satisfies HMRC or (on appeal) the tribunal that P was unaware that the tool that P was in possession of, or had otherwise obtained access to, was an electronic sales suppression tool.

#### *Daily default penalties*

- 7 (1) This paragraph applies if—
  - (a) a person (“P”) is assessed to a penalty under paragraph 6 in respect of an electronic sales suppression tool, and
  - (b) after being notified of the assessment (see paragraph 11(1)(b)), P continues to be in possession of, or otherwise have access to, the tool.
- (2) P is liable to a further penalty of an amount not exceeding £75 for each subsequent day on which P continues to be in possession of, or otherwise have access to, the tool.
- (3) The total amount of the penalties to which a person may be liable under this paragraph may not exceed £50,000.

### PART 3

#### SUPPLEMENTARY PROVISION

#### *Legitimate activity*

- 8 Liability to an electronic sales suppression penalty does not arise where the activity that would otherwise give rise to such liability is undertaken—
  - (a) by, or on behalf of or with the approval of, a public authority, and

- (b) for a purpose connected with avoiding prejudice to the assessment or collection of tax.

### *Double jeopardy*

- 9 A person is not liable to an electronic sales suppression penalty in respect of anything in respect of which the person has been convicted of an offence.

### *Special reduction*

- 10 (1) If HMRC think it right because of special circumstances, they may reduce an electronic sales suppression penalty.
- (2) In sub-paragraph (1), “special circumstances” does not include ability to pay.
- (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 in respect of a penalty.

### *Assessment*

- 11 (1) Where a person becomes liable to an electronic sales suppression penalty –
- (a) HMRC may assess the penalty, and
  - (b) if they do so, HMRC must notify the person.
- (2) No electronic sales suppression penalty may be notified under sub-paragraph (1)(b) later than the end of the period of two years beginning with the day on which evidence of facts, sufficient in the opinion of HMRC to indicate liability to the penalty, comes to HMRC’s knowledge.

### *Appeal*

- 12 (1) A person may appeal against –
- (a) a decision of HMRC that an electronic sales suppression penalty is payable by the person, or
  - (b) a decision of HMRC as to the amount of any such penalty.
- (2) Notice of an appeal must be given to HMRC in writing before the end of the period of 30 days beginning with the date on which notification of the penalty was given under paragraph 11(1)(b).
- (3) The notice must state the grounds of appeal.
- (4) On an appeal under sub-paragraph (1)(a) that is notified to the tribunal, the tribunal may affirm or cancel HMRC’s decision.
- (5) On an appeal under sub-paragraph (1)(b) that is notified to the tribunal, the tribunal may –
- (a) affirm HMRC’s decision, or
  - (b) substitute for that decision another decision that HMRC had power to make.
- (6) If the tribunal substitutes its decision for HMRC’s, the tribunal may rely on paragraph 10 –

- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
  - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of that paragraph was flawed.
- (7) In sub-paragraph (6)(b), “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (8) Subject to this paragraph and paragraph 13, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Schedule as they have effect in relation to an appeal against an assessment to income tax or, if the person is a company within the charge to corporation tax, corporation tax.

#### *Enforcement*

- 13 (1) An electronic sales suppression penalty must be paid—
- (a) before the end of the period of 30 days beginning with the date on which notification of the penalty was given under paragraph 11(1)(b), or
  - (b) if notice of an appeal is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) An electronic sales suppression penalty is recoverable as a debt due to the Crown.

#### *Power to change amount of penalty*

- 14 (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 made by statutory instrument substitute for the sum for the time being specified in paragraph 5(1), 6(1), 7(2) or 7(3) such other sum as seems to them to be justified by the change.
- (2) In sub-paragraph (1), “relevant date” means—
- (a) the date on which the Finance Act 2022 is passed, and
  - (b) each date on which the power conferred by sub-paragraph (1) has been exercised in relation to the sum in question.
- (3) Regulations under sub-paragraph (1) are subject to annulment in pursuance of a resolution of the House of Commons.
- (4) Regulations under sub-paragraph (1) do not apply in relation to an electronic sales suppression penalty to which liability arose before the date on which the regulations come into force.

#### *“Tribunal”*

- 15 In this Schedule “tribunal” means the First-tier Tribunal or, where determined by or under the Tribunal Procedure Rules, the Upper Tribunal.

## PART 4

## INFORMATION

*Application of Schedule 36 to FA 2008 (information and inspection powers)*

- 16 (1) Schedule 36 to FA 2008 (information and inspection powers) applies for a relevant purpose in relation to a relevant person as it applies for the purpose of checking a person's tax position.
- (2) This is subject to—
- (a) the general modifications in paragraphs 17, and
  - (b) the specific modifications in paragraph 18.
- (3) For the purposes of this Part, a person is “relevant” if an officer of Revenue and Customs has reason to suspect that the person is or may be liable to an electronic sales suppression penalty.
- (4) For the purposes of this Part, the following are “relevant purposes” in relation to a relevant person—
- (a) determining whether the relevant person is liable to an electronic sales suppression penalty;
  - (b) enabling HMRC to understand the operation of a tool in relation to which the relevant person's suspected liability to an electronic sales suppression penalty arises;
  - (c) identifying any other person whose activity in relation to a tool mentioned in paragraph (b) may give rise to liability to an electronic sales suppression penalty.

*General modifications of Schedule 36 to FA 2008 as applied*

- 17 In its application for a for a relevant purpose in relation to a relevant person, Schedule 36 to FA 2008 has effect as if—
- (a) any provision which can have no application for that purpose were omitted;
  - (b) references to “the taxpayer” were to “the relevant person”;
  - (c) references to prejudice to the assessment or collection of tax included prejudice to the fulfilment of a relevant purpose;
  - (d) references to a pending appeal relating to tax were to a pending appeal by the relevant person under paragraph 12 of this Schedule.

*Specific modifications of Schedule 36 to FA 2008 as applied*

- 18 In a case where the relevant purpose is that mentioned in paragraph 16(4)(c) above, paragraph 5 of Schedule 36 to FA 2008 applies as if sub-paragraphs (3) to (4) were omitted.