
1 Documentation etc relating to transfer pricing

- (1) In Part 2 of the TMA 1970 (records), in section 12B (records to be kept for purposes of returns) –
 - (a) after subsection (5B) insert –
 - “(5BA) Regulations under this section may make provision, in relation to relevant transfer pricing records specified, or of a description specified, in the regulations –
 - (a) as to the form or manner in which those records are to be kept and preserved;
 - (b) by reference to things specified in the transfer pricing guidelines (within the meaning of section 164 of TIOPA 2010 (interpretation in accordance with OECD principles)).”;
 - (b) in subsection (6) –
 - (i) omit the “and” after paragraph (a);
 - (ii) after that paragraph insert –
 - “(aa) records are “relevant transfer pricing records” if the Commissioners for Her Majesty’s Revenue and Customs reasonably consider that the records may relate to the calculation of profits or losses in accordance with Part 4 of TIOPA 2010 (transfer pricing);”.
- (2) In Part 3 of Schedule 18 to FA 1998 (duty to keep and preserve records), in paragraph 21 –
 - (a) after sub-paragraph (5A) insert –
 - “(5AA) Regulations under this paragraph may make provision, in relation to relevant transfer pricing records specified, or of a description specified, in the regulations –
 - (a) as to the form or manner in which those records are to be kept and preserved;
 - (b) by reference to things specified in the transfer pricing guidelines (within the meaning of section 164 of TIOPA 2010 (interpretation in accordance with OECD principles)).”;
 - (b) for sub-paragraph (6) substitute –
 - “(6) For the purposes of this paragraph –
 - (a) records are “relevant transfer pricing records” if the Commissioners for Her Majesty’s Revenue and Customs reasonably consider that the records may relate to the calculation of profits or losses in accordance with Part 4 of TIOPA 2010 (transfer pricing);
 - (b) “supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.”
- (3) In Schedule 24 to FA 2007 (penalties for errors) –
 - (a) in Part 1 (liability for penalty), after paragraph 3B insert –

“Errors related to transfer pricing records

- 3C (1) This paragraph applies where –
- (a) a document of a kind listed in the Table in paragraph 1 is given to HMRC by a person (“P”);
 - (b) the document contains an inaccuracy which falls within paragraph 1(2),
 - (c) P has failed to comply, in relation to specified relevant transfer pricing records that relate to the inaccuracy, with one or more of –
 - (i) section 12B of TMA 1970 (records to be kept for the purposes of returns);
 - (ii) paragraph 21 of Schedule 18 to FA 1998 (duty to keep and preserve records);
 - (iii) an information notice (within the meaning of Schedule 36 to FA 2008 (information and inspection powers)), and
 - (d) the document relates to an accounting period in respect of which –
 - (i) P, together with one or more persons, constitutes an MNE Group within the meaning of the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 (S.I. 2016/237) (see regulation 2(3) of those Regulations), and
 - (ii) the MNE Group meets the threshold requirement within the meaning of those Regulations (see regulations 3(2) to (4) of those Regulations).
- (2) It is to be presumed that the inaccuracy was careless, within the meaning of paragraph 3, unless –
- (a) the inaccuracy was deliberate on P’s part, or
 - (b) P satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that P took reasonable care to avoid the inaccuracy.
- (3) For the purposes of this paragraph records are “specified relevant transfer pricing records” if –
- (a) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B of TMA 1970 or paragraph 21 of Schedule 18 to FA 1998 (duties to keep and preserve records), and
 - (b) P is required to keep and preserve those records under either or both of those provisions.”;
- (b) in Part 4 (miscellaneous), in paragraph 18 (agency), in sub-paragraph (6) –
- (i) for “Paragraph 3A applies” substitute “Paragraphs 3A and 3C apply”;
 - (ii) for “it applies” substitute “they apply”.
- (4) In Schedule 36 to FA 2008 (information and inspection powers) –

(a) in Part 4 (restrictions on powers), in paragraph 21 (taxpayer notices following tax return) –

- (i) in sub-paragraph (3), for “D” substitute “E”;
- (ii) after sub-paragraph (8) insert –

“(8A) Condition E is that the notice is given for the purpose of obtaining any specified relevant transfer pricing information or documents.

(8B) For the purposes of Condition E, information or documents are “specified relevant transfer pricing information or documents” if –

- (a) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B of TMA 1970 or paragraph 21 of Schedule 18 to FA 1998 (duties to keep and preserve records), and
- (b) the taxpayer is required to keep and preserve those records under either or both of those provisions.”;

(b) in Part 6 (special cases), after paragraph 37B insert –

“Specified relevant transfer pricing documents

37C (1) This paragraph applies to an information notice given to a person (“A”) to the extent that the notice refers to specified relevant transfer pricing documents.

(2) Paragraph 18 (documents not in person’s possession or power) does not apply in relation to a document in the possession or power of another person who, together with A and any other persons, constitutes an MNE Group (and accordingly the information notice may require A to produce that document).

(3) For the purposes of this paragraph –

(a) documents are “specified relevant transfer pricing documents” if –

- (i) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B of TMA 1970 or paragraph 21 of Schedule 18 to FA 1998 (duties to keep and preserve records), and
- (ii) A, or another person who, together with A and any other persons, constitutes an MNE Group, is required to keep and preserve those records under either or both of those provisions;

(b) “MNE Group” has the same meaning as in the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 (S.I. 2016/237) (see regulation 2(3) of those Regulations).”;

(c) in Part 9 (miscellaneous provisions and interpretation), in paragraph 58 (general interpretation), at the appropriate place insert –

““TIOPA 2010” means the Taxation (International and Other Provisions) Act 2010;”.

- (5) The amendments made by this section have effect in relation to records, documents and information that the Commissioners for Revenue and Customs reasonably consider may relate to the calculation of profits or losses in accordance with Part 4 of TIOPA 2010 (transfer pricing) for the purposes of accounting periods beginning on or after 1 April 2023.