



Tax Take +



How to respond to an information request – Schedule 36, Finance Act 2008

June 2025

Guidance note

Introduction

1. Schedule 36 to the Finance Act 2008 (Schedule 36) provides HMRC with certain powers to obtain information and or documents from taxpayers and third parties in civil tax investigations.
2. This note summarises HMRC's powers to issue information notices under Schedule 36 and sets out the grounds on which such notices may be challenged. References below to paragraphs are references to paragraphs in Schedule 36.
3. Schedule 36 provides HMRC with the following two main types of power:
 - 3.1 power to obtain information and documents, and
 - 3.2 power to inspect premises and other property.
4. This note concentrates on the main powers which enable HMRC to obtain information and documents, as there is no right of appeal in relation to the powers relating to the inspection of premises and other property.
5. There are five main types of information notices which HMRC may issue under Schedule 36:
 - 5.1 a taxpayer notice (paragraph 1)
 - 5.2 a third-party notice (paragraph 2)
 - 5.3 a financial institution notice (paragraph 4A)
 - 5.4 a person whose identity is unknown notice (paragraph 5), and
 - 5.5 an identity not fully known notice (paragraph 5A).
6. We consider further below taxpayer notices and third party notices (paragraphs 1 and 2, respectively), which are the notices most frequently issued by HMRC under Schedule 36.

Taxpayer notices

7. An HMRC officer can, by written notice, require a taxpayer to provide information or to produce a document that is “*reasonably required*” for “*checking the taxpayer’s tax position*”. This power is very widely drafted and enables HMRC to obtain documents and information before a tax return is filed, as well as information on future liabilities a taxpayer may have.
8. There is no statutory precondition that HMRC must ask the taxpayer to provide the information or documents voluntarily before serving a taxpayer notice, although this will normally happen in practice. Indeed, taxpayers can normally expect to receive such a request with the notice HMRC will send to the taxpayer when opening its enquiry.
9. Paragraph 1 enables HMRC to obtain documents and information before a tax return is filed and can be used to obtain information in relation to a future liability to pay tax. If the taxpayer has already filed a self-assessment return or a company tax return, an HMRC officer cannot issue a taxpayer notice for the period covered by the return, unless one of the following conditions is satisfied (paragraph 21):
 - 9.1 there is an open enquiry for that period; or
 - 9.2 the officer has reason to suspect one of the following:
 - 9.2.1 an amount that ought to have been assessed to tax for the chargeable period was not assessed
 - 9.2.2 an assessment to tax for the chargeable period may be or has become insufficient, or
 - 9.2.3 relief from tax given for the chargeable period may be or has become excessive.
10. An HMRC officer does not have to obtain prior judicial approval before issuing a taxpayer notice. However, under paragraph 3(2), the officer can choose whether to seek approval from the First-tier Tribunal (FTT) in advance. If the FTT approves the issuing of the notice, then the taxpayer has no right to appeal against the notice (paragraph 29(3)). A taxpayer in such circumstances can, however, seek judicial review of HMRC’s and/or the FTT’s decision to issue/approve the notice (see guidance note: Judicial review proceedings).
11. If, however, the FTT has not approved the issuing of the notice, the taxpayer can appeal against a requirement to provide information or documents which are not part of the taxpayer’s statutory records (paragraph 29(3)). The FTT confirmed in *Newton v Revenue and Customs Comrs* [2018] UKFTT 513 (TC), that due to the lack of appeal rights, the term ‘statutory records’ should be narrowly construed.
12. Where an appeal is made under paragraph 29, notice must be given in writing to HMRC within 30 days of the date of the notice (paragraph 32(1)). The notice of appeal must contain the grounds of appeal (paragraph 32(2)). If the appeal is transmitted to the FTT, the FTT may uphold, vary or set aside the notice (paragraph 32(3)).
13. An application to the FTT for approval to issue a taxpayer notice can be made by HMRC without notice to the taxpayer in circumstances where the FTT is satisfied that the assessment or collection of tax might be prejudiced (paragraph 3(4)). Absent this situation, the taxpayer must be given a reasonable opportunity to make representations to HMRC concerning the information or documentation required and HMRC must provide the FTT with a summary of the taxpayer’s representations (paragraph 3(3)(c) and (d)).

Third party notice

14. An HMRC officer can, by written notice to any person, require that person to provide information or produce a document that is “*reasonably required*” for “*checking the tax position of another person*”. The issue of a third party notice, unlike a taxpayer notice, must be approved in advance by the FTT, unless the taxpayer consents to the issue of the notice (paragraph 3(1)).
15. Paragraph 3(3) provides that the FTT cannot approve the giving of a taxpayer notice, or a third party notice, unless:
 - 15.1 the application is made by an authorised officer of HMRC
 - 15.2 the FTT is satisfied that the officer giving the notice is justified in doing so

- 15.3 the intended recipient of the notice has been informed that the information or documents referred to in the notice are required and given a reasonable opportunity to make representations to HMRC
- 15.4 the FTT has been given a summary of any representations made by the intended recipient of the notice, and
- 15.5 in the case of a third party notice, the taxpayer has been given a summary of the reasons why HMRC requires the information and documents requested.
- 16. Requirements (c) to (e) do not apply where the FTT is satisfied that taking these actions might prejudice the assessment or collection of tax (paragraph 3(4)).
- 17. Where the FTT approves the giving of a third party notice, it may disapply the requirement to name the taxpayer in the notice if it is satisfied that the HMRC officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax (paragraph 3(5)).
- 18. Generally, HMRC must give a copy of the notice to the taxpayer to whom it relates. This requirement is disapplied if an application is made by an authorised officer of HMRC and the FTT 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 (paragraph 4).
- 19. If the issue of a third party notice has not been approved in advance by the FTT (ie the taxpayer has consented to the issue of the notice) then 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 a requirement in the notice (paragraph 30(1)). If the FTT has given its approval to the issue of the notice, in accordance with paragraph 3, the third party has no right of appeal.
- 20. Once judicial approval is given and the notice issued, the mechanism for challenging the validity of the notice is by way of judicial review (see guidance note: Judicial Review proceedings).

Tax position

- 21. The phrase “*tax position*” is widely defined in paragraph 64, as a person’s position regarding any tax including: past, present and future liabilities to pay tax; penalties and other amounts payable in connection with any tax; claims, elections, applications and notices in connection with a person’s liability to pay any tax; and any deductions or repayments of tax a person is required to make under PAYE regulations, the construction industry scheme or any other provision of the Taxes Acts. “Tax” also includes UK and certain foreign taxes.

Penalties for failure to comply

- 22. Under paragraphs 39 and 40, a person who fails to comply with an information notice will be liable to a penalty of £300 and a daily default penalty of £60 for each subsequent day on which the failure continues. HMRC may ask the FTT to increase the daily default penalty to a maximum of £1,000 a day, where a person does not comply with an identity unknown notice within 30 days, subject to certain safeguards (paragraph 49A).
- 23. Under paragraph 40A, a penalty of £3,000 can be imposed for providing inaccurate information or documentation in complying with an information notice, where any of the following conditions are satisfied:
 - 23.1 the inaccuracy is careless or deliberate
 - 23.2 the person knows of the inaccuracy at the time the information or document is provided, or
 - 23.3 the person who provided the inaccurate information or document discovers the inaccuracy sometime later and fails to take reasonable steps to inform HMRC.
- 24. Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.
- 25. Under paragraph 46, where a person becomes liable for a penalty under paragraphs 39, 40 or 40A, HMRC may assess the penalty and if they do so they must notify the person concerned accordingly.

26. Under paragraph 45, liability to a penalty under paragraphs 39 or 40 will not arise if the person concerned can satisfy HMRC, or on an appeal the FTT, that they have a reasonable excuse for their failure.
27. A “tax-geared” penalty can also be imposed. Paragraph 50 provides that where a person becomes liable to a penalty under paragraph 39 and the failure continues after the penalty has been imposed under that paragraph and HMRC has reason to believe that, as a result of the failure, the amount of tax that the person has paid (or is likely to pay) is significantly less than it would otherwise have been, they may apply to the Upper Tribunal (UT) for an additional penalty to be imposed in an amount decided by the UT (see *HMRC v AML Tax (UK) Ltd* [2022] UKUT 00081 (TCC)). In deciding the amount of the penalty, the UT will have regard to the amount of tax which has not been, or is not likely to be, paid by the person concerned.

Right of appeal against a penalty

28. Paragraph 47 provides that a person may appeal against a decision of HMRC imposing a penalty under paragraphs 39, 40 or 40A. The appeal may be against the imposition of the penalty or the amount of any such penalty.
29. The procedure to be followed when appealing against a decision that a penalty is payable is set out in paragraph 48. The notice of appeal must be in writing and must be given to HMRC before the end of the period of 30 days beginning with the date on which the penalty notification was issued.
30. On an appeal that is notified to the FTT (in accordance with the provisions of the Taxes Management Act 1970 (TMA), paragraph 48(3) and (4) provide that the FTT may confirm or cancel the decision or substitute its own decision for the decision under appeal.
31. Liability to a penalty under paragraphs 39 or 40 does not arise if the person satisfies HMRC, or the FTT, that there is a “reasonable excuse” for the failure.
32. A taxpayer cannot appeal against a penalty imposed for failing to respond to a Schedule 36 notice on the basis that the notice itself was invalid (see *R (on the application of PML Accounting) v Revenue and Customs Comrs* [2018] EWCA Civ 2231). If a taxpayer does not appeal against the information notice itself, it is deemed to be agreed, pursuant to section 54, TMA.

Restrictions on HMRC’s information powers

33. The main restrictions, which apply to all the notices mentioned above, are set out below.

Legal professional privilege

34. Paragraph 23 provides that an information notice does not require a person to provide information or produce any part of a document protected by legal professional privilege (LPP) (which entitles a person to withhold evidence, whether oral or written, from production to a third party or a court). LPP comprises:
- 34.1 legal advice privilege (confidential communications between lawyers and their clients made for the dominant purpose of seeking or giving legal advice), and
 - 34.2 litigation privilege (confidential communications between lawyers and their clients, or the lawyer or client and a third party, which comes into existence for the dominant purpose of being used in connection with actual or pending litigation).
35. Paragraph 19(1) excludes from disclosure documents that relate to “the conduct of any pending appeal”. The reference to “conduct of any pending appeal” indicates that only documents that are brought into existence for the purposes of the preparation and presentation of the appeal are protected (see *Monarch Assurance Co Ltd v Special Commissioners and Inland Revenue Comrs* [1986] STC 311). Paragraph 19(1) applies only in respect of “pending” appeals. Until an appeal has been made by the taxpayer, paragraph 19(1) does not apply.

Documents in the recipient's possession or power

36. Under paragraph 18, a person who receives an information notice is only required to produce a document if it is in that person's "*possession or power*".

Documents more than six years old

37. Paragraph 20 provides that an information notice cannot require a person to produce a document if the whole of the document originates more than six years before the date of the notice, unless the notice is given by, or with the agreement of, an authorised officer.

Top tips

- On receipt of a Schedule 36 information notice, ensure that it meets all of the statutory criteria in order to be validly issued.
- Consider relevant grounds for resisting or narrowing the scope of a Schedule 36 information notice.
- If complying with a Schedule 36 information notice, ensure that legally privileged documents are not disclosed to HMRC.
- If there are grounds for resisting or narrowing the scope of a Schedule 36 information notice, ensure that the appeal deadline is adhered to and that all necessary appeal paperwork is correctly transmitted to the FTT.

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