

General Anti-Abuse Rule (GAAR) Advisory Panel: terms of reference

1. Introduction

This document sets out the framework within which the GAAR Advisory Panel will operate - it does not convey any legal powers or responsibilities.

The panel has been established by the Commissioners for HM Revenue and Customs (the Commissioners) as a committee to carry out the functions specified in the legislation containing and referring to the GAAR and to carry out certain other functions set out in these terms of reference. Specifically the GAAR legislation provides that:

- HM Revenue and Customs (HMRC) may not give a notice (other than a provisional counteraction notice) to counteract tax advantages arising from tax arrangements under the GAAR unless those arrangements or equivalent arrangements have first been referred to the panel for its opinions, and those opinions have been given by a sub-panel
- in determining any issue in connection with the GAAR the tribunal or court must take into account HMRC's guidance on the GAAR that has been approved by the panel, and the opinions of the relevant sub-panel.

The Panel also carries out the functions specified in the Penalties for enablers of defeated tax avoidance legislation ("Penalties for enablers").

HMRC may not assess a penalty under this legislation unless an opinion of the GAAR Advisory Panel has been obtained in respect of, or which can be applied to, the tax arrangements to which the penalty relates.

2. Scope of the panel's remit

The panel's remit extends to the GAAR and Penalties for Enablers only and not to any other area of tax legislation and procedure. In particular, the panel's remit does not extend to considering other challenges to tax arrangements.

The panel will carry out the following functions:

- Consider, review, and (if appropriate) approve HMRC's guidance relating to the GAAR.
- Deliver opinions on cases referred to it by HMRC. The legislation requires the panel to consider whether, in the panel's opinion, the entering into and carrying out of the tax arrangements is or is not a reasonable course of action in relation to the relevant tax provisions.

Read the GAAR and Penalties for Enablers legislation on the gov.uk website.

In addition, the Chair will present an annual report to the Commissioners.

Consideration of cases and delivery of opinions

In order to provide opinions in accordance with the GAAR and Penalties for Enablers legislation, the Chair will select a sub-panel of three panel members to consider each specific case referred to the panel. Selection to the sub-panel will take into account panel member availability, skills and experience. This sub-panel may or may not include the Chair.

The Chair may recommend to the Commissioners additional persons for appointment to the panel to consider a specific case to ensure that the sub-panel has the appropriate expertise. Any individual appointed for this purpose will be formally appointed to the panel by the Commissioners, and their appointment will end when the sub-panel has delivered its opinions on that case and the anonymised version has been approved for publication.

The Chair will, when selecting panel members to form a sub-panel, have regard to potential conflicts of interest that might prevent a panel member from taking a fair and objective view.

The sub-panel will normally aim to deliver its opinion within 60 days of the Panel receiving all relevant referral material (including any further information the Panel requests).

Approval of Guidance

In order to facilitate the consideration, review, and approval process described above, HMRC will deliver draft GAAR guidance to the panel.

Panel members are to provide their suggestions and comments on it to the Chair, who is responsible for formulating the panel's response to HMRC, including recommendations for amendments, and for delivering the panel's approval.

The panel will liaise with HMRC to monitor the need for changes to the guidance at other times.

3. Accountability

The panel is accountable to the Commissioners.

4. Governance and structure

The panel is led by the Chair.

The Chair will work on a part-time basis, the number of hours to depend on the number of cases referred to the panel. The Chair and other panel members will not receive remuneration, but HMRC will reimburse expenses reasonably incurred in carrying out their duties.

Secretariat

The panel will be supported by a secretariat provided by HMRC.

The responsibilities of the secretariat may include:

- supporting the panel in its role of considering, amending and approving HMRC's guidance on the GAAR by ensuring that drafts are delivered to panel members, and arranging for any comments made by the panel to be fed back into the drafting of the guidance

- acting as secretary for cases referred to the panel
- supporting the Chair in producing the panel's annual report to the Commissioners

5. Appointments

Panel members are appointed by the Commissioners.

The Chair will be appointed through an open recruitment process in line with Cabinet Office guidance.

Core panel members are those members of the panel who are appointed to review and approve the guidance and to sit on sub-panels as required.

Core panel member appointments will be made by the Commissioners, advised by the Chair.

Core panel members will initially be appointed for three years. At the end of that period the appointment will be reviewed. After 3 years the appointment may be extended.

The Chair's appointment will initially be for five years unless the Chair resigns or is removed by the Commissioners. After 5 years the appointment may be extended.

Additional panel members will be appointed by the Commissioners on the recommendation of the Chair, for the period necessary for the relevant sub-panel to deliver its opinion.

6. Relationship with other bodies

Relationship with HMRC

The panel is a committee established by the Commissioners. It is responsible to the Commissioners.

Relationship with Parliament

The Commissioners are accountable to Parliament for all HMRC's functions and this includes all aspects of the panel's work.

7. Management and financial responsibilities

The panel's financial provision will form part of HMRC's annual allocation, and accountability for expenditure will be through the HMRC Accounting Officer.

8. Further obligations of panel members

The duty of confidentiality in S18 Commissioners for Revenue and Customs Act 2005 applies to all panel members.

The Chair must tell the Commissioners promptly if the Chair believes that a conflict of interests affects their ability to carry out their role.

Every panel member must tell the Chair promptly if they believe that a conflict of interests affects their ability to carry out their role as a panel member.