

1 Amendments relating to the operation of the GAAR

Schedule 1 contains amendments relating to the operation of the general anti-abuse rule under Part 5 of FA 2013.

SCHEDULES

SCHEDULE 1

Section 1

AMENDMENTS RELATING TO THE OPERATION OF THE GAAR

Introduction

- 1 Part 5 of FA 2013 (the general anti-abuse rule) is amended as follows.

Protecting adjustments under the GAAR before time limits expire

- 2 In section 209(6) (counteracting the tax advantage) –
 - (a) in paragraph (a) –
 - (i) for the words from the beginning to “by virtue of this section unless” substitute “the effect of adjustments made by an officer of Revenue and Customs by virtue of this section is suspended until”, and
 - (ii) after “complied with” insert “(but see section 209AA(6))”, and
 - (b) in paragraph (b), at the end insert “(but see sections 209AA and 209AB for cases where the time limit is treated as met)”.

- 3 After section 209 insert –

“209AA Protective GAAR notices

- (1) An officer of Revenue and Customs may give a written notice (a “protective GAAR notice”) to a person stating that the officer considers –
 - (a) that a tax advantage might have arisen to the person from tax arrangements that are abusive, and
 - (b) that, on the assumption that the advantage does arise from tax arrangements that are abusive, it ought to be counteracted under section 209.
- (2) The protective GAAR notice must be given within the ordinary assessing time limit applicable to the proposed adjustments.
- (3) But if –
 - (a) a tax enquiry is in progress into a return made by the person, and
 - (b) the return relates to the tax in respect of which the specified adjustments under the protective GAAR notice are made,the protective GAAR notice must instead be given no later than the time when the enquiry is completed.
- (4) The protective GAAR notice must –

- (a) specify the arrangements and the tax advantage, and
 - (b) specify the adjustments that, on the assumption that the advantage does arise from tax arrangements that are abusive, the officer proposes ought to be made.
- (5) Notice of appeal may be given against the adjustments specified in the protective GAAR notice; but any appeal is, as a result of this subsection, stayed—
- (a) for a period of 12 months beginning with the day on which the protective GAAR notice is given, or
 - (b) if a final GAAR counteraction notice is given before the end of that period, for a period ending with the day on which the final GAAR counteraction notice is given.
- (6) If, in the case of any adjustments specified in the protective GAAR notice—
- (a) notice of appeal is not given, or
 - (b) notice of appeal is given but the appeal is subsequently withdrawn,
- the protective GAAR notice has effect for all purposes as if it were a final GAAR counteraction notice (and, accordingly, as if the GAAR procedural requirements had been complied with).
- (7) In any other case—
- (a) the adjustments specified in the protective GAAR notice have no effect unless they (or lesser adjustments) are subsequently specified in a final GAAR counteraction notice, but
 - (b) the giving of the protective GAAR notice is treated as meeting the requirements of section 209(6)(b) in the case of that final GAAR counteraction notice.
- (8) In this section—
- “final GAAR counteraction notice” means a notice given under—
 - (a) paragraph 12 of Schedule 43,
 - (b) paragraph 8 or 9 of Schedule 43A, or
 - (c) paragraph 8 of Schedule 43B,
 - “GAAR procedural requirements” means the procedural requirements of Schedule 43, 43A or 43B,
 - “lesser adjustments” means adjustments specified in the final GAAR counteraction notice which assume a smaller tax advantage than was assumed in the protective GAAR notice, and
 - “ordinary assessing time limit”, in relation to any adjustments, means the time limit imposed by or under any enactment other than this Part for the making of the adjustments.
- (9) Expressions which are used in section 202 of FA 2014 (“tax enquiry”, and its being “in progress”, and “return”) have the same meaning in this section as they have in that section (and references to completing a tax enquiry are to be read accordingly).”

4 After section 209AA (as inserted by paragraph 3) insert –

“209AB Adjustments under section 209: notices under Schedule 43 or 43A

- (1) This section applies if –
 - (a) a person is given a notice under paragraph 3 of Schedule 43 or a pooling notice or notice of binding under Schedule 43A (“the Schedule 43 or 43A notice”), and
 - (b) the notice is given within the ordinary assessing time limit applicable to the adjustments proposed to be made to counteract the tax advantage in question.
- (2) The giving of the notice is treated as meeting the requirements of section 209(6)(b) (in the event that a final GAAR counteraction notice is given in relation to the tax arrangements concerned).
- (3) In this section “final GAAR counteraction notice” and “ordinary assessing time limit” have the same meaning as in section 209AA.”

5 Omit sections 209A to 209F (provisional counteraction notices).

6 In section 214(1) (interpretation of Part 5 of FA 2013), omit –

- (a) the definition of “notified adjustments”, and
- (b) the definition of “provisional counteraction notice”.

Minor amendments

7 In paragraph 11 of Schedule 43A (meaning of “equivalent arrangements”), omit “For the purposes of paragraph 1,”.

8 In paragraph 5 of Schedule 43C (penalty under section 212A), for subparagraphs (5) and (6) substitute –

- “(5) An assessment of a penalty under this paragraph must be made before the end of the period of 12 months beginning with the date (or the latest of the dates) on which the counteraction mentioned in section 212A(1)(d) becomes final (within the meaning of section 210(8)).”

Commencement

9 The amendment made by paragraph 2(a)(i) has effect in relation to adjustments made by an officer of Revenue and Customs by virtue of section 209 of FA 2013 on or after the commencement date.

10 The amendment made by paragraph 3 has effect in relation to notices given under section 209AA of FA 2013 on or after the commencement date (whenever the arrangements are entered into) but no notice may be given under that section in relation to any arrangements if a provisional counteraction notice has been given under section 209A of that Act before that date in respect of those arrangements.

11 The amendment made by paragraph 4 has effect in relation to notices given under Schedule 43 or 43A to FA 2013 on or after the commencement date (whenever the arrangements are entered into).

- 12 The amendment made by paragraph 5 does not affect the operation of sections 209A to 209F of FA 2013 in relation to provisional counteraction notices given under section 209A of that Act before the commencement date.
- 13 The amendment made by paragraph 8 has effect in relation to cases where a person becomes liable to a penalty under section 212A of FA 2013 on or after the commencement date.
- 14 In paragraphs 10 to 13 “the commencement date” means the date on which this Act is passed.