

Clause 1 and Schedule 1: Amendments relating to the operation of the GAAR

Summary

1. This clause introduces Schedule 1 which makes procedural changes to the General Anti Abuse Rule (GAAR). The Schedule repeals sections 209A to 209F of part 5 of FA 2013 concerning provisional counteraction notices and replaces them with a procedurally simpler protective GAAR notice. It also introduces some minor procedural and technical amendments to the legislation to remove ambiguity and to ensure that where HMRC decides not to pursue the GAAR, enquiries can still be pursued using technical non-GAAR arguments. These procedural changes will apply from Royal Assent. Provisional counteraction notices issued before the date of Royal Assent will not be affected.

Details of the clause and schedule

2. Clause 1 introduces Schedule 1 which makes changes in relation to the operation of the GAAR.

Schedule 1

3. Paragraph 1 introduces the amendments to Part 5 of FA 2013 (the GAAR).
4. Paragraph 2 amends section 209(6)(a) to ensure that where HMRC is compelled by statutory time limits to issue a notice making an adjustment before the GAAR procedural requirements have been satisfied it is able to do so. The effect of any adjustment is suspended until after the GAAR procedural requirements are complete. It also amends sections 209(6)(a) and 209(6)(b) of FA2013 to ensure that adjustments made under the GAAR following the new protective GAAR notice procedure satisfy procedural and timing requirements.
5. Paragraph 3 inserts new section 209AA into FA 2013.
6. Subsection 1 of new section 209AA provides for the issue of a new protective GAAR notice to replace the provisional counteraction notice in section 209A of FA 2013.
7. Subsection 2 of new section 209AA provides that the protective GAAR notice must be issued within the normal statutory time limits for making the adjustments included in the proposed counteraction.
8. Subsection 3 of new section 209AA covers the situation where a tax enquiry is already in progress and as a result there is no statutory time limit for making an adjustment in respect of the relevant tax year. In these circumstances, the protective GAAR notice is to be given any time before the enquiry is completed.
9. Subsection 4 of new section 209AA sets out the information that must be specified in

the protective GAAR notice.

10. Subsection 5 of new section 209AA provides that GAAR adjustments included in a protective GAAR notice can be appealed but that any such appeal will be “stayed” or put on hold for a period of 12 months from the date the protective GAAR notice is given or, if earlier, up to the date the final GAAR counteraction notice is given.
11. Subsection 6 of new section 209AA provides that where no appeal is made or the appeal is subsequently withdrawn, the protective GAAR notice will be treated as if it were a final GAAR counteraction notice and as if the GAAR procedural requirements had been met.
12. Subsection 7 of new section 209AA provides that in any other case (i.e. where an appeal is made), the adjustments specified in the protective GAAR notice (or lesser adjustments following enquiries) have no effect unless they are specified in a final GAAR counteraction notice. The time limit for making the adjustments in the final GAAR counteraction notice is met by giving the protective GAAR notice.
13. Subsections 8 and 9 of new section 209AA contain definitions for the purposes of section 209AA.
14. Paragraph 4 inserts new section 209AB into FA 2013.
15. Subsections 1 and 2 of new section 209AB provide that if a person is given a notice of proposed counteraction under Schedule 43 or a pooling or binding notice under Schedule 43A within the ordinary assessing time limits for the relevant adjustments, that notice will be treated as meeting the time limit for making the adjustments in any subsequent final GAAR counteraction notice.
16. Subsection 3 of new section 209AB confirms that “final GAAR counteraction notice” and “ordinary assessing time limit” have the same meaning as in section 209AA.
17. Paragraph 5 repeals sections 209A to 209F in Part 5 of FA2013.
18. Paragraph 6 contains consequential amendments removing definitions contained in section 209A from section 214(1) of Part 5 of FA2013.
19. Paragraph 7 amends paragraph 11 of Schedule 43A to make it clear that the definition of “equivalent arrangements” applies not just for pooling purposes but also to binding and generic referrals as intended.
20. Paragraph 8 replaces sub paragraphs (5) and (6) of paragraph 5 of Schedule 43C (relating to the GAAR penalty charged under section 212A), with a new sub paragraph (5). This provides that an assessment of a penalty under section 212A must be made within 12 months of the adjustments made under section 209 becoming final, i.e. when the amounts arising as a result of those adjustments can no longer be varied on appeal or otherwise.
21. Paragraph 9 provides that the amendment to section 209(6)(a) FA2013 suspending the effect of adjustments made under section 209 until the GAAR procedural requirements have been satisfied will have effect in relation to adjustments made on or after the date of Royal Assent.
22. Paragraph 10 provides that the new protective GAAR notice provisions in section

209AA will have effect in relation to notices issued on or after Royal Assent regardless of when the arrangements were entered into. A protective GAAR notice cannot be issued if a provisional counteraction notice has already been issued in respect of those arrangements.

23. Paragraph 11 provides that new section 209AB will have effect in relation to notices issued on or after the commencement date (regardless of when the arrangements were entered into).
24. Paragraph 12 provides that the repeal of sections 209A to 209F of FA 2013 will not affect the operation of these provisions in relation to provisional counteraction notices issued before the commencement date.
25. Paragraph 13 provides that the changes to the administrative provisions for the GAAR penalty will apply to cases where a person becomes liable to a penalty on or after the commencement date.
26. Paragraph 14 provides that the “commencement date” is the date of Royal Assent.

Background note

27. The GAAR was introduced in 2013. It provides HMRC with the ability to challenge “abusive” tax arrangements where those arrangements are designed to achieve a tax outcome clearly outside the intention of the legislation.
28. At the Budget on 29 October 2018, the government announced that legislation will be introduced in Finance Bill 2019-20 to make minor procedural and technical changes to the GAAR.
29. These changes will remove much of the incentive for taxpayers not to co-operate with requests for information whilst ensuring appropriate safeguards remain in place. These changes do not alter the fundamental GAAR test, safeguards or policy aims.
30. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 03000 585265 email: antonio.zagara@hmrc.gov.uk