Information about the general anti-abuse rule

We have asked you to read this factsheet because you’ve used arrangements that we consider the general anti-abuse rule (GAAR) may apply to. Please keep it safe as you may need to read it again.

Where this factsheet refers to ‘tax’, this means the taxes, levies and contributions to which the GAAR applies. These are listed at the end of page 2.

This factsheet is one of a series. For the full list, go to www.gov.uk and search for ‘HMRC compliance checks factsheets’.

If you need help

If you have any health or personal circumstances that may make it difficult for you to deal with this, please tell the HM Revenue and Customs (HMRC) officer who has contacted you. We’ll help you in whatever way we can. For more details, go to www.gov.uk/dealing-hmrc-additional-needs.

About the general anti-abuse rule

The GAAR helps make sure that people pay the right amount of tax, by tackling ‘abusive’ tax arrangements. It also aims to deter people from entering into abusive tax arrangements.

Under the GAAR we can make ‘just and reasonable’ adjustments to remove (‘counteract’) the tax advantage that a person has tried to gain from using abusive tax arrangements. We can do this, for example, by amending their tax return.

We can charge penalties for arrangements entered into on or after 15 September 2016. The amount of the penalty is a fixed rate of 60% of the value of the counteracted advantage. We can only charge a GAAR penalty if the tax advantage is counteracted under the GAAR rather than in any other way.

The GAAR applies to arrangements entered into on or after 17 July 2013. For National Insurance contributions (NICs), it applies to arrangements entered into on or after 13 March 2014. Amendments were made to the GAAR legislation on 15 September 2016, which:

• allowed us to give provisional counteraction notices
• introduce the concepts of ‘pooling’, ‘binding’ and ‘generic referrals’ where we’re applying opinions obtained from the GAAR Advisory Panel to users of equivalent arrangements
• introduce penalties for people who entered into abusive tax arrangements on or after 15 September 2016

Further amendments were made to the GAAR legislation on 22 July 2020. These amendments mean we’ll no longer send provisional counteraction notices and we’ll send protective GAAR notices instead.

You can find more information about the GAAR Advisory Panel later in this factsheet.

What we mean by tax arrangements and tax advantage

Arrangements are ‘tax arrangements’ if, considering all the circumstances, it would be reasonable to conclude that the main purpose, or one of the main purposes of the arrangements was to obtain a tax advantage. A tax advantage includes:

• relief or increased relief from tax
• repayment or increased repayment of tax
• avoidance or reduction of a charge to tax or an assessment to tax
• avoidance of a possible assessment to tax
• deferral of a payment of tax or advancement of a repayment of tax
• avoidance of an obligation to deduct or account for tax
When tax arrangements are considered to be abusive

The GAAR states that tax arrangements are abusive if they are arrangements, the entering into or carrying out of which, cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions - taking into account all the circumstances. This is often known as the ‘double reasonableness test’. The circumstances that will be taken into account include:

- whether the results of the arrangements are consistent with the principles and policy objectives of those tax provisions
- whether the way in which those results are obtained involves one or more contrived or abnormal steps
- whether the arrangements are intended to exploit any shortcomings in those tax provisions
- whether the arrangements produce a tax loss which is significantly greater than the economic loss, or a taxable profit or gain which is significantly smaller than the economic profit or gain
- whether the arrangements result in a claim for the repayment (or credit) of tax that has not been paid, and is unlikely to be paid
- whether the arrangements are consistent with established practice that had been accepted by HMRC

You can find more information about when tax arrangements may be considered abusive in our GAAR guidance. Go to www.gov.uk and search for ‘GAAR guidance’.

The GAAR Advisory Panel

The GAAR Advisory Panel is a committee of independent tax specialists. Their purpose is to provide a safeguard for customers by giving an independent opinion. No HMRC staff are on the panel.

We refer tax arrangements to the panel so they can give their opinion. We ask the panel whether they consider the entering into and carrying out of those tax arrangements is a reasonable course of action in relation to the relevant tax provisions. If different panel members have different opinions, the panel will give all the opinions. We then take into account the panel’s opinion, or opinions, when we decide what action to take under the GAAR, if any.

The panel’s opinion, or opinions, will be relevant to the particular tax arrangements that we referred to the panel, and, where appropriate, to other equivalent arrangements. We’ll tell you more, including what we mean by ‘equivalent arrangements’, if this applies to you.

For more information about the panel, go to www.gov.uk and search for ‘GAAR Advisory Panel’, or to see reports of opinions from the panel, search for ‘GAAR Advisory Panel opinions’.

Designated HMRC officer

To make sure that HMRC applies the GAAR responsibly and consistently, some actions under the GAAR have to be taken only by certain HMRC officers. Those officers are known as ‘designated HMRC officers’.

The taxes, levies and contributions that the GAAR applies to

The GAAR applies to tax arrangements that were entered into on or after 17 July 2013 (unless a different date is shown below) and that relate to:

- Annual Tax on Enveloped Dwellings
- Apprenticeship Levy (from 15 September 2016)
- Capital Gains Tax
- Corporation Tax (including any amount chargeable as if it were Corporation Tax, or treated as if it were)
- Diverted Profits Tax (for profits on or after 1 April 2015)
- Income Tax (including Income Tax collected through the PAYE system)
- Inheritance Tax
- NICs (see below)
- Petroleum Revenue Tax
- Stamp Duty Land Tax

The GAAR applies to NICs for arrangements entered into on or after 13 March 2014. This includes NICs collected through the PAYE system, Class 4 NICs that are collected through self-assessment and, from the tax year 6 April 2015 to 5 April 2016 it also includes most Class 2 NICs that are collected through self-assessment.