
61 General anti-abuse rule: provisional counteractions

- (1) Part 5 of FA 2013 (general anti-abuse rule) is amended as follows.
- (2) After section 209 insert –

“209A Provisional counteractions

- (1) An officer of Revenue and Customs may give a person a provisional counteraction notice if the officer has reasonable grounds for believing that a particular tax advantage arises to the person from particular tax arrangements which are abusive.
- (2) The officer of Revenue and Customs may, after or at the same time as giving a person a provisional counteraction notice, make any adjustments which the officer considers may be required under section 209 to counteract the tax advantage mentioned in subsection (1).
- (3) In this section “provisional counteraction notice” means a written notice which –
 - (a) specifies the adjustments and states that this section applies to them, and
 - (b) explains the effect of sections 209B to 209D (including an explanation of the conditions in which the matter would, or would not, be referred to the GAAR Advisory Panel under Schedule 43 or 43A).
- (4) Adjustments under subsection (2) may be made in any way in which adjustments may be made under section 209(5).

209B Confirmation or cancellation etc of provisional adjustments following an appeal

- (1) This section applies where a person (the “taxpayer”) has been given a provisional counteraction notice under section 209A.
- (2) If the taxpayer appeals against the making of the adjustments specified in the notice, the adjustments are to be treated as cancelled with effect from the time mentioned in subsection (5) unless one of the following actions is taken before that time –
 - (a) an officer of Revenue and Customs notifies the taxpayer that the adjustments are cancelled,
 - (b) (without cancelling the adjustments) an officer of Revenue and Customs gives the taxpayer written notice of the withdrawal of the provisional counteraction notice, or
 - (c) a designated HMRC officer gives the taxpayer a notice under paragraph 3 of Schedule 43 which –
 - (i) specifies the arrangements and the tax advantage mentioned in subsection section 209A(1), and
 - (ii) specifies the adjustments in question (or lesser adjustments) as the counteraction that the officer considers ought to be taken (see paragraph 3(2)(c) of that Schedule).
- (3) If, in a case within subsection (2)(c), the notice under paragraph 3 of Schedule 43 specifies lesser adjustments, the adjustments made under section 209A(2) are to be treated as modified accordingly.

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- (4) “Lesser adjustments” means adjustments which assume a smaller tax advantage than was assumed in the provisional counteraction notice.
 - (5) The time referred to in subsection (2) is the end of the period of 12 months beginning with the day on which the provisional counteraction notice is given.
 - (6) The officer may not take the action in subsection (2)(b) unless the officer was authorised to make the adjustments otherwise than under this Part.

209C Confirmation or cancellation etc of provisional adjustments following an appeal: further stages

- (1) This section applies if the action in section 209B(2)(c) (notice to taxpayer of proposed counteraction of tax advantage) is taken.
- (2) If the matter is not referred to the GAAR Advisory Panel, the adjustments in question are to be treated as cancelled with effect from the date of the designated HMRC officer’s decision under paragraph 6(2) of Schedule 43 unless the notice under paragraph 6(3) of Schedule 43 states that the adjustments are not to be treated as cancelled under this section.
- (3) A notice under paragraph 6(3) of Schedule 43 may not contain the statement referred to in subsection (2) unless HMRC was authorised to make the adjustments otherwise than under this Part.
- (4) If the taxpayer is given a notice under paragraph 12 of Schedule 43 which states that the tax advantage arising from the arrangements is not to be counteracted under the general anti-abuse rule, the adjustments are to be treated as cancelled unless that notice states that the adjustments are not to be treated as cancelled under this section.
- (5) A notice under paragraph 12 of Schedule 43 may not contain the statement referred to in subsection (4) unless HMRC was authorised to make the adjustments otherwise than under this Part.
- (6) A cancellation under subsection (4) takes effect from the date on which the notice under paragraph 12 of Schedule 43 is given.
- (7) If the taxpayer is given a notice under paragraph 12 of Schedule 43 stating that the tax advantage in question is to be counteracted –
 - (a) the adjustments specified in the provisional counteraction notice (“the provisional adjustments”) are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and
 - (b) so far as they are not confirmed, the provisional adjustments are to be treated as cancelled.

209D Provisional counteractions: statutory stay of appeals

- (1) This section applies if a person (“the taxpayer”) appeals against the making of adjustments which are specified in a provisional counteraction notice under section 209A(2).
- (2) No steps after the initial notice of appeal are to be taken in relation to the appeal unless and until the taxpayer is given –
 - (a) a notice under section 209B(2)(b),

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- (b) a notice under paragraph 6(3) of Schedule 43 containing the statement described in section 209C(2), or
 - (c) a notice under paragraph 12 of Schedule 43, in respect of the tax arrangements concerned.
 - (3) For the purposes of the appeal it is to be assumed that section 209A(2) only authorises the making of adjustments which comply with section 209(1) and (2).
 - (4) The taxpayer has until the end of the period mentioned in subsection (5) to comply with any requirement to specify the grounds of appeal.
 - (5) The period mentioned in subsection (4) is the 30 days beginning with the day on which the taxpayer receives the notice mentioned in subsection (2)(a) or (b).
 - (6) In subsection (2) the reference to “steps” does not include the withdrawal of the appeal.”