# General Anti-Abuse Rule

### Who is likely to be affected?

Users and promoters of abusive tax avoidance schemes.

### General description of the measure

The measure will counteract tax advantages arising from abusive tax avoidance arrangements. The General Anti-Abuse Rule (GAAR) will apply to income tax, corporation tax (including amounts treated as corporation tax), capital gains tax, inheritance tax, petroleum revenue tax and stamp duty land tax. It will also apply to the annual residential property tax due to be enacted with effect from 1 April 2013. Separate legislation will be introduced later to apply the GAAR to National Insurance contributions (NICs).

### Policy objective

The measure supports the Government's objective of promoting fairness in the tax system by deterring taxpayers from entering into abusive schemes that might succeed under current law. The GAAR will provide that tax advantages arising from such arrangements are counteracted on a just and reasonable basis.

### Background to the measure

An independent study led by Graham Aaronson QC recommended the introduction of a general anti-abuse rule targeted at artificial and abusive tax avoidance schemes. The Government announced at Budget 2012 that it accepted the recommendation.

A consultation ran from 12 June to 14 September. The Government's response was published on 11 December 2012.

## Detailed proposal

### Operative date

The measure will apply to abusive tax arrangements entered into on or after Royal Assent to Finance Bill 2013.

### Current law

The GAAR will provide an additional means for HM Revenue & Customs (HMRC) to tackle abusive tax avoidance schemes. No changes are proposed to current tax rules except to the extent needed to fit with the new legislation. All forms of tax avoidance (including both abusive tax avoidance to which the GAAR may apply, and tax avoidance that does not fall within the meaning of abusive tax avoidance that is the target of the GAAR) will continue to be challenged and counteracted using existing means.

## Proposed revisions

Legislation will be introduced in Finance Bill 2013 whereby the GAAR will provide for the counteraction of tax advantages arising from tax arrangements that are abusive. Counteraction by HMRC must follow certain procedural requirements: counteraction must first be notified by a designated HMRC officer and, unless having considered representations made by the taxpayer a designated HMRC officer decides that counteraction ought not to apply, the arrangements must be referred to an Advisory Panel, to be established by the Commissioners for HMRC for the purpose, for its opinion(s).

Counteraction will be on a just and reasonable basis and may take a number of forms, appropriate to the particular tax in question. Where counteraction by HMRC has taken place, it will be possible for taxpayers to claim such consequential relieving adjustments as are just and reasonable.

### Summary of impacts

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|---|---|---|---|---|---|---|
| **Exchequer impact (£m)** | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
| | | | | | | |
| | This measure is expected to increase receipts. The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2013.<br>This measure supports the Exchequer in its commitment to protect revenue. | | | | | |
| **Economic impact** | The measure is not expected to have any significant economic impacts. | | | | | |
| **Impact on individuals and households** | The impact on individuals will be on those participating in abusive avoidance schemes. | | | | | |
| **Equalities impacts** | The GAAR will have no direct equality impacts. However the GAAR's aim of promoting fairness within the tax system will indirectly affect equality between taxpayer groups (both individual and corporate) as the GAAR will mainly affect those who are more inclined to consider entering into abusive tax avoidance schemes. | | | | | |
| **Impact on business including civil society organisations** | The GAAR will only impact on businesses participating in abusive schemes that give them an unfair advantage over businesses undertaking normal commercial transactions.<br>This measure will have no impact on businesses and civil society organisations who are undertaking normal commercial transactions. | | | | | |
| **Operational impact (£m) (HMRC or other)** | The impact on HMRC's costs is expected to be limited. There will be a cost of providing administrative support to the GAAR Advisory Panel and producing guidance but, in the longer term, there is a possibility of cost savings when abusive avoidance is deterred or countered more effectively. | | | | | |
| **Other impacts** | Small firms impact test: small firms will only be affected by the GAAR to the extent that they participate in abusive tax avoidance schemes. It is expected that a negligible number of small firms will be affected.<br>Other impacts have been considered and none have been identified. | | | | | |

## Monitoring and evaluation

The measure will be monitored through regular communication with affected taxpayers and practitioners, intelligence via disclosure/other sources of attempts to circumvent the measure and by the number of cases authorised for counteraction under the GAAR with a separate record of cases successfully litigated using a GAAR challenge.

## Further advice

If you have any questions about this change, please contact Carolyn Comben on 020 7147 0086 (email: carolyn.comben@hmrc.gsi.gov.uk).

## PART 1

GENERAL ANTI-ABUSE RULE

### 1 General anti-abuse rule

(1) This Part has effect for the purpose of counteracting tax advantages arising from tax arrangements that are abusive.

(2) The rules of this Part are collectively to be known as "the general anti-abuse rule".

(3) The general anti-abuse rule applies to the following taxes—

(a) income tax,

(b) corporation tax, including any amount chargeable as if it were corporation tax or treated as if it were corporation tax,

(c) capital gains tax,

(d) petroleum revenue tax,

(e) inheritance tax,

(f) stamp duty land tax, and

(g) annual residential property tax.

### 2 Meaning of "tax arrangements" and "abusive"

(1) Arrangements are "tax arrangements" if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.

(2) 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, having regard to all the circumstances including—

(a) whether the substantive results of the arrangements are consistent with any principles on which those provisions are based (whether express or implied) and the policy objectives of those provisions,

(b) whether the means of achieving those results involves one or more contrived or abnormal steps, and

(c) whether the arrangements are intended to exploit any shortcomings in those provisions.

(3) Where the tax arrangements form part of any other arrangements regard must also be had to those other arrangements.

(4) Each of the following is an example of something which might indicate that tax arrangements are abusive—

(a) the arrangements result in an amount of income, profits or gains for tax purposes that is significantly less than the amount for economic purposes,
(b) the arrangements result in deductions or losses of an amount for tax purposes that is significantly greater than the amount for economic purposes, and
(c) the arrangements result in a claim for the repayment or crediting of tax (including foreign tax) that has not been, and is unlikely to be, paid,

but in each case only if it is reasonable to assume that such a result was not the intended result when the relevant tax provisions were enacted.

(5) The fact that tax arrangements accord with established practice, and HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice, is an example of something which might indicate that the arrangements are not abusive.

(6) The examples given in subsections (4) and (5) are not exhaustive.

**3 Meaning of "tax advantage"**

A "tax advantage" includes—
(a) relief or increased relief from tax,
(b) repayment or increased repayment of tax,
(c) avoidance or reduction of a charge to tax or an assessment to tax,
(d) avoidance of a possible assessment to tax,
(e) deferral of a payment of tax or advancement of a repayment of tax, and
(f) avoidance of an obligation to deduct or account for tax.

**4 Counteracting the tax advantages**

(1) If there are tax arrangements that are abusive, the tax advantages that would (ignoring this section) arise from the arrangements are to be counteracted by the making of adjustments.

(2) The adjustments required to be made to counteract the tax advantages are such as are just and reasonable.

(3) The adjustments may be made in respect of the tax in question or any other tax to which the general anti-abuse rule applies.

(4) Any adjustments required to be made under this section (whether by an officer of Revenue and Customs or the person to whom the tax advantage would arise) may be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

(5) But—
(a) no steps may be taken by an officer of Revenue and Customs by virtue of this section unless the procedural requirements of Schedule 1 have been complied with, and
(b) the power to make adjustments by virtue of this section is subject to any time limit imposed by or under any enactment other than this Part.

(6) Any adjustments made under this section have effect for all purposes.

**5 Consequential relieving adjustments**

(1) This section applies where—

(a) an officer of Revenue and Customs gives a notice under paragraph 12 of Schedule 1 stating that any tax advantage arising from the arrangements is to be counteracted, and

(b) the counteraction of the advantage is final.

(2) A person has 12 months, beginning with the day on which the counteraction becomes final, to make a claim for one or more consequential adjustments to be made in respect of any tax to which the general anti-abuse rule applies.

(3) On a claim under this section, an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.

(4) Consequential adjustments—

(a) may be made in respect of any period, and

(b) may affect any person (whether or not a party to the tax arrangements).

(5) But nothing in this section requires or permits an officer to make a consequential adjustment the effect of which is to increase a person's liability to any tax.

(6) For the purposes of this section—

(a) if the claim relates to income tax or capital gains tax, Schedule 1A to TMA 1970 applies to it;

(b) if the claim relates to corporation tax, that Schedule (and not Schedule 18 to FA 1998) applies to it;

(c) if the claim relates to petroleum revenue tax, Schedule 1A to TMA 1970 applies to it, but as if the reference in paragraph 2A(4) of that Schedule to a year of assessment included a reference to a chargeable period within the meaning of OTA 1975 (see section 1(3) and (4) of that Act);

(d) if the claim relates to inheritance tax it must be made in writing to HMRC and section 221 of IHTA 1984 applies as if the claim were a claim under that Act;

(e) if the claim relates to stamp duty land tax, Schedule 11A to FA 2003 applies to it as if it were a claim to which paragraph 1 of that Schedule applies;

(f) if the claim relates to annual residential property tax,[....].

(7) Where an officer of Revenue and Customs makes a consequential adjustment under this section, the officer must give the person who made the claim written notice describing the adjustment which has been made.

(8) For the purposes of this section the counteraction of a tax advantage is final when—

(a) in a case where in response to the notice under paragraph 12 of Schedule 1 the taxpayer has effected the counteraction by amending a return, assessment or claim, it is no longer possible for the person to further amend the return, assessment or claim, and

(b) in any other case—

(i) the time allowed for bringing any appeal or further appeal against the adjustment made to effect the counteraction has ended, and

(ii) if any appeal has been brought within that time, that appeal has been withdrawn or determined.

(9) Any adjustments required to be made under this section may be made—

(a) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and

(b) despite any time limit imposed by or under any enactment other than this Part.

(10) In subsection (8) the reference to "the taxpayer" is to be read in accordance with Schedule 1.

**6 Proceedings before a court or tribunal**

(1) In proceedings before a court or tribunal in connection with the general anti-abuse rule, HMRC must show—

(a) that there are tax arrangements that are abusive, and

(b) that the counteraction of the tax advantages arising from the arrangements is just and reasonable.

(2) In determining any issue in connection with the general anti-abuse rule, a court or tribunal must take into account—

(a) HMRC's guidance about the general anti-abuse rule that was approved by the GAAR Advisory Panel at the time the tax arrangements were entered into, and

(b) any opinion of the GAAR Advisory Panel about the arrangements (see paragraph 11 of Schedule 1).

(3) In determining any issue in connection with the general anti-abuse rule, a court or tribunal may take into account—

(a) guidance, statements or other material (whether of HMRC, a Minister of the Crown or anyone else) that was in the public domain at the time the arrangements were entered into, and

(b) evidence of established practice if it is shown that HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice.

**7 Relationship between the GAAR and priority rules**

(1) Any priority rule has effect subject to the general anti-abuse rule (despite the terms of the priority rule).

(2) A "priority rule" means a rule (however expressed) to the effect that particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.

(3) Examples of priority rules are—

(a) the rule in section 464, 699 or 906 of CTA 2009 (priority of loan relationships rules, derivative contracts rules and intangible fixed assets rules for corporation tax purposes), and

(b) the rule in section 6(1) of TIOPA 2010 (effect to be given to double taxation arrangements despite anything in any enactment).

**8 Consequential amendment**

(1) Section 42 of TMA 1970 (procedure for making claims etc) is amended as follows.

(2) In subsection (2), for "(3ZB)" substitute "(3ZC)".

(3) After subsection (3ZB) insert—

"(3ZC) Subsection (2) also does not apply in relation to any claim under section 5 of the Finance Act 2013 (claims for consequential relieving adjustments after counteraction of tax advantage under the general anti-abuse rule)."

**9 Interpretation**

In this Part—

"abusive", in relation to tax arrangements, has the meaning given by section 2(2) to (6);

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

"the GAAR Advisory Panel" has the meaning given by paragraph 1 of Schedule 1;

"the general anti-abuse rule" has the meaning given by section 1;

"HMRC" means Her Majesty's Revenue and Customs;

"tax advantage" has the meaning given by section 3;

"tax arrangements" has the meaning given by section 2(1).

**10 Commencement and transitional provision**

(1) The general anti-abuse rule has effect in relation to any tax arrangements entered into on or after the day on which this Act is passed.

(2) Where the tax arrangements form part of any other arrangements entered into before that day those other arrangements are to be ignored for the purposes of section 2(3), subject to subsection (3).

(3) Account is to be taken of those other arrangements for the purposes of section 2(3) if, as a result, the tax arrangements would not be abusive.

## SCHEDULE 1

Section 4

GENERAL ANTI-ABUSE RULE: PROCEDURAL REQUIREMENTS

*The GAAR Advisory Panel*

1 (1) In this Part of this Act "the GAAR Advisory Panel" means the panel of persons established by the Commissioners for the purposes of the general anti-abuse rule.

(2) In this Schedule "the Chair" means any member of the panel appointed by the Commissioners to chair it.

*Meaning of "designated HMRC officer"*

2 In this Schedule a "designated HMRC officer" means an officer of Revenue and Customs who has been designated by the Commissioners for the purposes of the general anti-abuse rule.

*Notice to taxpayer of proposed counteraction of tax advantage*

3 (1) If a designated HMRC officer considers—

(a) that a tax advantage has arisen to a person ("the taxpayer") from tax arrangements that are abusive, and

(b) that the advantage ought to be counteracted under section 4,

the officer must give the taxpayer a written notice to that effect.

(2) The notice must—

(a) specify the arrangements and the tax advantage,

(b) explain why the officer considers that a tax advantage has arisen to the taxpayer from tax arrangements that are abusive,

(c) set out the counteraction that the officer considers ought to be taken,

(d) inform the taxpayer of the period under paragraph 4 for making representations, and

(e) explain the effect of paragraphs 5 and 6.

4 If a notice is given to the taxpayer under paragraph 3, the taxpayer has 45 days beginning with the day on which the notice is given to send written representations about the proposed counteraction to the designated HMRC officer.

*Referral to GAAR Advisory Panel*

5 If no representations are made in accordance with paragraph 4, a designated HMRC officer must refer the matter to the GAAR Advisory Panel.

6 (1) If representations are made in accordance with paragraph 4, a designated HMRC officer must consider them.

(2) If, after considering them, the designated HMRC officer considers that the tax advantage ought to be counteracted under section 4, the officer must refer the matter to the GAAR Advisory Panel.

7 If the matter is referred to the GAAR Advisory Panel, the designated HMRC officer must at the same time provide the panel with—

(a) a copy of the notice sent to the taxpayer under paragraph 3,

(b) a copy of any representations made in accordance with paragraph 4 and any comments that the officer has on those representations, and

(c) a copy of the notice sent to the taxpayer under paragraph 8.

8 If the matter is referred to the GAAR Advisory Panel, the designated HMRC officer must at the same time give the taxpayer a notice which—

(a) specifies that the matter is being referred,

(b) is accompanied by a copy of any comments provided to the panel under paragraph 7(b), and

(c) informs the taxpayer of the period under paragraph 9 for making representations, and of the requirement under that paragraph to send any representations to the officer.

9 (1) The taxpayer has 14 days beginning with the day on which a notice is given under paragraph 8 to send the panel written representations about the proposed counteraction or about any comments provided to the panel under paragraph 7(b).

(2) The taxpayer must send a copy of any representations to the designated HMRC officer within that 14 day period.

(3) If no representations were made in accordance with paragraph 4, the designated HMRC officer—

(a) may provide the panel with comments on any representations made under this paragraph, and

(b) if comments are provided, must at the same time send a copy of them to the taxpayer.

*Decision of GAAR Advisory Panel and opinion notices*

10 (1) If the matter is referred to the GAAR Advisory Panel, the Chair must arrange for a sub-panel consisting of 3 members of the panel (one of whom may be the Chair) to consider it.

(2) The sub-panel may invite the taxpayer or the designated HMRC officer (or both) to supply the sub-panel with further information within a period specified in the invitation.

(3) Invitations must explain the effect of sub-paragraph (4) or (5) (as appropriate).

(4) If the taxpayer supplies information to the sub-panel under this paragraph, the taxpayer must at the same time send a copy of the information to the designated HMRC officer.

(5) If the designated HMRC officer supplies information to the sub-panel under this paragraph, that officer must at the same time send a copy of the information to the taxpayer.

11 (1) Where the matter is referred to the GAAR Advisory Panel, the sub-panel must produce—

(a) one opinion notice stating the joint opinion of all the members of the sub-panel, or

(b) two or three opinion notices which taken together state the opinions of all the members.

(2) The sub-panel must give a copy of the opinion notice or notices to—

(a) the designated HMRC officer, and

(b) the taxpayer.

(3) An opinion notice is a notice which states that in the opinion of the members of the sub-panel, or one or more of those members—

(a) the entering into and carrying out of the tax arrangements is a reasonable course of action in relation to the relevant tax provisions—

(i) having regard to all the circumstances (including the matters mentioned in subsections (2)(a) to (c) and (3) of section 2), and

(ii) taking account of subsections (4) to (6) of that section, or

(b) the entering into or carrying out of the tax arrangements is not a reasonable course of action in relation to the relevant tax provisions having regard to those circumstances and taking account of those subsections, or

(c) it is not possible, on the information available, to reach a view on that matter,

and the reasons for that opinion.

(4) In this Part, a reference to any opinion of the GAAR Advisory Panel about any tax arrangements is a reference to the contents of any opinion notice about the arrangements.

*Notice of final decision after considering opinion of GAAR Advisory Panel*

12 (1) A designated HMRC officer who has received a notice or notices under paragraph 11 must, having considered any opinion of the GAAR Advisory Panel about the tax arrangements, give the taxpayer a written notice setting out whether the tax advantage arising from the arrangements is to be counteracted under the general anti-abuse rule.

(2) If the notice states that a tax advantage is to be counteracted, it must also set out—

(a) the adjustments required to give effect to the counteraction, and

(b) if relevant, any steps that the taxpayer is required to take to give effect to it.

*Notices may be given on assumption that tax advantage does arise*

13 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule even if the officer merely considers that a tax advantage might have arisen to the taxpayer.

(2) Accordingly, any notice given under this Schedule—

(a) may be expressed to be given on the assumption that the tax advantage does arise (without agreeing that it does), and

(b) may set out steps that the taxpayer may take to avoid the proposed counteraction.

**EXPLANATORY NOTE**

**GENERAL ANTI-ABUSE RULE**

## SUMMARY

1. Part 1 introduces a general anti-abuse rule (GAAR) that provides for counteraction of tax advantages arising from tax arrangements that are abusive. The GAAR applies to income tax, corporation tax including amounts chargeable/treated as corporation tax, capital gains tax, inheritance tax, petroleum revenue tax and stamp duty land tax. It will also apply to the annual residential property tax due to be enacted with effect from 1 April 2013. Schedule 1 outlines the procedural requirements relevant to the application of the GAAR by HM Revenue & Customs (HMRC).

## DETAILS OF THE CLAUSES

2. Clause 1 sets out the purpose of the GAAR, noting that it applies only to "tax arrangements" which are "abusive" (see paragraphs 3 and 4 below) and listing the various taxes covered by the GAAR (see paragraph 1 above).

3. Clause 2(1) defines "tax arrangements" as arrangements in respect of which it would be reasonable to conclude (having taken all circumstances into account) that the main purpose or one of the main purposes of the arrangements is to obtain a tax advantage.

4. Clause 2(2) defines "abusive" tax arrangements. Arrangements are "abusive" if entering into them or carrying them out cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions. Again, all circumstances must be taken into account and the clause includes a non-exhaustive list of circumstances which must be considered.

5. Clause 2(3) notes that any arrangements of which the tax arrangements form part must also be taken into account in determining whether the tax arrangements are abusive.

6. Clause 2(4) lists examples of things which might indicate that the tax arrangements are abusive. Tax arrangements may be abusive if they give rise to certain results (in general a tax result which differs from the economic result) but only if it is reasonable to assume that the result was not the result intended when the relevant tax provisions were enacted.

7. Clause 2(5) notes that a possible indicator of non-abusive arrangements is that the tax arrangements are in accordance with established practice and, at the time the arrangements were entered into, HMRC had indicated its acceptance of that practice.

8. Clause 2(6) confirms that the examples given in clauses 2(4) and 2(5) are not exhaustive.

9. Clause 3 defines the term "tax advantage".

10. Clauses 4(1), 4(2) and 4(3) explain that the tax advantages arising from abusive tax arrangements are to be counteracted by the making of just and reasonable adjustments, whether in respect of the tax in question or any other tax to which the GAAR applies.

11. Clause 4(4) provides for the various ways in which the adjustments that are required to be made (whether by HMRC or by the person to whom the tax advantage arises) may be made. Clause 4(5) confirms that: HMRC must comply with the procedural requirements set out in Schedule 1 before making any such adjustments; and that any time limits imposed elsewhere in the tax legislation apply to the power to make adjustments under the GAAR.

12. Clause 4(6) notes that any adjustments made under clause 4 have effect for all purposes. This means that the adjustments are deemed to have effect for purposes other than just counteracting the tax advantage. They might, for example, adjust the base cost of an asset for a future capital gains disposal event.

13. Clause 5 sets out the process by which consequential relieving adjustments may be made.

14. Clause 5(1) notes that the section is only applicable where HMRC has notified the taxpayer (under paragraph 12 of Schedule 1) that the tax advantage in question is to be counteracted and the counteraction is final. Clause 5(8) explains when a counteraction is regarded as final for these purposes.

15. Clause 5(2) imposes a time limit of 12 months from the day on which the counteraction becomes final for a claim to be made for a consequential adjustment.

16. Clause 5(3) requires HMRC to make such of the adjustments claimed as are just and reasonable.

17. Clause 5(4) explains that adjustments may be made in respect of any period and may affect any person. However, Clause 5(5) specifies that HMRC may not make consequential adjustments which result in an increased tax liability for any person.

18. Clause 5(6) extends the application of existing administrative provisions for certain taxes to claims for consequential adjustments under the GAAR and so provides a consequential adjustments claim procedure in respect of each of the taxes covered by the GAAR.

19. Clause 5(7) requires any officer who makes a consequential adjustment to notify the claimant in writing of the adjustment made.

20. Clause 5(8) explains when a counteraction is to be regarded as final.

21. Clause 5(9) lists the means by which a consequential adjustment may be made and notes that time limits imposed by or under any other enactment do not apply to consequential adjustments under the GAAR.

22. Clause 5(10) notes that the reference to "the taxpayer" in Clause 5(8) is to be read in accordance with Schedule 1.

23. Clause 6(1) imposes the burden of proof on HMRC in any proceedings before a court or tribunal in connection with the GAAR. HMRC must show that there are tax arrangements which are abusive and that the counteraction is just and reasonable.

24. Clause 6(2) requires a court or tribunal, in determining any issue in connection with the GAAR, to take into account HMRC guidance (as approved by the GAAR Advisory Panel at the time the arrangements were entered into) and any opinion of the GAAR Advisory Panel about the arrangements.

25. Clause 6(3) lists other information which a court or tribunal may take into account in determining any issue in connection with the GAAR.

26. Clause 7(1) provides that all priority rules, as defined in Clause 7(2), are to have effect subject to the GAAR. Clause 7(3) lists a number of examples of priority rules found in tax legislation.

27. Clause 8 makes an amendment to the administrative provisions contained in Taxes Management Act (TMA 1970) to provide that the procedural requirements set out in section 42(2) of TMA 1970 in relation to certain claims do not apply to consequential adjustment claims under the GAAR.

28. Clause 9 defines a number of terms used in Part 1.

29. Clause 10(1) provides that the GAAR applies to any tax arrangements entered into on or after Royal Assent to Finance Bill 2013 ("the Commencement Date").

30. Clause 10(2) specifies that, where the tax arrangements under consideration form part of other arrangements entered into before the

Commencement Date, the other arrangements should be ignored in determining whether the tax arrangements in question are abusive. However, clause 10(3) notes that the other arrangements may be taken into account as evidence that the tax arrangements under consideration are not abusive.

## DETAILS OF THE SCHEDULE

31. Paragraph 1 defines "the GAAR Advisory Panel" and "the Chair".

32. Paragraph 2 defines "designated HMRC officer".

33. Paragraph 3(1) requires a designated HMRC officer ("designated officer") to notify a taxpayer in writing where the officer considers that the taxpayer has obtained a tax advantage which should be counteracted under the GAAR and paragraph 3(2) lists the information which must be contained in the notice.

34. Paragraph 4 specifies that the taxpayer has 45 days from the day on which the notice is given to provide written representations about the proposed counteraction to the designated officer.

35. Paragraph 5 provides that, if no representations are made by the taxpayer, a designated officer must refer the matter to the GAAR Advisory Panel (the "Panel").

36. Paragraph 6(1) requires any representations made by the taxpayer to be considered by a designated officer. If the designated officer considers that counteraction is still appropriate, paragraph 6(2) provides that the matter must be referred to the Panel.

37. Paragraph 7 sets out the information which must be provided to the Panel by the designated officer when making a referral. This includes any comments which the designated officer has on any representations made by the taxpayer.

38. Paragraph 8 requires the designated officer to notify the taxpayer (at the same time as the referral is made) that the matter is being referred to the Panel and lists the information which must be included with the notice.

39. Paragraph 9 (1) allows the taxpayer 14 days, from the day on which the notice under paragraph 8 is given, to make written representations to the Panel about the proposed counteraction or about any comments provided to the Panel by the designated officer under paragraph 7.

40. Paragraph 9(2) requires the taxpayer to send a copy of any such representations to the designated officer within the same period.

41. Paragraph 9(3) provides that if a taxpayer has not made representations in accordance with paragraph 4 (i.e. in response to the initial notice under paragraph 3), the designated officer may provide the Panel with comments on any representations made by the taxpayer under paragraph 9 and must send a copy of these comments to the taxpayer.

42. Paragraphs 10 and 11 deal with the decision of the Panel and the opinion notices to be produced by the Panel.

43. Paragraph 10(1) requires the Chair to arrange for 3 members of the Panel (one of whom may be the Chair) to form a sub-panel to consider the referred matter.

44. Paragraph 10(2) allows the sub-panel to invite the taxpayer and/or the designated officer to supply further information within a specified period. Paragraph 10(3) requires such invitations to note the obligation imposed by paragraph 10(4) or paragraph 10(5) (as appropriate). These require the taxpayer and the designated officer respectively to send the other party a copy of any information supplied to the sub-panel at the same time it is sent to the sub-panel.

45. Paragraph 11(1) requires the sub-panel to produce either one opinion notice stating the joint opinion of all sub-panel members or two or three opinion notices which together state the opinions of all sub-panel members. Paragraph 11(2) requires the sub-panel to give a copy of the opinion notice(s) to the designated officer and the taxpayer.

46. Paragraph 11(3) explains what must be included in an "opinion notice", confirming that the sub-panel members must consider whether the entering into and carrying out of the tax arrangements is a reasonable course of action in relation to the relevant tax provisions, taking account of the various circumstances and indicators listed in clause 2 of Part 1. An opinion notice must also include the reasons for the opinion.

47. Paragraph 11(4) notes that a reference to any opinion of the Panel in Part 1 is a reference to the contents of any opinion notice.

48. Paragraph 12(1) requires the designated officer to consider the opinion of the Panel and then notify the taxpayer in writing as to whether or not the tax advantage is to be counteracted under the GAAR. If the notice states that the tax advantage is to be counteracted, paragraph 12(2) requires the notice to specify, in addition, the adjustments required, and any steps required to be taken by the taxpayer, to give effect to the counteraction.

49. Paragraph 13 clarifies that a designated officer may take any action under Schedule 1 even if the officer merely considers that a taxpayer

may have obtained a tax advantage. Therefore, any notice given under Schedule 1 may be given on the assumption that a tax advantage has been obtained and may set out the steps that the taxpayer may take to avoid the proposed counteraction.

## BACKGROUND NOTE

50. The measure was announced at Budget 2012 following the publication, in November 2011, of a report by an independent study group led by Graham Aaronson QC. The Government accepted the group's recommendations that a general anti-abuse rule (GAAR) targeted at artificial and abusive tax avoidance schemes would be the right approach for the UK.

51. A consultation document on the GAAR, which included draft legislation, was published on 12 June 2012. The consultation ran until 14 September 2012. A number of changes were made to the original draft of the legislation in order to reflect comments received during the consultation process. A response document was published on 11 December 2012 to summarise the responses to the consultation, note the various amendments to the legislation and explain why these changes (and not others) were made. Revised legislation and draft guidance were published for technical consultation on 11 December 2012.

52. If you have any questions about this change, or comments on the legislation, please contact Carolyn Comben on 020 7147 0086 (email: carolyn.comben@hmrc.gsi.gov.uk).