

Part D Notes on amendments to 15 April 2013 GAAR guidance approved by the GAAR Advisory Panel with effect from 30 January 2015

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Index amended for correct page numbers and insertion of new example D25A. Example D37 amended for reference to FA 2013.

D2.2

'Straightforward' deleted from heading and replaced with 'Intended' to improve clarity.

D2.3

'Long' deleted from heading to better reflect the intention of s207 (5) FA 2013.

D2.3.1

FB 2013 amended to FA 2013.

D2.5.3

First sentence 'example at D6' and 'D7' inserted to differentiate the 2 examples more clearly with hyperlinks. Similarly 'offshore trusts and washing out gains' inserted into final sentence to better identify the example.

D2.6.1

Third sentence, inserted 'at D15' with hyperlink for easy referencing of the example.

D2.7.2

Line 1 'recent' deleted and replaced with "'2012', for improved accuracy.

Sentence 2 'at D8' inserted with hyperlink for ease of reference of the example.

D2.7.3

Inserted at end of first sentence 'at D15' with hyperlink for ease of reference of the example. Deleted 'of' and inserted 'off' in second sentence to correct typographical error.

D2.8.1

Inserted 'see D15' with hyperlink after 'Mayes' for ease of reference of the example.

D3.1

Line 1 inserted 'the main residence relief example' into words in brackets for ease of reference of the example.

D5.5

FB 2013 amended to FA 2013.

D5.5.4

Title reference to FB amended to FA. New sentence inserted 'It could be argued that Company B obtains a tax deduction without any economic cost, although Company A could equally argue that it is taxed on a profit when economically flat' and previous sentence 'None of the indicators of abuse is present' deleted to accurately reflect the facts and add clarity to the example.

D5.6.1

FB 2013 amended to FA 2013.

D6.6

FB 2013 amended to FA 2013.

D6.6.4

FB 2013 amended to FA 2013.

D7.1.1

'The Revenue' replaced with 'HMRC' in both locations as the correct title.

D7.5

FB 2013 amended to FA 2013.

D7.5.4

FB 2013 amended to FA 2013.

D7.5.5

Replaced 'the Revenue' with 'HMRC' in three places to use the correct title.

D7.6.2

Replaced 'the Revenue' with 'HMRC' to use the correct title.

Reference to s204 amended to s207 to reflect the section in FA2013.

D8.5

FB 2013 amended to FA 2013.

D8.5.4

FB 2013 amended to FA 2013.

D9.5

FB 2013 amended to FA 2013

D9.5.3 Bullet point 2

Deleted 'the new' before s85A to improve clarity.

D9.5.4

FB 2013 amended to FA 2013

D10.7

FB 2013 amended to FA 2013.

D10.7.4

FB 2013 amended to FA 2013

D11.2.1

Deleted 'recent' from first sentence after 'the' to improve clarity.

D11.5

FB 2013 amended to FA 2013.

D12.5

FB 2013 amended to FA 2013.

D12.5.4

FB 2013 amended to FA 2013.

D13.5

FB 2013 amended to FA 2013.

D13.5.4

FB 2013 amended to FA 2013.

D14.5

FB 2013 amended to FA 2013.

D14.5.3

Reference to para (3)(1)(b) amended to para 3(1)(b) to correct typographical error.

D14.5.4

FB 2013 amended to FA 2013.

D15.5

FB 2013 amended to FA 2013.

D15.5.4

FB 2013 amended to FA 2013.

D16

Deleted 'a straightforward' and inserted 'an intended' to reflect the amendments made to this example.

D16.2.3

New para 16.2.3 inserted 'The redemption provision is subject to a collar so that the shareholders are not exposed to any significant foreign exchange movement. This makes it extremely unlikely that the option would be exercised' (previous para 16.2.3 becomes 16.2.4). This change is made to the arrangements so that the means of achieving the substantive tax results involves a contrived step.

D16.2.3

Original para 16.2.3 moved to be 16.2.4 due to insertion of new 16.2.3.

D16.5

FB 2013 amended to FA 2013.

D16.5.2

Deleted 'No' in answer to the question and inserted 'Yes' as a result of the changed arrangements following insertion of the new para D16.2.3 above. Although the answer is yes, the overall outcome with regard to the GAAR is still that HMRC would not seek to apply the GAAR in view of the fact this is in accordance with established practice. Including a contrived step does not mean that once account is taken of all the circumstances the arrangements are in fact considered abusive.

Inserted new paragraph 'However, the inclusion of a foreign currency option that does not result in any significant exposure to exchange movements and is therefore unlikely to be exercised is a contrived step'. To make clear the effect of the changes made to the arrangements in new paragraph 16.2.3.

Deleted final sentence first paragraph 'The taxpayer who moves to Spain has made a decision to leave the UK permanently and as such he is not within the charge to capital gains tax when the notes are redeemed'. This is no longer relevant to the amended answer to the question following changes made to the arrangements in the new paragraph 16.2.3.

Deleted second paragraph 'This is not a situation where a shareholder intending to leave the UK has asked for consideration in loan notes in order to avoid paying tax. The intention to leave the UK could not be regarded as part of the arrangement which included the disposal of the shares for loan notes'. This is no longer relevant to the amended answer to the question following changes made to the arrangements in the new paragraph 16.2.3.

D16.5.4

FB 2013 amended to FA 2013.

D16.5.5

Inserted 'by including a foreign currency redemption clause even where the terms mean there is no significant exposure to currency movements' to make it clear the arrangements as amended at 16.2.3 accord with accepted established practice.

D17

Deleted 'standard' from between 'illustrate' and 'tax' to improve clarity.

D17.2.1

Deleted 'By the following March' and 'but ensures that there is no unconditional contact for that disposal'. New text inserted after 'Taxpayer B' to change the arrangements to make it clear there is a contrived or abnormal step 'with an intended completion date of 1 Jan 20XX. Taxpayer A having obtained tax advice renegotiates with Taxpayer B for the unconditional contract date and completion of the disposal to be after 6 April 20XX and to allow Taxpayer B exclusive occupation of the land and buildings rent free from 1 Jan 20XX'

D17.2.2

Inserted 'The disposal takes place after 6 April 20XX for tax purposes' for clarification.

D17.5

FB 2013 amended to FA 2013.

D17.5.2

New text inserted to explain why the amended arrangements include a contrived or abnormal step. New text 'after 5 April 20XX whilst the purchaser was given unusual rights of occupation from the originally agreed completion date.'

D17.5.4

FB 2013 amended to FA 2013.

D18.2.2

First paragraph. Inserted 'where she is resident for tax purposes' in first sentence. Inserted 'in month 1' into second sentence. In third sentence deleted 'Four months later' and inserted 'In month 5'. In fourth sentence deleted 'A year later' and inserted 'In month 7' and inserted 'in Derbyshire'. Deleted 'and ' from penultimate sentence after 'London' and amended 'weekend' to 'weekends'. Deleted 'in her country home' and inserted 'between her two country homes' and inserted 'her' in front of 'holidays' at the end of that sentence.

Second paragraph. Deleted 'a year later' and inserted 'in month 20' in first sentence. Deleted 'Shortly afterwards' and inserted 'In month 20' in the second sentence and 'her country homes' amended to 'the country home'. Deleted 'within the next two years' and inserted 'By month 26' in final sentence.

All amendments are to make the example clearer.

D18.4.2

Deleted 'three years' and inserted '18 months' due to FA 2014 changes to s223 TCGA 1992. Deleted 'with the' and inserted 'by' to correct typo.

Inserted new second sentence 'All of the gains on the properties are exempt for the period during which they were the main residence and for the final 18 months of ownership so private residence relief means there is no Capital Gains Tax to pay'. To make clear the taxpayer's intended outcome of the elections.

D18.5

FB 2013 amended to FA 2013.

D18.5.4

FB 2013 amended to FA 2013.

D18.6.2

Deleted '3 years' and inserted '18 months of their ceasing to be a main residence' to reflect FA 2014 changes to s223 TCGA 1992.

D19.6

FB 2013 amended to FA 2013.

D20.2.1

Inserted 'discretionary' to make it clear what type of trust is in question.

D20.5

FB 2013 amended to FA 2013.

D20.6.1

The original text

'Delaying payment to the UK resident beneficiaries by a year might be regarded as an abnormal step but as this is the specific effect of the legislation it is not regarded as abnormal in the context of achieving the substantive tax results.'

Has been amended to make effect of the arrangements clearer and now read as shown below

'The trustees of the discretionary trust making payment to the UK resident beneficiaries in the later year would not be regarded as a contrived or abnormal step.'

D21.5

FB 2013 amended to FA 2013.

D22.5

FB 2013 amended to FA 2013.

D22.5.4

FB 2013 amended to FA 2013.

D23.5

FB 2013 amended to FA 2013.

D24.5

FB 2013 amended to FA 2013.

D24.5.4

Reference to FB 2013 amended to FA 2013. Final 2 sentences inserted to clarify indicators of abusiveness 'The directors expected to receive and did receive cash. The arrangement was not one where it was intended for a benefit to be provided in the form of platinum sponge.'

D25.5

FB 2013 amended to FA 2013.

D25.5.4

FB 2013 amended to FA 2013. Final 2 sentences inserted to clarify indicators of abusiveness. Text inserted in 'The directors expected to receive and did receive cash. The arrangement was not one where it was intended for a payment in kind to be made'

D25A

Wholly new example inserted of arrangements designed to avoid Part 7A ITEPA 2003.

D26.5

FB 2013 amended to FA 2013.

D27.2.3

This has changed to be D27.3 in line with the numbering followed in other examples.

D27.3 – D27.5.1

Renumbered D27.4 – D27.6.1 in line with the numbering followed in other examples.

D27.4

Renumbered D27.5 and Sch 34 FB 2013 amended to Sch 36 FA 2013.

D28.3

Second bullet 'FB 2013' deleted and inserted at end of first bullet 's162A IHTA 1994' because FA 2013 inserted the new section 162A into IHTA 1984.

D28.4.1

FB 2013 amended to FA 2013.

D28.5

FB 2013 amended to FA 2013.

D28.5.1

FB 2013 amended to FA 2013

D28.5.3

FB 2013 amended to FA 2013

D28.5.4

FB 2013 amended to FA 2013.

D29.5

FB 2013 amended to FA 2013.

D29.7.1

Deleted 'purchase of the trust interest' and inserted 'settlement of the shares on the basis that it is a relevant property settlement' to clarify the example.

D30

Added 'acquisition of trust interests' to heading to clarify what the arrangements concern.

D30.5

FB 2013 amended to FA 2013.

D31.4.8

FB 2013 amended to FA 2013

D31.5

FB 2013 amended to FA 2013.

D31.5.2

In the third paragraph (beginning "Options 3 and 4...") in the final sentence has been amended. 'the GAAR is not thought to apply' deleted and replaced by 'in relation to option 4 the GAAR is not thought to apply to option 3 or option 4' to improve clarity.

D31.2.2

'XI' amended to 'X1' to correct a typographical error.

D32.5

FB 2013 amended to FA 2013.

D33.5

FB 2013 amended to FA 2013.

D34.5

FB 2013 amended to FA 2013.

D34.5.1

Deleted 'to' from last sentence of penultimate paragraph between 'invoke' and 'the' to correct a typographical error.

D36

Example D36 'Partnership and bare trust over property' in the 15 April 2013 guidance is deleted from the amended guidance as unnecessary. Rule changes blocked this type of scheme although the arrangement is still considered abusive and the principles in the example illustrates valid, however these are adequately demonstrated by another example 'Subsales'.

D37

FB 2013 amended to FA 2013.

D37.1

Deleted 'The GAAR applies to all tax arrangements entered into on or after the day on which Finance Act 2013 is passed, which is the day on which Finance Bill 2013 receives royal assent.' New text inserted following passing of Finance Act 2013 on 17 July 2013 and National Insurance Contributions Act on 13 March 2014. New text is 'For taxes to which the GAAR applies, other than National Insurance Contributions, the GAAR applies to all tax arrangements entered into on or after 17 July 2013, which is the day on which Finance Bill 2013 received Royal Assent. For National Insurance Contributions the GAAR applies to all tax arrangements entered into on or after 13 March 2014.'

D37.2

Deleted 'this date' and inserted 'those respective dates' to reflect changes to D37.1 above.

D37.3

Deleted 'on which Finance Act 2013 is passed' and inserted 'the date from which the GAAR applies' in first sentence to reflect passing of FA 2013 and NICA 2014.

D40.2

FB 2013 amended to FA 2013.