
62 General anti-abuse rule: binding of other tax arrangements to lead arrangements

- (1) Part 5 of FA 2013 (general anti-abuse rule) is amended as follows.
- (2) In section 209 (counteracting tax advantages), in subsection (6)(a), after “Schedule 43” insert “or 43A”.
- (3) In section 211 (proceedings before a court or tribunal), in subsection (2)(b), after “(see paragraph 11 of Schedule 43)” insert “, or (where applicable) any opinion of the GAAR Advisory Panel about any tax arrangements which are, as a result of a notice under paragraph 1 of Schedule 43A, the lead arrangements in relation to the tax arrangements”.
- (4) After Schedule 43 insert –

“SCHEDULE 43A

PROCEDURAL REQUIREMENTS: TAX ARRANGEMENTS BOUND TO LEAD
ARRANGEMENTS

Notice to taxpayer of proposed binding of tax arrangements

- 1 (1) This paragraph applies where a designated HMRC officer has given a person (“P”) a notice under paragraph 3 of Schedule 43 in relation to any tax arrangements (the “lead arrangements”) and either –
 - (a) the period of 45 days mentioned in paragraph 4 of that Schedule has expired without any representations having been made by P, or
 - (b) the officer has notified P under paragraph 6(3) of that Schedule of the officer’s decision to refer the matter to the GAAR Advisory Panel.
- (2) If the officer considers –
 - (a) that a tax advantage has arisen to another person (“R”) from tax arrangements that are abusive,
 - (b) that those tax arrangements (“R’s arrangements”) are equivalent arrangements in relation to the lead arrangements, and
 - (c) that the advantage ought to be counteracted under section 209,the officer may give R a notice (a “notice of binding”) in relation to R’s arrangements.
- (3) The officer may not give R a notice of binding if R has been given a notice under paragraph 3 of Schedule 43 in respect of R’s arrangements.
- (4) A notice of binding must –
 - (a) specify the tax arrangements in relation to which the notice is given and the tax advantage,
 - (b) explain why the officer considers R’s arrangements to be equivalent arrangements in relation to the lead arrangements,
 - (c) explain why the officer considers that a tax advantage has arisen to R from tax arrangements that are abusive,

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- (d) set out the counteraction that the officer considers ought to be taken, and
 - (e) explain the effect of –
 - (i) paragraphs 2 and 3,
 - (ii) subsection (10) of section 209, and
 - (iii) section 212A.
- (5) The notice may set out steps that R may (subject to subsection (10) of section 209) take to avoid the proposed counteraction.
- (6) A notice of binding may describe more than one set of lead arrangements and, if so, must explain why the officer considers R's arrangements to be equivalent arrangements in relation to each set of lead arrangements.

Representations

- 2 (1) This paragraph applies where –
- (a) a notice of binding has been given to a person (“R”) in relation to any tax arrangements (“R’s arrangements”), and
 - (b) a designated HMRC officer has been given an opinion notice (or opinion notices) under paragraph 11(2) of Schedule 43 in relation to tax arrangements which are the lead arrangements in relation to R’s arrangements.
- (2) The officer must give R a copy of the opinion notice or notices.
- (3) The copy must be accompanied by a notice –
- (a) explaining R’s right to make representations falling within sub-paragraph (4), and
 - (b) setting out the period in which those representations may be made.
- (4) R has 30 days beginning with the relevant day to make representations in any of the following categories –
- (a) representations that, because of the expiry of time limits, no officer of Revenue and Customs has power to make the counteractions proposed in the notice of binding;
 - (b) representations that no tax advantage has arisen to R from R’s arrangements;
 - (c) representations that R has already been given a notice under paragraph 3 of this Schedule in relation to R’s arrangements (but with reference to different lead arrangements);
 - (d) representations as to why R’s arrangements are or may be materially different from the lead arrangements.
- (5) In sub-paragraph (4) “the relevant day” means the day on which the notice under sub-paragraph (3) is given by the designated HMRC officer.
- (6) In sub-paragraph (4)(d) references to “arrangements” include any circumstances which would be relevant in accordance with section 207 to a determination of whether the tax arrangements in question are abusive.

Notice of final decision after considering decision of GAAR Advisory Panel

- 3 (1) This paragraph applies where –
 - (a) a person (“R”) has been given under paragraph 2(2) a copy of an opinion notice (or opinion notices) in relation to any tax arrangements (the “lead arrangements”),
 - (b) the period of 30 days set out in paragraph 2(4) has expired, and
 - (c) a designated HMRC officer has given a notice under paragraph 12 of Schedule 43 stating that the tax advantage arising from the lead arrangements is to be counteracted under the general anti-abuse rule.
- (2) The officer must, having considered any opinion of the GAAR Advisory Panel about the lead arrangements and any representations made under paragraph 2(4), give R a written notice setting out whether the tax advantage arising from R’s arrangements is to be counteracted under the general anti-abuse rule.
- (3) If the notice under sub-paragraph (2) 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 R is required to take to give effect to it.

“Equivalent arrangements”

- 4 (1) For the purposes of paragraph 1, tax arrangements (the “other arrangements”) are “equivalent arrangements” in relation to the lead arrangements if Conditions 1 and 2 are met.
- (2) Condition 1 is that the other arrangements are substantially the same as the lead arrangements having regard –
 - (a) to the substantive results of the tax arrangements concerned (in each case), and
 - (b) to the means of achieving those results.
- (3) Condition 2 is that –
 - (a) the other arrangements have characteristics (“the matching characteristic”) which are the same or substantially the same as the characteristics of the lead arrangements which are relied on by the designated HMRC officer for GAAR purposes, and
 - (b) having regard to all the characteristics of the other arrangements, a designated HMRC officer could reasonably rely on the matching characteristics for GAAR purposes (if the officer were to give a notice under paragraph 3 of Schedule 43 in relation to those tax arrangements).
- (4) In Condition 2 the reference to reliance on characteristics “for GAAR purposes” is to reliance on the characteristics for explaining, in a notice under paragraph 3 of Schedule 43, why the officer considers that a tax advantage has arisen to a person from tax arrangements that are abusive.

Notices may be given on assumption that tax advantage does arise

- 5 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule where the officer considers that a tax advantage might have arisen to the person concerned.
- (2) Accordingly, any notice given by a designated HMRC officer under this Schedule may be expressed to be given on the assumption that a tax advantage does arise (without conceding that it does).

Meaning of “designated HMRC officer”

- 6 In this Schedule “designated HMRC officer” means an officer of Revenue and Customs designated for the purposes of the general anti-abuse rule.”