

Amendments to Clauses 144 and 145: General Anti-Abuse Rule: Provisional counteractions and binding of tax arrangements to lead arrangements

Summary

1. These amendments ensure that the General Anti-Abuse Rule (GAAR) procedural changes work as intended, and ensure that consequences that already result from a GAAR counteraction apply equally under the new GAAR counteraction procedures.
2. Additionally, these amendments ensure that those who engage in abusive arrangements concerning National Insurance Contributions (NICs) are subject to the procedural changes under Clause 145 and the GAAR Penalty under Clause 146.

Details of the amendments

3. Amendment 114 amends section 209A(c) to clarify the information that must be provided in a provisional counteraction notice.
4. Amendment 115 to 134 make changes to Schedule 43A in Clause 145 to include a "pooling notice" in the new GAAR procedure for "equivalent arrangements". Amendment 7 explains the meaning of a "pool" for these purposes, including that tax arrangements will remain in the pool even if the "lead" arrangements depart from it.
5. Amendment 124 makes changes to the meaning of "notice of binding" for the purposes of the GAAR procedures. A "notice of binding" will only be issued where a counteraction notice has already been given in relation to counteracted arrangements which are in a pool.
6. Amendment 135 clarifies paragraph 2 of Schedule 43A to explain that a taxpayer who fails to finalise the steps as part of the "relevant corrective action" will remain within the procedure under Schedule 43A.
7. Amendment 136 explains that a "lead" taxpayer who takes relevant corrective action will cease to be part of the pool.
8. Amendments 137 to 154 make small changes to Schedule 43A to include a "pooling notice" in the new GAAR procedure.
9. Amendment 155 amends paragraph 1 of Schedule 43B to reflect the inclusion of the "pooling notice" in the new GAAR procedure. The effect of new sub-paragraph (2) and (3A) is that no additional users of tax arrangements will be added to the pool after HMRC has given notice of a proposal to make a generic referral to the GAAR Advisory Panel in respect of the pool of tax arrangements in question.
10. Amendments 156 to 169 make small changes to clarify Schedule 43B.

11. Amendments 170 to 174 make small consequential changes to include the new GAAR procedures under Schedules 43A and 43B into the existing GAAR legislation in Finance Act 2013.
12. Amendments 175 to 177 make small consequential amendments to include the new GAAR procedures under Schedules 43A and 43B into the Accelerated Payments rules at section 219 of Finance Act 2014.
13. Amendment 178 amends the National Insurance Contributions Act 2014 to include abusive NICs arrangements in the new GAAR procedures under Schedules 43A and 43B, and the GAAR penalty under Clause 146.
14. Amendment 179 makes consequential amendments to the Accelerated Payments rules, the Code of Practice on Taxation for Banks rules, and the Promoters of Tax Avoidance Schemes rules, to ensure that they include the new GAAR procedures under Schedules 43A and 43B.

Background note

15. The procedural changes to the GAAR in Schedule 43A and Schedule 43B FA13 have been introduced to ensure that the GAAR procedure works efficiently in respect of marketed tax avoidance schemes.
16. The procedural changes in new Section 209A to 209F FA13 enable HMRC to provisionally counteract under GAAR whilst maintaining the procedural safeguards in Schedule 43 and new Schedules 43A and 43B for taxpayers.