

Amendments to Clause 146: General Anti-Abuse Rule Penalty

Summary

1. These amendments ensure that those who are successfully counteracted under the General Anti-Abuse Rule (GAAR) will be subject to a GAAR Penalty where they submit a return, claim or other document to HMRC (or someone else does but they knew or should have known that) which was submitted on the basis that a tax advantage arises from the tax arrangements where all or part of that tax advantage is later counteracted under the GAAR.
2. Minor amendments are also made to ensure the smooth running of the GAAR Penalty and to reflect the amendments made in respect of Clause 145.

Details of the amendments

3. Amendments 82 to 86 make changes to the new section 212A of the Finance Act 2013 to provide that, where person is counteracted under the GAAR, and another person has given a "tax document" to HMRC on the basis that a tax advantage arises from the tax arrangements, and the person who is counteracted knew (or should have known) that that document was given on the basis that a tax advantage arises to them from the tax arrangements, they will be subject to a GAAR penalty.
4. Amendment 87 clarifies how "tax document" is to be interpreted for the purposes of section 212A.
5. Amendment 88 amends paragraph 2 to Schedule 43C to clarify how to calculate the value of the counteracted advantage.
6. Amendments 89 and 90 clarify how to interpret "direct tax" for the purposes of Schedule 43C.
7. Amendments 91 to 96 make small changes to new subsections 209(8) to (10) to take account of the amendments made to Clause 145.
8. Amendments 97 and 98 amends the meaning of "tax appeal" under new paragraph 1A to Schedule 43 of Finance Act 2013 to include an appeal under the Apprenticeship Levy rules.
9. Amendment 99 clarifies new paragraph 4A of Schedule 43 of Finance Act 2013 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 43.

Background note

10. The GAAR penalty has been introduced to increase the deterrent effect of the GAAR, discouraging the minority of persistent tax avoiders who remain undeterred from engaging in abusive tax avoidance. This penalty will ensure that there is an effective disincentive to entering into abusive tax avoidance, and that those who do engage in abusive tax avoidance are subject to an appropriate downside.