

Explanatory Note

Clause 17: Transactions in securities: procedure for counteraction of advantage

Summary

1. This measure amends Part 13 of Income Tax Act 2007 (ITA 2007) to align the counteraction process for the Transactions in Securities legislation more closely with the process for compliance checks under self-assessment. The new procedure has effect for transactions occurring on or after 6 April 2016. Related changes are made by clause 16.

Details of the clause

2. Subsection (1) provides for the amendment of Part 13 of ITA 2007.
3. Subsection (2) changes the process required for an officer of HM Revenue & Customs (HMRC) to begin proceedings to counteract a tax advantage. The officer will serve a notice of enquiry in place of issuing a preliminary notification that a counteraction notice ought to be served.
4. Subsection (3) omits sections 696 and 697 of ITA 2007, which provided further procedural rules under the old counteraction provisions.
5. Subsections (4) and (5) amend section 698, the legislation that provides for a "counteraction notice" to be served, so that a notice can be issued following a notice of enquiry rather than a preliminary notice.
6. Subsection (6) introduces new section 698A into ITA 2007. This enables the recipient of an enquiry notice to apply to the tribunal to direct that the enquiry should be concluded. It also introduces a requirement for an enquiry to conclude either with the issue of a counteraction notice or a "no-counteraction notice" where no counteraction is required.
7. Subsection (7) amends section 684(d) so that it is subject to "no-counteraction notices". This replaces rules that consider when an officer determines that no further action is necessary or the tribunal determines that there is no prima facie case that section 684 applies.
8. Subsection (8) provides that the new procedure will apply to transactions occurring on or after 6 April 2016, or where there is a series of transactions, where any one or more of the transactions occurs on or after that date.
9. Subsection (9) makes clear that where the transaction occurs before that date, the existing procedure will continue to apply.

Background note

10. The Transactions in Securities legislation in Part 13 of ITA 2007 aims to prevent amounts extracted from companies being treated as capital transactions when their effect is in substance the same as a distribution. Its compliance and counteraction rules were not updated to take account of the introduction of Self-Assessment. These changes make improvements to the counteraction rules.
11. These amendments are being made to strengthen and rationalise the Transactions in Securities provisions.
12. If you have any questions about this change, or comments on the legislation, please contact Adrian Coates on 03000 586041 (email: Adrian.Coates@hmrc.gsi.gov.uk)