



Provisional counteraction notices given under the GAAR

This factsheet tells you about provisional counteraction notices given under the general anti-abuse rule (GAAR).

You will need to read this factsheet if you've used arrangements that we consider GAAR may apply to, and we've given you one or more provisional counteraction notices. As well as reading this factsheet you should also read factsheet CC/FS34a 'Information about the general anti-abuse rule', as it tells you more about the GAAR.

Where this factsheet refers to 'tax', this means the taxes, levies and contributions to which the GAAR applies. You can find details of these in factsheet CC/FS34a 'Information about the general anti-abuse rule'.

This factsheet is one of a series of compliance checks factsheets. For the full list of factsheets in the series, go to www.gov.uk and search for 'Compliance checks factsheets'.

Important information

If you disagree with the adjustments that we make after we've given you a provisional counteraction notice, you need to appeal against those adjustments. If you don't appeal, the tax advantage shown in the provisional counteraction notice will be treated as having been counteracted under the general anti-abuse rule (GAAR). This means that you will be liable to pay the additional tax due. This is explained in more detail in the provisional counteraction notice, and later in this factsheet in the section 'About your appeal rights'.

About provisional counteraction notices

A provisional counteraction notice tells you about some or all of the adjustments that we believe may be needed under the GAAR to counteract a tax advantage arising from tax arrangements. Such adjustments are referred to as 'notified adjustments'. A provisional counteraction notice also tells you:

- about the arrangements and tax advantage
- that you'll be able to appeal against us having made the notified adjustments, once we've made them
- that if you appeal, your appeal can't proceed until we've given you a different type of notice. You can find more information about this in the section headed 'About your appeal rights'
- that in certain circumstances, the notified adjustments will be cancelled. You can find more information about this in the section headed 'Time limits for us to take action'

Giving a provisional counteraction notice allows us to make the notified adjustments before all the GAAR procedures have been completed.

You can find more information about how we make the notified adjustments in the section headed 'Making the notified adjustments'.

What to do when you receive a provisional counteraction notice

When you receive a provisional counteraction notice, there's nothing specific you need to do about it. However, if you have a tax adviser, you may want to discuss the matter with them.

If you disagree with us having made the notified adjustments, you'll need to wait until we make them before you can do anything. This is explained in the section 'About your appeal rights'.

If you agree with us having made the notified adjustments and decide that you want to settle your tax affairs, just let us know as soon as possible. We'll let you know whether there's anything you need to do.

It's entirely up to you whether to settle your tax affairs. If you don't want to settle, we'll continue with any action we may take – including any action under the GAAR.

Making the notified adjustments

We'll usually make the notified adjustments quite soon after giving you a provisional counteraction notice. This may involve us sending you, for example, a tax assessment, an amended tax assessment, a determination, or a decision relating to your liability to the type of tax involved.

About your appeal rights

You can't appeal against a provisional counteraction notice. However, if we make the notified adjustments that are specified in the provisional counteraction notice, you'll be able to appeal against us having made them if you disagree. We'll give you more information about your appeal rights when we make the notified adjustments.

If you appeal against us having made the notified adjustments, there's nothing that you or we can do to progress your appeal, unless and until we've given you a different type of notice, or told you that the notified adjustments are cancelled. However, you can withdraw your appeal if you change your mind and decide that you want to settle your tax affairs.

Even though there's nothing that you or we can do to progress your appeal, you need to make sure you appeal within the time limit if you disagree with us having made the notified adjustments. If you don't appeal, then the tax advantage shown in the provisional counteraction notice will be treated as having been counteracted under the general anti-abuse rule (GAAR). This means you'll be liable to pay the additional tax due. This is explained in more detail in the provisional counteraction notice.

The different types of notices that we might give you are listed below. If you still disagree once you've received one of those notices, you'll have 30 days to tell us your grounds for appealing against us having made the notified adjustments. The 30 days will start from when we give you one of the notices listed below.

A notice to withdraw the provisional counteraction notice (without cancelling the notified adjustments)

We'd give you one of these notices if we'd decided that the notified adjustments should be made under tax legislation other than the GAAR. This type of notice would withdraw the provisional counteraction notice, but wouldn't cancel the notified adjustments. We'd give you such a notice under section 209B(4)(b) of the Finance Act 2013.

A notice of decision not to refer matter to the GAAR Advisory Panel (without cancelling the notified adjustments)

We'd give you one of these notices if both the following applied:

- we'd given you a notice under paragraph 3 of Schedule 43 Finance Act 2013 telling you that the tax advantages arising from the tax arrangements ought to be counteracted under the GAAR
- you'd made representations in response to that notice and we'd changed our view

The notice of decision would tell you that we'd decided not to refer your case to the GAAR Advisory Panel, and that the notified adjustments should be made under tax legislation other than the GAAR.

We'd give you such a notice under paragraph 6(3) of Schedule 43 to the Finance Act 2013.

A notice of final decision after considering the opinion of the GAAR Advisory Panel

We'd give you one of these notices if we'd done all of the following:

- referred your arrangements to the GAAR Advisory Panel for their opinion
- received and considered one or more opinion notices from the GAAR Advisory Panel
- made a decision about whether or not the tax advantage arising to you from your tax arrangements were to be counteracted under the GAAR

We'd give you such a notice under paragraph 12 of Schedule 43 to the Finance Act 2013.

A notice of final decision where there is a notice of binding

We'd give you one of these notices if we'd also given you a 'notice of binding' in respect of your tax arrangements. The notice of final decision would tell you about our decision whether or not the tax advantages arising from your tax arrangements were to be counteracted under the GAAR.

We'd give you such a notice of final decision under paragraph 9(2) of Schedule 43A to the Finance Act 2013. We'll give you more information about 'binding' if we give you a notice of binding.

A notice of final decision where tax arrangements have been placed in a pool

We'd give you one of these notices if your tax arrangements had been placed into a 'pool' with other equivalent tax arrangements. The notice would tell you about our decision whether or not the tax advantages from your tax arrangements were to be counteracted under the GAAR.

We'd give you such a notice under paragraph 8(2) of Schedule 43A to the Finance Act 2013. We'll give you more information about 'pooling' if we give you a pooling notice.

A notice of final decision after considering the opinion of the GAAR Advisory Panel following a generic referral

We'd give you one of these notices if both of the following applied:

- we'd made a 'generic referral' to the GAAR Advisory Panel in respect of all the notified arrangements in the pool under schedule 43B to the Finance Act 2013
- your tax arrangements were notified arrangements

The notice would tell you about our decision whether or not the tax advantages arising from your tax arrangements were to be counteracted under the GAAR. We'd give you such a notice under paragraph 8 of Schedule 43B to the Finance Act 2013.

We'll give you more information about 'generic referrals' if we're considering making a generic referral in respect of pooled arrangements that include your tax arrangements. And we'll also tell you what we mean by 'notified arrangements'.

Time limits for us to take action

If we don't give you one or more of the notices shown below either before, or within 12 months of the date on which we give you the provisional counteraction notice, then the notified adjustments shown in that provisional counteraction notice will be treated as cancelled. If we give you more than one provisional counteraction notice, each notice has its own 12 month deadline.

The notices are:

A notice cancelling the notified adjustments

We'd give you one of these notices after giving you the provisional counteraction notice if we decided to cancel the notified adjustments before the 12 months deadline.

A notice of withdrawal of the provisional counteraction notice (without cancelling the notified adjustments)

We'd give you one of these notices if we decided that the notified adjustments were needed under tax legislation other than the GAAR, and we were withdrawing the provisional counteraction notice. This type of notice wouldn't cancel the notified adjustments. We'd give you such a notice under section 209B(4)(b) of the Finance Act 2013.

A notice of proposed counteraction of tax advantage

We'd give you one of these notices to tell you that we thought counteraction ought to be taken under the GAAR. The notice would show both:

- the arrangements and tax advantages that are shown in the provisional counteraction notice
- the notified adjustments (or lesser adjustments) as the counteraction that ought to be taken under the GAAR

We'd give you such a notice under paragraph 3 of Schedule 43 to the Finance Act 2013.

Pooling Notice

We'd give you one of these notices to tell you that your tax arrangements were to be placed in a pool with equivalent arrangements. The notice would show both:

- the arrangements and tax advantages as shown in the provisional counteraction notice
- the notified adjustments (or lesser adjustments) as the counteraction that ought to be taken under the GAAR

We'd give you such a notice under paragraph 1 of Schedule 43A to the Finance Act 2013. We'll give you more information about 'pooling', and tell you what we mean by 'equivalent', if we give you a pooling notice.

Notice of binding

We'd give you one of these notices to tell you that we consider that your tax arrangements are equivalent to other tax arrangements, and should be bound with them. Those arrangements would be ones for which we'd given a counteraction notice after having considered the opinion, or opinions, of the GAAR Advisory Panel. Such a notice of binding would show both:

- the arrangements and tax advantages as shown in the provisional counteraction notice
- the notified adjustments (or lesser adjustments) as the counteraction that ought to be taken under the GAAR

We'd give you such a notice under paragraph 2 of Schedule 43A to the Finance Act 2013. We'll give you more information about 'binding' if we give you a notice of binding.

Notice of proposal to make generic referral of tax arrangements

We'd give you one of these notices after we'd given you a pooling notice, and where the lead arrangements were no longer in the pool. This notice would be to tell you that we were considering making a generic referral to the GAAR Advisory Panel in relation to all tax arrangements in the pool. Such a notice of proposal to make a generic referral would show both:

- the tax arrangements and tax advantages as shown in the provisional counteraction notice
- the notified adjustments (or lesser adjustments) as the counteraction that ought to be taken under the GAAR

We'd give you such a notice under paragraph 1(2) of Schedule 43B to the Finance Act 13. We'll give you more information about 'generic referrals' if we intend to make a generic referral in respect of pooled arrangements that include your tax arrangements.