



# Revenue Scotland and Tax Powers Act 2014

2014 asp 16

## PART 5

### THE GENERAL ANTI-AVOIDANCE RULE

#### *Artificial tax avoidance arrangements*

#### **63 Tax avoidance arrangements**

- (1) An arrangement (or series of arrangements) is a tax avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.
- (2) An “arrangement”—
  - (a) includes any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event (whether legally enforceable or not), and
  - (b) may comprise one or more stages or parts.

#### **64 Meaning of “artificial”**

- (1) A tax avoidance arrangement is artificial if condition A or B is met.
- (2) Condition A is met if the entering into or carrying out of the arrangement is not a reasonable course of action in relation to the tax provisions in question having regard to all the circumstances, including—
  - (a) whether the substantive results of the arrangement are consistent with—
    - (i) any principles on which those provisions are based (whether express or implied), and
    - (ii) the policy objectives of those provisions,
  - (b) whether the arrangement is intended to exploit any shortcomings in those provisions.
- (3) Condition B is met if the arrangement lacks economic or commercial substance.

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*Status: This is the original version (as it was originally enacted).*

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- (4) Each of the following is an example of something which might indicate that a tax avoidance arrangement lacks economic or commercial substance—
- (a) whether the arrangement is carried out by a person in a manner which would not normally be employed in reasonable business conduct,
  - (b) whether the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole,
  - (c) whether the arrangement includes elements which have the effect of offsetting or cancelling each other,
  - (d) whether transactions are circular in nature,
  - (e) whether the arrangement results in a tax advantage that is not reflected in the business risks undertaken by the taxpayer.
- (5) The fact that—
- (a) a tax avoidance arrangement accords with established practice, and
  - (b) Revenue Scotland had, at the time the arrangement was entered into, indicated its acceptance of that practice,
- is an example of something that might indicate that the arrangement is not artificial.
- (6) The examples given in subsections (4) and (5) are not exhaustive.
- (7) Where a tax avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements.

## **65 Meaning of “tax advantage”**

- (1) A “tax advantage” includes in particular—
- (a) relief or increased relief from tax,
  - (b) repayment or increased repayment of tax,
  - (c) avoidance or reduction of a charge to tax or an assessment to tax,
  - (d) avoidance of a possible assessment to tax, and
  - (e) deferral of a payment of tax or advancement of a repayment of tax.
- (2) In determining whether a tax avoidance arrangement has resulted in a tax advantage, regard may be had to the amount of tax that would have been payable in the absence of the arrangement.