***Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 43B. (See end of Document for details)*

SCHEDULES

[F1SCHEDULE 43B

PROCEDURAL REQUIREMENTS: GENERIC REFERRAL OF TAX ARRANGEMENTS

Textual Amendments

F1 Sch. 43B inserted (15.9.2016 with effect in accordance with s. 157(30) of the amending Act) by Finance Act 2016 (c. 24), **s. 157(3)**

Notice of proposal to make generic referral of tax arrangements

1 (1) Sub-paragraph (2) applies if—

[F2(a) further to pooling notices given under paragraph 1(3) of Schedule 43A, two or more sets of tax arrangements are in a pool relating to any lead arrangements,

(b) the person to whom the notice mentioned in paragraph 1(1) of Schedule 43A was given takes the relevant corrective action (as defined in paragraph 4A of Schedule 43) before—

(i) the end of the period of 75 days beginning with the day on which that notice was given, or

(ii) such later time as that person and HMRC may agree, and**]**

(c) no referral under paragraph 5 or 6 of Schedule 43 has been made in respect of any arrangements in the pool.

(2) A designated HMRC officer may determine that, in respect of each of the tax arrangements that are in the pool, there is to be given (to the person to whom the pooling notice in question was given) a written notice of a proposal to make a generic referral to the GAAR Advisory Panel in respect of the arrangements in the pool.

(3) Only one determination under sub-paragraph (2) may be made in relation to any one pool.

(4) The persons to whom those notices are given are "the notified taxpayers".

(5) A notice given to a person ("T") under sub-paragraph (2) must—

(a) specify the arrangements (the "specified arrangements") and the tax advantage (the "specified advantage") to which the notice relates,

(b) inform T of the period under paragraph 2 for making a proposal.

Textual Amendments

F2 Sch. 43B para. 1(1)(a)(b) substituted (5.12.2017) by The General Anti-Abuse Rule Procedure (Amendment) Regulations 2017 (S.I. 2017/1090), regs. 1, **12(2)**

Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 43B. (See end of Document for details)*

2 (1) T has 30 days beginning with the day on which the notice under paragraph 1 is given to propose to HMRC that it—

(a) should give T a notice under paragraph 3 of Schedule 43 **[**F3or paragraph 5 of Schedule 43D (as the case may be)**]** in respect of the arrangements to which the notice under paragraph 1 relates, and

(b) should not proceed with the proposal to make a generic referral to the GAAR Advisory Panel in respect of those arrangements.

(2) If a proposal is made in accordance with sub-paragraph (1) a designated HMRC officer must consider it.

Textual Amendments

F3 Words in Sch. 43B para. 2(1)(a) inserted (with effect in accordance with s. 124(2) of the amending Act) by Finance Act 2021 (c. 26), **Sch. 32 para. 12(2)**

Generic referral

3 (1) This paragraph applies where a designated HMRC officer has given notices to the notified taxpayers in accordance with paragraph 1(2).

(2) If none of the notified taxpayers has made a proposal under paragraph 2 by the end of the 30 day period mentioned in that paragraph, the officer must make a referral to the GAAR Advisory Panel in respect of the notified taxpayers and the arrangements which are specified arrangements in relation to them.

(3) If at least one of the notified taxpayers makes a proposal in accordance with paragraph 2, the designated HMRC officer must, after the end of that 30 day period, decide whether to—

(a) give a notice under paragraph 3 of Schedule 43 **[**F4or paragraph 5 of Schedule 43D (as the case may be)**]** in respect of one set of tax arrangements in the relevant pool **[**F5in relation to which such a proposal has been made**]**, or

(b) make a referral to the GAAR Advisory Panel in respect of the tax arrangements in the relevant pool.

F6**[** (3A) If under sub-paragraph (3)(a) a notice is given under paragraph 3 of Schedule 43 **[**F7or paragraph 5 of Schedule 43D**]** in respect of one set of tax arrangements but F8... the matter is not referred to the GAAR Advisory Panel, a designated officer must make a referral to the GAAR Advisory Panel in respect of the notified taxpayers and the arrangements which are specified arrangements in relation to them.**]**

(4) A referral under this paragraph is a "generic referral".

Textual Amendments

F4 Words in Sch. 43B para. 3(3)(a) inserted (with effect in accordance with s. 124(2) of the amending Act) by Finance Act 2021 (c. 26), **Sch. 32 para. 12(3)(a)**

F5 Words in Sch. 43B para. 3(3)(a) inserted (5.12.2017) by The General Anti-Abuse Rule Procedure (Amendment) Regulations 2017 (S.I. 2017/1090), regs. 1, **13(2)**

F6 Sch. 43B para. 3(3A) inserted (5.12.2017) by The General Anti-Abuse Rule Procedure (Amendment) Regulations 2017 (S.I. 2017/1090), regs. 1, **13(3)**

F7 Words in Sch. 43B para. 3(3A) inserted (with effect in accordance with s. 124(2) of the amending Act) by Finance Act 2021 (c. 26), **Sch. 32 para. 12(3)(b)**

F8 Words in Sch. 43B para. 3(3A) omitted (with effect in accordance with s. 124(2) of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 32 para. 12(3)(c)**

4 (1) If a generic referral is made to the GAAR Advisory Panel, the designated HMRC officer must at the same time provide it with—

(a) a general statement of the material characteristics of the specified arrangements, and

(b) a declaration that—

(i) the statement under paragraph (a) is applicable to all the specified arrangements, and

(ii) as far as HMRC is aware, nothing which is material to the GAAR Advisory Panel's consideration of the matter has been omitted.

(2) The general statement under sub-paragraph (1)(a) must—

(a) contain a factual description of the tax arrangements;

(b) set out HMRC's view as to whether the tax arrangements accord with established practice (when the arrangements were entered into);

(c) explain why it is the designated HMRC officer's view that a tax advantage of the nature described in the statement and arising from tax arrangements having the characteristics described in the statement would be a tax advantage arising from arrangements that are abusive;

(d) set out any matters the designated officer is aware of which may suggest that any view of HMRC or the designated HMRC officer expressed in the general statement is not correct;

(e) set out any other matters which the designated officer considers are required for the purposes of the exercise of the GAAR Advisory Panel's functions under paragraph 6.

5 If a generic referral is made the designated HMRC officer must at the same time give each of the notified taxpayers a notice which—

(a) specifies that a generic referral is being made, and

(b) is accompanied by a copy of the statement given to the GAAR Advisory Panel in accordance with paragraph 4(1)(a).

Decision of GAAR Advisory Panel and opinion notices

6 (1) If a generic referral is made to the GAAR Advisory Panel under paragraph 3, the Chair must arrange for a sub-panel consisting of 3 members of the GAAR Advisory Panel (one of whom may be the Chair) to consider it.

(2) The sub-panel must produce—

(a) one opinion notice stating the joint opinion of all the members of the sub-panel, or

(b) two or three opinion notices which taken together state the opinions of all the members.

(3) The sub-panel must give a copy of the opinion notice or notices to the designated HMRC officer.

Changes to legislation: *There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 43B. (See end of Document for details)*

(4) An opinion notice is a notice which states that in the opinion of the members of the sub-panel, or one or more of those members—

(a) the entering into and carrying out of tax arrangements such as are described in the general statement under paragraph 4(1)(a) is a reasonable course of action in relation to the relevant tax provisions,

(b) the entering into or carrying out of such tax arrangements is not a reasonable course of action in relation to the relevant tax provisions, or

(c) it is not possible, on the information available, to reach a view on that matter,

and the reasons for that opinion.

(5) In forming their opinions for the purposes of sub-paragraph (4) members of the sub-panel must—

(a) have regard to all the matters set out in the statement under paragraph 4(1)(a),

(b) assume (unless the contrary is stated in the statement under paragraph 4(1)(a)) that the tax arrangements do not form part of any other arrangements,

(c) have regard to the matters mentioned in paragraphs (a) to (c) of section 207(2), and

(d) take account of subsections (4) to (6) of section 207.

(6) For the purposes of the giving of an opinion under this paragraph, the arrangements are to be assumed to be tax arrangements.

(7) In this Part, a reference to any opinion of the GAAR Advisory Panel in respect of a generic referral of any tax arrangements is a reference to the contents of any opinion notice given in relation to a generic referral in respect of the arrangements.

Notice of right to make representations

7 (1) Where a designated HMRC officer is given an opinion notice (or opinion notices) under paragraph 6, the officer must give each of the notified taxpayers a copy of the opinion notice (or notices) and a written notice which—

(a) explains the notified taxpayer's right to make representations falling within sub-paragraph (2), and

(b) sets out the period in which those representations may be made.

(2) A notified taxpayer ("T") who is given a notice under sub-paragraph (1) has 30 days beginning with the day on which the notice is given to make representations in any of the following categories—

(a) representations that no tax advantage has arisen from the specified arrangements;

(b) representations that T has already been given a notice under paragraph 6 of Schedule 43A in relation to the specified arrangements;

(c) representations that any matter set out in the statement under paragraph 4(1)(a) is materially inaccurate as regards the specified arrangements (having regard to all circumstances which would be relevant in accordance with section 207 to a determination of whether the tax arrangements in question are abusive).

Notice of final decision after considering opinion of GAAR Advisory Panel

8 (1) A designated HMRC officer who has received a copy of a notice or notices under paragraph 6(3) in respect of a generic referral must consider the case of each notified taxpayer in accordance with sub-paragraph (2).

(2) The officer must, having considered—

(a) any opinion of the GAAR Advisory Panel about the matters referred to it, and

(b) any representations made by the notified taxpayer under paragraph 7,

give to the notified taxpayer a written notice setting out whether the specified advantage is to be counteracted under the general anti-abuse rule.

(3) If the notice states that a tax advantage is to be counteracted, it must also set out—

(a) the adjustments required to give effect to the counteraction, and

(b) if relevant, any steps that the taxpayer is required to take to give effect to it.

Notices may be given on assumption that tax advantage does arise

9 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule where the officer considers that a tax advantage might have arisen [F9]....

(2) Accordingly, any notice given by a designated HMRC officer under this Schedule may be expressed to be given on the assumption that a tax advantage does arise (without conceding that it does).

Textual Amendments

F9 Words in Sch. 43B para. 9(1) omitted (with effect in accordance with s. 124(2) of the amending Act) by virtue of Finance Act 2021 (c. 26), **Sch. 32 para. 12(4)**

[F10 HMRC officers

Textual Amendments

F10 Sch. 43B para. 9A and cross-heading inserted (5.12.2017) by The General Anti-Abuse Rule Procedure (Amendment) Regulations 2017 (S.I. 2017/1090), regs. 1, **14**

9A. Anything that may or must be done by a given designated HMRC officer under this Schedule may be done instead by any other designated HMRC officer**]**

Power to amend

10 (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).

(2) Regulations under sub-paragraph (1) may include—

(a) any amendment of this Part that is appropriate in consequence of an amendment by virtue of sub-paragraph (1);

(b) transitional provision.

(3) Regulations under sub-paragraph (1) are to be made by statutory instrument.

***Changes to legislation:** There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 43B. (See end of Document for details)*

(4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the House of Commons.**]**

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2013, SCHEDULE 43B.