
Changes to legislation: Finance (No. 2) Act 2017, Paragraph 23 is up to date with all changes known to be in force on or before 04 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 16

PENALTIES FOR ENABLERS OF DEFEATED TAX AVOIDANCE

PART 7

GAAR ADVISORY PANEL OPINION, AND REPRESENTATIONS

Requirement for opinion of GAAR Advisory Panel

- 23 (1) A penalty under paragraph 1 may not be assessed unless—
- (a) the decision that it should be assessed is taken by a designated HMRC officer, and
 - (b) either the condition in sub-paragraph (2) or the condition in sub-paragraph (3) is met.
- (2) The condition in this sub-paragraph is that, when the assessment is made—
- (a) a GAAR final decision notice has been given in relation to—
 - (i) the arrangements to which the penalty relates (“the relevant arrangements”), or
 - (ii) arrangements that are equivalent to the relevant arrangements,
 - (b) where a notice is required by paragraph 25 to be given to the person liable to the penalty, that notice has been given and the time allowed for making representations under that paragraph has expired, and
 - (c) a designated HMRC officer has, in deciding whether the penalty should be assessed, considered—
 - (i) the opinion of the GAAR Advisory Panel which was considered by HMRC in preparing that GAAR final decision notice, and
 - (ii) any representations made under paragraph 25.
- (3) The condition in this sub-paragraph is that, when the assessment is made—
- (a) an opinion of the GAAR Advisory Panel which applies to the relevant arrangements has been given on a referral under paragraph 26,
 - (b) where a notice is required by paragraph 35 to be given to the person liable to the penalty, that notice has been given and the time allowed for making representations under that paragraph has expired, and
 - (c) a designated HMRC officer has, in deciding whether the penalty should be assessed, considered—
 - (i) that opinion of the GAAR Advisory Panel, and
 - (ii) any representations made under paragraph 35.
- (4) Where a notification of a penalty under paragraph 1 is given, the notification must be accompanied by a report prepared by HMRC of—

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- (a) if the condition in sub-paragraph (2) is met, the opinion of the GAAR Advisory Panel which was considered by HMRC in preparing the GAAR final decision notice;
 - (b) if the condition in sub-paragraph (3) is met, the opinion of the GAAR advisory panel mentioned in that sub-paragraph.
- (5) Paragraph 24 contains definitions of terms used in this paragraph.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. A1 para. 8(6)(b) omitted by [2022 c. 3 Sch. 1 para. 32\(b\)](#)
- Sch. A1 para. 8(2) substituted by [2022 c. 3 Sch. 1 para. 32\(a\)](#)