

# REVENUE SCOTLAND AND TAX POWERS ACT 2014

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## EXPLANATORY NOTES

### THE ACT

#### **Part 5 – the General Anti-Avoidance Rule**

##### **Counteracting tax advantages**

##### *Section 66 – Counteracting tax advantages*

92. This section provides Revenue Scotland with the power to adjust the tax liability of a taxpayer who would otherwise benefit from a tax advantage in relation to the devolved taxes arising from an artificial tax avoidance arrangement. Subsection (1) provides that Revenue Scotland may make any adjustments that it considers to be just and reasonable in order to counteract such a tax advantage. Subsection (2) makes clear that these adjustments may be made in respect of the tax in relation to which a tax advantage has been gained, or in respect of any other tax.
93. Subsection (3) makes clear that the adjustments made to counteract a tax liability include adjustments that impose or increase a tax liability, and that tax is to be charged in accordance with the adjustment. Subsection (4) provides that the adjustment made to counteract a tax advantage may take the form of a tax assessment, a modification to an existing assessment, an amendment, or the disallowance of a claim (for a relief or reduction in tax) amongst other things.
94. Subsection (5) requires that in counteracting a tax advantage Revenue Scotland is obliged to adhere to the procedures and steps set out in later sections in this Part of the Act.
95. Subsection (6) provides that the power to make adjustments is subject to any time limit set out in Part 6 or any other enactment.

##### *Section 67 – Proceedings in connection with the general anti-avoidance rule*

96. This section makes provision in relation to court actions arising from the operation of the GAAR in relation to the devolved taxes. Subsection (1) provides that, where Revenue Scotland makes adjustments to counteract a tax advantage, the burden of proof is on it to demonstrate that there is a tax avoidance arrangement that is artificial, and that the adjustments made to counteract the tax advantage arising from the arrangement are just and reasonable.
97. Subsection (2) provides that, in determining any issues in connection with the GAAR, a court or tribunal is obliged to take account of guidance published by Revenue Scotland about the GAAR which was extant when the tax avoidance arrangement in question was entered into.

98. Subsection (3) provides that a court or tribunal may also take account of guidance, statements or other material in the public domain at the time the tax avoidance arrangement in question was entered into, and may also take account of evidence of established practice at that time.

***Section 68 – Notice to taxpayer of proposed counteraction of tax advantage***

99. This section sets out Revenue Scotland’s responsibility for notifying a taxpayer when it is intending to counteract a tax advantage in relation to the devolved taxes.
100. Subsection (1) provides that if a member of staff in Revenue Scotland (“a designated officer”) considers that a tax advantage has arisen from a tax avoidance arrangement that is artificial, and that the tax advantage should be counteracted, the designated officer must notify the taxpayer.
101. Subsection (2) specifies that a notification must include a statement of the tax avoidance arrangement and the tax advantage; an explanation of why the designated officer considers that a tax advantage has arisen to the taxpayer from a tax avoidance arrangement that is artificial; a statement of the counteraction that Revenue Scotland intends to take; and a statement of the period of time that the taxpayer has for making representations (45 days under subsection (4)).
102. Subsection (3) provides that a notice to a taxpayer may also describe the steps that the taxpayer can take to avoid the proposed counteraction.
103. Subsection (4) provides that when a taxpayer receives a notice under this section, they have 45 days in which to respond to the notice by making written representations. Subsection (5) gives the designated officer power to increase the number of days within which written representations may be made to more than 45 days, if the taxpayer makes a written request. Subsection (6) provides that the designated officer must take account of any representations made by the taxpayer in response to the notification given under subsection (1) and (2).

***Section 69 – Final notice to taxpayer of counteraction of tax advantage***

104. This section provides that where a taxpayer has been sent a notice under section 63(1), after the period for making representations about the notice has expired, the designated officer must provide the taxpayer with another written notice setting out whether or not the tax advantage arising from the tax avoidance arrangement is to be counteracted as proposed in the earlier notice.

***Section 70 – Counteraction of tax advantages: payment of tax charged etc.***

105. Section 70 provides that, where a taxpayer has been sent a notice of counteraction under section 64, the taxpayer must pay any tax amount, penalty or interest which is payable within 30 days of the notice being issued.
106. Subsection (2) stipulates that if the tax advantage is to be counteracted, the notice must explain the adjustments required to give effect to the counteraction, and any steps required of the taxpayer in this regard.

***Section 71 – Assumption of tax advantage***

107. This section gives a designated officer power to give a taxpayer a notice under section 68 and section 69 where the designated officer thinks that a tax advantage in relation to the devolved taxes might have arisen to the taxpayer. Subsection (2) makes clear that this enables a designated officer to send a notification to a taxpayer on the assumption that a tax advantage does arise.