



Revenue Scotland and Tax Powers Act 2014

2014 asp 16

PART 5

THE GENERAL ANTI-AVOIDANCE RULE

Artificial tax avoidance arrangements

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.
- (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,

Status: This is the original version (as it was originally enacted).

- (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.