



Non-Domestic Rates (Scotland) Act 2020

2020 asp 4

PART 4

ANTI-AVOIDANCE REGULATIONS

37 Anti-avoidance regulations

- (1) The Scottish Ministers may by regulations (“anti-avoidance regulations”) make such provision as they consider appropriate with a view to preventing or minimising advantages (see section 38) arising from non-domestic rates avoidance arrangements that are artificial (see sections 39 and 40).
- (2) The Scottish Ministers may not make anti-avoidance regulations unless they consider that it is appropriate to do so.
- (3) Anti-avoidance regulations—
 - (a) may modify any enactment (but not this Part),
 - (b) may make different provision for different purposes,
 - (c) may make incidental, supplementary, consequential, transitional, transitory or saving provision.

38 Meaning of “advantage”

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

39 Non-domestic rates avoidance arrangements

- (1) An arrangement (or series of arrangements) is a non-domestic rates avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining an advantage is the main purpose, or one of the main purposes, of the arrangement.
- (2) An “arrangement” includes any agreement, transaction, undertaking, action or event (whether legally enforceable or not).

40 Meaning of “artificial”

- (1) A non-domestic rates 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 non-domestic rates 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 non-domestic rates avoidance arrangement lacks economic or commercial substance—
 - (a) the arrangement is carried out in a manner which would not normally be employed in reasonable business conduct,
 - (b) the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangements as a whole,
 - (c) the arrangement includes elements which have the effect of offsetting or cancelling each other,
 - (d) transactions are circular in nature,
 - (e) the arrangement results in an advantage that is not reflected in the business risks undertaken.
- (5) The examples given in subsection (4) are not exhaustive.
- (6) Where a non-domestic rates avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements.

41 Procedure for anti-avoidance regulations

- (1) Anti-avoidance regulations are subject to the affirmative procedure.
- (2) Before laying a draft of a Scottish statutory instrument containing anti-avoidance regulations before the Scottish Parliament, the Scottish Ministers—
 - (a) must consult such person or persons as appear to the Scottish Ministers to represent the interests of—
 - (i) local authorities, or
 - (ii) assessors,

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- as the Scottish Ministers consider appropriate, and
- (b) may consult—
 - (i) such ratepayers or potential ratepayers, and
 - (ii) such other persons,as the Scottish Ministers consider appropriate.
- (3) Consultation under subsection (2) must include a copy of the proposed anti-avoidance regulations.
- (4) The Scottish Ministers must, as soon as reasonably practicable after consultation under subsection (2) begins, notify the Scottish Parliament about the consultation.
- (5) The Scottish Ministers must have regard to any representations about the draft anti-avoidance regulations received as a result of the consultation.
- (6) When laying a draft of a Scottish statutory instrument containing anti-avoidance regulations, the Scottish Ministers must also lay before the Scottish Parliament a document which—
 - (a) explains why the Scottish Ministers consider that it is appropriate to make the anti-avoidance regulations, and
 - (b) gives details of—
 - (i) the consultation,
 - (ii) any representations received as a result of the consultation, and
 - (iii) the changes (if any) made to the draft anti-avoidance regulations as a result of those representations.