



Non-Domestic Rates (Scotland) Act 2020

2020 asp 4

PART 4

ANTI-AVOIDANCE REGULATIONS

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.

Changes to legislation: Non-Domestic Rates (Scotland) Act 2020, Section 40 is up to date with all changes known to be in force on or before 22 May 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](#)

Commencement Information

II [S. 40](#) in force at 5.11.2020 by [S.S.I. 2020/327](#), [sch.](#)

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing S.S.I. 2020/327, sch. by [S.S.I. 2021/120 reg. 2\(2\)](#)