



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.