



# Finance Act 2013

## 2013 CHAPTER 29

### PART 5

#### GENERAL ANTI-ABUSE RULE

#### **206 General anti-abuse rule**

- (1) This Part has effect for the purpose of counteracting tax advantages arising from tax arrangements that are abusive.
- (2) The rules of this Part are collectively to be known as “the general anti-abuse rule”.
- (3) The general anti-abuse rule applies to the following taxes—
  - (a) income tax,
  - (b) corporation tax, including any amount chargeable as if it were corporation tax or treated as if it were corporation tax,
  - (c) capital gains tax,
  - (d) petroleum revenue tax,
  - (e) inheritance tax,
  - (f) stamp duty land tax, and
  - (g) annual tax on enveloped dwellings.

#### **207 Meaning of “tax arrangements” and “abusive”**

- (1) Arrangements are “tax arrangements” if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements.
- (2) Tax arrangements are “abusive” if they are arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances including—
  - (a) whether the substantive results of the arrangements are consistent with any principles on which those provisions are based (whether express or implied) and the policy objectives of those provisions,

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- (b) whether the means of achieving those results involves one or more contrived or abnormal steps, and
  - (c) whether the arrangements are intended to exploit any shortcomings in those provisions.
- (3) Where the tax arrangements form part of any other arrangements regard must also be had to those other arrangements.
- (4) Each of the following is an example of something which might indicate that tax arrangements are abusive—
- (a) the arrangements result in an amount of income, profits or gains for tax purposes that is significantly less than the amount for economic purposes,
  - (b) the arrangements result in deductions or losses of an amount for tax purposes that is significantly greater than the amount for economic purposes, and
  - (c) the arrangements result in a claim for the repayment or crediting of tax (including foreign tax) that has not been, and is unlikely to be, paid,
- but in each case only if it is reasonable to assume that such a result was not the anticipated result when the relevant tax provisions were enacted.
- (5) The fact that tax arrangements accord with established practice, and HMRC had, at the time the arrangements were entered into, indicated its acceptance of that practice, is an example of something which might indicate that the arrangements are not abusive.
- (6) The examples given in subsections (4) and (5) are not exhaustive.

## **208 Meaning of “tax advantage”**

A “tax advantage” includes—

- (a) relief or increased relief from tax,
- (b) repayment or increased repayment of tax,
- (c) avoidance or reduction of a charge to tax or an assessment to tax,
- (d) avoidance of a possible assessment to tax,
- (e) deferral of a payment of tax or advancement of a repayment of tax, and
- (f) avoidance of an obligation to deduct or account for tax.

## **209 Counteracting the tax advantages**

- (1) If there are tax arrangements that are abusive, the tax advantages that would (ignoring this Part) arise from the arrangements are to be counteracted by the making of adjustments.
- (2) The adjustments required to be made to counteract the tax advantages are such as are just and reasonable.
- (3) The adjustments may be made in respect of the tax in question or any other tax to which the general anti-abuse rule applies.
- (4) The adjustments that may be made include those that impose or increase a liability to tax in any case where (ignoring this Part) there would be no liability or a smaller liability, and tax is to be charged in accordance with any such adjustment.
- (5) Any adjustments required to be made under this section (whether by an officer of Revenue and Customs or the person to whom the tax advantage would arise) may

be made by way of an assessment, the modification of an assessment, amendment or disallowance of a claim, or otherwise.

- (6) But—
- (a) no steps may be taken by an officer of Revenue and Customs by virtue of this section unless the procedural requirements of Schedule 43 have been complied with, and
  - (b) the power to make adjustments by virtue of this section is subject to any time limit imposed by or under any enactment other than this Part.
- (7) Any adjustments made under this section have effect for all purposes.

## **210 Consequential relieving adjustments**

- (1) This section applies where—
- (a) the counteraction of a tax advantage under section 209 is final, and
  - (b) if the case is not one in which notice of the counteraction was given under paragraph 12 of Schedule 43, HMRC have been notified of the counteraction by the taxpayer.
- (2) A person has 12 months, beginning with the day on which the counteraction becomes final, to make a claim for one or more consequential adjustments to be made in respect of any tax to which the general anti-abuse rule applies.
- (3) On a claim under this section, an officer of Revenue and Customs must make such of the consequential adjustments claimed (if any) as are just and reasonable.
- (4) Consequential adjustments—
- (a) may be made in respect of any period, and
  - (b) may affect any person (whether or not a party to the tax arrangements).
- (5) But nothing in this section requires or permits an officer to make a consequential adjustment the effect of which is to increase a person's liability to any tax.
- (6) For the purposes of this section—
- (a) if the claim relates to income tax or capital gains tax, Schedule 1A to TMA 1970 applies to it;
  - (b) if the claim relates to corporation tax, Schedule 1A to TMA 1970 (and not Schedule 18 to FA 1998) applies to it;
  - (c) if the claim relates to petroleum revenue tax, Schedule 1A to TMA 1970 applies to it, but as if the reference in paragraph 2A(4) of that Schedule to a year of assessment included a reference to a chargeable period within the meaning of OTA 1975 (see section 1(3) and (4) of that Act);
  - (d) if the claim relates to inheritance tax it must be made in writing to HMRC and section 221 of IHTA 1984 applies as if the claim were a claim under that Act;
  - (e) if the claim relates to stamp duty land tax or annual tax on enveloped dwellings, Schedule 11A to FA 2003 applies to it as if it were a claim to which paragraph 1 of that Schedule applies.
- (7) Where an officer of Revenue and Customs makes a consequential adjustment under this section, the officer must give the person who made the claim written notice describing the adjustment which has been made.

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- (8) For the purposes of this section the counteraction of a tax advantage is final when the adjustments made to effect the counteraction, and any amounts arising as a result of those adjustments, can no longer be varied, on appeal or otherwise.
- (9) Any adjustments required to be made under this section may be made—
  - (a) by way of an assessment, the modification of an assessment, the amendment of a claim, or otherwise, and
  - (b) despite any time limit imposed by or under any enactment other than this Part.
- (10) In this section “the taxpayer”, in relation to a counteraction of a tax advantage under section 209, means the person to whom the tax advantage would have arisen.

## **211 Proceedings before a court or tribunal**

- (1) In proceedings before a court or tribunal in connection with the general anti-abuse rule, HMRC must show—
  - (a) that there are tax arrangements that are abusive, and
  - (b) that the adjustments made to counteract the tax advantages arising from the arrangements are just and reasonable.
- (2) In determining any issue in connection with the general anti-abuse rule, a court or tribunal must take into account—
  - (a) HMRC’s guidance about the general anti-abuse rule that was approved by the GAAR Advisory Panel at the time the tax arrangements were entered into, and
  - (b) any opinion of the GAAR Advisory Panel about the arrangements (see paragraph 11 of Schedule 43).
- (3) In determining any issue in connection with the general anti-abuse rule, a court or tribunal may take into account—
  - (a) guidance, statements or other material (whether of HMRC, a Minister of the Crown or anyone else) that was in the public domain at the time the arrangements were entered into, and
  - (b) evidence of established practice at that time.

## **212 Relationship between the GAAR and priority rules**

- (1) Any priority rule has effect subject to the general anti-abuse rule (despite the terms of the priority rule).
- (2) A “priority rule” means a rule (however expressed) to the effect that particular provisions have effect to the exclusion of, or otherwise in priority to, anything else.
- (3) Examples of priority rules are—
  - (a) the rule in section 464, 699 or 906 of CTA 2009 (priority of loan relationships rules, derivative contracts rules and intangible fixed assets rules for corporation tax purposes), and
  - (b) the rule in section 6(1) of TIOPA 2010 (effect to be given to double taxation arrangements despite anything in any enactment).

## **213 Consequential amendment**

- (1) Section 42 of TMA 1970 (procedure for making claims etc) is amended as follows.

(2) In subsection (2), for “(3ZB)” substitute “(3ZC)”.

(3) After subsection (3ZB) insert—

“(3ZC) Subsection (2) also does not apply in relation to any claim under section 210 of the Finance Act 2013 (claims for consequential relieving adjustments after counteraction of tax advantage under the general anti-abuse rule).”

## **214 Interpretation of Part 5**

In this Part—

“abusive”, in relation to tax arrangements, has the meaning given by section 207(2) to (6);

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“the GAAR Advisory Panel” has the meaning given by paragraph 1 of Schedule 43;

“the general anti-abuse rule” has the meaning given by section 206;

“HMRC” means Her Majesty’s Revenue and Customs;

“tax advantage” has the meaning given by section 208;

“tax arrangements” has the meaning given by section 207(1).

## **215 Commencement and transitional provision**

(1) The general anti-abuse rule has effect in relation to any tax arrangements entered into on or after the day on which this Act is passed.

(2) Where the tax arrangements form part of any other arrangements entered into before that day those other arrangements are to be ignored for the purposes of section 207(3), subject to subsection (3).

(3) Account is to be taken of those other arrangements for the purposes of section 207(3) if, as a result, the tax arrangements would not be abusive.