



# Finance Act 2016

## 2016 CHAPTER 24

### PART 10

#### TAX AVOIDANCE AND EVASION

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

#### **157 General anti-abuse rule: binding of tax arrangements to lead arrangements**

- (1) Part 5 of FA 2013 (general anti-abuse rule) is amended in accordance with subsections (2) to (11).
- (2) After Schedule 43 insert—

#### “SCHEDULE 43A

#### PROCEDURAL REQUIREMENTS: POOLING NOTICES AND NOTICES OF BINDING

##### *Pooling notices*

- 1 (1) This paragraph applies where a person has been given a notice under paragraph 3 of Schedule 43 in relation to any tax arrangements (the “lead arrangements”) and the condition in sub-paragraph (2) is met.
- (2) The condition is that the period of 45 days mentioned in paragraph 4(1) of Schedule 43 has expired but no notice under paragraph 12 of Schedule 43 or paragraph 8 of Schedule 43B has yet been given in respect of the matter.
- (3) If a designated HMRC officer considers—
  - (a) that a tax advantage has arisen to another person (“R”) from tax arrangements that are abusive,
  - (b) that those tax arrangements (“R’s arrangements”) are equivalent to the lead arrangements, and

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- (c) that the advantage ought to be counteracted under section 209, the officer may give R a notice (a “pooling notice”) which places R's arrangements in a pool with the lead arrangements.
- (4) There is one pool for any lead arrangements, so all tax arrangements placed in a pool with the lead arrangements (as well as the lead arrangements themselves) are in one and the same pool.
- (5) Tax arrangements which have been placed in a pool do not cease to be in the pool except where that is expressly provided for by this Schedule (regardless of whether or not the lead arrangements or any other tax arrangements remain in the pool).
- (6) The officer may not give R a pooling notice if R has been given in respect of R's arrangements a notice under paragraph 3 of Schedule 43.

*Notice of proposal to bind arrangements to counteracted arrangements*

- 2 (1) This paragraph applies where a counteraction notice has been given to a person in relation to any tax arrangements (the “counteracted arrangements”) which are in a pool created under paragraph 1.
- (2) If a designated HMRC officer considers—
  - (a) that a tax advantage has arisen to another person (“R”) from tax arrangements that are abusive,
  - (b) that those tax arrangements (“R's arrangements”) are equivalent to the counteracted arrangements, and
  - (c) that the advantage ought to be counteracted under section 209,
 the officer may give R a notice (a “notice of binding”) in relation to R's arrangements.
- (3) The officer may not give R a notice of binding if R has been given in respect of R's arrangements a notice under—
  - (a) paragraph 1, or
  - (b) paragraph 3 of Schedule 43.
- (4) In this paragraph “counteraction notice” means a notice such as is mentioned in sub-paragraph (2) of paragraph 12 of Schedule 43 or sub-paragraph (3) of paragraph 8 of Schedule 43B (notice of final decision to counteract).
- 3 (1) The decision whether or not to give R a pooling notice or notice of binding must be taken, and any notice must be given, as soon as is reasonably practicable after HMRC becomes aware of the relevant facts.
- (2) A pooling notice or notice of binding must—
  - (a) specify the tax arrangements in relation to which the notice is given and the tax advantage,
  - (b) explain why the officer considers R's arrangements to be equivalent to the lead arrangements or the counteracted arrangements (as the case may be),
  - (c) explain why the officer considers that a tax advantage has arisen to R from tax arrangements that are abusive,

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- (d) set out the counteraction that the officer considers ought to be taken, and
  - (e) explain the effect of—
    - (i) paragraphs 4 to 10,
    - (ii) subsection (9) of section 209, and
    - (iii) section 212A.
- (3) A pooling notice or notice of binding may set out steps that R may (subject to subsection (9) of section 209) take to avoid the proposed counteraction.

*Corrective action by a notified taxpayer*

- 4 (1) If a person to whom a pooling notice or notice of binding has been given takes the relevant corrective action in relation to the tax arrangements and tax advantage specified in the notice before the beginning of the closed period mentioned in section 209(9), the person is to be treated for the purposes of paragraphs 8 and 9 and Schedule 43B (generic referral of tax arrangements) as not having been given the notice in question (and accordingly the tax arrangements in question are no longer in the pool).
- (2) For the purposes of this Schedule the “relevant corrective action” is taken if (and only if) the person takes the steps set out in sub-paragraphs (3) and (4).
- (3) The first step is that—
- (a) the person amends a return or claim to counteract the tax advantage specified in the pooling notice or notice of binding, or
  - (b) if the person has made a tax appeal (by notifying HMRC or otherwise) on the basis that the tax advantage specified in the pooling notice or notice of binding arises from the tax arrangements specified in that notice, the person takes all necessary action to enter into an agreement with HMRC (in writing) for the purpose of relinquishing that advantage.
- (4) The second step is that the person notifies HMRC—
- (a) that the first step has been taken, and
  - (b) of any additional amount which has or will become due and payable in respect of tax by reason of the first step being taken.
- (5) Where a person takes the first step described in sub-paragraph (3)(b), HMRC may proceed as if the person had not taken the relevant corrective action if the person fails to enter into the written agreement.
- (6) In determining the additional amount which has or will become due and payable in respect of tax for the purposes of sub-paragraph (4)(b), it is to be assumed that, where the person takes the necessary action as mentioned in sub-paragraph (3)(b), the agreement is then entered into.
- (7) No enactment limiting the time during which amendments may be made to returns or claims operates to prevent the person taking the first step mentioned in sub-paragraph (3)(a) before the tax enquiry is closed.
- (8) No appeal may be brought, by virtue of a provision mentioned in sub-paragraph (9), against an amendment made by a closure notice in respect of a tax enquiry to the extent that the amendment takes into account an amendment

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made by the taxpayer to a return or claim in taking the first step mentioned in sub-paragraph (3)(a).

(9) The provisions are—

- (a) paragraph 35(1)(b) of Schedule 33,
- (b) section 31(1)(b) or (c) of TMA 1970,
- (c) paragraph 9 of Schedule 1A to TMA 1970,
- (d) paragraph 34(3) of Schedule 18 to FA 1998, and
- (e) paragraph 35(1)(b) of Schedule 10 to FA 2003.

*Corrective action by lead taxpayer*

- 5 If the person mentioned in paragraph 1(1) takes the relevant corrective action (as defined in paragraph 4A of Schedule 43) before the end of the period of 75 days beginning with the day on which the notice mentioned in paragraph 1(1) was given to that person, the lead arrangements are treated as ceasing to be in the pool.

*Opinion notices and right to make representations*

- 6 (1) Sub-paragraph (2) applies where—
- (a) a pooling notice is given to a person in relation to any tax arrangements, and
  - (b) an opinion notice (or opinion notices) under paragraph 11(2) of Schedule 43 about another set of tax arrangements in the pool (“the referred arrangements”) is subsequently given to a designated HMRC officer.
- (2) The officer must give the person a pooled arrangements opinion notice.
- (3) No more than one pooled arrangements opinion notice may be given to a person in respect of the same tax arrangements.
- (4) Where a designated HMRC officer gives a person a notice of binding, the officer must, at the same time, give the person a bound arrangements opinion notice.
- 7 (1) In relation to a person who is, or has been, given a pooling notice, “pooled arrangements opinion notice” means a written notice which—
- (a) sets out a report prepared by HMRC of any opinion of the GAAR Advisory Panel about the referred arrangements,
  - (b) explains the person's right to make representations falling within sub-paragraph (3), and
  - (c) sets out the period in which those representations may be made.
- (2) In relation to a person who is given a notice of binding “bound arrangements opinion notice” means a written notice which—
- (a) sets out a report prepared by HMRC of any opinion of the GAAR Advisory Panel about the counteracted arrangements (see paragraph 2(1)),
  - (b) explains the person's right to make representations falling within sub-paragraph (3), and
  - (c) sets out the period in which those representations may be made.

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- (3) A person who is given a pooled arrangements opinion notice or a bound arrangements opinion notice has 30 days beginning with the day on which the notice is given to make representations in any of the following categories—
- (a) representations that no tax advantage has arisen to the person from the arrangements to which the notice relates;
  - (b) representations as to why the arrangements to which the notice relates are or may be materially different from—
    - (i) the referred arrangements (in the case of a pooled arrangements opinion notice), or
    - (ii) the counteracted arrangements (in the case of a bound arrangements opinion notice).
- (4) In sub-paragraph (3)(b) references to “arrangements” include any circumstances which would be relevant in accordance with section 207 to a determination of whether the tax arrangements in question are abusive.

*Notice of final decision*

- 8 (1) This paragraph applies where—
- (a) any tax arrangements have been placed in a pool by a notice given to a person under paragraph 1, and
  - (b) a designated HMRC officer has given a notice under paragraph 12 of Schedule 43 in relation to any other arrangements in the pool (the “referred arrangements”).
- (2) The officer must, having considered any opinion of the GAAR Advisory Panel about the referred arrangements and any representations made under paragraph 7(3) in relation to the arrangements mentioned in sub-paragraph (1) (a), give the person a written notice setting out whether the tax advantage arising from those arrangements is to be counteracted under the general anti-abuse rule.
- 9 (1) This paragraph applies where—
- (a) a person has been given a notice of binding under paragraph 2, and
  - (b) the period of 30 days for making representations under paragraph 7(3) has expired.
- (2) A designated HMRC officer must, having considered any opinion of the GAAR Advisory Panel about the counteracted arrangements and any representations made under paragraph 7(3) in relation to the arrangements specified in the notice of binding, give the person a written notice setting out whether the tax advantage arising from the arrangements specified in the notice of binding is to be counteracted under the general anti-abuse rule.
- 10 If a notice under paragraph 8(2) or 9(2) states that a tax advantage is to be counteracted, it must also set out—
- (a) the adjustments required to give effect to the counteraction, and
  - (b) if relevant, any steps the person concerned is required to take to give effect to it.

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*“Equivalent arrangements”*

- 11 (1) For the purposes of paragraph 1, tax arrangements are “equivalent” to one another if they are substantially the same as one another having regard to—
- (a) their substantive results,
  - (b) the means of achieving those results, and
  - (c) the characteristics on the basis of which it could reasonably be argued, in each case, that the arrangements are abusive tax arrangements under which a tax advantage has arisen to a person.

*Notices may be given on assumption that tax advantage does arise*

- 12 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule where the officer considers that a tax advantage might have arisen to the person concerned.
- (2) Accordingly, any notice given by a designated HMRC officer under this Schedule may be expressed to be given on the assumption that a tax advantage does arise (without conceding that it does).

*Power to amend*

- 13 (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).
- (2) Regulations under sub-paragraph (1) may include—
- (a) any amendment of this Part that is appropriate in consequence of an amendment by virtue of sub-paragraph (1);
  - (b) transitional provision.
- (3) Regulations under sub-paragraph (1) are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the House of Commons.”
- (3) After Schedule 43A insert—

“SCHEDULE  
43B

PROCEDURAL REQUIREMENTS: GENERIC REFERRAL OF TAX ARRANGEMENTS

*Notice of proposal to make generic referral of tax arrangements*

- 1 (1) Sub-paragraph (2) applies if—
- (a) pooling notices given under paragraph 1 of Schedule 43A have placed one or more sets of tax arrangements in a pool with the lead arrangements,
  - (b) the lead arrangements (see paragraph 1(1) of Schedule 43A) have ceased to be in the pool, and
  - (c) no referral under paragraph 5 or 6 of Schedule 43 has been made in respect of any arrangements in the pool.

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- (2) A designated HMRC officer may determine that, in respect of each of the tax arrangements that are in the pool, there is to be given (to the person to whom the pooling notice in question was given) a written notice of a proposal to make a generic referral to the GAAR Advisory Panel in respect of the arrangements in the pool.
- (3) Only one determination under sub-paragraph (2) may be made in relation to any one pool.
- (4) The persons to whom those notices are given are “the notified taxpayers”.
- (5) A notice given to a person (“T”) under sub-paragraph (2) must—
  - (a) specify the arrangements (the “specified arrangements”) and the tax advantage (the “specified advantage”) to which the notice relates,
  - (b) inform T of the period under paragraph 2 for making a proposal.
- 2 (1) T has 30 days beginning with the day on which the notice under paragraph 1 is given to propose to HMRC that it—
  - (a) should give T a notice under paragraph 3 of Schedule 43 in respect of the arrangements to which the notice under paragraph 1 relates, and
  - (b) should not proceed with the proposal to make a generic referral to the GAAR Advisory Panel in respect of those arrangements.
- (2) If a proposal is made in accordance with sub-paragraph (1) a designated HMRC officer must consider it.

#### *Generic referral*

- 3 (1) This paragraph applies where a designated HMRC officer has given notices to the notified taxpayers in accordance with paragraph 1(2).
- (2) If none of the notified taxpayers has made a proposal under paragraph 2 by the end of the 30 day period mentioned in that paragraph, the officer must make a referral to the GAAR Advisory Panel in respect of the notified taxpayers and the arrangements which are specified arrangements in relation to them.
- (3) If at least one of the notified taxpayers makes a proposal in accordance with paragraph 2, the designated HMRC officer must, after the end of that 30 day period, decide whether to—
  - (a) give a notice under paragraph 3 of Schedule 43 in respect of one set of tax arrangements in the relevant pool, or
  - (b) make a referral to the GAAR Advisory Panel in respect of the tax arrangements in the relevant pool.
- (4) A referral under this paragraph is a “generic referral”.
- 4 (1) If a generic referral is made to the GAAR Advisory Panel, the designated HMRC officer must at the same time provide it with—
  - (a) a general statement of the material characteristics of the specified arrangements, and
  - (b) a declaration that—
    - (i) the statement under paragraph (a) is applicable to all the specified arrangements, and

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- (ii) as far as HMRC is aware, nothing which is material to the GAAR Advisory Panel's consideration of the matter has been omitted.
- (2) The general statement under sub-paragraph (1)(a) must—
  - (a) contain a factual description of the tax arrangements;
  - (b) set out HMRC's view as to whether the tax arrangements accord with established practice (when the arrangements were entered into);
  - (c) explain why it is the designated HMRC officer's view that a tax advantage of the nature described in the statement and arising from tax arrangements having the characteristics described in the statement would be a tax advantage arising from arrangements that are abusive;
  - (d) set out any matters the designated officer is aware of which may suggest that any view of HMRC or the designated HMRC officer expressed in the general statement is not correct;
  - (e) set out any other matters which the designated officer considers are required for the purposes of the exercise of the GAAR Advisory Panel's functions under paragraph 6.
- 5 If a generic referral is made the designated HMRC officer must at the same time give each of the notified taxpayers a notice which—
  - (a) specifies that a generic referral is being made, and
  - (b) is accompanied by a copy of the statement given to the GAAR Advisory Panel in accordance with paragraph 4(1)(a).

*Decision of GAAR Advisory Panel and opinion notices*

- 6 (1) If a generic referral is made to the GAAR Advisory Panel under paragraph 3, the Chair must arrange for a sub-panel consisting of 3 members of the GAAR Advisory Panel (one of whom may be the Chair) to consider it.
- (2) The sub-panel must produce—
  - (a) one opinion notice stating the joint opinion of all the members of the sub-panel, or
  - (b) two or three opinion notices which taken together state the opinions of all the members.
- (3) The sub-panel must give a copy of the opinion notice or notices to the designated HMRC officer.
- (4) An opinion notice is a notice which states that in the opinion of the members of the sub-panel, or one or more of those members—
  - (a) the entering into and carrying out of tax arrangements such as are described in the general statement under paragraph 4(1)(a) is a reasonable course of action in relation to the relevant tax provisions,
  - (b) the entering into or carrying out of such tax arrangements is not a reasonable course of action in relation to the relevant tax provisions, or
  - (c) it is not possible, on the information available, to reach a view on that matter,
 and the reasons for that opinion.



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- (5) In forming their opinions for the purposes of sub-paragraph (4) members of the sub-panel must—
- (a) have regard to all the matters set out in the statement under paragraph 4(1)(a),
  - (b) assume (unless the contrary is stated in the statement under paragraph 4(1)(a)) that the tax arrangements do not form part of any other arrangements,
  - (c) have regard to the matters mentioned in paragraphs (a) to (c) of section 207(2), and
  - (d) take account of subsections (4) to (6) of section 207.
- (6) For the purposes of the giving of an opinion under this paragraph, the arrangements are to be assumed to be tax arrangements.
- (7) In this Part, a reference to any opinion of the GAAR Advisory Panel in respect of a generic referral of any tax arrangements is a reference to the contents of any opinion notice given in relation to a generic referral in respect of the arrangements.

*Notice of right to make representations*

- 7 (1) Where a designated HMRC officer is given an opinion notice (or opinion notices) under paragraph 6, the officer must give each of the notified taxpayers a copy of the opinion notice (or notices) and a written notice which—
- (a) explains the notified taxpayer's right to make representations falling within sub-paragraph (2), and
  - (b) sets out the period in which those representations may be made.
- (2) A notified taxpayer (“T”) who is given a notice under sub-paragraph (1) has 30 days beginning with the day on which the notice is given to make representations in any of the following categories—
- (a) representations that no tax advantage has arisen from the specified arrangements;
  - (b) representations that T has already been given a notice under paragraph 6 of Schedule 43A in relation to the specified arrangements;
  - (c) representations that any matter set out in the statement under paragraph 4(1)(a) is materially inaccurate as regards the specified arrangements (having regard to all circumstances which would be relevant in accordance with section 207 to a determination of whether the tax arrangements in question are abusive).

*Notice of final decision after considering opinion of GAAR Advisory Panel*

- 8 (1) A designated HMRC officer who has received a copy of a notice or notices under paragraph 6(3) in respect of a generic referral must consider the case of each notified taxpayer in accordance with sub-paragraph (2).
- (2) The officer must, having considered—
- (a) any opinion of the GAAR Advisory Panel about the matters referred to it, and
  - (b) any representations made by the notified taxpayer under paragraph 7,

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give to the notified taxpayer a written notice setting out whether the specified advantage is to be counteracted under the general anti-abuse rule.

- (3) If the notice states that a tax advantage is to be counteracted, it must also set out—
- (a) the adjustments required to give effect to the counteraction, and
  - (b) if relevant, any steps that the taxpayer is required to take to give effect to it.

*Notices may be given on assumption that tax advantage does arise*

- 9 (1) A designated HMRC officer may give a notice, or do anything else, under this Schedule where the officer considers that a tax advantage might have arisen to the person concerned.
- (2) Accordingly, any notice given by a designated HMRC officer under this Schedule may be expressed to be given on the assumption that a tax advantage does arise (without conceding that it does).

*Power to amend*

- 10 (1) The Treasury may by regulations amend this Schedule (apart from this paragraph).
- (2) Regulations under sub-paragraph (1) may include—
- (a) any amendment of this Part that is appropriate in consequence of an amendment by virtue of sub-paragraph (1);
  - (b) transitional provision.
- (3) Regulations under sub-paragraph (1) are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under sub-paragraph (1) is subject to annulment in pursuance of a resolution of the House of Commons.”
- (4) In section 209 (counteracting tax advantages), in subsection (6)(a), after “Schedule 43” insert “, 43A or 43B ”.
- (5) In section 210 (consequential relieving adjustments), in subsection (1)(b), after “Schedule 43,” insert “ paragraph 8 or 9 of Schedule 43A or paragraph 8 of Schedule 43B, ”.
- (6) In section 211 (proceedings before a court or tribunal), in subsection (2)(b), for the words from “Panel” to the end substitute “Panel given—
- (i) under paragraph 11 of Schedule 43 about the arrangements or any tax arrangements which are, as a result of a notice under paragraph 1 or 2 of Schedule 43A, the referred or (as the case may be) counteracted arrangements in relation to the arrangements, or
  - (ii) under paragraph 6 of Schedule 43B in respect of a generic referral of the arrangements.”
- (7) Section 214 (interpretation of Part 5) is amended in accordance with subsections (8) to (10).
- (8) Renumber section 214 as subsection (1) of section 214.

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(9) In subsection (1) (as renumbered), at the appropriate places insert—

““designated HMRC officer” has the meaning given by paragraph 2 of Schedule 43;”.

““notice of binding” has the meaning given by paragraph 2(2) of Schedule 43A;”

““pooling notice” has the meaning given by paragraph 1(4) of Schedule 43A;”

““tax appeal” has the meaning given by paragraph 1A of Schedule 43;”

““tax enquiry” has the meaning given by section 202(2) of FA 2014.”

(10) After subsection (1) insert—

“(2) In this Part references to any “opinion of the GAAR Advisory Panel” about any tax arrangements are to be interpreted in accordance with paragraph 11(5) of Schedule 43.

(3) In this Part references to tax arrangements which are “equivalent” to one another are to be interpreted in accordance with paragraph 11 of Schedule 43A.”

(11) In Schedule 43 (general anti-abuse rule: procedural requirements), in paragraph 6, after sub-paragraph (2) insert—

“(3) The officer must, as soon as reasonably practicable after deciding whether or not the matter is to be referred to the GAAR Advisory Panel, give the taxpayer written notice of the decision.”

(12) Section 10 of the National Insurance Contributions Act 2014 (GAAR to apply to national insurance contributions) is amended in accordance with subsections (13) to (16).

(13) In subsection (4), at the end insert “, paragraph 8 or 9 of Schedule 43A to that Act (pooling of tax arrangements: notice of final decision) or paragraph 8 of Schedule 43B to that Act (generic referral of arrangements: notice of final decision) ”.

(14) After subsection (6) insert—

“(6A) Where, by virtue of this section, a case falls within paragraph 4A of Schedule 43 to the Finance Act 2013 (referrals of single schemes: relevant corrective action) or paragraph 4 of Schedule 43A to that Act (pooled schemes: relevant corrective action)—

(a) the person (“P”) mentioned in sub-paragraph (1) of that paragraph takes the “relevant corrective action” for the purposes of that paragraph if (and only if)—

(i) in a case in which the tax advantage in question can be counteracted by making a payment to HMRC, P makes that payment and notifies HMRC that P has done so, or

(ii) in any case, P takes all necessary action to enter into an agreement in writing with HMRC for the purpose of relinquishing the tax advantage, and

(b) accordingly, sub-paragraphs (2) to (8) of that paragraph do not apply.”

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(15) In subsection (11)—

- (a) for “and HMRC” substitute “, “HMRC” and “tax advantage””;
- (b) after “2013” insert “ (as modified by this section) ”.

(16) After subsection (11) insert—

“(12) See section 10A for further modifications of Part 5 of the Finance Act 2013.”

(17) After section 10 of the National Insurance Contributions Act 2014 insert—

**“10A Application of GAAR in relation to penalties**

- (1) For the purposes of this section a penalty under section 212A of the Finance Act 2013 is a “relevant NICs-related penalty” so far as the penalty relates to a tax advantage in respect of relevant contributions.
- (2) A relevant NICs-related penalty may be recovered as if it were an amount of relevant contributions which is due and payable.
- (3) Section 117A of the Social Security Administration Act 1992 or (as the case may be) section 111A of the Social Security Administration (Northern Ireland) Act 1992 (issues arising in proceedings: contributions etc) has effect in relation to proceedings before a court for recovery of a relevant NICs-related penalty as if the assessment of the penalty were a NICs decision as to whether the person is liable for the penalty.
- (4) Accordingly, paragraph 5(4)(b) of Schedule 43C to the Finance Act 2013 (assessment of penalty to be enforced as if it were an assessment to tax) does not apply in relation to a relevant NICs-related penalty.
- (5) In the application of Schedule 43C to the Finance Act 2013 in relation to a relevant NICs-related penalty, paragraph 9(5) has effect as if the reference to an appeal against an assessment to the tax concerned were to an appeal against a NICs decision.
- (6) In paragraph 8 of that Schedule (aggregate penalties), references to a “relevant penalty provision” include—
  - (a) any provision mentioned in sub-paragraph (5) of that paragraph, as applied in relation to any class of national insurance contributions by regulations (whenever made);
  - (b) section 98A of the Taxes Management Act 1970, as applied in relation to any class of national insurance contributions by regulations (whenever made);
  - (c) any provision in regulations made by the Treasury under which a penalty can be imposed in respect of any class of national insurance contributions.
- (7) The Treasury may by regulations—
  - (a) disapply, or modify the effect of, subsection (6)(a) or (b);
  - (b) modify paragraph 8 of Schedule 43C to the Finance Act 2013 as it has effect in relation to a relevant penalty provision by virtue of subsection (6)(b) or (c).

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- (8) Section 175(3) to (5) of SSCBA 1992 (various supplementary powers) applies to a power to make regulations conferred by subsection (7).
- (9) Regulations under subsection (7) must be made by statutory instrument.
- (10) A statutory instrument containing regulations under subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (11) In this section “NICs decision” means a decision under section 8 of the Social Security Contributions (Transfer of Functions, etc) Act 1999 or Article 7 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (SI 1999/671).
- (12) In this section “relevant contributions” means the following contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992—
  - (a) Class 1 contributions;
  - (b) Class 1A contributions;
  - (c) Class 1B contributions;
  - (d) Class 2 contributions which must be paid but in relation to which section 11A of the Act in question (application of certain provisions of the Income Tax Acts in relation to Class 2 contributions under section 11(2) of that Act) does not apply.”
- (18) Section 219 of FA 2014 (circumstances in which an accelerated payment notice may be given) is amended in accordance with subsections (19) and (20).
- (19) In subsection (4), after paragraph (c) insert—
  - “(d) a notice has been given under paragraph 8(2) or 9(2) of Schedule 43A to FA 2013 (notice of final decision after considering Panel's opinion about referred or counteracted arrangements) in relation to the asserted advantage or part of it and the chosen arrangements (or is so given at the same time as the accelerated payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel about the other arrangements (see subsection (8)) was as set out in paragraph 11(3)(b) of Schedule 43 to FA 2013;
  - (e) a notice under paragraph 8(2) of Schedule 43B to FA 2013 (GAAR: generic referral of tax arrangements) has been given in relation to the asserted advantage or part of it and the chosen arrangements (or is so given at the same time as the accelerated payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel which considered the generic referral in respect of those arrangements under paragraph 6 of Schedule 43B to FA 2013 was as set out in paragraph 6(4)(b) of that Schedule.”
- (20) After subsection (7) insert—
  - “(8) In subsection (4)(d) “other arrangements” means—
    - (a) in relation to a notice under paragraph 8(2) of Schedule 43A to FA 2013, the referred arrangements (as defined in that paragraph);

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- (b) in relation to a notice under paragraph 9(2) of that Schedule, the counteracted arrangements (as defined in paragraph 2 of that Schedule).”
- (21) In section 220 of FA 2014 (content of notice given while a tax enquiry is in progress)—
  - (a) in subsection (4)(c), after “219(4)(c)” insert “, (d) or (e) ”;
  - (b) in subsection (5)(c), after “219(4)(c)” insert “, (d) or (e) ”;
  - (c) in subsection (7), for the words from “under” to the end substitute “under—
    - (a) paragraph 12 of Schedule 43 to FA 2013,
    - (b) paragraph 8 or 9 of Schedule 43A to that Act, or
    - (c) paragraph 8 of Schedule 43B to that Act,
 as the case may be. ”
- (22) Section 287 of FA 2014 (Code of Practice on Taxation for Banks) is amended in accordance with subsections (23) to (25).
- (23) In subsection (4), after “(5)” insert “ or (5A) ”.
- (24) In subsection (5)(b), after “Schedule” insert “ or paragraph 8 or 9 of Schedule 43A to that Act ”.
- (25) After subsection (5) insert—
  - “(5A) This subsection applies to any conduct—
    - (a) in relation to which there has been given—
      - (i) an opinion notice under paragraph 6(4)(b) of Schedule 43B to FA 2013 (GAAR advisory panel: opinion that such conduct unreasonable) stating the joint opinion of all the members of a sub-panel arranged under that paragraph, or
      - (ii) one or more such notices stating the opinions of at least two members of such a sub-panel, and
    - (b) in relation to which there has been given a notice under paragraph 8 of that Schedule (HMRC final decision on tax advantage) stating that a tax advantage is to be counteracted.
  - (5B) For the purposes of subsection (5), any opinions of members of the GAAR advisory panel which must be considered before a notice is given under paragraph 8 or 9 of Schedule 43A to FA 2013 (opinions about the lead arrangements) are taken to relate to the conduct to which the notice relates.”
- (26) In Schedule 32 to FA 2014 (accelerated payments and partnerships), paragraph 3 is amended in accordance with subsections (27) and (28).
- (27) In sub-paragraph (5), after paragraph (c) insert—
  - “(d) the relevant partner in question has been given a notice under paragraph 8(2) or 9(2) of Schedule 43A to FA 2013 (notice of final decision after considering Panel's opinion about referred or counteracted arrangements) in respect of any tax advantage resulting from the asserted advantage or part of it and the chosen arrangements (or is given such a notice at the same time as the partner payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel about

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the other arrangements (see sub-paragraph (7)) was as set out in paragraph 11(3)(b) of Schedule 43 to FA 2013;

- (e) the relevant partner in question has been given a notice under paragraph 8(2) of Schedule 43B to FA 2013 (GAAR: generic referral of arrangements) in respect of any tax advantage resulting from the asserted advantage or part of it and the chosen arrangements (or is given such a notice at the same time as the partner payment notice) in a case where the stated opinion of at least two of the members of the sub-panel of the GAAR Advisory Panel which considered the generic referral in respect of those arrangements was as set out in paragraph 6(4)(b) of that Schedule.”

(28) After sub-paragraph (6) insert—

“(7) Other arrangements” means—

- (a) in relation to a notice under paragraph 8(2) of Schedule 43A to FA 2013, the referred arrangements (as defined in that paragraph);
- (b) in relation to a notice under paragraph 9(2) of that Schedule, the counteracted arrangements (as defined in paragraph 2 of that Schedule).”

(29) In Schedule 34 to FA 2014 (promoters of tax avoidance schemes: threshold conditions), in paragraph 7—

- (a) in paragraph (a), at the end insert “(referrals of single schemes) or are in a pool in respect of which a referral has been made to that Panel under Schedule 43B to that Act (generic referrals), ”;
- (b) in paragraph (b)—
  - (i) for “in relation to the arrangements” substitute “ in respect of the referral ”;
  - (ii) after “11(3)(b)” insert “ or (as the case may be) 6(4)(b) ”;
- (c) in paragraph (c)(i) omit “paragraph 10 of”.

(30) The amendments made by this section have effect in relation to tax arrangements (within the meaning of Part 5 of FA 2013) entered into at any time (whether before or on or after the day on which this Act is passed).

**Changes to legislation:**

Finance Act 2016, Section 157 is up to date with all changes known to be in force on or before 26 July 2023. 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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)