

SCHEDULES

SCHEDULE 14

Section 101

AMENDMENTS RELATING TO THE OPERATION OF THE GAAR

Introduction

1 Part 5 of FA 2013 (the general anti-abuse rule) is amended as follows.

Protecting adjustments under the GAAR before time limits expire

2 In section 209 (counteracting the tax advantage), for subsection (6) substitute—

“(6) But—

- (a) the effect of adjustments made by an officer of Revenue and Customs by virtue of this section is suspended until the procedural requirements of Schedule 43, 43A or 43B 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.

The provision made by this subsection needs to be read with sections 209AA to 209AC and has no effect on adjustments so far as made otherwise than by virtue of this section.”

3 After section 209 insert—

“209AA Protective GAAR notices

(1) An officer of Revenue and Customs may give a written notice (a “protective GAAR notice”) to a person stating that the officer considers—

- (a) that a tax advantage might have arisen to the person from tax arrangements that are abusive, and
- (b) that, on the assumption that the advantage does arise from tax arrangements that are abusive, it ought to be counteracted under section 209.

(2) The protective GAAR notice must be given within the ordinary assessing time limit applicable to the proposed adjustments.

(3) But if—

- (a) a tax enquiry is in progress into a return made by the person, and
- (b) the return relates to the tax in respect of which the specified adjustments under the protective GAAR notice are made,

the protective GAAR notice must instead be given no later than the time when the enquiry is completed.

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- (4) The protective GAAR notice must—
- (a) specify the arrangements and the tax advantage, and
 - (b) specify the adjustments that, on the assumption that the advantage does arise from tax arrangements that are abusive, the officer proposes ought to be made.
- (5) The adjustments specified in the protective GAAR notice have effect as if they are made by virtue of section 209.
- (6) Notice of appeal may be given against the adjustments specified in the protective GAAR notice (whether or not the adjustments are also made otherwise than by virtue of section 209).
- (7) Any appeal against the specified adjustments (whether made by virtue of section 209 or otherwise) is, as a result of this subsection, stayed—
- (a) for a period of 12 months beginning with the day on which the protective GAAR notice is given, or
 - (b) if a final GAAR counteraction notice is given before the end of that period, for a period ending with the day on which the final GAAR counteraction notice is given.
- (8) If, in the case of the specified adjustments (whether made by virtue of section 209 or otherwise)—
- (a) notice of appeal is not given or notice of appeal is given but the appeal is subsequently withdrawn or determined by agreement, and
 - (b) no final GAAR counteraction notice is given,
- the protective GAAR notice has effect for all purposes (other than the purposes of section 212A) as if it had been given as a final GAAR counteraction notice (and, accordingly, as if the GAAR procedural requirements had been complied with).
- (9) In any case not falling within subsection (8)—
- (a) the specified adjustments have no effect (so far as they are made by virtue of section 209) unless they (or lesser adjustments) are subsequently specified in a final GAAR counteraction notice, but
 - (b) the giving of the protective GAAR notice is treated as meeting the requirements of section 209(6)(b) in the case of that final GAAR counteraction notice.”

4 After section 209AA (as inserted by paragraph 3) insert—

“209AB Adjustments under section 209: notices under Schedule 43 or 43A

- (1) This section applies in the case of any particular adjustments in respect of a particular period or matter (“the adjustments concerned”) if—
- (a) a person is given a notice under paragraph 3 of Schedule 43 or a pooling notice or notice of binding under Schedule 43A (“the Schedule 43 or 43A notice”) that specifies the adjustments concerned (whether or not other adjustments are specified),
 - (b) the Schedule 43 or 43A notice is given within the relevant time limit applicable to the adjustments concerned, and

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- (c) the adjustments concerned have not been specified in a provisional counteraction notice under section 209A, or a protective GAAR notice under section 209AA, given before the time at which the Schedule 43 or 43A notice is given.
- (2) The Schedule 43 or 43A notice is given within the relevant time limit if—
 - (a) it is given within the ordinary assessing time limit applicable to the adjustments concerned, or
 - (b) if a tax enquiry is in progress into a return made by the person and the particular adjustments concerned relate to the matters contained in the return, it is given no later than the time when the enquiry is completed.
- (3) The adjustments concerned have effect as if they are made by virtue of section 209.
- (4) If, in the case of the specified adjustments (whether made by virtue of section 209 or otherwise)—
 - (a) notice of appeal is not given or notice of appeal is given but the appeal is subsequently withdrawn or determined by agreement, and
 - (b) no final GAAR counteraction notice is given,the Schedule 43 or 43A notice has effect for all purposes (other than the purposes of section 212A) as if it had been given as a final GAAR counteraction notice (and, accordingly, as if the GAAR procedural requirements had been complied with).
- (5) In any case not falling within subsection (4)—
 - (a) the adjustments concerned have no effect (so far as they are made by virtue of section 209) unless they (or lesser adjustments) are subsequently specified in a final GAAR counteraction notice, but
 - (b) the giving of the Schedule 43 or 43A notice is treated as meeting the requirements of section 209(6)(b) in the case of that final GAAR counteraction notice.”

5 After section 209AB (as inserted by paragraph 4) insert—

“209AC Sections 209AA and 209AB: definitions

- (1) In sections 209AA and 209AB—
 - “final GAAR counteraction notice” means a notice given under—
 - (a) paragraph 12 of Schedule 43,
 - (b) paragraph 8 or 9 of Schedule 43A, or
 - (c) paragraph 8 of Schedule 43B,
 - “GAAR procedural requirements” means the procedural requirements of Schedule 43, 43A or 43B,
 - “lesser adjustments” means adjustments specified in the final GAAR counteraction notice which assume a smaller tax advantage than was assumed in the protective GAAR notice or (as the case may be) the Schedule 43 or 43A notice, and
 - “ordinary assessing time limit”, in relation to any adjustments, means the time limit imposed by or under any enactment other than this Part for the making of the adjustments.

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(2) Expressions which are used in section 202 of FA 2014 (“tax enquiry”, and its being “in progress”, and “return”) have the same meaning in sections 209AA and 209AB as they have in that section (and references to completing a tax enquiry are to be read accordingly).”

6 Omit sections 209A to 209F (provisional counteraction notices).

7 In section 214(1) (interpretation of Part 5 of FA 2013), omit—

- (a) the definition of “notified adjustments”, and
- (b) the definition of “provisional counteraction notice”.

Minor amendments

8 In paragraph 11 of Schedule 43A (meaning of “equivalent arrangements”), omit “For the purposes of paragraph 1,”.

9 In paragraph 5 of Schedule 43C (penalty under section 212A), for sub-paragraphs (5) and (6) substitute—

“(5) An assessment of a penalty under this paragraph must be made before the end of the period of 12 months beginning with the date (or the latest of the dates) on which the counteraction mentioned in section 212A(1)(d) becomes final (within the meaning of section 210(8)).”

Commencement

10 The amendment made by paragraph 2 has effect in relation to adjustments made by an officer of Revenue and Customs by virtue of section 209 of FA 2013 on or after the commencement date.

11 The amendment made by paragraph 3 has effect in relation to notices given under section 209AA of FA 2013 on or after the commencement date (whenever the arrangements are entered into) but no notice may be given under that section in relation to any adjustments if a provisional counteraction notice has been given under section 209A of that Act before that date in respect of those adjustments.

12 The amendment made by paragraph 4 has effect in relation to notices given under Schedule 43 or 43A to FA 2013 on or after the commencement date (whenever the arrangements are entered into).

13 The amendment made by paragraph 6 does not affect the operation of sections 209A to 209F of FA 2013 in relation to provisional counteraction notices given under section 209A of that Act before the commencement date.

14 The amendment made by paragraph 9 has effect in relation to cases where a person becomes liable to a penalty under section 212A of FA 2013 on or after the commencement date.

15 In paragraphs 10 to 14 “the commencement date” means the date on which this Act is passed.