

EXPLANATORY MEMORANDUM TO
THE GENERAL ANTI-ABUSE RULE PROCEDURE (AMENDMENT)
REGULATIONS 2017

2017 No. 1090

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes minor changes to Schedule 43A and 43B to the Finance Act 2013 – the General Anti-Abuse Rule (“GAAR”) procedural rules for users of marketed tax avoidance arrangements. The purpose of these rules is to explain the procedure that will be followed when HMRC considers that the GAAR applies to a taxpayer’s tax arrangements in cases of marketed tax avoidance. This instrument provides for small clarifications and simplifications of these rules to ensure the procedures achieve their policy aim.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Part 5 of the Finance Act 2013 introduced the GAAR. The purpose of the GAAR is to tackle abusive tax arrangements: highly contrived tax avoidance that no reasonable person could consider to be a reasonable course of action.
- 4.2 Before HMRC can counteract abusive tax arrangements using the GAAR, they must first make a referral to the independent GAAR Advisory Panel, who provide expert opinions on potential GAAR cases.
- 4.3 Schedule 43 to the Finance Act 2013 sets out the procedural rules that need to be followed for HMRC to make a referral to the GAAR Advisory Panel.
- 4.4 Schedules 43A and 43B to the Finance Act 2013 were introduced by Finance Act 2016, to ensure that the GAAR procedure can work efficiently for marketed tax avoidance arrangements. Marketed tax avoidance schemes involve tax arrangements that typically are sold off-the-shelf to multiple taxpayers, where the tax analysis is very similar for each person.
- 4.5 Prior to Finance Act 2016, every individual user of a multi-user tax avoidance scheme would have to be referred to the Panel. Schedules 43A and 43B overcome this

procedural inefficiency by allowing multi-user tax avoidance schemes to be addressed under one referral to the GAAR Advisory Panel.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the General Anti-Abuse Rule Procedure (Amendment) Regulations 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 The government believes that all individuals and businesses have a responsibility to pay the tax they owe. It wants a level playing field for the majority of people who pay their tax, so that everyone pays their fair share. For the persistent minority of taxpayers who use abusive tax arrangements to avoid paying tax, the GAAR provides an important tool to correct the taxpayer’s tax position.
- 7.2 The government also believes that all taxpayers have the right to be treated fairly. The GAAR procedural rules provide a number of taxpayer safeguards to ensure this fair treatment, in particular the consideration of the matter in question by the independent GAAR Advisory Panel, who are external to HMRC.
- 7.3 This instrument only makes miscellaneous amendments to the GAAR procedural rules that apply for marketed tax avoidance arrangements. These rules set out the steps that HMRC must take when it considers that such arrangements should be tackled under the GAAR and the matter considered by the GAAR Advisory Panel.
- 7.4 HMRC has been gathering findings over time as usage of the GAAR has developed. This practical experience has identified some elements of HMRC’s procedure which need to be made clearer in the legislation. This instrument clarifies the steps that HMRC will take during this procedure and removes some instances of legislative ambiguity. This will make the procedure more efficient for taxpayers by making it clearer as to how this procedure will work. It does not increase HMRC’s powers or alter the fundamental GAAR test, safeguards or policy aims.
- 7.5 The amendments clarify the steps in the procedure that refer to a designated HMRC officer (a senior official in HMRC who makes decisions during the GAAR procedure). This is to ensure that taxpayers understand the precise role of the designated HMRC officer, who is the key HMRC decision-maker in the GAAR procedure.
- 7.6 They also simplify the procedural rules by tidying cross-references and clarifying ambiguity across Schedules 43A and 43B. This is to ensure that the rules are not so proscriptive that they exclude more complex instances of a GAAR referral.
- 7.7 The GAAR procedural rules ensure the fair treatment of taxpayers in cases of abusive tax avoidance. These small changes provide greater certainty for taxpayers by making

sure they understand how HMRC will act during the GAAR procedure. Simplifying and clarifying the procedure will also ensure that HMRC can more efficiently tackle some of the most egregious forms of tax avoidance.

Consolidation

7.8 This instrument does not consolidate another instrument.

8. Consultation outcome

8.1 The policy behind these provisions was subject to consultation in 2016. The government received no responses to the consultation on the draft legislation for the procedural rules provided by Schedules 43A and 43B Finance Act 2016, which are the schedules amended by this instrument.

8.2 This instrument only impacts on steps taken by HMRC during the GAAR procedure, and does not alter the fundamental test or safeguards of the GAAR. Consequently no further consultation was undertaken because the impacts to the taxpayer of this procedure are unchanged.

9. Guidance

9.1 Guidance will be updated where necessary to reflect the amendments.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to those that enter into abusive tax arrangements.

10.2 The impact on the public sector is limited to improve the processes for the teams in HMRC who deal with tax avoidance.

10.3 A Tax Information and Impact Note covering this instrument was published on 9 December 2015 alongside draft legislation and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses in so far as businesses of any size can enter into abusive tax arrangements.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

12. Monitoring & review

12.1 HMRC will keep its activity in relation to the GAAR procedure under review to ensure that the amendments resolve the issues they seek to address.

13. Contact

13.1 Ellen Roberts in the Counter Avoidance Directorate of HM Revenue and Customs. Telephone: 03000 594918 or email: ellen.roberts@hmrc.gsi.gov.uk can answer any queries regarding the instrument.