



Revenue Scotland and Tax Powers Act 2014

2014 asp 16

PART 5

THE GENERAL ANTI-AVOIDANCE RULE

Introductory

62 The general anti-avoidance rule: introductory

- (1) This Part has effect for the purpose of counteracting tax advantages arising from tax avoidance arrangements that are artificial.
- (2) The rules in this Part are collectively to be known as “the general anti-avoidance rule”.

Artificial tax avoidance arrangements

63 Tax avoidance arrangements

- (1) An arrangement (or series of arrangements) is a tax avoidance arrangement if, having regard to all the circumstances, it would be reasonable to conclude that obtaining a tax advantage is the main purpose, or one of the main purposes, of the arrangement.
- (2) An “arrangement”—
 - (a) includes any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event (whether legally enforceable or not), and
 - (b) may comprise one or more stages or parts.

64 Meaning of “artificial”

- (1) A tax avoidance arrangement is artificial if condition A or B is met.

Status: This is the original version (as it was originally enacted).

- (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 tax 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 tax avoidance arrangement lacks economic or commercial substance—
- (a) whether the arrangement is carried out by a person in a manner which would not normally be employed in reasonable business conduct,
 - (b) whether the legal characterisation of the steps in the arrangement is inconsistent with the legal substance of the arrangement as a whole,
 - (c) whether the arrangement includes elements which have the effect of offsetting or cancelling each other,
 - (d) whether transactions are circular in nature,
 - (e) whether the arrangement results in a tax advantage that is not reflected in the business risks undertaken by the taxpayer.
- (5) The fact that—
- (a) a tax avoidance arrangement accords with established practice, and
 - (b) Revenue Scotland had, at the time the arrangement was entered into, indicated its acceptance of that practice,
- is an example of something that might indicate that the arrangement is not artificial.
- (6) The examples given in subsections (4) and (5) are not exhaustive.
- (7) Where a tax avoidance arrangement forms part of any other arrangements, regard must also be had to those other arrangements.

65 Meaning of “tax advantage”

- (1) A “tax advantage” includes in particular—
- (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, and
 - (e) deferral of a payment of tax or advancement of a repayment of tax.
- (2) In determining whether a tax avoidance arrangement has resulted in a tax advantage, regard may be had to the amount of tax that would have been payable in the absence of the arrangement.

Counteracting tax advantages

66 Counteracting tax advantages

- (1) Revenue Scotland may make such adjustments as it considers just and reasonable to counteract the tax advantages that would (ignoring this Part) arise from a tax avoidance arrangement that is artificial.
- (2) The adjustments may be made in respect of the tax in question or any other devolved tax.
- (3) The adjustments that may be made include (but are not restricted to) 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.
- (4) Any adjustments required to be made under this section (whether by Revenue Scotland or the person to whom the tax advantage would arise) may be made by—
 - (a) the amendment of a return (see sections 83, 87 and 93),
 - (b) the correction of a return (see section 84),
 - (c) the making of a Revenue Scotland determination (see section 95),
 - (d) the making of a tax return (see section 97),
 - (e) the making of a Revenue Scotland assessment (see section 100),
 - (f) the entering into of a contract settlement (see section 118), or
 - (g) such other method as Revenue Scotland considers appropriate.
- (5) No steps may be taken by Revenue Scotland unless the procedural requirements of sections 68 and 69 have been complied with.
- (6) The power to make adjustments by virtue of this section is subject to any time limit imposed by or under Part 6, any other provision of this Act or any other enactment.

67 Proceedings in connection with the general anti-avoidance rule

- (1) In proceedings before a court or tribunal in connection with the general anti-avoidance rule, Revenue Scotland must show—
 - (a) that there is a tax avoidance arrangement that is artificial, and
 - (b) that the adjustments made to counteract the tax advantages arising from the tax avoidance arrangement are just and reasonable.
- (2) In determining any issue in connection with the general anti-avoidance rule, a court or tribunal must take into account any guidance published by Revenue Scotland about the general anti-avoidance rule (at the time the tax avoidance arrangement was entered into).
- (3) In determining any issue in connection with the general anti-avoidance rule, a court or tribunal may take into account—
 - (a) guidance, statements or other material (whether by Revenue Scotland or anyone else) that was in the public domain at the time the tax avoidance arrangement was entered into, and
 - (b) evidence of established practice at that time.

Status: This is the original version (as it was originally enacted).

68 Notice to taxpayer of proposed counteraction of tax advantage

- (1) If a designated officer considers—
 - (a) that a tax advantage has arisen to a person (“the taxpayer”) from a tax avoidance arrangement that is artificial, and
 - (b) that the advantage should be counteracted under section 66,the officer must give the taxpayer a notice to that effect.
- (2) The notice must—
 - (a) specify the tax avoidance arrangement and the tax advantage,
 - (b) explain why the officer considers that a tax advantage has arisen to the taxpayer from a tax avoidance arrangement that is artificial,
 - (c) set out the counteraction that the officer considers should be taken, and
 - (d) inform the taxpayer of the period under subsection (4) for making representations.
- (3) The notice may set out the steps that the taxpayer may take to avoid the proposed counteraction.
- (4) If a notice is given to a taxpayer under subsection (1), the taxpayer has 45 days beginning with the day on which the notice is given to send representations to the designated officer in response to the notice.
- (5) The designated officer may, on a request made by the taxpayer, extend the period during which representations may be made.
- (6) The designated officer must take into account any representations made by the taxpayer.

69 Final notice to taxpayer of counteraction of tax advantage

- (1) The designated officer must, after the expiry of the period in which representations may be made under section 68, give the taxpayer a notice setting out whether the tax advantage arising from the tax avoidance arrangement is to be counteracted under the general anti-avoidance rule.
- (2) If the notice states that a tax advantage is to be counteracted, the notice 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 and the period within which those steps must be taken.

70 Counteraction of tax advantages: payment of tax charged etc.

- (1) This section applies where—
 - (a) a designated officer gives a taxpayer a notice under section 69, and
 - (b) the notice sets out the adjustments required to give effect to the counteraction of a tax advantage.
- (2) The taxpayer must pay any amount, or additional amount, of tax chargeable or penalty or interest imposed as a result of the adjustments before the end of the period of 30 days beginning with the date on which the notice is issued.

- (3) Subsection (2) applies in place of any other provision of this Act or any other enactment which specifies a time limit for the payment of tax, penalty or interest.

71 Assumption of tax advantage

- (1) A designated officer may give a notice under section 68 or 69 where the officer considers that a tax advantage might have arisen to the taxpayer.
- (2) Accordingly, any notice given by a designated officer under section 68 or 69 may be expressed to be given on the assumption that the tax advantage does arise (without agreeing that it does).

General anti-avoidance rule: commencement and transitional provision

72 General anti-avoidance rule: commencement and transitional provision

- (1) The general anti-avoidance rule has effect in relation to any tax avoidance arrangement entered into on or after the date on which this Part comes into force.
- (2) Where the tax avoidance arrangement forms part of any other arrangements entered into before that day, those other arrangements are to be ignored for the purposes of section 64(7), subject to subsection (3).
- (3) Account is to be taken of those other arrangements if, as a result, the tax avoidance arrangement would not be artificial.