



# National Insurance Contributions Act 2014

## 2014 CHAPTER 7

### *Application of general anti-abuse rule to national insurance contributions*

#### **10 GAAR to apply to national insurance contributions**

- (1) In Part 5 of the Finance Act 2013 (general anti-abuse rule)—
  - (a) references to tax, other than in references to particular taxes, include national insurance contributions, and
  - (b) references to a charge to tax include a liability to pay national insurance contributions.
- (2) Section 206(3) of that Act (list of taxes to which the general anti-abuse rule applies) has effect as if it included a reference to national insurance contributions.
- (3) Section 207 of that Act (meaning of “tax arrangements” and “abusive”) has effect as if, in subsection (4)(a), after “income,” there were inserted “earnings (within the meaning of Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992),”.
- (4) Adjustments to be made in respect of national insurance contributions under section 209 of the Finance Act 2013 (counteracting the tax advantages) may be made by a notice given under paragraph 12 of Schedule 43 to that Act (notice of final decision) [F1, 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)].
- (5) For the purposes of section 210 of that Act (consequential relieving adjustments)—
  - (a) if a claim under that section relates to Class 4 national insurance contributions, Schedule 1A to the Taxes Management Act 1970 (as that Schedule applies in relation to such contributions) applies to it, and
  - (b) if a claim under that section relates to any other class of national insurance contributions, it must be made in such form and manner, and contain such information, as HMRC may require.
- (6) Adjustments to be made in respect of national insurance contributions under that section may be made by a notice given under subsection (7) of that section.

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- [<sup>F2</sup>(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.]
- (7) This section has effect in relation to tax arrangements (within the meaning of Part 5 of the Finance Act 2013 as modified by this section) entered into on or after the day on which this Act is passed.
- (8) Subsections (9) and (10) apply where the tax arrangements—
- (a) would not have been tax arrangements but for the modifications made by this section, and
  - (b) form part of other arrangements entered into before the day on which this Act is passed.
- (9) The other arrangements are to be ignored for the purposes of section 207(3) of the Finance Act 2013, subject to subsection (10).
- (10) Account is to be taken of the other arrangements for the purposes of that section if, as a result, the tax arrangements would not be abusive.
- (11) In this section—
- “abusive”, “arrangements” [<sup>F3</sup>, “HMRC” and “tax advantage”] have the same meaning as in Part 5 of the Finance Act 2013 [<sup>F4</sup>(as modified by this section)];
- “national insurance contributions” means contributions under either Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992.
- [<sup>F5</sup>(12) See section 10A for further modifications of Part 5 of the Finance Act 2013.]

#### Textual Amendments

- F1** Words in s. 10(4) inserted (with effect in accordance with s. 157(30) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 157\(13\)](#)
- F2** S. 10(6A) inserted (with effect in accordance with s. 157(30) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 157\(14\)](#)
- F3** Words in s. 10(11) substituted (with effect in accordance with s. 157(30) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 157\(15\)\(a\)](#)
- F4** Words in s. 10(11) inserted (with effect in accordance with s. 157(30) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 157\(15\)\(b\)](#)
- F5** S. 10(12) inserted (with effect in accordance with s. 157(30) of the amending Act) by [Finance Act 2016 \(c. 24\), s. 157\(16\)](#)

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## **[<sup>F6</sup>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).
- (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;

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- (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.]

#### Textual Amendments

**F6** S. 10A inserted (with effect in accordance with s. 157(30) of the amending Act) by [Finance Act 2016 \(c. 24\)](#), s. 157(17)

## 11 Power to modify application of GAAR to national insurance contributions

- (1) Where a modification is made to Part 5 of the Finance Act 2013 (general anti-abuse rule) that does not apply in relation to national insurance contributions (“the tax only modification”), the Treasury may by regulations—
  - (a) make provision for the purpose of applying the tax only modification in relation to national insurance contributions (with or without modifications),
  - (b) make provision in relation to national insurance contributions corresponding to the tax only modification, or
  - (c) otherwise modify the general anti-abuse rule, as it has effect in relation to national insurance contributions, in consequence of, or for the purpose of making provision supplementary or incidental to, the tax only modification.
- (2) Regulations under this section—
  - (a) may amend, repeal or revoke any provision of an Act or instrument made under an Act (whenever passed or made),
  - (b) may make consequential, incidental, supplementary, transitional, transitory or saving provision, and
  - (c) may make different provision for different cases, classes of national insurance contributions or purposes.
- (3) Regulations under this section must be made by statutory instrument.
- (4) A statutory instrument containing (with or without other provision) regulations under this section that amend or repeal a provision of an Act may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.
- (5) A statutory instrument containing regulations under this section that does not have to be approved in draft under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In this section—
  - “general anti-abuse rule” has the same meaning as in Part 5 of the Finance Act 2013;
  - “national insurance contributions” means contributions under either Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992.

**Changes to legislation:**

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