

SCHEDULES

SCHEDULE 43

Section 209

GENERAL ANTI-ABUSE RULE: PROCEDURAL REQUIREMENTS

The GAAR Advisory Panel

- 1 (1) In this Part “the GAAR Advisory Panel” means the panel of persons established by the Commissioners for the purposes of the general anti-abuse rule.
- (2) In this Schedule “the Chair” means any member of the GAAR Advisory Panel appointed by the Commissioners to chair it.

Meaning of “designated HMRC officer”

- 2 In this Schedule a “designated HMRC officer” means an officer of Revenue and Customs who has been designated by the Commissioners for the purposes of the general anti-abuse rule.

Notice to taxpayer of proposed counteraction of tax advantage

- 3 (1) If a designated HMRC officer considers—
- (a) that a tax advantage has arisen to a person (“the taxpayer”) from tax arrangements that are abusive, and
 - (b) that the advantage ought to be counteracted under section 209,
- the officer must give the taxpayer a written notice to that effect.
- (2) The notice must—
- (a) specify the arrangements and the tax advantage,
 - (b) explain why the officer considers that a tax advantage has arisen to the taxpayer from tax arrangements that are abusive,
 - (c) set out the counteraction that the officer considers ought to be taken,
 - (d) inform the taxpayer of the period under paragraph 4 for making representations, and
 - (e) explain the effect of paragraphs 5 and 6.
- (3) The notice may set out steps that the taxpayer may take to avoid the proposed counteraction.
- 4 (1) If a notice is given to the taxpayer under paragraph 3, the taxpayer has 45 days beginning with the day on which the notice is given to send written representations in response to the notice to the designated HMRC officer.
- (2) The designated officer may, on a written request made by the taxpayer, extend the period during which representations may be made.

Status: This is the original version (as it was originally enacted).

Referral to GAAR Advisory Panel

- 5 If no representations are made in accordance with paragraph 4, a designated HMRC officer must refer the matter to the GAAR Advisory Panel.
- 6 (1) If representations are made in accordance with paragraph 4, a designated HMRC officer must consider them.
- (2) If, after considering them, the designated HMRC officer considers that the tax advantage ought to be counteracted under section 209, the officer must refer the matter to the GAAR Advisory Panel.
- 7 If the matter is referred to the GAAR Advisory Panel, the designated HMRC officer must at the same time provide it with—
- (a) a copy of the notice given to the taxpayer under paragraph 3,
 - (b) a copy of any representations made in accordance with paragraph 4 and any comments that the officer has on those representations, and
 - (c) a copy of the notice given to the taxpayer under paragraph 8.
- 8 If the matter is referred to the GAAR Advisory Panel, the designated HMRC officer must at the same time give the taxpayer a notice which—
- (a) specifies that the matter is being referred,
 - (b) is accompanied by a copy of any comments provided to the GAAR Advisory Panel under paragraph 7(b), and
 - (c) informs the taxpayer of the period under paragraph 9 for making representations, and of the requirement under that paragraph to send any representations to the officer.
- 9 (1) The taxpayer has 21 days beginning with the day on which a notice is given under paragraph 8 to send the GAAR Advisory Panel written representations about—
- (a) the notice given to the taxpayer under paragraph 3, or
 - (b) any comments provided under paragraph 7(b).
- (2) The GAAR Advisory Panel may, on a written request made by the taxpayer, extend the period during which representations may be made.
- (3) The taxpayer must send a copy of any representations to the designated HMRC officer at the same time as the representations are sent to the GAAR Advisory Panel.
- (4) If no representations were made in accordance with paragraph 4, the designated HMRC officer—
- (a) may provide the GAAR Advisory Panel with comments on any representations made under this paragraph, and
 - (b) if comments are provided, must at the same time send a copy of them to the taxpayer.

Decision of GAAR Advisory Panel and opinion notices

- 10 (1) If the matter is referred to the GAAR Advisory Panel, 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 may invite the taxpayer or the designated HMRC officer (or both) to supply the sub-panel with further information within a period specified in the invitation.

- (3) Invitations must explain the effect of sub-paragraph (4) or (5) (as appropriate).
 - (4) If the taxpayer supplies information to the sub-panel under this paragraph, the taxpayer must at the same time send a copy of the information to the designated HMRC officer.
 - (5) If the designated HMRC officer supplies information to the sub-panel under this paragraph, the officer must at the same time send a copy of the information to the taxpayer.
- 11 (1) Where the matter is referred to the GAAR Advisory Panel, 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.
- (2) The sub-panel must give a copy of the opinion notice or notices to—
- (a) the designated HMRC officer, and
 - (b) the taxpayer.
- (3) 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 the tax arrangements is a reasonable course of action in relation to the relevant tax provisions—
 - (i) having regard to all the circumstances (including the matters mentioned in subsections (2)(a) to (c) and (3) of section 207), and
 - (ii) taking account of subsections (4) to (6) of that section, or
 - (b) the entering into or carrying out of the tax arrangements is not a reasonable course of action in relation to the relevant tax provisions having regard to those circumstances and taking account of those subsections, or
 - (c) it is not possible, on the information available, to reach a view on that matter, and the reasons for that opinion.
- (4) For the purposes of the giving of an opinion under this paragraph, the arrangements are to be assumed to be tax arrangements.
- (5) In this Part, a reference to any opinion of the GAAR Advisory Panel about any tax arrangements is a reference to the contents of any opinion notice about the arrangements.

Notice of final decision after considering opinion of GAAR Advisory Panel

- 12 (1) A designated HMRC officer who has received a notice or notices under paragraph 11 must, having considered any opinion of the GAAR Advisory Panel about the tax arrangements, give the taxpayer a written notice setting out whether the tax advantage arising from the arrangements is to be counteracted under the general anti-abuse rule.
- (2) 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.

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

Notices may be given on assumption that tax advantage does arise

- 13 (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 taxpayer.
- (2) Accordingly, any notice given by a designated HMRC officer under this Schedule may be expressed to be given on the assumption that the tax advantage does arise (without agreeing that it does).