

SCHEDULES

SCHEDULE 32

Section 124

THE GAAR AND PARTNERSHIPS

PART 1

NEW SCHEDULE TO FA 2013

1 After Schedule 43C of FA 2013 insert—

“SCHEDULE 43D

Section 209

THE GAAR AND PARTNERSHIPS

PART 1

GENERAL

Introductory

- 1 (1) This Schedule makes provision about the operation of the general anti-abuse rule in relation to partnerships.
- (2) This Schedule applies where—
 - (a) a return is made under section 12AA of TMA 1970 (a “section 12AA partnership return”), or
 - (b) a return is made in accordance with regulations under paragraph 10 of Schedule A1 to TMA 1970 (a “Schedule A1 partnership return”).

Meaning of “the responsible partner”

- 2 In this Schedule, “the responsible partner” means—
 - (a) in relation to the making of a section 12AA partnership return, the person who delivered the return or their successor (within the meaning of section 12AA(11) of TMA 1970);
 - (b) in relation to the making of a Schedule A1 partnership return, the nominated partner (within the meaning of paragraph 5 of Schedule A1 to TMA 1970).

Status: This is the original version (as it was originally enacted).

Partnership return made on basis that tax advantage arises

- 3 (1) For the purposes of this Schedule, a partnership return is regarded as made on the basis that a particular tax advantage arises (or might arise) to a partner from particular arrangements if—
- (a) it is made on the basis that an increase or reduction in one or more of the amounts mentioned in section 12AB(1) of TMA 1970 (amounts in the partnership statement in a partnership return) results (or might result) from those arrangements, and
 - (b) that increase or reduction results (or might result) in that tax advantage for the partner.
- (2) In sub-paragraph (1) and in the following provisions of this Schedule “partnership return” means a section 12AA partnership return or a Schedule A1 partnership return.

PART 2

PROTECTIVE GAAR NOTICES

Power to give protective GAAR notice to responsible partner

- 4 (1) If an officer of Revenue and Customs considers, in relation to a partnership—
- (a) that a partnership return has been made on the basis that a tax advantage arises (or might arise) to one or more partners 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,
- the officer may give a written notice to that effect (a “protective GAAR notice”) to the responsible partner.
- (2) Subsections (2) to (9) of section 209AA apply in relation to a protective GAAR notice given under this paragraph as they apply in relation to a protective GAAR notice given under that section, subject to the modifications in sub-paragraphs (3) and (4).
- (3) Section 209AA(3) is to be read as if—
- (a) for “a return made by the person, and” there were substituted “the partnership return”, and
 - (b) paragraph (b) were omitted.
- (4) Section 209AA(8) is to be read as if, for “212A”, there were substituted “212B”.

PART 3

NOTICES OF PROPOSED COUNTERACTION

Power to give notice of proposed counteraction to responsible partner

- 5 (1) If a designated HMRC officer considers that, in relation to a partnership—
- (a) a partnership return has been made on the basis that a tax advantage has arisen to one or more partners from tax arrangements that are abusive, and
 - (b) the tax advantage ought to be counteracted under section 209, the officer may give the responsible partner a written notice under this paragraph.
- (2) A partner who appears to a designated HMRC officer to fall within subparagraph (1)(a) is a “relevant partner” for the purposes of this Part of this Schedule.
- (3) The notice must—
- (a) specify each relevant partner, the arrangements and the tax advantage,
 - (b) explain why the officer considers that a tax advantage has arisen to each relevant partner from tax arrangements that are abusive,
 - (c) set out the counteraction that the officer considers ought to be taken,
 - (d) inform the responsible partner of the period for making representations under paragraph 4 of Schedule 43, and
 - (e) explain the effect of—
 - (i) paragraphs 5 and 6 of Schedule 43, and
 - (ii) sections 209(8) and 212B.
- (4) The notice may set out steps that may be taken to avoid the proposed counteraction.
- (5) If, after the notice has been given, it appears to a designated HMRC officer that the tax advantage has not in fact arisen to a partner specified in the notice, the officer must amend the notice accordingly.
- (6) Where a designated HMRC officer so amends a notice—
- (a) it is treated as having been given in the amended form, and
 - (b) the officer may take such other steps as the officer considers appropriate.

Effect of giving a notice under paragraph 5

- 6 Where an officer gives a notice under paragraph 5 in respect of a tax advantage, this Part of this Act has effect in relation to the tax advantage with the modifications in paragraph 7.

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

Modifications to Schedule 43

- 7 (1) Schedule 43 (procedural requirements) has effect with the following modifications.
- (2) Schedule 43 is to be read as if paragraphs 1A and 3 were omitted.
- (3) References to a notice given under paragraph 3 of Schedule 43 are to be read as if they were to a notice given under paragraph 5 of this Schedule.
- (4) In paragraphs 4 and 6 to 12, references to the taxpayer are to be read as if they were to the responsible partner.
- (5) Schedule 43 is to be read as if, for paragraphs 4A and 4B (and the headings before those paragraphs), there were substituted—

“Corrective action taken by the responsible partner

- 4A (1) Where, in respect of a partnership—
- (a) a designated HMRC officer gives a notice under paragraph 5 of Schedule 43D in respect of a tax advantage arising to one or more partners,
 - (b) the closed period mentioned in section 209(8) has not begun, and
 - (c) the responsible partner—
 - (i) amends a partnership return or claim to counteract the tax advantage, and
 - (ii) notifies HMRC of that fact,
- the matter is not to be referred to the GAAR Advisory Panel.
- (2) Where a tax enquiry is in progress, no enactment limiting the time during which amendments may be made to returns or claims operates to prevent the responsible partner taking the action mentioned in sub-paragraph (1)(c)(i) and (ii) before the enquiry is closed.
- (3) No appeal may be brought, by virtue of a provision mentioned in sub-paragraph (4), against an amendment made by a closure notice in respect of a tax enquiry, to the extent that the amendment takes into account an amendment made by the responsible partner to a return or claim as mentioned in sub-paragraph (1)(c).
- (4) The provisions are—
- (a) section 31(1)(b) or (c) of TMA 1970,
 - (b) paragraph 9 of Schedule 1A to TMA 1970.

Corrective action by relevant partners

- 4B (1) Where, in respect of a partnership—
- (a) a designated HMRC officer gives a notice under paragraph 5 of Schedule 43D in respect of a tax advantage arising to one or more partners,

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

- (b) the closed period mentioned in section 209(8) has not begun, and
 - (c) a partner mentioned in paragraph (a) takes all necessary action to enter into an agreement with HMRC (in writing) for the purpose of relinquishing the tax advantage,
- the partner is not to be treated as a relevant partner for the purposes of Part 3 of Schedule 43D.
- (2) As soon as is practicable after the beginning of the closed period, the notice given under paragraph 5 of Schedule 43D must be amended by a designated HMRC officer so each partner to whom sub-paragraph (1) applies is no longer specified in it.
 - (3) Where a notice is amended in accordance with sub-paragraph (2), the notice is treated as having been given in the amended form.
 - (4) If a partner to whom sub-paragraph (1) applies fails to enter into the written agreement, HMRC may proceed as if that sub-paragraph had not applied in relation to the partner (and accordingly, as if the partner were a relevant partner).

Referral to GAAR Advisory Panel

- 4C Paragraph 5 and 6 apply if, immediately before the beginning of the closed period mentioned in section 209(8)
-
- (a) the responsible partner has not taken the action described in paragraph 4A(1)(c), and
 - (b) there is at least one relevant partner.”

Notices may be given on assumption that tax advantage does arise

- 8 (1) A designated HMRC officer may give a notice, or do anything else, under this Part of this Schedule where the officer considers that a tax advantage might have arisen.
- (2) Accordingly, any notice given by a designated HMRC officer under paragraph 5 may be expressed to be given on the assumption that the tax advantage does arise (without agreeing that it does).

HMRC officers

- 9 Anything that may or must be done by a given designated HMRC officer under this Part of this Schedule may be done instead by any other designated HMRC officer.

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

PART 4

POOLING NOTICES AND NOTICES OF BINDING

Power to give pooling notice or notice of binding to responsible partner

- 10 (1) If a designated HMRC officer—
- (a) has the power to give to a person (“R”) a pooling notice under paragraph 1(3) or a notice of binding under paragraph 2(2) of Schedule 43A in respect of a tax advantage arising from tax arrangements (“R’s arrangements”), and
 - (b) considers that a partnership return has been made on the basis that the tax advantage has arisen to R, or to R and one or more of R’s partners, from R’s arrangements,
- the officer may give the pooling notice or notice of binding to the responsible partner under this paragraph.
- (2) A partner (including R) who appears to a designated HMRC officer to fall within sub-paragraph (1)(b) is a “relevant partner” for the purposes of this Part of this Schedule.
- (3) If, after the notice has been given, it appears to a designated HMRC officer that the tax advantage has not in fact arisen to a partner specified in the notice, the officer must amend the notice accordingly.
- (4) Where a designated HMRC officer so amends the notice—
- (a) it is treated as having been given in the amended form, and
 - (b) the officer may take such other steps as the officer considers appropriate.
- (5) The officer may not give a pooling notice under this paragraph if a notice under paragraph 5 has been given in respect of R’s arrangements.
- (6) The officer may not give a notice of binding under this paragraph if, in respect of R’s arrangements, one of the following notices has been given—
- (a) a pooling notice under this paragraph, or
 - (b) a notice under paragraph 5.

Effect of giving notice under paragraph 10

- 11 Where a pooling notice or notice of binding is given to the responsible partner under paragraph 10, this Part of this Act has effect in relation to the tax advantage with the modifications in paragraphs 12 and 13.

Modifications to Schedule 43A

- 12 (1) Schedule 43A (procedural requirements: pooling notices and notices of binding) has effect with the following modifications.

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

- (2) Paragraph 1 is to be read as if, in sub-paragraph (3A), after “lead arrangements” there were inserted “(whether under this Schedule or Schedule 43D)”.
- (3) Paragraph 3 is to be read as if—
 - (a) in sub-paragraph (2)(a), after “specify” there were inserted “each relevant partner,”,
 - (b) in sub-paragraph (2)(c), for “R” there were substituted “each relevant partner”, and
 - (c) in sub-paragraph (3), for “R may” there were substituted “may be taken”.
- (4) Schedule 43A is to be read as if, for paragraph 4 (and the heading before it), there were substituted—

“Corrective action by responsible partner

- 4 (1) Where, in respect of a partnership—
 - (a) a designated HMRC officer gives a pooling notice or notice of binding under paragraph 10 of Schedule 43D in respect of a tax advantage arising to one or more partners,
 - (b) the closed period mentioned in section 209(9) has not begun, and
 - (c) the responsible partner—
 - (i) amends a partnership return or claim to counteract the tax advantage, and
 - (ii) notifies HMRC of that fact,the responsible partner is treated for the purposes of paragraphs 6 to 9 and Schedule 43B as not having been given the notice in question.
- (2) Where a tax enquiry is in progress, no enactment limiting the time during which amendments may be made to returns or claims operates to prevent the responsible partner taking the action mentioned in sub-paragraph (1) before the enquiry is closed.
- (3) No appeal may be brought, by virtue of a provision mentioned in sub-paragraph (4), against an amendment made by a closure notice in respect of a tax enquiry, to the extent that the amendment takes into account an amendment made by the responsible partner to a return or claim as mentioned in sub-paragraph (1)(c).
- (4) The provisions are—
 - (a) section 31(1)(b) or (c) of TMA 1970,
 - (b) paragraph 9 of Schedule 1A to TMA 1970.

Corrective action by relevant partners

- 4A (1) Where, in respect of a partnership—

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

- (a) a designated HMRC officer gives a pooling notice or notice of binding under paragraph 10 of Schedule 43D in respect of a tax advantage arising to one or more partners,
 - (b) the closed period mentioned in section 209(9) has not begun, and
 - (c) a partner mentioned in paragraph (a) takes all necessary action to enter into an agreement with HMRC (in writing) for the purpose of relinquishing the tax advantage,
- the partner is not to be treated as a relevant partner for the purposes of Part 4 of Schedule 43D.
- (2) As soon as is practicable after the beginning of the closed period, the pooling notice or notice of binding must be amended by a designated HMRC officer so each partner to whom sub-paragraph (1) applies is no longer specified in it.
 - (3) Where a notice is amended in accordance with sub-paragraph (2), the notice is treated for the purposes of paragraphs 6 to 9 and Schedule 43B as having been given in the amended form.
 - (4) If a partner to whom sub-paragraph (1) applies fails to enter into the written agreement, HMRC may proceed as if that sub-paragraph had not applied in relation to the partner (and accordingly, as if the partner were a relevant partner)."
 - (5) Paragraph 7(3)(a) is to be read as if "to the person" were omitted.
 - (6) Paragraph 8(1) is to be read as if for "paragraph 1(3)" there were substituted "paragraph 10 of Schedule 43D."
 - (7) Paragraph 10(b) is to be read as if for "the person concerned" there were substituted "the responsible partner".
 - (8) Paragraph 9(1)(a) is to be read as if for "paragraph 2" there were substituted "paragraph 10 of Schedule 43D".
 - (9) Paragraph 11(c) is to be read as if "to a person" were omitted.

Modifications to Schedule 43B

- 13 (1) Schedule 43B to FA 2013 (procedural requirements: generic referral of tax arrangements) has effect with the modifications in sub-paragraph (2).
- (2) Paragraph 1 is to be read as if—
 - (a) in sub-paragraph (1)(a), for "paragraph 1(3) of Schedule 43A" there were substituted "paragraph 10 of Schedule 43D",
 - (b) for the words before sub-paragraph (b)(i), there were substituted "the relevant corrective action has been taken before", and
 - (c) after sub-paragraph (5), there were inserted—

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

“(6) For the purposes of sub-paragraph (1)(b) the “relevant corrective action” is taken if (and only if) in respect of the tax advantage arising out of the lead arrangements—

- (a) the responsible partner has taken the action mentioned in paragraph 4A(1)(c) of Schedule 43, or
- (b) each of the relevant partners in question have taken the action described in paragraph 4B(1)(c) of that Schedule.”

Notices may be given on assumption that tax advantage does arise

- 14 (1) A designated HMRC officer may give a notice, or do anything else, under this Part of this Schedule where the officer considers that a tax advantage might have arisen.
- (2) Accordingly, any notice given by a designated HMRC officer under paragraph 10 may be expressed to be given on the assumption that the tax advantage does arise (without agreeing that it does).

HMRC officers

- 15 Anything that may or must be done by a given designated HMRC officer under this Part of this Schedule may be done instead by any other designated HMRC officer.”

PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS TO PART 5 OF FA 2013

2 Part 5 of FA 2013 is amended as follows.

3 (1) Section 209 (counteracting tax advantages) is amended as follows.

(2) In subsection (5), for “the person to whom the tax advantage would arise” substitute “anyone else”.

(3) After subsection (6) insert—

“(6A) The procedural requirements mentioned in subsection (6)(a) include any procedural requirements which apply under or by virtue of Schedule 43D (which makes provision in relation to partnerships).”

(4) For subsections (8) and (9) substitute—

“(8) Where a matter is referred to the GAAR Advisory Panel under paragraph 5 or 6 of Schedule 43 in relation to any tax arrangements, no GAAR-related adjustments may be made in the period (“the closed period”) that—

- (a) begins with the 31st day after the end of the 45 day period mentioned in paragraph 4(1) of Schedule 43, and
- (b) ends immediately before the day on which the notice under paragraph 12 of Schedule 43 is given in relation to the tax arrangements.

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

- (9) Where a pooling notice or notice of binding has been given in relation to any tax arrangements, no GAAR-related adjustments may be made in the period (“the closed period”) that—
- (a) begins with the 31st day after the day on which the notice is given, and
 - (b) ends immediately before the day on which a notice under paragraph 8(2) or 9(2) of Schedule 43A, or a notice under paragraph 8(2) of Schedule 43B, is given in relation to the tax arrangements (as the case may be).”

- (5) In subsection (10)(a), after “43” insert “or paragraph 5 of Schedule 43D.”

4 After section 209AB insert—

“209ABA Adjustments under section 209: notices under Schedule 43D

- (1) This section applies in the case of any particular adjustments in respect of a particular period or matter (“the adjustments concerned”) if, in relation to a partnership—
 - (a) the responsible partner is given a notice under paragraph 5 or 10 of Schedule 43D (“the Schedule 43D notice”) that specifies the adjustments concerned (whether or not other adjustments are specified),
 - (b) the Schedule 43D notice is given within the relevant time limit applicable to the adjustments concerned, and
 - (c) the adjustments concerned have not been specified in a protective GAAR notice given before the time at which the Schedule 43D notice is given.
- (2) The Schedule 43D 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) in a case where a tax enquiry is in progress into a partnership return made by the responsible partner 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 43D notice has effect for all purposes (other than the purposes of section 212B) 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)—

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

- (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 43D notice is treated as meeting the requirements of section 209(6)(b) in the case of that final GAAR counteraction notice.
- (6) In subsection (1) “protective GAAR notice” means a protective GAAR notice given under section 209AA or paragraph 4 of Schedule 43D.
- (7) In this section “the responsible partner” and “partnership return” have the same meaning as in Schedule 43D.”
- 5 (1) Section 209AC (sections 209AA and 209AB: definitions) is amended as follows.
 - (2) In the heading for “and 209AB” substitute “to 209ABA”.
 - (3) In subsection (1)—
 - (a) in the opening words for “and 209AB” substitute “to 209ABA”,
 - (b) in the definition of “GAAR procedural requirements” for “or 43B” substitute “, 43B, or (as the case may be) 43D”, and
 - (c) in the definition of “lesser adjustments” after “Schedule 43 or 43A notice” insert “(within the meaning of section 209AB) or the Schedule 43D notice (within the meaning of section 209ABA)”.
 - (4) In subsection (2) for “and 209AB” substitute “to 209ABA”.
- 6 In section 210 (consequential relieving adjustments)—
 - (a) in subsection (1)(b) omit “by the taxpayer”, and
 - (b) for subsection (10) substitute—
 - “(10) For the purposes of subsection (1)(b), HMRC must be notified—
 - (a) in a case where Schedule 43D applies, by the responsible partner (within the meaning of that Schedule), and
 - (b) in any other case, by the person to whom the tax advantage would have arisen.”
- 7 In section 212A (penalty), in subsection (1)(c)(ii) for “paragraph (c)” substitute “paragraph (b)”.
- 8 After section 212A insert—

“212B Penalty: partnerships

- (1) This section applies if, in respect of a partnership—
 - (a) the responsible partner has been given a notice under—
 - (i) paragraph 12 of Schedule 43,
 - (ii) paragraph 8 or 9 of Schedule 43A, or
 - (iii) paragraph 8 of Schedule 43B,stating that a tax advantage is to be counteracted, and
 - (b) the tax advantage, so far as arising to a partner (P) in the partnership, has been counteracted by the making of adjustments under section 209.

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

- (2) P is liable to pay a penalty of an amount equal to 60% of the value of the counteracted tax advantage.
- (3) Schedule 43C—
- (a) gives the meaning of “the value of the counteracted tax advantage”, and
 - (b) makes other provision in relation to penalties under this section.
- (4) For the meaning of “the responsible partner” see paragraph 2 of Schedule 43D.”
- 9 In section 214(1)—
- (a) in the entry for “notice of binding” after “43A” insert “or paragraph 10 of Schedule 43D (as the case may be)”,
 - (b) in the entry for “pooling notice” for “paragraph 1(4) of Schedule 43A” insert “paragraph 1(3) of Schedule 43A or paragraph 10 of Schedule 43D (as the case may be);”, and
 - (c) omit the entry for “tax appeal”.
- 10 (1) Schedule 43 (general anti-abuse rule: procedural requirements) is amended as follows.
- (2) Omit paragraph 1A.
 - (3) In paragraph 4A(3)(b) omit the words from the beginning to “that notice,”.
 - (4) In paragraph 4A(7)—
 - (a) at the beginning insert “Where a tax enquiry is in progress,”, and
 - (b) omit “(whether or not before the specified time)”.
 - (5) In paragraph 13(1) omit “to the taxpayer”.
 - (6) After paragraph 13 insert—
- “HMRC officers*
- 14 Anything that may or must be done by a given designated HMRC officer under this Schedule may be done instead by any other designated HMRC officer.”
- 11 (1) Schedule 43A (procedural requirements: pooling notices and notices of binding) is amended as follows.
- (2) In paragraph 1(1), after “43” insert “, or paragraph 5 of Schedule 43D,”.
 - (3) In paragraph 4(7), at the beginning insert “Where a tax enquiry is in progress,”.
 - (4) In paragraph 12(1), omit “to the person concerned”.
- 12 (1) Schedule 43B (procedural requirements: generic referral of tax arrangements) is amended as follows.
- (2) In paragraph 2(1)(a), after “43” insert “or paragraph 5 of Schedule 43D (as the case may be)”.
 - (3) In paragraph 3—

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

- (a) in sub-paragraph (3)(a), after “43” insert “or paragraph 5 of Schedule 43D (as the case may be)”,
 - (b) in sub-paragraph (3A), after “43” insert “or paragraph 5 of Schedule 43D”, and
 - (c) in sub-paragraph (3A) omit “(by virtue of paragraph 4A of that Schedule)”.
- (4) In paragraph 9(1), omit “to the person concerned”.
- 13 (1) Schedule 43C (penalty under section 212A: supplementary provision) is amended as follows.
 - (2) In the heading after “212A” insert “or 212B”.
 - (3) In paragraph 1, for “section 212A” substitute “sections 212A and 212B”
 - (4) In paragraph 2—
 - (a) for sub-paragraph (1), substitute—
 - “(1) The “value of the counteracted tax advantage” is—
 - (a) for a penalty under section 212A, the additional amount due or payable in respect of tax as a result of the counteraction mentioned in subsection (1)(d) of that section, and
 - (b) for a penalty under section 212B, the additional amount due or payable in respect of tax (by the partner in question) as a result of the counteraction mentioned in subsection (1)(b) of that section.”,
 - (b) for “section 212A(1)(c)” substitute “section 212A(1)(d) or as result of the counteraction mentioned in 212B(1)(b) (as the case may be)”, and
 - (c) in sub-paragraph (5), for “the”, in the second place it occurs, substitute “a”.
 - (5) In paragraph 3(1) omit “mentioned in section 212A(1)(b) (“the tax advantage)”.
 - (6) In paragraph 4(1), after “212A” insert “or 212B (as the case may be)”.
 - (7) In paragraph 5—
 - (a) in sub-paragraph (1), after “212A” insert “or 212B (as the case may be)”, and
 - (b) in sub-paragraph (2), for paragraph (a) substitute—
 - “(a) notify—
 - (i) where the penalty is under section 212A, the person who is liable for it;
 - (ii) where the penalty is under section 212B, the person who is liable for it and the responsible partner.”, and
 - (c) in sub-paragraph (5), after “section 212A(1)(d)” insert “or section 212B(1)(b) (as the case may be)”.
 - (8) In paragraph 8—
 - (a) in sub-paragraph (1)(b), after “212A” insert “or 212B (as the case may be)”, and
 - (b) in sub-paragraph (4), after “212A” insert “or 212B”.
 - (9) In paragraph 9—
 - (a) in sub-paragraph (1)(a), after “212A” insert “or 212B”, and
 - (b) after sub-paragraph (1) insert—

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

“(1A) Where the penalty is under section 212B, an appeal against it must be brought by the responsible partner.”

(10) In paragraph 10(1), after section 212A insert “or 212B”.