

SCHEDULES

SCHEDULE 32

THE GAAR AND PARTNERSHIPS

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.

(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—

Status: This is the original version (as it was originally enacted).

“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)—
 - (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”.

Status: This is the original version (as it was originally enacted).

- (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.
 - (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)”,

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- (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—
 - (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—

Status: This is the original version (as it was originally enacted).

- (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—
 - “(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”.