



# Finance Act 2016

## 2016 CHAPTER 24

### PART 10

#### TAX AVOIDANCE AND EVASION

##### *General anti-abuse rule*

#### **156 General anti-abuse rule: provisional counteractions**

(1) In Part 5 of FA 2013 (general anti-abuse rule), after section 209 insert—

**“209A Effect of adjustments specified in a provisional counteraction notice**

- (1) Adjustments made by an officer of Revenue and Customs which—
- (a) are specified in a provisional counteraction notice given to a person by the officer (and have not been cancelled: see sections 209B to 209E),
  - (b) are made in respect of a tax advantage that would (ignoring this Part) arise from tax arrangements that are abusive, and
  - (c) but for section 209(6)(a), would have effected a valid counteraction of that tax advantage under section 209,
- are treated for all purposes as effecting a valid counteraction of the tax advantage under that section.
- (2) A “provisional counteraction notice” is a notice which—
- (a) specifies adjustments (the “notified adjustments”) which the officer reasonably believes may be required under section 209(1) to counteract a tax advantage that would (ignoring this Part) arise to the person from tax arrangements;
  - (b) specifies the arrangements and the tax advantage concerned, and

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- (c) notifies the person of the person's rights of appeal with respect to the notified adjustments (when made) and contains a statement that if an appeal is made against the making of the adjustments—
  - (i) no steps may be taken in relation to the appeal unless and until the person is given a notice referred to in section 209F(2), and
  - (ii) the notified adjustments will be cancelled if HMRC fails to take at least one of the actions mentioned in section 209B(4) within the period specified in section 209B(2).
- (3) It does not matter whether the notice is given before or at the same time as the making of the adjustments.
- (4) In this section “adjustments” includes adjustments made in any way permitted by section 209(5).

**209B Notified adjustments: 12 month period for taking action if appeal made**

- (1) This section applies where a person (the “taxpayer”) to whom a provisional counteraction notice has been given appeals against the making of the notified adjustments.
- (2) The notified adjustments are to be treated as cancelled with effect from the end of the period of 12 months beginning with the day on which the provisional counteraction notice is given unless an action mentioned in subsection (4) is taken before that time.
- (3) For the purposes of subsection (2) it does not matter whether the action mentioned in subsection (4)(c), (d) or (e) is taken before or after the provisional counteraction notice is given (but if that action is taken before the provisional counteraction notice is given subsection (5) does not have effect).
- (4) The actions are—
  - (a) an officer of Revenue and Customs notifying the taxpayer that the notified adjustments are cancelled;
  - (b) an officer of Revenue and Customs giving the taxpayer written notice of the withdrawal of the provisional counteraction notice (without cancelling the notified adjustments);
  - (c) a designated HMRC officer giving the taxpayer a notice under paragraph 3 of Schedule 43 which—
    - (i) specifies the arrangements and the tax advantage which are specified in the provisional counteraction notice, and
    - (ii) specifies the notified adjustments (or lesser adjustments) as the counteraction that the officer considers ought to be taken (see paragraph 3(2)(c) of that Schedule);
  - (d) a designated HMRC officer giving the taxpayer a pooling notice or a notice of binding under Schedule 43A which—
    - (i) specifies the arrangements and the tax advantage which are specified in the provisional counteraction notice, and
    - (ii) specifies the notified adjustments (or lesser adjustments) as the counteraction that the officer considers ought to be taken;

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- (e) a designated HMRC officer giving the taxpayer a notice under paragraph 1(2) of Schedule 43B which—
  - (i) specifies the arrangements and the tax advantage which are specified in the provisional counteraction notice, and
  - (ii) specifies the notified adjustments (or lesser adjustments) as the counteraction that the officer considers ought to be taken.
- (5) In a case within subsection (4)(c), (d) or (e), if—
  - (a) the notice under paragraph 3 of Schedule 43, or
  - (b) the pooling notice or notice of binding, or
  - (c) the notice under paragraph 1(2) of Schedule 43B,(as the case may be) specifies lesser adjustments the officer must modify the notified adjustments accordingly.
- (6) The officer may not take the action in subsection (4)(b) unless the officer was authorised to make the notified adjustments otherwise than under this Part.
- (7) In this section “lesser adjustments” means adjustments which assume a smaller tax advantage than was assumed in the provisional counteraction notice.

#### **209C Notified adjustments: case within section 209B(4)(c)**

- (1) This section applies if the action in section 209B(4)(c) (notice to taxpayer of proposed counteraction of tax advantage) is taken.
- (2) If the matter is not referred to the GAAR Advisory Panel, the notified adjustments are to be treated as cancelled with effect from the date of the designated HMRC officer's decision under paragraph 6(2) of Schedule 43 unless the notice under paragraph 6(3) of Schedule 43 states that the adjustments are not to be treated as cancelled under this section.
- (3) A notice under paragraph 6(3) of Schedule 43 may not contain the statement referred to in subsection (2) unless HMRC would have been authorised to make the adjustments if the general anti-abuse rule did not have effect.
- (4) If the taxpayer is given a notice under paragraph 12 of Schedule 43 which states that the specified tax advantage is not to be counteracted under the general anti-abuse rule, the notified adjustments are to be treated as cancelled unless that notice states that those adjustments are not to be treated as cancelled under this section.
- (5) A notice under paragraph 12 of Schedule 43 may not contain the statement referred to in subsection (4) unless HMRC would have been authorised to make the adjustments if the general anti-abuse rule did not have effect.
- (6) If the taxpayer is given a notice under paragraph 12 of Schedule 43 stating that the specified tax advantage is to be counteracted—
  - (a) the notified adjustments are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and
  - (b) so far as they are not confirmed, the notified adjustments are to be treated as cancelled.

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#### **209D Notified adjustments: case within section 209B(4)(d)**

- (1) This section applies if the action in section 209B(4)(d) (pooling notice or notice of binding) is taken.
- (2) If the taxpayer is given a notice under paragraph 8(2) or 9(2) of Schedule 43A which states that the specified tax advantage is not to be counteracted under the general anti-abuse rule, the notified adjustments are to be treated as cancelled, unless that notice states that those adjustments are not to be treated as cancelled under this section.
- (3) A notice under paragraph 8(2) or 9(2) of Schedule 43A may not contain the statement referred to in subsection (2) unless HMRC would have been authorised to make the adjustments if the general anti-abuse rule did not have effect.
- (4) If the taxpayer is given a notice under paragraph 8(2) or 9(2) of Schedule 43A stating that the specified tax advantage is to be counteracted—
  - (a) the notified adjustments are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and
  - (b) so far as they are not confirmed, the notified adjustments are to be treated as cancelled.

#### **209E Notified adjustments: case within section 209B(4)(e)**

- (1) This section applies if the action in section 209B(4)(e) (notice of proposal to make generic referral) is taken.
- (2) If the notice under paragraph 1(2) of Schedule 43B is withdrawn, the notified adjustments are to be treated as cancelled unless the notice of withdrawal states that the adjustments are not to be treated as cancelled under this section.
- (3) The notice of withdrawal may not contain the statement referred to in subsection (2) unless HMRC was authorised to make the notified adjustments otherwise than under this Part.
- (4) If the taxpayer is given a notice under paragraph 8(2) of Schedule 43B, which states that the specified tax advantage is not to be counteracted under the general anti-abuse rule, the notified adjustments are to be treated as cancelled, unless that notice states that those adjustments are not to be treated as cancelled under this section.
- (5) A notice under paragraph 8(2) of Schedule 43B may not contain the statement referred to in subsection (4) unless HMRC was authorised to make the adjustments otherwise than under this Part.
- (6) If the taxpayer is given a notice under paragraph 8(2) of Schedule 43B stating that the specified tax advantage is to be counteracted—
  - (a) the notified adjustments are confirmed only so far as they are specified in that notice as adjustments required to give effect to the counteraction, and

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- (b) so far as they are not confirmed, the notified adjustments are to be treated as cancelled.

### **209F Appeals against provisional counteractions: further provision**

- (1) Subsections (2) to (5) have effect in relation to an appeal by a person (“the taxpayer”) against the making of adjustments which are specified in a provisional counteraction notice.
  - (2) No steps after the initial notice of appeal are to be taken in relation to the appeal unless and until the taxpayer is given—
    - (a) a notice under section 209B(4)(b),
    - (b) a notice under paragraph 6(3) of Schedule 43 (notice of decision not to refer matter to GAAR advisory panel) containing the statement described in section 209C(2) (statement that adjustments are not to be treated as cancelled),
    - (c) a notice under paragraph 12 of Schedule 43,
    - (d) a notice under paragraph 8(2) or 9(2) of Schedule 43A, or
    - (e) a notice under paragraph 8 of Schedule 43B,in respect of the tax arrangements concerned.
  - (3) The taxpayer has until the end of the period mentioned in subsection (4) to comply with any requirement to specify the grounds of appeal.
  - (4) The period mentioned in subsection (3) is the 30 days beginning with the day on which the taxpayer receives the notice mentioned in subsection (2).
  - (5) In subsection (2) the reference to “steps” does not include the withdrawal of the appeal.”
- (2) In section 214(1) of FA 2013 (interpretation of Part 5), at the appropriate place insert—
- ““notified adjustments”, in relation to a provisional counteraction notice, has the meaning given by section 209A(2);”
- ““provisional counteraction notice” has the meaning given by section 209A(2);”.
- (3) The amendments made by this section have effect in relation to tax arrangements (within the meaning of Part 5 of FA 2013) entered into at any time (whether before or on or after the day on which this Act is passed).

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 19 para. 12(5)(b) inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(c\)](#)
- Sch. 19 para. 12(5)(a) word inserted by [2017 c. 32 Sch. 14 para. 49\(2\)\(b\)](#)
- Sch. 19 para. 51(8)(b) words inserted by [2017 c. 32 Sch. 14 para. 48\(2\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(a\)](#)
- Sch. 19 para. 53(1) words inserted by [2017 c. 32 Sch. 14 para. 48\(4\)\(b\)](#)
- Sch. 19 para. 12(5)(a) words renumbered as Sch. 19 para. 12(5)(a) by [2017 c. 32 Sch. 14 para. 49\(2\)\(a\)](#)
- Sch. 19 para. 58(1) words substituted by [2017 c. 32 Sch. 14 para. 48\(5\)](#)
- Sch. 20 para. 1(4)(e) inserted by [2021 c. 26 Sch. 27 para. 47\(2\)](#)
- Sch. 20 para. 3(3)(d) and word inserted by [2021 c. 26 Sch. 27 para. 47\(3\)\(b\)](#)
- Sch. 20 para. 5(5) inserted by [2021 c. 26 Sch. 27 para. 47\(5\)](#)
- Sch. 22 para. 2(4B) inserted by [2021 c. 26 Sch. 27 para. 48\(2\)\(c\)](#)
- Sch. 22 para. 3(4A) inserted by [2021 c. 26 Sch. 27 para. 48\(3\)](#)