
STATUTORY INSTRUMENTS

2017 No. 1090

TAXES

**The General Anti-Abuse Rule Procedure
(Amendment) Regulations 2017**

Made - - - - 13th November 2017
Laid before Parliament 14th November 2017
Coming into force - - 5th December 2017

The Treasury make the following Regulations in exercise of the powers conferred by paragraph 13 of Schedule 43A to the Finance Act 2013 and paragraph 10 of Schedule 43B to that Act (1).

Citation and commencement

1. These Regulations may be cited as the General Anti-Abuse Rule Procedure (Amendment) Regulations 2017 and come into force on 5th December 2017.

Amendments of Schedule 43A to the Finance Act 2013

2. Schedule 43A to the Finance Act 2013 (procedural requirements: pooling notices and notices of binding) is amended as specified in regulations 3 to 10.

3.—(1) Paragraph 1 (pooling notices) is amended as follows.

(2) In sub-paragraph (3) —

(a) in paragraph (a) —

(i) for “another” substitute “a”;

(ii) after “arrangements” insert “(other than the lead arrangements)”;

(b) in the words after paragraph (c), for the words from “which places” to the end substitute “to that effect”.

(3) After sub-paragraph (3) insert—

“(3A) For the purposes of this Schedule and Schedule 43B, all the tax arrangements in relation to which pooling notices have been served in respect of the same lead arrangements are to be regarded as being in a “pool” together.”

(4) Omit sub-paragraphs (4) and (5).

(1) 2013 c.29. Schedules 43A and 43B were inserted by section 157(1) to (3) of the Finance Act 2016 (c. 24).

4.—(1) Paragraph 2 (notice of proposal to bind arrangements to counteracted arrangements) is amended as follows,

(2) In sub-paragraph (1) omit “which are in a pool created under paragraph 1”.

(3) In sub-paragraph (2)(a) —

(a) for “another” substitute “a”;

(b) after “arrangements” insert “(other than the counteracted arrangements)”.

5. In paragraph 3 (requirements relating to pooling notice or notice of binding), in sub-paragraph (1) —

(a) after “The decision” insert “of a designated HMRC officer”;

(b) or “HMRC” substitute “the officer”.

6.—(1) Paragraph 4 (corrective action) is amended as follows.

(2) In sub-paragraph (1), for “8 and” substitute “6 to”.

(3) In sub-paragraph (3)(b), omit the words from “if” to “that notice,”.

7. Omit paragraph 5 (lead arrangements ceasing to be in pool).

8. In paragraph 6 (opinion notices etc), in sub-paragraph (1)(b), after “pool” insert “or the lead arrangements”.

9. In paragraph 8 (notice of final decision), in sub-paragraph (1) —

(a) for paragraph (a) substitute —

“(a) further to a pooling notice given under paragraph 1(3), a set of tax arrangements is in a pool relating to any lead arrangements, and”;

(b) in paragraph (b), after “pool” insert “or the lead arrangements”.

10. After paragraph 12 insert —

“HMRC officers

12A. 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.”

Amendments of Schedule 43B to the Finance Act 2013

11. Schedule 43B to the Finance Act 2013 (generic referrals) is amended as specified in regulations 12 to 14.

12.—(1) Paragraph 1 (notice of proposal to make generic referral) is amended as follows.

(2) In sub-paragraph (1), for paragraphs (a) and (b) substitute—

“(a) further to pooling notices given under paragraph 1(3) of Schedule 43A, two or more sets of tax arrangements are in a pool relating to any lead arrangements,

(b) the person to whom the notice mentioned in paragraph 1(1) of Schedule 43A was given takes the relevant corrective action (as defined in paragraph 4A of Schedule 43) before—

(i) the end of the period of 75 days beginning with the day on which that notice was given, or

(ii) such later time as that person and HMRC may agree, and”.

13.—(1) Paragraph 3 (generic referral) is amended as follows.

(2) In sub-paragraph (3)(a), after “relevant pool” insert “in relation to which such a proposal has been made”.

(3) After sub-paragraph (3) insert —

“(3A) If under sub-paragraph (3)(a) a notice is given under paragraph 3 of Schedule 43 in respect of one set of tax arrangements but (by virtue of paragraph 4A of that Schedule) the matter is not referred to the GAAR Advisory Panel, a designated officer must make a referral to the GAAR Advisory Panel in respect of the notified taxpayers and the arrangements which are specified arrangements in relation to them.”

14. After paragraph 9 insert —

“HMRC officers

9A. 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”.

13th November 2017

Mark Spencer
Heather Wheeler
Two of the Lords Commissioners of Her
Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 5 of the Finance Act 2013 makes provision for the General Anti-Abuse Rule (GAAR). In particular, it allows for arrangements that are thought to be abusive to be referred, in some circumstances, to the GAAR Advisory Panel. Schedules 43A and 43B to that Act set out a procedure under which, where one set of arrangements is referred to the Panel (the “lead arrangements”), equivalent arrangements can also be counteracted.

These Regulations make minor changes to the procedural rules in Schedules 43A and 43B.

Regulation 3(2)(a) amends paragraph 1(3)(a) of Schedule 43A so as to allow arrangements to be “pooled” with lead arrangements even if they give rise to a tax advantage to the same person.

Regulation 3(2)(b), (3) and (4) amend paragraph 1 of Schedule 43A so as to secure that the lead arrangements are not themselves in the “pool” with the equivalent arrangements. This is to facilitate the continuation of the “pool” of equivalent arrangements where settlement is reached in relation to the lead arrangements. Regulations 4(2), 7, 8, 9 and 12 make consequential amendments.

Regulation 4(3) makes an amendment to paragraph 2 of Schedule 43A that is equivalent to the amendment made by regulation 3(2)(a) (see above).

Regulation 5 makes clear that the decision to issue a pooling notice or notice of binding is made by a designated HMRC officer, in accordance with paragraph 1(3) of Schedule 43A.

Regulation 6(2) corrects a cross-reference.

Regulation 6(3) amends paragraph 4(3)(b) of Schedule 43A so as to allow corrective action to be taken by the taxpayer whether or not the taxpayer has made a tax appeal.

Regulation 10 secures that, where Schedule 43A requires or permits a designated HMRC officer to do something, any other designated HMRC officer may do it instead. Regulation 14 makes equivalent provision for Schedule 43B.

Regulation 13(2) clarifies that a notice under paragraph 3 of Schedule 43 may only be given in respect of arrangements in relation to which a proposal under paragraph 3(2) of Schedule 43B has been made.

Regulation 13(3) clarifies that where a person makes a proposal to HMRC under paragraph 2 of Schedule 43B, but subsequently takes corrective action in accordance with paragraph 4A of Schedule 43, a designated HMRC officer must make a referral to the GAAR Advisory Panel.

A Tax Information and Impact Note covering this instrument was published on 9 December 2015 alongside draft legislation and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.