**Compliance checks series – CC/FS35**

General anti-abuse rule and pooling notices

You should read this factsheet if we’ve given you a pooling notice under the general anti-abuse rule (GAAR).

We may give you a pooling notice if you’ve used arrangements that we consider the GAAR may apply to.

You can find more information about the GAAR in factsheet CC/FS34a ‘Information about the general anti- abuse rule’.

Where this factsheet refers to ‘tax’, this means the taxes, levies and contributions to which the GAAR applies. These are listed in factsheet CC/FS34a.This factsheet is one of a series. For the full list in the series, go to [www.gov.uk](http://www.gov.uk/) and search for ‘HMRC compliance checks factsheets’.

# Giving a pooling notice on the assumption that a tax advantage has arisen

Where we consider that a tax advantage might have arisen, we can give you a pooling notice on the assumption that a tax advantage does arise to you - without agreeing that it does. Paragraph 12 of Schedule 43A to the Finance Act (FA) 2013 allows us to do this.

# Equivalent tax arrangements

For the purposes of pooling, tax arrangements are equivalent to one another if they’re substantially the same as one another, having regard to all of the following:

* the substantive results of the arrangements
* the means of achieving those results
* the characteristics on the basis of which it could reasonably be argued, in each case, that the arrangements are abusive tax arrangements under which a tax advantage has arisen to a person

# About pooling

We can place tax arrangements into a pool where we believe that 2 or more sets of tax arrangements:

* are equivalent
* result in tax advantages that we consider should be counteracted under the GAAR Placing arrangements into a pool is known as pooling.

We do not have to refer each individual set of tax arrangements to the GAAR Advisory Panel for an opinion. Instead, we can refer one set to the panel. Any arrangements that we refer to the panel are known as ‘referred arrangements’. Once we receive the panel’s opinion on the referred arrangements, we can apply that opinion to all the equivalent tax arrangements in the pool.

We can place your arrangements into a pool and give you a pooling notice under paragraph 1 of Schedule 43A to the FA 2013, if all of the following apply:

* we’ve given a notice of proposed counteraction of tax advantage to a person relating to their tax arrangements - those tax arrangements are known as the ‘lead arrangements’
* the 45-day period for making representations relating to that notice of proposed counteraction of tax advantage has passed
* we have not given a notice of final decision for the lead arrangements, or any arrangements already in a pool formed by reference to the lead arrangements, stating whether or not the tax arrangements should be counteracted - the notice of final decision will be given under either of the following
  + paragraph 12 of Schedule 43 to the FA 2013, for the referred arrangements
  + paragraph 8 of Schedule 43B to the FA 2013, for a generic referral (read the section ‘Generic referral of tax arrangements’ below for more information)
* we consider that
  + a tax advantage has arisen to you from tax arrangements that are abusive
  + your tax arrangements are equivalent to the lead arrangements
  + the tax advantage should be counteracted under the GAAR

All tax arrangements for which pooling notices have been given because we consider them to be equivalent to the same lead arrangements are in the same pool.

Your tax arrangements will remain in the pool unless you take the relevant corrective action. Read the section ‘Taking corrective action’ below for more information.

## Notices of proposed counteraction

We cannot give you a pooling notice if we’ve already given you a notice of proposed counteraction of tax advantage relating to your tax arrangements. However, we can give you a notice of proposed counteraction of tax advantage after we’ve given you a pooling notice. Notices of proposed counteraction of tax advantage are given under paragraph 3 of Schedule 43 to the FA 2013.

# About pooling notices

Your pooling notice will:

* tell you which tax arrangements it relates to
* tell you the amount of the tax advantage
* explain why we consider the tax arrangements are equivalent to the lead arrangements
* explain why we consider that a tax advantage has or might have arisen to you from tax arrangements that are abusive
* tell you what adjustments are needed to counteract the tax advantage
* tell you what to do if you want to take corrective action (read the section ‘Taking corrective action’ for more information about this)
* tell you about the pooled arrangements opinion notice and your right to make representations
* tell you about the notice of final decision

The pooling notice will tell you about the period during which you will not be able to take corrective action under the GAAR. This is known as the ‘closed period’. It’ll also tell you about the penalties that we may charge if we give you a notice of final decision telling you that a tax advantage is to be counteracted under the GAAR. You can find more information about this in the sections ‘Notice of final decision’ and ‘Penalties under the GAAR’.

You can find out more information about the closed period in the section ‘Closed period’.

# Provisional counteraction notices and protective GAAR notices

We may have given you one or more provisional counteraction notices and/or protective GAAR notices before we give you a pooling notice.

A provisional counteraction notice tells you about some or all of the adjustments that we believe may be needed under the GAAR to counteract a tax advantage. Those adjustments are referred to as notified adjustments.

After giving you one or more provisional counteraction notices, we may give you a pooling notice telling you the adjustments that are needed to counteract the tax advantage. If we do this, these adjustments will include the notified adjustments shown in the provisional counteraction notice, or lesser adjustments. This is unless the provisional counteraction notice has been withdrawn or the notified adjustments have been cancelled.

A protective GAAR notice tells you about some or all of the adjustments that we consider may be needed under the GAAR to counteract a tax advantage.

If we consider that any other adjustments are needed to counteract the tax advantage, they’ll also be included in the pooling notice.

# Taking corrective action

If we give you a pooling notice, it’ll tell you how to take corrective action. Taking corrective action means taking the steps set out below to settle your tax affairs.

You can take relevant corrective action before the beginning of the ‘closed period’ by taking the 2 steps below.

## First step

Take one of the following actions:

* take all necessary action to enter into a written agreement with us to relinquish that tax advantage - if you take all necessary action but do not enter into the written agreement, we may proceed as if you have not taken the corrective action
* amend your return, or claim, to counteract the tax advantage specified in the pooling notice - you’ll not be prevented by any other statutory time limits from amending your return, or claim, before the compliance check is closed

## Second step

Tell us:

* that you’ve taken the first step
* the additional amount which has or will become due and payable as a result of you taking the first step

If you take the relevant corrective action in accordance with the pooling notice, then you’ll be treated as no longer being in the pool. If you do not, you’ll remain in the pool.

## Your appeal rights if you take corrective action

If you amend your return, or claim, to counteract the tax advantage specified in the pooling notice, and we take that amendment into account when we close the compliance check, you will not be able to appeal against that amendment.

# Closed period

If we give you a pooling notice for tax arrangements there’s a deadline by which you can take relevant corrective action. You can only take relevant corrective action before the 31st day after we give you the notice.

There is then a period during which you cannot make any GAAR-related adjustments. It’s known as the ‘closed period’.

The closed period begins 31 days after the day the notice was given to you, and ends the day before the day we give you one of the following:

* a notice of final decision under paragraph 8(2) of Schedule 43A
* a notice of final decision in relation to a generic referral under paragraph 8(2) of Schedule 43B

If we then counteract the tax advantage, we may also charge you a penalty. Read the section ‘Penalties where the GAAR has been applied’ for more information.

We cannot charge this type of penalty if you entered into the tax arrangements before 15 September 2016.

# If the lead taxpayer takes corrective action

The lead taxpayer is the person whose tax arrangements are the lead arrangements.

If the lead taxpayer takes relevant corrective action within 75 days of the date on which we gave them a notice of proposed counteraction, we will not refer those lead arrangements to the panel.

In these circumstances, we may choose another set of equivalent tax arrangements for possible referral to the panel. If this happens, we’ll issue a notice of proposed counteraction to the person whose tax arrangements we’ve chosen. This could be your tax arrangements. Alternatively, we may consider making a generic referral to the GAAR Advisory Panel.

Read the section ‘Generic referral of tax arrangements’, for more information. In either circumstance, your tax arrangements will remain in the pool.

# Pooled arrangements opinion notices

If we give you a pooling notice and the GAAR Advisory Panel give us an opinion notice (or opinion notices) about the referred arrangements, we’ll give you a pooled arrangements opinion notice.

A pooled arrangements opinion notice is a written notice which tells you about the GAAR Advisory Panel’s opinion or opinions on the referred arrangements.

We can only give you one pooled arrangements opinion notice for any one set of tax arrangements. If you’ve taken relevant corrective action, we will not send you a pooled arrangements opinion notice. You cannot appeal against a pooled arrangements opinion notice, but you can make representations.

You have 30 days beginning with the day on which the notice is given to do this. You can make representations if you believe that no tax advantage has arisen from your arrangements, or that your arrangements are materially different from the referred arrangements.

# Notice of final decision

Once we’ve given you a pooled arrangements opinion notice and given a notice of final decision (under paragraph 12 of Schedule 43 to the FA 2013) for the referred arrangements, we’ll consider the opinions of the GAAR Advisory Panel in relation to your arrangements, along with any representations that you’ve made.

We’ll then decide whether to counteract the tax advantage under the GAAR. We’ll send you a notice of final decision telling you what will happen next. This is unless a pooling notice and/or one or more protective GAAR notices have been treated as a notice of final decision. We explain more about this in the section ‘Making the adjustments and appealing’.

# Generic referral of tax arrangements

If relevant corrective action has been taken for the lead arrangements, and there are at least 2 sets of arrangements in the pool, we may propose to make a generic referral of pooled arrangements to the panel. We can do this if we have not referred any tax arrangements in the pool to the GAAR Advisory Panel.

As with pooled arrangements, a generic referral to the GAAR Advisory Panel means that we can apply the panel’s opinion to equivalent tax arrangements without the need for referring each individual case to the panel.

We’ll let you have more information if this applies to you.

# Penalties under the GAAR

We may charge you a penalty if you entered into the tax arrangements on or after 15 September 2016 and all of the conditions below apply:

* we’ve given you a notice of final decision, stating that a tax advantage arising from tax arrangements is to be counteracted
* a tax document has been given to us on the basis that the tax advantage arises to you from those arrangements
* that document was given to us by you or another person in circumstances where you knew, or should have known, that they gave the document on the basis that the tax advantage arises to you from those arrangements
* the tax advantage has been counteracted by making adjustments under the GAAR

We can only charge a GAAR penalty if the tax advantage is counteracted under the GAAR, rather than in any other way.

A tax document for this purpose means any document submitted to HMRC in accordance with statutory provision. It includes, for example, a claim or return.

The penalty is an amount equal to 60% of the value of the counteracted advantage. The counteracted advantage is generally the additional amount due or payable for tax, as a result of the adjustments made to counteract the tax advantage.

# Making the adjustments and appealing

You cannot appeal against a pooling notice either to us or to a tribunal or court. You can appeal against the adjustments once we’ve made them.

## Adjustments we’ve already made

We may have already made some or all of the adjustments shown in a pooling notice. If so, we’ll have sent you one or more provisional counteraction notices and/or protective GAAR notices. They will have explained:

* your right to appeal against the adjustments once we had made them
* the effect of not appealing against the adjustments

## Adjustments we may make between giving a pooling notice and a notice of final decision

After we’ve given you a pooling notice, we do not have to give you a protective GAAR notice if we make any of the adjustments shown in the pooling notice, before giving you a notice of final decision. The legislation that allows us to do this is section 209AB of the Finance Act 2013. When we make any of these adjustments, we will tell you how to appeal and the time limits for doing so.

If:

* you do not appeal
* you appeal and later withdraw your appeal
* your appeal is settled by agreement

and we do not give you a notice of final decision, then the pooling notice is treated (for all purposes other than penalties) as if it were a notice of final decision. The GAAR legislation refers to a notice of final decision as a final GAAR counteraction notice. You can find out what we mean by a final GAAR counteraction notice in the section ‘Final GAAR counteraction notice’.

If you do not appeal, you will have to pay the additional tax that results from us having made the adjustments.

## Adjustments we may make after giving a notice of final decision

Further adjustments may be needed if a notice of final decision states the tax advantage should be counteracted under the GAAR.

Once we make any further adjustments, you’ll be able to appeal against us having made them. When we make the adjustments we’ll tell you more about how to appeal and the time limits for doing so.

# Final GAAR counteraction notice

A final GAAR counteraction notice is one of the following:

* notice of final decision after considering the opinion of the GAAR Advisory Panel (under paragraph 12 of Schedule 43 to the Finance Act 2013)
* pooled arrangements notice of final decision (under paragraph 8(2) of Schedule 43A to the Finance Act 2013)
* generic referral notice of final decision (under paragraph 8 of Schedule 43B to the Finance Act 2013)
* bound arrangements notice of final decision (under paragraph 9(2) of Schedule 43A to the Finance Act 2013)

Each of these notices will tell you whether the tax advantage from your tax arrangements is to be counteracted under the GAAR.