Funding the Future

The need for a General anti-avoidance principle

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Aggressive tax avoidance can be countered through the creation of what are called general anti-avoidance principles within taxation law. A number of countries have such principles in place, although with varying degrees of success, depending largely upon how rigid they are. The more rigid they are, the less likely they are to work since a rigid provision looks more like a rule and merely creates its own set of new loopholes that the tax planning industry seeks to exploit.

A general anti-avoidance principle is based on the logic that if any transaction is undertaken primarily to secure a tax advantage, or any step in a transaction is added for that propose then the benefit that transaction gives for taxation purposes can be ignored, and tax can be charged as if it had not taken place.

Such a legal principle should be a vital part of the law in every country if the struggle against tax evasion and avoidance is to be won. It is also an essential part of any tax system that seeks to ensure that all income is subject to tax. This is because whilst any tax system has to be rule-based to make the detail of its arrangements work, eventually rules are not enough to make the system comprehensive. Principles have to be built-in to ensure that the rules do not create their own problems. This suggestion is exceptionally unpopular with the tax planning industry. This is because it is harder to break principles than rules, which is precisely why they are so useful in this context.

It is to tackle this sort of abuse by professionally qualified people that we suggest a major extension of professional ethics to make clear that many current practices are considered unacceptable professional conduct in the future.

(This text comes form Tax Us If You Can published by The Tax Justice Network - of which I was a co-author, and refers to a key platform of the reforms that I seek to promote).