

41% - right or wrong?

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There have been interesting reactions to yesterday's press release from the TJN (which was reproduced here) on the research spearheaded by Richard Lupson-Darnell into the causes for UK tax legislation.

Accountancy Age [covered](#) it. Thanks chaps. Another accountancy journal confirmed that they would do so within 3 minutes of getting the mail from me with the press release attached. I have to admit even I was surprised.

Some, such as [TaxationWeb](#), which I would have expected to do so, did not. But it looks likely that the national press will be covering it soon, so I thought [Dennis Howlett's comments](#) were of interest. Let's put it on record straight away that Dennis is not opposed to what I'm trying to do. He [blogged to that effect](#) the same day. That may be his polite way of getting my attention, but since his analysis is more critical than that of some others I thought it worth looking at. His argument seems to be:

- 1) I didn't define anti-avoidance in the published comments and press release;
- 2) The argument is not fully developed;
- 3) The research could be developed further, but wasn't.

Each is an interesting point. I'm going to come back to the definition of tax avoidance when I have time. But the Tax Justice Network has published one, often. It is:

The term given to the practice of seeking to minimise a tax bill without deliberate deception (which would be tax evasion or fraud).

The term is sometimes used to describe the practice of claiming allowances and reliefs clearly provided for in national tax law. It is, however, now generally agreed that this is not tax avoidance. If the law provides that no tax is due on a transaction then no tax can have been avoided by undertaking it. This practice is now generally seen as being tax compliance. So what the term tax avoidance now usually refers to is the practice of seeking to not pay tax contrary to the spirit of the law. This is also called aggressive tax avoidance.

Aggressive tax avoidance is the practice of seeking to minimise a tax bill by attempting to comply with the letter of the law whilst avoiding its purpose or spirit. (etcâ€š„,¶)

That's readily available from ['tax us if you can'](#), published by the Tax Justice Network and so sets a framework for this issue. I did not think I had to define it again, at least in a press release. Not least because the term is in common usage and even if indefinable (which I happen to think is true) can, like an elephant with which it shares this characteristic, be readily identified by a seasoned observer. One was engaged on this research.

Second, Dennis is suggesting that we jumped to a conclusion. Did we? I don't think so. Anti-avoidance legislation is aimed at taxpayers. We suggested that it was the actions of taxpayers that gave cause for this legislation to be enacted. I accept one can argue where this circle starts, and it's clear we started at a particular point, which was explicit. But is that an undeveloped argument or an unreasonable conclusion given the starting point? I doubt it. No one else but Dennis seems to have this problem. And like most pressure group analysis, we weren't pretending this was PhD stuff. It was simple analysis involving some judgement, and as it so happens incorporated considerable caution in our case to ensure that we did not overstate the case.

How cautious? Well, enough that we could have claimed almost 60% of legislation was focused on anti-avoidance. We chose not to. We went to the bottom end of the scale we could calculate and used 41%. Let's use the range 40% to 60% to cover possibilities and anyone who wants to count something differently from us will have to contend with the fact that our methodology (which weighted all sections and schedules as being of equal length in the legislation when those relating to anti-avoidance are, as our testing showed, much longer on average than those introducing new initiatives) under scored the page allocation made to this category of sections and schedules.

Unless someone is in denial about the existence of either tax avoidance, or anti-avoidance legislation our research is a good marker in the sand. We'll stand by it. But if anyone would like to fund us to develop it further, just call me. We could undertake a lot more research on the issue if we had the cash to do so.