

Making aggressive tax avoidance illegal - what a new GA...

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The proposed General Anti-Avoidance Rule, published today and written by Graham Aaronson QC, about which I wrote earlier today, attacks arrangements with one or more of these qualities:

- (a) arrangements that would result in receipts being taken into account for tax purposes which are significantly less than the true economic income, profit or gain;
- (b) arrangements that would result in deductions being taken into account for tax purposes which are significantly greater than the true economic cost or loss;
- (c) arrangements that includes a transaction at a value significantly different from market value, or otherwise on non-commercial terms;
- (d) arrangements, or any element of it, inconsistent with the legal duties of the parties to it;
- (e) arrangements including a person, a transaction, a document or significant terms in a document, which would not be included if the arrangement were not designed to achieve an abusive tax result;
- (f) arrangements that omit a person, a transaction, a document or significant terms in a document, which would not be omitted if the arrangement were not designed to achieve an abusive tax result; and
- (g) arrangements that include the location of an asset or a transaction, or of the place of residence of a person, which would not be so located if the arrangement were not designed to achieve an abusive tax result.

All or welcome; the last especially so since it is clearly aimed at tax havens.

And all have another welcome characteristic: without exception the drafting notes that the arrangements in question are legal and would work but for the new GAAR. The idea

that tax avoidance can be made illegal has been established. That is massive leap forward in thinking.