

A GAAR for the UK - one step closer today

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Graham Aaronson QC's report for HM Treasury on the desirability of a General Anti-Avoidance Rule (GAAR) for the UK is published this morning, and I warmly welcome it.

There are two reasons for me saying that. First, in the days when Vince Cable and I used to talk he was quite a fan of my work, and as a result he and Matthew [Lord] Oakeshott put this idea, for which I had campaigned hard, into the LibDem manifesto on 2010. From there it went into the Coalition agreement and so I might, I think, fairly claim a small credit for the fact that this issue has reached this stage.

Second, and in the interests of full disclosure it is only fair to record I met Graham Aaronson twice during the course of his work, doing so on behalf of the TUC who I advise on tax. I did as a result have a chance to read drafts of this report and to input into the process, and both appreciated that opportunity and Graham's receptiveness to ideas, many of which he took on board.

So what of the outcome? Well, this is more like a principle than a rule, and I appreciate that. It would be hard to see how a piece of legislation could more precisely enact the will of parliament without using those words than this draft does. It's very clever in that respect, and I welcome that.

I also think that many appropriate checks and balances are built in to the drafting. HMRC cannot use this willy nilly, and that's right. This should be a tool of last resort and not a battering ram for widespread use. Appropriate defences for action are built in. Safeguards to prevent HMRC over-using the provision are included. The result is that the rule will be used against egregious cases, and not be aimed at all tax planning. That's right: where the law provides for choice planning is inevitable and right and I for one have never denied that fact.

But let's also be clear: this suggested rule says very clearly that things that may be legal can also be morally unacceptable and the chance to prevent a person availing themselves of that abuse should exist. That is an enormous step forward in UK tax law

if it comes to be enacted and I welcome it. So should all wise companies and tax professionals, not least because this means no one is now obliged, even in their wilder moments, to mention these egregious schemes any more: they can simply say they are sure they will fail and as such can recommend clients to ignore them. Companies can also do so with a clear conscience, knowing the chance of failure in using such schemes has now increased, a lot. Anyone who does not welcome this is simply saying they think abuse of the law is desirable: it will be a foolish person who does that. Certainty is, incidentally increased because such schemes will also now be unavailable

But that said there are compromises which I would not have embraced. For example, I think the burden of proof should rest with the taxpayer in all cases when an action is taken under these rules. It has been made so hard for HMRC to begin them I think that the right balance. Right now that's not the case: in all but the cases most likely to impact on small business and individuals the balance of proof is on HMRC. That, curiously, is reversed in the case of what will arise for most small businesses and individuals and the impression that this is another measure that picks on the small player is reinforced as a result. That is unfortunate.

Second, I think there is real risk that the tax profession may have too much influence on the advisory board that will be established to run this GAAR. That would be a serious problem and more balance is required in my opinion.

Third, the scope is simply not wide enough. NIC and SDLT should be in from the outset.

I would hope that progress can be made on all these issues, but let's have no doubt about it: this is a very big step forward for tax justice and I warmly welcome this report and hope it moves rapidly towards becoming law. The Tories will need to be held very firmly to account on that one.