

Tax avoiders have nothing to fear from George Osborne

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I have [the following blog](#) over at the New Statesman this morning:

"I regard tax evasion and indeed aggressive tax avoidance as morally repugnant." So said George Osborne in his [Budget speech](#) in March. I hope he meant it. The trouble is he has not evidenced it.

Last week the government started [a consultation](#) on the introduction of what is, in effect, [the tax anti-avoidance rule](#) recommended by Graham Aaranson QC as a result of a review Osborne commissioned in 2010. The government say this is a general anti-avoidance rule. And the trouble is that is precisely what it isn't.

I can say that with confidence. Aaranson himself said in his report:

I have concluded that introducing a broad spectrum general anti-avoidance rule would not be beneficial for the UK tax system.

In other words, what Aaranson suggested was not a general anti-avoidance rule. He did instead propose:

[I]ntroducing a moderate rule which does not apply to responsible tax planning, and is instead targeted at abusive arrangements, would be beneficial for the UK tax system.

The trouble is that his plan — now adopted almost wholesale by the government - is intended as a result to only attack what he described as the "most egregious" tax abuse schemes. I met with Aaranson during his review process. What he clearly meant was that his intention was that the vast majority of tax planning should continue uninterrupted. Indeed, he says in his report that a broadly based general anti-avoidance rule

Would carry a real risk of undermining the ability of business and individuals to carry out sensible and responsible tax planning. Such tax planning is an entirely appropriate response to the complexities of a tax system such as the UK's.

May would disagree. He was also worried that such a scheme:

Would also inevitably in practice give discretionary power to HMRC who would effectively become the arbiter of the limits of responsible tax planning.

To make sure that didn't happen he wanted representatives of the tax profession — dedicated almost solely to tax avoidance as it is — to decide which schemes were acceptable or not. That's like putting the foxes in charge of the hen house.

That's why I doubt that Osborne is committed to tackling tax avoidance. And it is why I have always supported a general anti-avoidance principle in the UK, and not a general anti-avoidance rule. As a tax avoidance specialist said [in the](#)Times (£) today:

It's a game of cat and mouse. The revenue closes one scheme, we find a way round it.

That is what happens when you have a rule. A principle is something quite different. It looks at intent. It is not about box ticking, as rules are (which is why they are so easy to get round - general anti-avoidance rules included). It is about looking at what you did and using that evidence to assess on the balance of probabilities what your intentions were.

So, if, for example, you arranged your affairs so that you provided your services via a series of companies, one of which happened to be in Jersey which lent you back the tax free income it had received so that you appeared to have no legal requirement to pay tax in a way that a more commercially obvious arrangement might have given rise to then it would be reasonable for someone — and I think that someone should be HM Revenue & Customs — to decide you're tax avoiding. And if that's what they decide then if we had a general anti-avoidance principle they could say that the scheme was abusive and take the obvious step of simply ignoring all the steps put into the arrangement likely to be solely or mainly included to save tax. They'd then tax the commercial substance of the deal and not the artificial arrangement put in place solely to avoid tax.

Of course any such HMRC ruling would be subject to appeal to the courts, but the taxpayer would have to show why the scheme was not tax avoidance: the burden of proof would be on them.

This changes the way we assess tax in the UK, without doubt, and in a way Aaranson and Osborne clearly do not intend. But even the Times said today in its leader:

The British tax system is unfair. It charges the vast majority of people the basic rate of income tax, and expects them to pay. It asks a minority to pay higher rates of tax, and then invites them to avoid it.

That is true. A general anti-avoidance principle rather than a general anti-avoidance

rule would radically change this and would provide the power needed to deliver a fair tax system in the UK. That's why Michael Meacher MP is tabling a private member's bill to introduce a general anti-avoidance principle into UK tax law this week.

It's what the *Times* wants. It's what the UK needs. But will Osborne find the moral will to back it?