Funding the Future

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I have been asked today whether the General Anti-Tax Avoidance Principle Bill that I wrote for Michael Meacher MP and which is currently before parliament would provide any additional powers for HM Revenue & Customs to tackle and tax avoidance Starbucks might have undertaken.

I'd remind you that it's been suggested that Starbucks did three things to turn a profitable UK business, according to its reports to shareholders, into a loss making one in thirteen out of the last fourteen years according to its UK accounts. They are:

a) Paid a 6% royalty to another Starbuck's company for use of the intellectual property attaching to the brand;

b) May have overpaid for coffee beans to a Starbuck's owned supply chain channelled through the Netherlands and Switzerland;

c) Paid a high rate of interest on large intra-group loans to finance the business.

In principle each of these could be challenged using transfer pricing arrangements. But, that as is well known, difficult to say the least: comparative prices have to be proved and that is a long and arbitrary process.

What the Bill I wrote for Michael Meacher would let HMRC do instead is look at the motive for this arrangement. First, given that the business is being very obviously run for profit and is obviously profitable or the chain would not currently be subject to expansion plans the motive for these structures that seem to turn profit into loss cannot be profit: that has already been achieved. So, using the motive test in the Bill these transactions fail: they do not appear profit driven, they appear tax driven. If they really do turn profit into tax loss then their purpose would fail the General Anti-Tax Avoidance Principle Bill. Their purpose must be tax avodiance. In that case the option of ignoring them for the purposes of tax assessment would arise. They could be ignored.

I happen to think that might be a weak argument for the beans: there must be a basis for pricing them without recourse to this Bill - transfer pricing rules should work there.

But the royalty would be a prime target for attack: it has no commercial purpose at all. The profit stays within the group, and it cannot be justified as commercial since no one would pay a royalty for thirteen out of fourteen years to make continuing losses. In that case the Bill I have written would be a perfect mechanism for targeting such arrangements that represent what seems to be tax abuse.

I'd add, it might also be possible to use it on the whole financing structure but I'd look at thin capitalisation and transfer pricing rules first.

But would what I have written be useful? Yes, is my answer: it could be a game changer.