

If we're to beat the tax avoidance crisis the National ...

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The National Audit Office report on HMRC's performance on tax avoidance, issued today, is an important document, not least because it makes it very clear that HMRC is losing this battle. [As they say:](#)

The tax avoidance disclosure regime introduced in 2004 by HM Revenue and Customs, DOTAS, has helped the department make some important headway in reducing the opportunities for avoidance. However, there is little evidence that HMRC is making progress in preventing the sale of highly contrived tax avoidance schemes to a large number of taxpayers.

There seem to be two reasons for this. The first is that disclosing schemes seems to provide no deterrence:

In each of the last four years, over 100 new avoidance schemes have been disclosed under DOTAS. While HMRC believes most of these would be defeated if tested in the courts, there is no evidence that their usage is reducing.

As importantly, the armoury available to HMRC is not effective for three reasons. The first is that when an abuse of law is found the change to stop it is retrospective at present. That means all schemes have a window of opportunity. Second, litigation might stop high profile cases but is difficult to then retrospectively apply to other cases. And thirdly there just aren't enough resources, which is why at least 41,000 cases are no outstanding. All three hamper HMRC's progress.

So too though does HMRC's own failed management approach. As the NAO notes:

HMRC has an anti-avoidance strategy, but does not monitor its costs and has not yet identified how it will evaluate its effectiveness. This limits its ability to make informed decisions about where to direct its avoidance activity.

It's failure to properly assess the tax gap from tax avoidance is just one part of this issue, as I have long documented.

So what can be done? The simple answer may well be nothing at all unless there is a serious change of direction on this issue. There are good reasons for saying that.

First, whilst courts are willing to determine their decisions on the fine nuisances of the legal construction of schemes whilst ignoring their intent the opportunity for legal abuse will always exist. The [Ranges FC decision](#) is perfect example of that. There is not a single person who can believe that Rangers did not use employee benefit trusts to pay staff to avoid tax - and cost the Exchequer tens of millions in the process. But, the scheme has been ruled legal because on a narrow interpretation of the documentation it was technically possible that the parties could have meant to create loans even though it seems implicit that no one expected them to be repaid in any meaningful way.

Second, nothing will happen whilst HMRC do not have the staff they need to pursue cases.

So, we need to firstly give HMRC the staff they need. Secondly we need to give them the legislation they need. That, of course, is a General Anti-Tax Avoidance Principle Bill of the sort I have written and [which is before parliament now as a result of it being sponsored by Michael Meacher MP](#).

Legislation of this sort (which is being opposed by the government - whose own Bill on this issue is so narrowly focussed it has little chance of stopping much of the abuse to which the NAO refers) is vital to look at the intent of the parties to a transaction. Tests of intention can be built into law, as that draft law shows. Then a scheme can be ruled legal or not depending on the intention of the parties, and that is the way to defeat tax avoidance. Nothing else will do.

Now when will the government listen?