

Funding the Future

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There was a lengthy debate on the General Anti-Abuse Rule in the House of Commons on Wednesday. I'm grateful to Michael Meacher MP, Kelvin Hopkins MP and Caroline Lucas MP all making interventions in support of my general anti-avoidance principle and for my work on the tax gap, but that's not the issue of concern right now. What was pleasing was Labour's robust attack on the General Anti-Abuse Rule and its demand that the rule be reviewed within two years to assess its effectiveness.

Catherine McKinnel MP led for Labour and amongst the things she said were ([all quotes from Hansard, here](#)):

At a time when living standards are being squeezed, Government borrowing is up, growth forecasts have been downgraded again, the public services upon which people rely are being cut or threatened across the country, and ordinary people are being asked to pay the price of the Chancellor's economic failure, there is understandable anger about the unfairness and injustice of people working hard and paying their fair share of taxes, while they hear almost daily about the complex lengths to which a small but significant number of multinational corporations will go in order not to do so.

and

There will sometimes be good reasons for companies to pay little or less tax. Some firms invest large sums in research and development, assets and infrastructure. That must be celebrated and acknowledged, but people are rightly entitled to ask what is going wrong when a company can make sales of £1.2 billion and describe itself to investors as profitable yet report no profit in the UK. It totally undermines the concept of a level playing field when good British companies pay their fair share on profits generated in this country whereas others seem to get away with not doing so.

As we all know from our constituency postbags, people are angry about the devastating consequences of tax avoidance not just on the UK and our public services but on developing countries, with multinational giants using tax havens and artificial corporate structures to shift profits offshore and away from the places where they were generated.

and

I welcome the statement on page 4 of the guidance that was finally published, which suggests that the GAAR

“rejects the approach taken by the Courts in a number of old cases to the effect that taxpayers are free to use their ingenuity to reduce their tax bills by any lawful means, however contrived those means might be and however far the tax consequences might diverge from the real economic position.”

That is a significant advance on the current situation, but, in the Treasury’s words, the GAAR is intended to address

“artificial and abusive avoidance schemes but without creating uncertainty for business investment”

and will attack

“only those schemes that are the intended target and not a broader spread of business arrangements.”

Which means:

What deterrent effect is the narrowly defined GAAR expected to have? As the Government’s flagship policy for tackling tax avoidance, what dent will it make in the tax gap—that is, the difference between the tax collected and the tax that would be collected if everybody complied with the letter and the spirit of the law? Table 2.1 of the Budget 2013 and [HMRC](#)’s recently updated impact note on the GAAR estimate that it will result in additional revenue of £60 million in 2014-15, rising to £85 million in 2017-18. Those are without doubt notable sums of money, but let us remind ourselves of the tax gap. HMRC’s most recent estimate for the period 2010-11, considered by some to be relatively conservative, stands at £32.2 billion. HMRC believes that about 14% of that can be accounted for by tax avoidance activity, which means £4.5 billion to £5 billion a year. (At which point a diversion on my tax gap work occurred)

So:

Other concerns have been raised about the chair, the panel and the manner in which they will be appointed. The chair has been appointed and will appoint his panel, and it is they who will interpret what they believe to be reasonable. What a tax expert considers to be reasonable might be regarded differently in the eyes of a member of the public. Indeed, many tax experts will differ on what they believe to be reasonable tax planning, as opposed to something egregious that would fall under the GAAR. The concern is that the GAAR is so narrow in tackling only the most egregious schemes that it could hardly be considered general at all and should perhaps be called the AAR instead.

And as a result the inherent flaws suggest:

Our amendment 8 proposes a maximum two-year gap between Royal Assent to the Bill and the review [of the effectiveness of the GAAR]. I look forward to hearing from the Minister whether he is prepared to commit to such a review, particularly in light of the concerns expressed at the beginning of my submission about the lack of time afforded by the Government's publishing the guidance so late for proper scrutiny of the legislation.

Whilst concluding:

In conclusion, we will support the Government's legislation, brought forward today, to introduce a GAAR. However, we believe, along with my right hon. Friend Mr Meacher, who has tabled his amendments as a suggested alternative to the GAAR, that the Government's GAAR has many potential flaws.

And if that's Labour's position on the GAAR, then I'm well pleased.