

Why the Duke of Westminster tax case is dead and buried..

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I have already received several comments [challenging my view that the world of tax avoidance has been changed for good](#) by the publication of new GAAR Guidance, issued by HMRC this afternoon and approved by the Interim GAAR Advisory panel, [of which I was a member](#).

Those who think I'm wrong have clearly not read the GAAR guidance. The GAAR does, of course, only apply to tax arrangements that are considered abusive. I think this a weakness, but what is clear that this must embrace all the most artificial forms of tax avoidance: that is what the legislation and Guidance makes clear. And what [that Guidance](#), which will (unusually) have the power of statute behind it, also makes clear is that (para C8) is that:

The GAAR legislation includes a number of procedural innovations.

These include that:

it is explicitly provided that the tribunal or court must take into account the Parts of this Guidance which have been approved by the GAAR Advisory Panel at the time when the arrangements were entered into.

Parts A, B, C and D have all been approved by the Panel today. So, any court, of whatever status, up to and including the Supreme Court, will in future have no choice but read the GAAR Guidance to determine what precedents it may take into account when considering an issue and if the GAAR Guidance says they no longer apply then it must ignore them.

In this context the wording of Part B of the Guidance is crucial. [As I have noted](#), four legal precedents which between them have been the foundation of the UK tax avoidance industry are explicitly rejected by that Guidance, including the classic Duke of Westminster case of 1936. The Guidance says that the cases in question epitomise (Para B2.3 and 4):

the approach which Parliament has rejected in enacting the GAAR legislation. Taxation

is not to be treated as a game where taxpayers can indulge in any ingenious scheme in order to eliminate or reduce their tax liability.

Accordingly, it is essential to appreciate that, so far as the operation of the GAAR is concerned, Parliament has decisively rejected this approach, and has imposed an overriding statutory limit on the extent to which taxpayers can go in trying to reduce their tax bill. That limit is reached when the arrangements put in place by the taxpayer to achieve that purpose go beyond anything which could reasonably be regarded as a reasonable course of action.

What this quote explicitly means is that once this provision achieves Royal Assent the Duke of Westminster case becomes legal history in the UK. The right to tax avoid in any way the taxpayer pleases will then have been removed. And about time too.

I'm pleased to have played a part in achieving that goal.