The new General Anti-Abuse Rule panel is all from the t...

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Accountancy Age has noted that the new General Anti-Abuse Rule panel of independent experts has been appointed. All six are tax professionals. None come from civil society. None some to have a non-business background.

Why is this important? Simply because under the Rule as it has become law no one on the panel who now offer advice on the use of the Rule before an action can proceed may come from HMRC and none need sit in a judicial capacity. They must, however, be tax experts. And now, as predicted, it is clear that this means that the inevitable consequence is that this panel is drawn from the private sector tax profession and from the tax department's of big business and like it or not, (and without knowing anyone on the new panel) experience suggests that such people are likely to be more tolerant of tax avoidance than the population at large. Despite this the panel's task is to determine whether it is reasonable to think any scheme the Revenue wish to challenge is abusive or not. The consequence is that an incredibly select view of what is reasonable will be applied to any attempt to use the General Anti-Abuse Rule.

It is, admittedly, the case that the opinion of this panel will only be considered advisory, but given the status afforded to it the chance that HMRC would proceed with a case if even one member of the panel thought the taxpayer's actions reasonable, especially given that the taxpayer and any subsequent appeal hearing will have to be told this, is very low indeed. This does in effect give any member of this panel the chance to veto any action to stop tax abuse. The chance that HMRC will take the risk of being found to get their judgement on this issue wrong very often is also very low, so they will as a result be very risk averse in making any decision to use the Rule and risk seeking a ruling from the panel. In that case the structure of and power afforded to this panel is a clear obstacle to the effectiveness of the General Anti-Abuse Rule.

The moral is a simple one: you can't outsource the operation of tax law but the General Anti-Abuse Rule, and that is why it will have to be replaced.