Funding the Future

It's time for Labour to make a fuss on tax avoidance

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Polly Toynbee's written this in the Guardian this morning:

Now is the time for Labour to make a lot more noise on tax avoidance. Osborne will claim a clamp-down on Thursday which the TUC exposes as puny. His general anti-avoidance rule will let 99% off the hook — Amazon, Google, npower, Starbucks and the rest. The word is that Balls is none too keen on business-bashing. But post-crash, times have changed and the public doesn't think it's Marxist to rein in bankers' pay or stop tax avoiders.

Polly is undoubtedly right on this issue. Tax avoidance is now the number 1 business ethics issue and that gives real resonance to the TUC report, which is here - and I should make full disclosure that I wrote it.

As I said in it:

In our opinion the UK needs a General Anti-Tax Avoidance Principle. Two words differentiate what we want from what the government is delivering in 2014, but they are critical. The first is that we want to tackle tax avoidance and not just tax abuse. The second is that we want a principles based approach to tax avoidance, and not a rules based one. Both points are fundamental, but there are other pragmatic reasons for thinking that the General Anti-Abuse Rule will simply not deliver the clamp down on tax avoidance that the government claims for it.

The difference might be found between the EU demand that member states have what is in effect a general anti-avoidance principle and the UK's General Anti-Abuse Rule. The EU says:

An artificial arrangement or an artificial series of arrangements which has been put into place for the essential purpose of avoiding taxation and leads to a tax benefit shall be ignored. National authorities shall treat these arrangements for tax purposes by reference to their economic substance.

This reference to economic substance is key: the logic here is of tax compliance that I

have long defined as seeking to pay the right amount of tax (but no more) in the right place at the right time where right means that the economic substance of the transactions undertaken coincides with the place and form in which they are reported for taxation purposes. The EU was, I think, influenced by that thinking.

The UK General Anti-Abuse Rule on the other hand tackles:

arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions.

And as it says, such arrangements must be abusive to be countered, and it adds

ï,· whether the arrangement can be considered a reasonable course of action in relation to the relevant tax provisions;

ï,· comparing the substantive results of the arrangements with that which might be expected based on the principles on which the relevant tax provisions are based, and with the policy objectives of those provisions;

ï,· seeing whether there are contrived or abnormal steps in the arrangement;

ï,· seeing whether the arrangements are intended to exploit any shortcomings in the relevant provisions; and

ï,· the 'double reasonableness' test — i.e. whether the arrangements cannot reasonably be regarded as a reasonable course of action.

This is deliberately defined as a high bar to cross - and for all practical purposes the General Anti-Abuse Rule panel, made up of tax practitioners has also to agree that it has been crossed before it can be used, which is going to make it exceptionally unlikely in practice. And just to add insult to injury, the GAAR cannot be used in international cases according to the UK, although the EU flatly contradicts this.

No wonder people will get angry.

And no wonder Polly Toynbee thinks the Coalition have left a barn door open for Labour, who are already keen on developing the GAAR into something useful.

I look forward to that happening.