

# Scotland has a General Anti-Avoidance Rule

Published: January 13, 2026, 7:11 am

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One aspect of the passing of the Revenue Scotland and Tax Powers Act by the Scottish parliament last week was that Scotland has something to which the rest of the UK can only, as yet, aspire, which is a General Anti-Avoidance Rule. We only have the second rate General Anti-Abuse Rule (and I say that as someone who helped draft the guidance on it). The difference in wording in the title is important in meaning and intent.

[Sections 57 and following of that Act](#) create the new Rule, which has welcome developments within it when compared to the rest of the UK anti-abuse rule on which it is based. The most obvious of such developments is the effective abolition of the absurd 'double reasonableness' test that the rest of the UK rule uses and the fact that there is no GAAR advisory panel in Scotland whose members in the rest of the UK are drawn from the tax profession, which facts makes use of the rule very unlikely in England Wales and Northern Ireland. In Scotland it will simply be for Revenue Scotland to decide if avoidance subject to the Act has taken place and if a taxpayer does not like the fact for them to challenge it in Tribunal, just as it should be. The wording used is precise, clear and makes it obvious where the responsibility lies:

*A designated officer may give a notice under section 63 or 64 where the officer considers that a tax advantage might have arisen to the taxpayer.*

I welcome that.

However, that does not mean that the new rule contains all desirable features such a Rule should incorporate, and [which were reflected in my own draft for such a Rule](#). It is still missing a clearance system and a proper arrangement for penalties to be imposed for taking the chance of running foul of the GAAR.

The Scottish GAAR is a step forward, but bolder steps still need to be taken in the Rest of the UK to deliver a proper GAAR. And if Scotland wanted to provide taxpayers with certainty it should deliver a clearance system, for a fee, of course.