

Another view on Diverted Profit Tax

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David Quention has now contributed to the debate on the Diverted Profit Tax (DPT) [in a new blog published last night](#). I think his commentary, as always, well worth reading. I admit I had the chance to discuss his thinking with him before the blog was published and, as is obvious, we do not entirely agree.

The nub of David's argument is, I think, political. He views the DPT as a General Anti-Avoidance Rule and that, with the inbuilt penalty of a 25% rather than a 20% tax rate, it will work as such as companies will restructure to avoid it. Therefore, like all GAARs it has to be widely drafted and more coercive than actually effective. It also needs, if possible to avoid actually being litigated because when a GAAR is litigated it might be shown to be ineffective, at which point it loses its bite.

I agree with that to a fair degree. My point is that I think GAARs are the direction in which the OECD will travel on this issue and if they are it is better to wait to make sure that coordination is achieved and that it would also be better that this be addressed by extending the YK's existing General Anti-Abuse Rule that Labour has already promised to address because it is too weak.

But I recognise the politics of this: the Tories have realised, rather late in the day, that cutting taxes does not in any way end tax avoidance. That only shows their naivety. Now they're trying to shore up the tax base whichever way they can. Labour faces the dilemma that it might never have been able to introduce a measure as tough as this. My argument remains that it could do so in 2016 now by saying it supports this measure but only if it is not enacted until the BEPS proposals are known.

And in that possibility there is also a way forward. Labour will have leverage on this issue in the dying days of this parliament. Maybe it should let this measure hit the statute book. But its operative date should be 1 April 2016, not 1 April 2015. What that means is companies have time to take action to avoid it, so it becomes a more effective GAAR if that is the intention, and the OECD can also say what it is doing and the UK can modify or enact something better by 2016 if that is desirable.

Going down this route may create the necessary threat of action of BEPS fails whilst providing the compromise that gives it the chance to do so.

The debate remains open, in other words.