Funding the Future

The UKâ€™s already relaxed its laws preventing tax...

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The UK government marked Brexit and its new ability to legislate without bothering to consult Parliament, or anyone else come to that, to announce changes that relax rules on preventing tax abuse last night. As tax lawyer Dan Neidle, who us no friend of tax justice, noted on Twitter:

https://twitter.com/danneidle/status/1344719737301950469?s=27

None of the following tax abuse arrangements, excepting item D, now have to be reported to HMRC, when that was required yesterday:

An arrangement will be reportable if it meets at least one of the Hallmarks. For Hallmark categories A, B and certain elements of category C, an arrangement will only be reportable if it is also captured by the so-called 'Main Benefit' test. This test means that one of the main objectives of the arrangement is to obtain a tax advantage.

"The five Hallmark categories are the following:

Category A — Generic hallmarks linked to the main benefit test: arrangements that give rise to performance fees or involve mass-marketed schemes.

Category B — Specific hallmarks linked to the main benefit test: this includes certain tax planning features, such as buying a loss-making company to exploit its losses in order to reduce tax liability. Another example would involve arrangements aimed at converting income into capital in order to obtain a tax benefit.

Category C — Specific hallmarks related to cross-border transactions; some of these hallmarks are also subject to the main benefit test: for example, deductible cross-border payments between associated enterprises where the recipient is essentially subject to no tax, zero or almost zero tax. Another hallmark is about deductions for the same depreciation on an asset claimed in more than one jurisdiction.

Category D — Specific hallmarks concerning the automatic exchange of information and beneficial ownership: an arrangement is reportable if it has the effect of undermining the rules, or the absence thereof, on beneficial ownership or Directive 2014/107/EU or

any other equivalent agreement on automatic exchange of financial account information.

Category E — Specific hallmarks concerning transfer pricing: these include the use of unilateral safe harbours; the transfer of hard-to-value intangible assets when no reliable comparables exist and the projection of future cash flows or income are highly uncertain.

What is the net outcome? Macfarlanes argue very little has changed because these arrangements had to already be reported in UK law under the 2004 Disclosure of Tax Avoidance Schemes (DOTAS) arrangements. I admit I do not agree. I think these measures added clarity that has now been lost as a result of this appeal, and that loss will always permit abuse.

More important though is the timing and subliminal messaging attached to the measure, because this leaves no doubt as to the future attitude to be adopted to this issue. It is clear that the aim is to indicate that the UK is, at the very least, to now be considered a ‘light touch’ regime with regard to the investigation of international tax abuse arrangements. This is deeply troubling.

It would appear that the creation of Singapore-on-Thames is now the intention of the government. The UK clearly wishes to become an even bigger tax haven than it already is, and a pariah state on the world stage. This is very bad news indeed for tax justice, the cause of beating global tax competition that is dedicated to undermining the right of the democratic state to tax, and to fair markets that require a level playing field in tax. It also sends a terrible signal to Brussels. I do wonder how long it will be before retaliatory measures will be considered if the UK is dedicated to heading down this path. It’s a dreadful start to this new relationship.