

Briefing Note

General Anti-Abuse Rule (GAAR)

The Government raised the prospect of a general anti-abuse rule (GAAR) in the June 2010 Budget. Following a report by Graham Aaronson Q.C. in November 2011 and a Government consultation document in June 2012, a revised form of the GAAR legislation was published in December 2012.

What is the GAAR?

The GAAR is part of the Government's strategic approach against tax avoidance. There are various different terms used in this context, not always accurately. These include:-

- tax evasion. This is a criminal offence and involves, for example, deliberately not disclosing income or capital gains that ought to be taxable;
- "abusive" or "aggressive" tax avoidance. This is not a criminal offence, but generally involves convoluted transactions which take advantage of "loopholes" in tax legislation. Although these schemes sometimes fit the letter of the law they generally do not meet the spirit of what was intended by parliament when tax legislation was enacted; and
- tax mitigation or non-aggressive tax avoidance. Again, this is legal and unlike abusive or aggressive tax avoidance, is seen as forming the "centre ground" of "responsible" tax planning. This type of planning generally makes use of sensible structuring in order to obtain available reliefs or to organise transactions in a tax efficient way.

The GAAR is designed to tackle the second category of "abusive" or "aggressive" tax avoidance.

How will the GAAR work?

- The draft legislation provides that if there are "tax arrangements" that are "abusive" the tax advantage that would arise from the arrangements may be counteracted by HMRC making reasonable adjustments to the tax outcome of the arrangements.
- "Tax arrangements" include circumstances where it would be reasonable to conclude that obtaining a tax advantage was the main purpose, or one of the main purposes of the arrangements.

- Tax arrangements are “abusive” if there arrangements which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provision. This is the so called “double reasonableness” test. Circumstances that might suggest an arrangement is “abusive” include (but are not limited to):
 - whether the result of the arrangement is consistent with the principles set out in particular tax legislation;
 - whether achieving the result of the tax arrangement involves one or more contrived or abnormal steps; and
 - whether the arrangements are intended to exploit any shortcomings in the tax code.
- In order to counteract the tax advantages, HMRC must refer the matter to an Advisory Panel which is intended to operate at arm’s length from HMRC. The Advisory Panel is also to publish guidance as to how the GAAR is to operate in practice.

What taxes will the GAAR cover?

The GAAR will have effect in respect of the following taxes:-

- income tax;
- corporation tax;
- capital gains tax;
- inheritance tax;
- stamp duty land tax; and
- petroleum revenue tax.

The GAAR will not apply to VAT which has its own detailed anti-avoidance code and procedure.

What type of arrangements might be caught by the GAAR?

This is the big question. The Aaronson Report and consultation documents indicate that the GAAR is intended to apply only to “abusive”, “egregious”, or “contrived” tax avoidance arrangements. “Sensible” “middle ground” tax planning is not intended to be caught. The so called “double reasonableness” test referred to above, is intended to provide a degree of protection for these types of planning. However, there is a concern that the GAAR could apply to tax planning arrangements that many view as straightforward and acceptable.

The Aaronson Report and consultation documents set out examples of the type of arrangements that are intended to be caught. The examples cited would certainly be considered to be very aggressive and contrived, but it would be helpful to have seen examples on planning arrangements that might be closer to the line.

When will the GAAR take effect?

The implementation date for the GAAR has been postponed from 6th April 2013 to the date on which the Finance Act 2013 obtains Royal Assent (likely to be summer 2013). Transactions completed before that date will not be caught by the GAAR. Accordingly, it will be sensible for tax planning arrangements, where possible, to be completed before that date. As ever, professional advice should be taken on tax planning arrangements to determine whether they are likely to be caught by the GAAR.

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This note is intended as a brief summary of the General Anti-Abuse Rule (GAAR) as of December 2012. Legislation is subject to change. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. Should you require further advice please contact your usual contact at Turcan Connell or Tom.Duguid@turcanconnell.com.

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