

General Anti-Abuse Rule (GAAR)

Please note that the questions at the end of each section are summarised at the end of this article. Please email the questions with your answers and comments to consultation@aat.org.uk by **13 August 2012**

Introduction

The Government is proposing to introduce a General Anti-Abuse Rule (GAAR) to tackle abusive tax arrangements. This follows on from an independent report led by Graham Aaronson QC which concluded that, *“introducing a moderate rule which does not apply to responsible tax planning, and is instead targeted at abusive arrangements, would be beneficial for the UK tax system”*.

The purpose of the GAAR is to tackle abusive tax arrangements while maintaining the attractiveness of the UK as a location for genuine business investment.

Scope of the GAAR

The GAAR aims to target artificial and abusive tax avoidance schemes which, because they are often complex and/or novel, could not have been contemplated directly when formulating the tax legislation.

The Government proposes that the GAAR should initially apply to the following taxes:

- Income Tax
- Corporation Tax (including taxes linked to Corporation Tax, such as the Bank Levy)
- Capital Gains Tax
- Petroleum Revenue Tax
- Inheritance Tax
- Stamp duty land tax
- [the new tax on ownership of high-value residential properties or dwellings to be created by FA 2013].

Question A - Do you agree that the GAAR should be limited to these taxes and duties initially?

Target of the GAAR

The target of the GAAR is abusive tax arrangements where:

- a “tax arrangement” is an arrangement where it would be reasonable to conclude that the main purpose or one of the main purposes is to obtain a tax advantage
- a tax arrangement is “abusive” if it cannot reasonably be regarded as a reasonable course of action with regard to all the circumstances (double reasonable test).

Question B – Do you agree that the above legal meanings for “abusive” and “tax arrangements” are appropriate for the GAAR to work? Or do you believe that tax is an arbitrary construct to which the reasonableness test cannot be applied?

Tax advantage

If the arrangement is found to be an abusive tax arrangement, then the tax advantages arising are to be counteracted on a just and reasonable basis, where:

A “tax advantage” includes:

- *relief or increased relief from tax*
- *repayment or increased repayment of tax*
- *avoidance or a reduction of a charge to tax or an assessment to tax*
- *avoidance of a possible assessment to tax*
- *a deferral of a payment of tax or an advancement of a repayment of tax*
- *avoidance of an obligation to deduct or account for tax.*

Question C – Do you agree with the principle and basis for counteracting the tax advantage?

The Advisory Panel

As a taxpayer safeguard, the consultation document is proposing, an Advisory Panel, to provide a quick and cost-effective way of helping taxpayers and HMRC identify the borderline of where the GAAR applies. The report led by Graham Aaronson QC recommended that the Advisory Panel would operate on an advisory basis and its opinions would not be binding on the taxpayer or HMRC.

Question D – Do you have any comments on the proposals relating to the Advisory Panel?

Double Taxation Agreements (DTA)

The Government is proposing that the GAAR should apply to artificial and abusive arrangements where UK tax advantages have been obtained through rights or benefits under any DTA.

The consultation document notes that some views have been expressed that if the GAAR were to dis-apply the effect of DTAs, this would conflict with the UK's duty to abide by the terms of its agreements with other countries. However, the Organisation for Economic Co-operation and Development commentary on the Model Tax

Convention paragraph 9.4 of the OECD commentary on Article 1 of the Model Tax Convention confirms that:

States do not have to grant the benefits of a double taxation convention where arrangements that constitute an abuse of the provisions of the convention have been entered into.

Question E - Do you agree that the GAAR should be capable of counteracting UK tax advantages obtained under double taxation agreements?

De-minimis

The AAT had previously suggested to HMRC that a de-minimis clause should be added in order to avoid this legislation being used inappropriately in areas to which it was not intended.

Question F – Do you agree with the AAT’s suggestion that the GAAR should include a de-minimis clause?

Concluding questions

Question G - Do you agree with the purpose of the GAAR which is to tackle abusive tax arrangements?

Question H - Do you agree with the purpose of the GAAR but disagree with the introduction of the GAAR itself? For example you may prefer to see better legislation that is objective and perhaps more prescriptive (without the need for Extra Statutory Concessions or Targeted Anti-Avoidance Rules) that the courts can enforce against schemes that are perceived to be abusive and contrived.

Please email the questions with your answers and comments to consultation@aat.org.uk by **13 August 2012**

Please note that the AAT will consider all answers and comments, however, the AAT will need to use its discretion in order to provide a cohesive response to possibly a diverse range of views from the membership.

Summary of Questions

Question A - Do you agree that the GAAR should be limited to these taxes and duties initially?

Question B – Do you agree that the above legal meanings for “abusive” and “tax arrangements” are appropriate for the GAAR to work? Or do you believe that tax is an arbitrary construct to which the reasonableness test cannot be applied?

Question C – Do you agree with the principle and basis for counteracting the tax advantage?

Question D – Do you have any comments on the proposals relating to the Advisory Panel?

Question E - Do you agree that the GAAR should be capable of counteracting UK tax advantages obtained under double taxation agreements?

Question F – Do you agree with the AAT’s suggestion that the GAAR should include a de-minimis clause?

Question H - Do you agree with the purpose of the GAAR but disagree with the introduction of the GAAR itself? For example you may prefer to see better legislation that is objective and perhaps more prescriptive (without the need for ESCs or TAARs) that the courts can enforce against schemes that are perceived to be abusive and contrived.

For more information:

[A General Anti-Abuse Rule \(consultation document\)](#)

[Report by Graham Aaronson QC, published 21 November 2011](#)

[Background information on GAAR](#)