UK200Group tax

talking tax

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GAAR and why I think it should be welcomed!...

I welcome the proposed introduction of a general anti avoidance rule (GAAR) from April 2013 as announced in the March 2012 Budget.

This may seem an odd or even worse provocative statement for a tax adviser to make, so let me explain further. There are numerous charges that can be levelled against a GAAR of which the most serious is unfairness and it is to be hoped that the majority of these can be dealt with in the forthcoming consultation process. My ideal of the GAAR is that together with the planned reduction in the top rate of income tax to 45% it will bring normality back to the world of tax planning.

The 50% tax rate has created a psychological barrier for individuals with higher incomes facing the loss of over half of that income in tax if it also attracts a national insurance liability (let's face it, national insurance is a tax, as the Budget proposal to align it more closely with income tax recognises). Some have confronted my imaginary barrier by looking at more aggressive tax avoidance structures, which although falling within the letter of the law have a distinct whiff of artificiality about them.

Perhaps I am taking the wrong approach; after all I could earn a large fee for recommending and implementing such a structure and another for handling the HMRC enquiry that I consider a likely consequence of my client adopting an aggressive anti avoidance approach. I am afraid that I would regard creating a muddle so I could benefit from sorting it out as, to quote from George Osborne's speech "morally repugnant". When I also heard the Chancellor place the blame for the numerous anti avoidance schemes that are draining the Treasury's coffers on accountants, I felt my profession was being unfairly slurred and had an impulse to scream at the radio "I'm not one of those!"

As part of my professional duty to my client I should ensure that he or she pays as little tax as possible; after all I have never met a client who has asked me to help them increase their tax bill! The oft quoted words of Lord Tomlin in the Duke of Westminster case back in 1936 which are used to justify tax avoidance are in my view still appropriate, but I doubt his Lordship intended this to justify something which is artificial or not commercial. Tax is an important consideration in any financial transaction, business or personal and that to me is where I exercise my skills such as they are as a tax practitioner in minimising the liability that arises so that the net of tax result to my client is as high as possible.

The critics of a GAAR will highlight its unfairness and I am afraid that is an inevitable consequence of a catch all piece of legislation. However is it fair that a taxpayer who operates within what I consider the Lord Tomlin guidelines to pay more tax than one who participates in an anti avoidance scheme and pays considerably less tax because HMRC do not have the resources to adequately challenge the legitimacy of the scheme and end up doing a deal that is favourable to the taxpayer merely to collect some tax.

Our role as tax practitioners in the consultation period is clear; we are going to have a GAAR from April 2013 so we must ensure that the obviously unfair and unworkable elements are eliminated from the final legislation. I am quite clear on how I want my role as a tax adviser to be going forward, which is to use my knowledge of "the appropriate acts" as Lord Tomlin described them, to ensure my clients pay as little tax as is legitimately possible. I want to be proud of my profession, rather than be regarded as associated with something that is "morally repugnant". A GAAR that clearly defines what is and is not acceptable will in my view aid that aim.

These views are my own and as I said at the start they may be controversial and even derided. I will be interested to see the responses, if any, I receive and whether I have gauged the mood of the majority of accountants and tax advisers correctly.

About the author ...

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UK200Group Talking Tax Q & As – March 2012

Members of our Tax Panel each month look at issues they have come across and share these with members and readers of UK200Group's Talking Tax.

This month's Q & As supplied by Terry Jordan of BKL Tax

INHERITANCE TAX (IHT) Post Budget…

Q Were any IHT changes announced in the Budget?

A Purchases of certain interests in "excluded property" trusts are to suffer a 20% entry charge and, going forward, will rank for ten-year and proportionate or "exit" charges. (A number of practitioners thought that planning had already been blocked!)

Q What about the nil rate band?

A It is fixed at £325,000 through to 5 April 2015 and will then increase in line with the CPI.

Q Has planning for non-UK domiciles been affected by the Budget measures?

A The penal 15% SDLT charge on "enveloping" residential property worth more than £2m is likely to deter non-UK domiciles from shifting the situs of such properties by the use of a non-UK company. In addition, it is proposed that there should be an annual charge on such properties owned by non-natural persons and that CGT should be charged on the disposal of residential property owned by non-UK, non-natural persons, with those measures likely to be implemented from 6 April 2013.

Q Was there any good news?

A Consideration is to be given to increasing the £55,000 spouse/civil partner exemption where the transfer is from a UK domicile to a non-UK domicile and whether it should be possible for a person to elect to be treated as UK domiciled for IHT purposes. (Turkeys voting for Christmas comes to mind as, on the face of it, worldwide assets would potentially be brought into charge.)

Q Is that it?

A Consideration is to be given to simplifying the (often Byzantine) calculations of ten-year and proportionate or "exit" charges that apply to relevant property trusts.

For further information on any of the above …

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UK200Group Tax Panel members are renowned for their depth of knowledge and can advise on all areas of taxation with special expertise and experience of multinationals, UK companies, privately-owned organisations, sole traders, family businesses, trusts, partnerships and private individuals. Straight forward general enquiries will be dealt with quickly and free of charge. More complex specific client enquiries may require a fee charge which will be discussed and agreed by both parties prior to any work being undertaken. Tax enquiries can be posted to www.uk200group.co.uk members' home page under Specialist Panels, Tax Panel Newsgroup. The Centre is alerted to all enquiries posted on the UK200Group web site.

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