

# General Anti-Tax Avoidance Principle Bill

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**B I L L**

TO

Introduce a principle that any financial arrangements made by a company or individual should not have as their primary purpose the avoidance of tax; to establish a statutory rule to apply in the assessment of such arrangements; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1 General anti tax-avoidance principle**

- (1) This Act has effect for the purpose of counteracting tax advantages arising from tax arrangements that are considered to embrace tax avoidance.
- (2) The principles included in this Act are collectively to be known as “the general anti-tax avoidance principle”. 5
- (3) The general anti-tax avoidance principle applies to the following taxes—
  - (a) income tax,
  - (b) corporation tax, including any amount chargeable as if it were corporation tax or treated as if it were corporation tax,
  - (c) capital gains tax, 10
  - (d) petroleum revenue tax,
  - (e) inheritance tax,
  - (f) stamp duty land tax,
  - (g) national insurance,
  - (h) value added tax, and 15
  - (i) any tax on ownership of high-value residential properties or dwellings created in a Finance Act passed in 2013.

**2 Meaning of “tax arrangements”**

- (1) Arrangements are “tax arrangements” if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax 20

advantage as a result of tax avoidance was the main purpose, or one of the main purposes, of the arrangements.

- (2) Arrangements are not tax arrangements if—
- (a) the arrangement was specifically permitted by legislation or regulation relating to any of the taxes referred to in section 1(3) or is clearly consistent with principles on which the taxes referred to in section 1(3) are based whether express or implied, or 5
  - (b) the advantaged party shows that the arrangement was neither designed nor carried out with the intention of achieving a tax advantage and that no step or feature was included in or omitted from it with that intention. 10

### 3 Meaning of “tax avoidance”

- (1) Arrangements represent “tax avoidance” if, having regard to all the circumstances, it would be reasonable to conclude that tax is not paid—
- (a) by the right person, or 15
  - (b) at the right time, or
  - (c) in the right place, or
  - (d) under the charging provisions of the right tax, or
  - (e) at all when it would appear right that it was due, or
  - (f) in any combination of the circumstances noted in (a) to (e). 20
- (2) In subsection (1) an arrangement is considered “right” when the economic substance of that arrangement giving rise to a potential charge to tax under any one or more of the taxes referred to in section 1(3) of this Act accords with the form in which that arrangement is declared for assessment for taxation purposes whether in the United Kingdom or elsewhere, with non-declaration of a potential charge to tax on the economic substance of a transaction in the United Kingdom as a result of the form adopted for its completion being considered a tax declaration for the purposes of this section. 25
- (3) For the purposes of subsection (2) the economic substance of an arrangement does not accord with the economic form in which that arrangement is declared for taxation purposes if having regard to all the circumstances— 30
- (a) one or more of the parties to the arrangement cannot reasonably have been included as a party to it without the securing of a tax advantage having been an objective;
  - (b) the contractual form of the arrangement cannot reasonably have been adopted without the securing of a tax advantage having been an objective; 35
  - (c) the location in which the arrangement is recorded as having occurred cannot reasonably have been decided upon without the securing of a tax advantage having been an objective; 40
  - (d) the timing of the arrangement cannot reasonably have been decided upon without the securing of a tax advantage having been and objective;
  - (e) the arrangement has as one or more of its objectives the declaration of a transaction for assessment under the provisions of one of the taxes referred to in section 1(3), or none of them, when declaration under the provisions of another of those taxes would seem more appropriate; 45
  - (f) the arrangement represents a transaction as relating to capital when it would appear to relate to income;

- (g) the arrangement represents a transaction as being income derived from capital when it would appear to be derived from the profits of a trade or employment,
  - (h) the arrangement appears to be without economic substance,
  - (i) the arrangement cannot be regarded as a reasonable course of action having taken into consideration –
    - (i) any relevant tax provisions,
    - (ii) the substantive results of the arrangements, and
    - (iii) any other arrangements of which the arrangements form a part; or
  - (j) any party to the arrangement has stated that an objective of structuring the arrangement in the form adopted was the securing of a tax advantage.
- (4) In subsection (3) “taxation purposes” includes –
- (a) any action required to comply with the obligations of any legislation or regulation relating to any of the taxes referred to in section 1(3) or their administration or assessment notwithstanding any deficiency or shortcoming in them that the arrangement is meant to exploit,
  - (b) any principles on which the taxes referred to in section 1(3) are based whether express or implied, and
  - (c) the policy objectives of the taxes referred to in section 1(3).

#### 4 Meaning of “tax advantage”

- (1) A “tax advantage” may be considered to have arisen for the purposes of this Act if –
- (a) the arrangement results in an amount of income, profits or gains for tax purposes that is significantly less than the amount for economic purposes,
  - (b) the arrangement results in deductions or losses of an amount for tax purposes that is significantly greater than the amount for economic purposes,
  - (c) the arrangement results in a claim for the repayment or crediting of tax (including foreign tax) that has not been, and is unlikely to be, paid,
  - (d) the arrangements involve a transaction or agreement the consideration for which is an amount or value significantly different from market value or which otherwise contains non-commercial terms,
  - (e) the arrangement results in an amount of income, profits or gains for tax purposes being assessed for tax purposes upon a person who appears to have less economic claim upon that income, profit or gain than another person who would have greater taxation liability due upon it if they were assessed to that income, profit or gain for tax purposes,
  - (f) the arrangement results in an amount of income, profit or gain being subject to a tax other than that which the economic substance of the arrangement would suggest appropriate with less tax being due as a result,
  - (g) the arrangement results in an amount of income, profit or gain being subject to tax assessment in a jurisdiction other than the United Kingdom when the economic substance of the arrangement would suggest that inappropriate whether or not more or less tax is due in that other place or not,

- (h) the arrangement results in a lower rate of tax being applied to the income, profit or gain than might otherwise have been the case,
    - (i) the arrangement results in tax being paid later than might otherwise have been the case,
    - (j) any combination of the circumstances referred to in paragraphs (a) to (i). 5
  - (2) Subsection (1) is not to be read as limiting in any way the cases in which tax arrangements might be giving rise to a tax advantage.
  - (3) A tax advantage may, without limitation, be indicated to have arisen by the existence of – 10
    - (a) relief or increased relief from tax,
    - (b) repayment or increased repayment of tax,
    - (c) avoidance or a reduction of a charge to tax or an assessment to tax,
    - (d) avoidance of a possible assessment to tax,
    - (e) a deferral of a payment of tax or an advancement of a repayment of tax, 15
    - (f) avoidance of an obligation to deduct or account for tax, and
    - (g) the passing of an obligation to make declaration of a liability to be assessed to tax to another party.
- 5 Counteracting the tax advantages**
- (1) If tax arrangements meeting the definition of section 2(1) of this Act are identified then the tax advantages arising from the arrangements are to be counteracted on a just and reasonable basis. 20
  - (2) The counteraction may be made in respect of each or any tax to which the general anti-tax avoidance principle applies.
  - (3) An officer of Revenue and Customs must make, on a just and reasonable basis, such consequential adjustments in respect of any tax to which the general anti-avoidance rule applies as are appropriate. 25
  - (4) These consequential adjustments –
    - (a) may be made in respect of any period, and
    - (b) may affect any person (whether or not a party to the arrangements) so long as they are connected to the party that has enjoyed the benefit of a tax advantage, such connection being as defined in section 993 of the Income Tax Act 2007. 30
- 6 Proceedings before a court or tribunal**
- (1) In proceedings before a court or tribunal in connection with the general anti-tax avoidance principle, HMRC must show – 35
    - (a) that there are tax arrangements that give rise to a tax advantage as a result of tax avoidance, and
    - (b) that the counteraction of the tax advantages arising from the arrangements is just and reasonable. 40
  - (2) In determining any issue in connection with the general anti-tax avoidance principle, a court or tribunal must take into account –
    - (a) explanatory notes that cast light on the objective setting or contextual scene of the specific Taxing Act or this Act;

- (b) the clear statements by a Minister or other promoter of the specific Taxing Act or this Act together if necessary with such other Parliamentary material as was necessary to understand such statements and their effect;
- (c) HMRC's guidance about the general anti-tax avoidance principle; 5
- (d) guidance, statements or other material (whether of HMRC, a Minister of the Crown or anyone else) that is in the public domain at the time the arrangements were entered into as to the principles on which the taxes referred to in section 1(3) are based whether express or implied, the nature of tax avoidance, and those matters considered to fall within section 2(2)(a) of this Act (on which matter HMRC shall issue periodic guidance); 10
- (e) evidence of established practice at that time; and
- (f) evidence as to the intent of the parties, irrespective of the outcome of the arrangements. 15

## 7 Application for clearance of transactions

- (1) A person may provide the Commissioners for Her Majesty's Revenue and Customs with particulars of a transaction or transactions effected or to be effected by the person in order to obtain a notification about them under this section. 20
- (2) If the Commissioners consider that the particulars, or any further information provided under this subsection, are insufficient for the purposes of this section, they must notify the person what further information they require for those purposes within 30 days of receiving the particulars or further information.
- (3) If any such further information is not provided within 30 days from the notification, or such further time as the Commissioners allow, they need not proceed further under this section. 25
- (4) The Commissioners must notify the person whether they are satisfied that the transaction or transactions, as described in the particulars, were or will be such that they ought not to be counteracted under the provisions of section 5 of this Act. 30
- (5) The notification must be given within 30 days of receipt of the particulars, or, if subsection (2) applies, of all further information required but subject to the conditions of subsection (6) having been met.
- (6) The person making application for a notification under this section shall – 35
  - (a) specify the amount of tax that they estimate might be due as a result of making the arrangement,
  - (b) specify whether that arrangement shall continue during the two year period following its commencement, and
  - (c) pay a fee in respect of the notification to be supplied under section (4) prior to that notification being supplied of not less than – 40
    - (i) £1,000, or
    - (ii) 5 per cent of the estimated tax due as a result of making the arrangement, whichever shall be the greater,
 such charge to be subject to Value Added Tax and to be due whether or not the requested notification can be supplied or not. 45

- (7) HMRC shall have power to substitute such other sum that they think appropriate for those sums notified under subsections (6)(a) and (b) if they think those estimates unrealistic.
- (8) If HMRC makes use of the powers in subsection (6)(d) they shall notify the person within thirty days of their intent to do so and provide their estimate of the tax that might be due under the arrangement with reasons stated, with the person having thirty days thereafter to appeal against the same or let their application lapse. 5
- (9) HMRC may publish their notifications issued under this section so long as the taxpayer's identity is anonymised. 10

## 8 Effect of clearance notification under section 7

- (1) This section applies if the Commissioners for Her Majesty's Revenue and Customs notify a person under section 7 that they are satisfied that a transaction or transactions, as described in the particulars provided under that section, were or will be such that no counteraction of section 5 of this Act ought to be taken in respect of the transaction or transactions. 15
- (2) No such action may then be taken in respect of the transaction or transactions.
- (3) But the notification does not prevent such action being taken in respect of transactions including not only the ones to which the notification relates but also others. 20
- (4) The notification is void if the particulars and any further information given under section 7 about the transaction or transactions do not fully and accurately disclose all facts and considerations which are material for the purposes of that section.

## 9 Power to obtain information 25

- (1) This section applies if it appears to an officer of Her Majesty's Revenue and Customs that a person may be a person to whom section 5 applies in respect of one or more transactions.
- (2) The officer may serve a notice on the person requiring the person to give the officer information in the person's possession about the transaction or, if there are two or more, about any of them. 30
- (3) That information must be information about matters that are relevant to the question whether counteraction should be taken.
- (4) Those matters must be specified in the notice under subsection (2).
- (5) That notice must require the information to be given within such period as is specified in it. 35
- (6) That period must be at least 30 days.

## 10 Interpretation

In this Act—

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), 40

“connected” is defined by section 993 Income Tax Act 2007,  
“the general anti-tax avoidance principle” has the meaning given by  
section 1,  
“HMRC” means Her Majesty’s Revenue and Customs,  
“notification” has the meaning given by section 7(1),  
“tax advantage” has the meaning given by section 4,  
“tax arrangements” has the meaning given by section 2(1),  
“tax avoidance” has the meaning given by section 3, and  
“taxes” has the meaning given to it by section 1(3).

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## **11 Financial provisions**

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*There shall be paid out of money provided by Parliament –*

- (a) *any expenditure incurred under or by virtue of this Act by a Minister of the Crown or a government department, and*
- (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.*

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## **12 Short title, commencement and extent**

- (1) This Act may be cited as the General Anti-Tax Avoidance Principle Act 2012.
- (2) This Act comes into force on the day on which this Act is passed.
- (3) This Act extends to England and Wales, Scotland and Northern Ireland.

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To introduce a principle that any financial arrangements made by a company or individual should not have as their primary purpose the avoidance of tax; to establish a statutory rule to apply in the assessment of such arrangements; and for connected purposes.

*Presented by Mr Michael Meacher,  
supported by  
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