The General Anti-Abuse Rule

Simon McKie examines draft legislation published in the June Condoc and outlines the implications for tax advisers

The Government intends to bring forward legislation in the Finance Bill 2013 to introduce what it calls a General Anti-Abuse Rule which it says is "…targeted at artificial and abusive tax avoidance"[1]. The proposal that the UK should enact a General Anti-Avoidance Rule (a GAAR[2]) has recurred regularly during my career in taxation[3]. The discussion of whether a GAAR would be harmful or beneficial is hampered by the lack of agreed definitions. A working definition, couched, as far as possible, in non-value-laden terms, is a rule under which transactions undertaken in accordance with a plan taking account of taxation are, if the plan is unacceptable, taxed so as to nullify the tax advantage that they would otherwise confer.

It can be appreciated at once, however, that this definition requires further definitions: of what is a 'plan', of how you determine the tax advantage which would otherwise be conferred by the arrangements and, most crucially, of what distinguishes unacceptable from acceptable tax planning.

Whatever definition has been used, proposals for the introduction of a GAAR into the UK tax system have, in the past, always foundered because, on examination, it has proved impossible to find any satisfactory definition of tax avoidance which distinguishes with reasonable certainty the tax planning that the Government deems unacceptable and is determined to frustrate from that which it is prepared to accept. For that reason, after due consideration, it has until now always been concluded that introducing such a rule would create considerable uncertainty as to the application of the tax system to common transactions – and would therefore be economically damaging to the country. It has also been concluded that in order to reduce that uncertainty, a comprehensive clearance system would be required, which would impose very large burdens on Her Majesty's Revenue & Customs (HMRC).

In December 2010 the Government asked the distinguished Queen's Counsel and specialist in revenue law Graham Aaronson to "…lead a study programme to establish whether a GAAR could be framed so as to be effective in the UK tax system"[4]. Aaronson duly reported in November 2011, and acknowledged that what he called "a broad spectrum General Anti-Avoidance Rule would not be beneficial for the UK tax system"[5]. He claimed, however, to have designed and drafted what he called "a specifically targeted anti-abuse rule" which would bring benefits that are "substantial and valuable"[6]. The report claimed that "an anti-abuse rule which is targeted at contrived and artificial schemes will not apply to the centre ground of responsible tax planning. Consequently, there will be no need for a comprehensive system of clearances, with the resource burdens that such a system would require"[7].

In the Consultation Document issued on 12 June 2012 (hereafter referred to as the June Condoc), the Government published draft legislation modelled on Aaronson's suggested rule, but with many of the safeguards for the taxpayer that he had suggested either omitted or reduced[8]. It seems clear that next year we shall have a GAAR and that it is not likely to vary significantly from the draft legislation published in the June Condoc.

The GAARs proposed both by Aaronson and by the June Condoc are actually broad form Anti-Avoidance Rules. Rebecca Murray has commented that Aaronson uses the term abuse in place of avoidance for "presentational purposes"[9]. Jon Richardson has compared the proposed GAAR with those that have been adopted in other jurisdictions, and concluded that "…despite the stated intentions that the proposed UK GAAR is to be more narrowly drawn, this does not appear to be the case … It looks very similar to other GAARs around the world in terms of its ambit"[10].

This article analyses the draft legislation published in the June Condoc and its implications for those providing taxation advice.

A statement of purpose?

Section 1(1) provides that:

> *"This Part [presumably the draft legislation will become a discrete Part of next year's Finance Act] has effect for the purpose of counteracting tax advantages arising from tax arrangements that are abusive."*

At first sight this might be mistaken for a statement of overall purpose in the light of which the courts are to construe the succeeding legislation. As we shall see, however, "abusive" is given its own highly specified definition, which bears little relationship to the use of the word in ordinary English. What is abusive, will, therefore, be determined in accordance with the detailed provisions of Section 2 that follow, rather than the ambit of Section 2 being restricted to those arrangements that can fairly be described as abusive as the term is understood in ordinary usage.

To what taxes will the GAAR apply?

Section 1(3) sets out the taxes in respect of which the rule is applied. They are all the major central, direct taxes[11].

The application of a GAAR to inheritance tax (IHT) poses particular difficulties because IHT applies to transactions which are by their nature non-commercial and intended to confer a gratuitous benefit, and involves arrangements which must operate over many decades. For this reason Aaronson had recommended that the GAAR should not apply to IHT[12] and the Government's decision that it should has been strongly criticised, both by the Chartered Institute of Taxation (CIOT)[13] and the Society of Trust and Estate Practitioners (STEP)[14] in their representations on the June Condoc.

Tax arrangements and the main purpose test

Section 2(1) provides that:

> *"Arrangements are 'tax arrangements' if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage was the main purpose, or one of the main purposes, of the arrangements."*

A tax advantage is defined in Section 3 as including:

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; and
f. avoidance of an obligation to deduct or account for tax.

Arrangements

For this purpose, "arrangements" include any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable)[15]. In the similar definition of arrangements for the purposes of the income tax provisions relating to settlements, the term arrangements has been held to be of very wide meaning[16]. It is likely that the court will take a similarly wide view of its meaning in the proposed GAAR.

It is clear that arrangements in this context can include a single transaction.

Tax arrangements

HMRC say in their June Condoc that the definition of tax arrangements in Section 2(1) "is not significantly different from the standard 'main purpose' rules embedded in some existing targeted anti-avoidance rules"[17]. That is certainly true. Section 2(1) is quite similar, for example, to the rules restricting the deductibility of allowable losses in TCGA 1992 s.16A. What the June Condoc does not say, however, is that such rules currently create great uncertainty in the areas of the tax system to which they apply[18] so that the use of a similar rule in a provision that will apply across the whole of the direct tax system will greatly increase uncertainty in the application of that system.

Although Section 2(1) is based on a familiar pattern, it still raises difficult areas of construction.

Objective or subjective?

First, the provision does not ask what are the purposes of the arrangements but whether "it would be reasonable to conclude" that one of their main purposes was of the required sort. It is sometimes suggested that this form of wording imports an objective element into the test. If, however, the main purposes of the arrangements do not include the obtaining of a tax advantage, in what possible circumstances could it be "reasonable to conclude" that they do? If they do, in what circumstances would it be reasonable to conclude that they do not? Surely only where one assumes a hypothetical person judging reasonableness who is not in possession of all the relevant facts. The section provides, however, that one is to have "regard to all the circumstances." So it is not clear why the draftsman has not merely provided that arrangements are tax arrangements if the obtaining of a tax advantage was one of their main purposes or their only main purpose.

Main purposes

Section 2(1) raises the difficult question of when a purpose is a main purpose. The *Oxford English Dictionary* defines "main" as "principal, chief, pre-eminent", and specifically in relation to "a quality, a condition, action, etc." as meaning "very great in degree, value, etc.; highly remarkable for a specified quality, very great or considerable of its kind." It should be clear from this definition that there can only be more than one main purpose of arrangements where the main purposes may all fairly be described as chief or as very great in degree or highly remarkable, etc. Where one purpose is of greatly more importance than all the others, the absolute pre-eminence of one purpose precludes any other purpose from being a main purpose[19].

Not a significant filter

Most tax-planning arrangements will be tax arrangements under this definition because the obtaining of a tax advantage will usually be one of the main purposes of such arrangements, particularly if the courts construe "main" in this context with the width with which it was construed in *Snell* v *HMRC*. In spite of this the June Condoc rejects "a narrow purpose test", because a purpose test "which is narrow enough to give certainty to taxpayers risks being circumvented by abusive schemes"[20].

The reasonableness test

Instead, the June Condoc relies on sub-sections 2–5 of Section 2 which determine whether tax arrangements are "abusive". It is these sub-sections that determine the scope of the rule and upon which depends whether it fulfils the Government's stated objective that the GAAR must "provide sufficient certainty about the tax treatment of transactions without resulting in undue costs for businesses and HMRC"[21].

Section 2(2–5) provides:

2(2) Tax arrangements are 'abusive' if they are arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action, having regard to all the circumstances including:
- *a. the relevant tax provisions;*
- *b. the substantive results of the arrangements; and*
- *c. any other arrangements of which the arrangements form part.*

2(3) In sub-section 2a the reference to the relevant tax provisions includes:
- *a. any principles on which they are based (whether express or implied);*
- *b. their policy objectives; and*
- *c. any shortcomings in them that the arrangements are intended to exploit.*

2(4) Each of the following is an indication that tax arrangements might be abusive:
- *a. the arrangements result in an amount of income, profits or gains for tax purposes that is significantly less than the amount for economic purposes;*
- *b. the arrangements result in deductions or losses of an amount for tax purposes that is significantly greater than the amount for economic purposes;*
- *c. the arrangements result in a claim for the repayment or crediting of tax (including foreign tax) that has not been, and is unlikely to be, paid; and*
- *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*[22].

2(5) Sub-section 4 is not to be read as limiting in any way the cases in which tax arrangements are regarded as abusive.

The structure of the reasonableness test

The reader will see that sub-section 2 provides the general rule for determining what tax arrangements are abusive, and sub-sections 3–5 supplement that general rule. You will also notice that none of the descriptions of the target of the rule used by the June Condoc or by Aaronson, such as "artificial tax avoidance schemes", "contrived and artificial schemes", "egregious tax

avoidance schemes", "highly aggressive schemes" or "egregious tax planning schemes", form part of the definition of "abusive" tax arrangements, and that abuse itself is not a feature of that definition.

Double or single?

Rather, the rule in sub-section 2 has been referred to as the "double reasonableness rule", referring as it does to "reasonably" and "reasonable". It is difficult to see, however, if one has "regard to all the circumstances" how a course of action that was unreasonable could "reasonably be regarded as reasonable", or how a course of action that is reasonable could "reasonably be regarded as unreasonable". That being so, surely the words "cannot reasonably be regarded as a reasonable course of action" could be simplified to "which are not a reasonable course of action" without any change of effect. There is, therefore, no double reasonableness requirement but simply a reasonableness test. Arrangements which are reasonable courses of action will not be abusive, and arrangements which are not, will be.

How is the taxpayer to determine what a court will consider to be reasonable?

All the circumstances

In determining reasonableness, one must have regard to all the circumstances and these will include items (a–c) listed in sub-section 2. It is unlikely that the things listed would not be included in "all the circumstances" in any event, so the list seems to have no practical effect. What the section does not tell us is how, in judging reasonableness, one is to have regard to the relevant circumstances.

Do the succeeding sub-sections provide any help in determining this?

Sub-section 3

Sub-section 3 provides an inclusive rather than an exhaustive definition of "the relevant tax provisions". It will extend the meaning of that phrase if the items listed would not in any event fall within it but it does not give any further guidance as to how having regard to the relevant tax provisions will effect whether arrangements are reasonable or not.

Sub-sections 4 and 5

At first sight, sub-section 4 does help in identifying abusive arrangements because it lists certain characteristics of tax arrangements that provide an indication that the arrangements "might be abusive". It cannot, however, restrict the class of arrangements which "cannot reasonably be regarded as a reasonable course of action" because of sub-section 5. What is more, it is not clear to what extent sub-section 4 extends the ambit of "arrangements" to arrangements which would not otherwise fall within Section 2(2) because the listed features are not indications that the arrangements are abusive but merely indications that they might be.

A judicial discretionary power

It is clear, therefore, that legislation does not provide a means of determining whether arrangements are reasonable, and therefore abusive, or not. What is a reasonable course of action within sub-section 2 – and therefore what are abusive tax arrangements to which the GAAR applies – will need to be determined by the courts developing a body of case law in future years. It is clear that the GAAR does not provide any principles by which the reasonableness or otherwise of a course of action can be determined. It is therefore a "broad spectrum general anti-avoidance rule" based upon a judicial discretion to determine reasonableness and thus is of a type that the June Condoc concedes would not be beneficial[23].

Counteracting tax advantages

Section 4 provides that where there are tax arrangements that are abusive and the procedural requirements of the relevant schedule have been complied with, the tax advantage arising from the arrangements are to be counteracted on a just and reasonable basis[24].

The counteraction may be made in respect of the tax in question or any other tax to which the GAAR applies[25]. 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 GAAR applies as are appropriate[26]. These adjustments may be made in respect of any period and may affect any person whether or not he is a party to the arrangements[27].

The schedule setting out the procedural requirements has not yet been published, even in draft form. It might be thought that, as Section 4(1) provides that the arrangements are to be "counteracted", it would have to be HMRC which initiates that counteraction. The June Condoc, however, says that:

> *"The Government's intention is that the GAAR should, as far as possible, operate within existing self-assessment regimes (where the relevant tax operates within such a regime). Tax recovered under the GAAR should be treated as tax which should have been self-assessed in the relevant return of the taxpayer, and all of the usual consequences of the self-assessment regime should follow."*[28]

So it appears that the intention is that the taxpayer should make a judgment in respect of his transactions as to whether his arrangements are abusive tax arrangements within Section 2 and, if they are, should self-assess making such counteraction as is just and reasonable. If the tax liability at which he arrives does not correspond to the tax liability finally determined, he will pay interest on any tax paid late and may be liable to penalties for careless or deliberate error[29].

The legislation, however, gives no indication of how a counteraction "on a just and reasonable basis" is to be determined. So here again is a very significant area of uncertainty in the legislation, where the taxpayer must guess at the judgment which will be made in the future by the court and which, if he guesses wrong, may expose him to considerable liabilities for interest and penalties.

Proceedings before a court or tribunal

The burden of proof

Section 5 makes provisions about proceedings before a court or tribunal in connection with the GAAR. Section 5(1) places the burden of proof on HMRC to show:

> *"a. that there are tax arrangements that are abusive, and*
> *b. that the counteraction of the tax advantages arising from the arrangements is just and reasonable."*

The formulation of (b) is rather odd. As we have said, the intention is that the GAAR will operate within the self-assessment system. It may be that a taxpayer, in completing his self-assessment, decides that some counteraction is necessary but that HMRC disagree with the amount or nature of the counteraction. To which counteraction does (b) refer? Common sense would suggest the counteraction for which HMRC contends, but nothing in the legislation says so. It should

surely have been formulated to provide that HMRC must show "what counteraction of the tax advantages arising from the arrangements is just and reasonable."

As we have seen, counteractions will include adjustments to other taxpayers' returns under Section 4(3). Once an assessment has become final, however, although HMRC may make further assessments in certain circumstances[30], apart from in respect of certain errors in a self-assessment[31], they have no power to reduce an assessment other than by agreement under TMA 1970, s.54 in respect of an appeal against an assessment. Without such an appeal an assessment may only be reduced on a claim by the taxpayer under TMA 1970 Sch1AB para. 1. The affected taxpayer, however, may have no knowledge of the circumstances that give rise to the need for a consequential adjustment because they involve the tax affairs of another person. Providing appropriate powers will require specific new legislative provisions which are yet to be.

Matters which the court or tribunal may or may not take into account

Section 5(2) provides that:

> "*In determining any issue in connection with the general anti-abuse rule, a court or tribunal must take into account:*
>
> *a. HMRC's guidance about the general anti-abuse rule that has been approved by the GAAR Advisory Panel, and*
>
> *b. any opinion of the GAAR Advisory Panel about the arrangements.*"

And Section 5(3) provides that it may take into account:

> "*a. 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, and*
>
> *b. evidence of established practice at that time.*"

Although a court must or may take account of these materials, the legislation provides no means of determining how they are to be taken into account. What is more, this requirement and permission is contained in a procedural section separate from the definition of abusive tax transactions in Section 2 and the counteraction provisions of Section 4. So it is clear that the materials cannot modify the test under Section 2 of whether the tax arrangements are "abusive", nor modify the concept of what is "just and reasonable" in Section 4. It is unclear, therefore, what the requirement in Section 2 and the permission of 5(3) add, except that Section 5(3a) at least makes it clear that the court may take account of Hansard materials which do not fall within the principle in *Pepper* v *Hart*[32].

The advisory panel

Unsatisfactory and incomplete constitution

In making his proposal for a GAAR, Aaronson placed great weight on the protection which he said would be offered by his proposal that there should be a GAAR advisory panel[33]. It is to this panel, that Section 5(2) refers. Section 7 provides that the GAAR advisory panel is to have the meaning given by a schedule which has not yet been drafted. The June Condoc, however, includes a discussion of the advisory panel in which it is clear that the Government proposes to create a panel with fewer resources, less independence and less control of its own output than that proposed by Aaronson, so that the proposed arrangements for the panel have been the subject of criticism by the CIOT[34].

Under the Government's proposals it is not clear whether or not the advisory panel will be a permanent body. On the one hand it is referred to in the singular but on the other the June Condoc says: "The advisory panel would draw its expertise from a range of individuals, who will not necessarily be the same on each occasion"[35].

Nothing in the document states that there will be a core permanent membership or a permanent chairman. It is to have members both from HMRC and from outside HMRC but the June Condoc does not expressly say that the members outside HMRC will be members independent of Government[36]. It is not clear whether the members of the panel will be remunerated or whether they will have any secretarial support that is independent of HMRC[37].

Reduced functions

Aaronson said that the advisory panel should have three key functions[38]. The first would be to provide an element of impartial supervision of the administration of the GAAR by HMRC, by providing opinions to HMRC and the taxpayer on the application of the GAAR to particular arrangements. That remains one of its functions under the June Condoc recommendations.

Its second function would be to build up a body of guidance based on anonymised summaries of its conclusions on particular arrangements, and the third would be to take responsibility for the publication of guidance on the GAAR. In this way, Aaronson hoped that the advisory panel would build up detailed principles over time to help the courts apply the reasonableness test. Aaronson's proposals were in themselves seriously inadequate but HMRC has not accepted the proposal that the panel should produce anonymised summaries of its decisions and it proposes that it should merely review HMRC guidance rather than being responsible for its drafting[39].

Administrative arrangements

The June Condoc proposes that a designated HMRC Officer would give written notification to a taxpayer where he considers that the GAAR may apply, inviting a written response. Presumably, that might be in response to a self-assessment return completed on the basis that the GAAR applies, which seems a rather roundabout way of approaching the matter. The taxpayer could then make a written response. If he did so, the designated HMRC officer would have to consider the response and, if he were still of the view that the GAAR "may apply", he must refer the matter to the advisory panel. The advisory panel would give its opinion to HMRC and to the taxpayer. That opinion would bind neither HMRC nor the courts.

What account must the court take of the panel's views?

We have seen that a court or tribunal would have to take into account any opinion of the GAAR advisory panel about the arrangements under consideration, but that the statute does not determine how it must take account of it. It appears that the court has an unrestricted discretion to prefer its own view to that of the advisory panel provided that it does take account of the panel's opinion in doing so. It is interesting that the advisory panel's opinion is not expressly one of the circumstances to which regard must be had in applying the reasonableness test under Section 2(2). It is also interesting that, although the burden of proving that the GAAR applies to a set of arrangements is imposed by the draft legislation on HMRC, the June Condoc envisages the advisory panel reaching a

neutral conclusion on the basis that it does not have enough information to determine whether the GAAR applies or not. One would have thought that, in that case, its conclusion should be that HMRC had not satisfied the evidential burden placed upon it and, therefore, that the GAAR did not apply.

An effective protection?

In practice, it appears that the arrangements in relation to the advisory panel will simply represent another procedure through which the taxpayer will have to pass on his journey to the tribunal, increasing costs and creating delay rather like reviews under TMA 1970 ss.49A–49I.

The relationship of the GAAR to other tax provisions

The GAAR is to be ignored in applying other legislative provisions relating to a tax to which the rule applies[40]. This presumably means that you first apply the law ignoring the GAAR and then make adjustments for counteraction under Section 4. Only time and experience of its operation will reveal whether this rule is adequate to do justice to all of the results of the counterfactual hypothesis involved in applying the GAAR.

What are the GAAR's implications for an adviser giving tax advice?

It is clear that neither Aaronson nor the parliamentary draftsmen have managed to solve the essential problem posed in formulating a GAAR – that of providing a sufficiently precise definition of the avoidance, which is its target to allow its application to be determined with reasonable certainty. Rather, the draft legislation leaves the court to decide what is a reasonable course of action without providing the principles by which what is reasonable may be distinguished from what is unreasonable. In effect, the proposal amounts to conferring a discretionary power on the courts to distinguish unacceptable tax planning from acceptable, and to penalise it. Perhaps over many years the courts will develop a set of principles to remedy the legislation's lack. But in doing so they will be left with the very same problem that Aaronson and the Government have been unable to solve: what distinguishes unacceptable tax planning from acceptable?

Although it is clear that the proposals will introduce considerable uncertainty in the application of taxation across the whole range of direct taxes, it is equally clear that the Government will proceed with this proposal largely in the form proposed by the June Condoc. How is the adviser to advise his clients in these circumstances?

Although it is not possible to define tax avoidance with statutory precision, there are many tax-planning schemes which one can recognise as being of a sort likely to raise the hostility of HMRC and the courts. Such tax planning rarely succeeds in the courts in any event and the adviser will be able to advise his clients of the extreme improbability of its being successful in the future.

In respect of most routine tax planning, however, he will not able to say, with any high degree of probability, whether the GAAR will or will not apply, at least until a sufficient body of case law has built up to allow greater predictability. Almost all tax-planning advice in the future must come with the caveat that the GAAR might apply to it. It is unlikely that HMRC's guidance will be of much use in identifying the dividing line between arrangements that HMRC will regard as falling within the GAAR and those that they will not. Such guidance is rarely drafted with precision. On the contrary, it is usually deliberately vague and full of caveats. No doubt advisers will lay off the risk resulting from the GAAR's uncertainty by frequently referring to counsel on the issue. Sensible counsel, however, will themselves be wary of giving unqualified opinions on the matter and one would not be acting in the interests of a client if one took an opinion from a less than cautious counsel simply to protect oneself from a professional negligence action.

So, the difficulties for those offering tax-planning advice from the introduction of the GAAR will be very real. In practice HMRC, because they have committed themselves to the assertion that the GAAR will apply only to artificial and abusive schemes[41], are likely, at first, to hold it in terrorem, to apply only to those arrangements and taxpayers whom they are determined to defeat. As time goes on, however, HMRC are likely to find such a powerful and indiscriminate weapon too great a temptation to confine to a narrow target and to use it in respect of an ever-expanding class of ordinary tax-planning arrangements. ■

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Endnotes

1. Foreword to the Consultation Document entitled 'A General Anti-Abuse Rule' published on 12 June 2012. The document is hereinafter referred to as the June Condoc.
2. In this article, GAAR is used to indicate general anti-avoidance rules, and the rules which Aaronson and the June Condoc have dubbed "General Anti-Abuse Rules".
3. Before the present review, the most recent proposal was made in a Consultation Document issued on 5 October 1998 entitled 'A General Anti-Avoidance Rule for Direct Taxes: a Consultative Document'.
4. A report by Graham Aaronson QC entitled 'A study to consider whether a general anti-avoidance rule should be introduced in the UK tax system', hereinafter called the Aaronson Report, para. 2.1.
5. Aaronson Report, para. 1.5.
6. Aaronson Report, para. 1.8.
7. Aaronson Report, para. 1.7.
8. June Condoc, Annex D. In spite of this, in a letter and supplementary report submitted to the Exchequer Secretary, David Gauke, on 27 June 2012 (the 'Aaronson June 2012 letter'), Aaronson said that his study group agreed that "the [June Condoc] draft GAAR embodies all of the main principles which we consider need to be incorporated in, and to form the framework of, a GAAR that would be appropriate for the United Kingdom."
9. *Tax Avoidance* by Rebecca Murray (2012), Sweet & Maxwell, p. 14.
10. *Tax Journal* dated 29 June 2012. Article entitled 'Analysis – Special Focus – the Proposed GAAR'.
11. Income tax, corporation tax, including any amount chargeable as if it were corporation tax or treated as if it were corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, stamp duty, land tax and the new tax on ownership of high-value residential properties or dwellings to be created by FA 2013. Similar provisions are to be introduced in respect of National Insurance contributions.
12. After the June Condoc was published, however, in the Aaronson June 2012 letter, Aaronson said that his study group "are quite happy to see the scope of the GAAR extended in this way", although he reiterated that "areas of taxation such

as trusts can create particular difficulties …", but he did not give a reason for his change of view.

13. 'A General Anti-Abuse Rule: response by the Chartered Institute of Taxation and Association of Taxation Technicians', dated 13 September 2012 (hereinafter referred to as the CIOT Submission), para. 4.6.
14. The Society of Trust and Estate Practitioners' paper entitled 'A General Anti-Abuse Rule: Comments on Consultation Document issued on 12 June 2012 (published September 2012)', hereinafter referred to as the STEP Submission, page 1.
15. June Condoc, Section 7.
16. See, for example, *Burston* v *CIR* (No 1); *Halperin* v *CIR* KB [1945] 2 All ER 61; *CIR* v *Prince-Smith* KB [1943] 1 All ER 434; *Young* v *Pearce*; *Young* v *Scrutton ChD* [1996] STC 743; *CIR* v *Pay ChD* [1955] 36 TC 109; *Crossland* v *Hawkins*, CA [1961] 2 All ER 812; *Vandervell* v *CIR HL* [1967] 2 AC 291; *CIR* v *Watchtel ChD* [1971] 1 All ER 296.
17. June Condoc, para. 3.9.
18. See for example the analysis of TCGA 1992 s.16A by John Barnett in his article for the Tax Adviser, October 2007, entitled 'TAAR Very Much'.
19. One might, however, be cautious in the light of the Special Commissioner's decision in *PA and Mrs M Snell* v *HMRC* SpC [2008] SSCD 1094 which concerned the meaning of "main purpose" in the "transactions in securities legislation" now found in ITA 2007 s.684(1)(c). The Special Commissioner found that, although a sale was undertaken for a bona fide commercial purpose, it also had another main purpose of conferring a tax advantage. This in spite of the fact that the tax benefit of the transaction was just 7% of the total transaction value.
20. June Condoc, para. 3.9.
21. June Condoc, Foreword.
22. This is a good example of why extending the GAAR to IHT will cause such problems in practice. Most transactions to which IHT is relevant will take place at a value different to market value
23. June Condoc, para. 1.6.
24. June Condoc, Section 4(1).
25. June Condoc, Section 4(2).
26. June Condoc, Section 4(3).
27. Section 4(4).
28. June Condoc, June Condoc, para. 5.1.
29. Under FA 2007, Sch 24, para. 1.
30. TMA 1970 s.29.
31. TMA 1970 s.9A.
32. *Pepper* v *Hart & Others HL* [1992] STC 898.
33. Aaronson Report paras 1.11.iv, 4.20 and Appendix 1, para. 14.
34. The CIOT Submission, para. 4.3.
35. June Condoc, para. 6.17.
36. June Condoc, para. 6.3.
37. June Condoc, Section 6.
38 Aaronson Report, para. 5.25.
39. June Condoc, Section 6.
40. June Condoc, Section 6.
41. June Condoc, para. 5.14.published.