

Designing a General Anti-avoidance Rule



Professor Judith Freedman, CBE

*Professor of Taxation Law and Director of Legal Research
Oxford University Centre for Business Taxation*

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Academic Conference Room
11/F Cheng Yu Tung Tower
University of Hong Kong

Following growing concern around the world about tax base erosion and profit shifting, the OECD has identified the general anti-avoidance rule (GAAR) as one tool to combat tax avoidance. The UK has not previously had a GAAR, having preferred to rely on case law and specific anti-avoidance legislation to deal with this problem, but in December 2010 the UK Coalition Government appointed the Aaronson Study Group to advise on whether the UK should join most other common law countries in having a statutory rule. Judith Freedman was a member of that study group, alongside Graham Aaronson QC (the Chair), John Bartlett (Group Head of Tax, BP plc); Sir Launcelot Henderson (UK High Court Judge); The Rt Hon Lord Hoffmann (formerly Lord of Appeal, Non-Permanent Judge of the Court of Final Appeal of Hong Kong); Howard Nolan (formerly Tax Partner at Slaughter & May, Judge of the UK First-Tier Tax Tribunal) and John Tiley CBE QC (Hon) FBA (Cambridge University). Following the deliberations of the group, Graham Aaronson recommended the introduction of a General Anti-Abuse Rule, a version of which is to be introduced in the UK's Finance Bill 2013. In this lecture, Judith Freedman will discuss the design issues and difficulties encountered in the work of the study group, informed by issues arising in other systems and the reasons for the proposals made, as well as the reactions to the proposals and the subsequent government action. She will consider the role and the limitations of a GAAR as a tool and the thorny questions of certainty and administrative and judicial discretion in this area.

Judith Freedman is Professor of Taxation Law and a Fellow of Worcester College, Oxford University and a Research Fellow at the Institute for Fiscal Studies. She worked as a solicitor in the corporate tax department of Freshfields before becoming an academic at the London School of Economics (LSE). Whilst at the LSE, she lectured and researched on tax and company law. At Oxford University, her focus is taxation, particularly corporate and business taxation. She participated in the establishment of the Oxford University Centre for Business Taxation and is now its Director of Legal Research and a member of its Steering Committee and Advisory Board. She has served on a number of Law Society, Department of Trade and Industry and HM Revenue and Customs committees and advisory groups. She was a member of the Office of Tax Simplification Consultative Committee on Small Business Taxation and the Aaronson Tax Avoidance Study Group appointed to report to the Exchequer Secretary on the introduction of a General Anti-avoidance Rule. She is the general editor of the *British Tax Review* and is on the editorial boards of the *Modern Law Review*, the *eJournal of Tax Research*, *The Canadian Tax Journal*, *The Australian Tax Review* and *The Tax Journal*. She is a member of the Council of the Institute for Fiscal Studies (IFS) and a member of the IFS Tax Law Review Committee, and was one of the few lawyers contributing to the Mirrlees report [Reforming the Tax System for the 21st Century](#).

In the UK's 2013 New Year's Honours List, Judith was appointed as a Commander of the Order of the British Empire for her contribution to Tax Research.

Selected Publications on the GAAR: J Freedman, '[Defining Taxpayer Responsibility: In Support of a General Anti-Avoidance Principle](#)' (2004) *British Tax Review* 332; J Freedman, '[Interpreting Tax Statutes: Tax Avoidance and the Intention of Parliament](#)' (2007) 123 *Law Quarterly Review* Sweet & Maxwell 53; J Freedman, '[GAAR: challenging assumptions](#)' (2010) *Tax Journal* 27 Sept 2010 and Aaronson Study (Nov 2011) http://www.hm-treasury.gov.uk/d/gaar_final_report_111111.pdf.

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email Flora Leung at flkleung@hku.hk to reserve a place.**