

Who is to blame for tax avoidance?

by Francis Bennion

As a former draftsman of UK Government Finance Bills I was interested in your assertions (leading article 5 October) that those at fault regarding income tax avoidance are ‘the people who make the law’, and that there ought to be ‘a simpler tax system’. I believe the basic fault lies with the creators of the income tax system. Lord Macmillan, a distinguished Law Lord, [famously] said in 1935:

‘The Income Tax Acts nowhere define “income” any more than they define “capital”; they describe sources of income and prescribe methods of computing income, but what constitutes income they discreetly refrain from saying.’

Since then the system of an annual amending Finance Act simply heaps Pelion upon Ossa, unrelieved by periodic consolidation Acts. I used to suffer agonies striving to draft effective amendments[, once actually being rendered impotent for several months]. It was impossible to do the job without the result being virtually incomprehensible[, even though as the founder of the Statute Law Society and the Statute Law Review I have fought for clarity over many years].

The official Tax Law Rewrite has made valiant progress, but the compilers are duty bound not to change the law significantly so it will not do what you ask. Gordon Brown committed himself to producing a General Anti-Avoidance Rule (GAAR) but this has not yet been done and I have given sound reasons why it should not be done [(see *Taxation Practitioner* August 1999, p.10)].

I see no way of giving you what you quite reasonably ask for. We must struggle along [on the present lines], making small improvements where we can.¹

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References:

None

¹ Published in *The Times* 8 October 2012.