Tax paid by Media Companies

Report prepared by
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Background

In 2008 the Guardian newspaper made allegations against Tesco plc with regard to the management of the latter's taxation affairs. This resulted in litigation which was resolved in favour of Tesco PLC, although it did become clear during the course of this process that Tesco POC had, indeed, undertaken significant artificial offshore tax planning, which was the substance of the original allegation.

However, it also became clear that the Guardian Media Group plc that owns the Guardian also had questions to answer with regard to its own taxation affairs. In particular, it was involved in structuring a purchase of a joint venture through an offshore entity to avoid stamp duty, and its 2008 accounts showed that it had made a profit on the sale of an interest in a subsidiary entity which had resulted in no taxation liability arising, and this reduced the apparent tax rate declared in those accounts amounted to an apparent rebate of 0.26%.

At various times over the last year I have looked these issues. This paper looks at the issues I have considered in two stages, the first being a comparison of the tax rate paid by the Guardian Media Group over the years 2003 to 2007 when compared to other media entities and the second being the 2008 result it declared.

Section 1 – Tax Rate of Media Companies

Methodology

The following companies were surveyed subject to the following constraints:

1. News Corporation radically changed the basis of its accounting in 2004. Comparative trading data for 2004 and 2003 was available in the 2005 published accounts and this data has been used for those years. However, this means no balance sheet data for 2003 for that company was available. In addition because News Corporation was an Australian and then a US corporation its accounting disclosure is different from that for the European based companies in this survey. Accordingly data for goodwill amortisation

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was not available (although other data in the accounts would suggest it is not charged, meaning the absence of disclosure might actually indicate that fact) and some data on current tax liabilities was not available. None of these limitations has any material impact on the conclusions in this report.

2. Independent News & Media plc has not yet published its 2007 trading data and as such this is not included in the survey.

3. Press Acquisitions Limited began trading in 2004, but that was not a complete year. It is apparent that it is set up to at best break even and little true perspective can be obtained upon its tax affairs. Its parent company, May Corporation Limited is based in Jersey. Since the Barclay brothers are not resident in Jersey no corporation tax will be paid by May Corporation Limited in Jersey.

The approach used has been to:

a. Extract data as from the accounts of the companies in question. All accounts bar those for Pearson plc for 2003 and 2004 and all those for Press Acquisitions Limited were downloaded from the web sites of the companies in question. These accounts were taken from their Companies House files since Pearson plc had only placed summary financial statements on its web site and those for Press Acquisitions Limited were not available in any other way.

b. The data was double checked as far as possible and from year to year, working from the most recent backwards.

c. If accounting data was restated for a year it was the original version published for the year that has been included in the data for analysis and the restated figures have been ignored. The introduction of International Reporting Standards gave rise to a restatement of the European quoted company accounts in 2004 or 2005.

The analysis undertaken assumes the following:

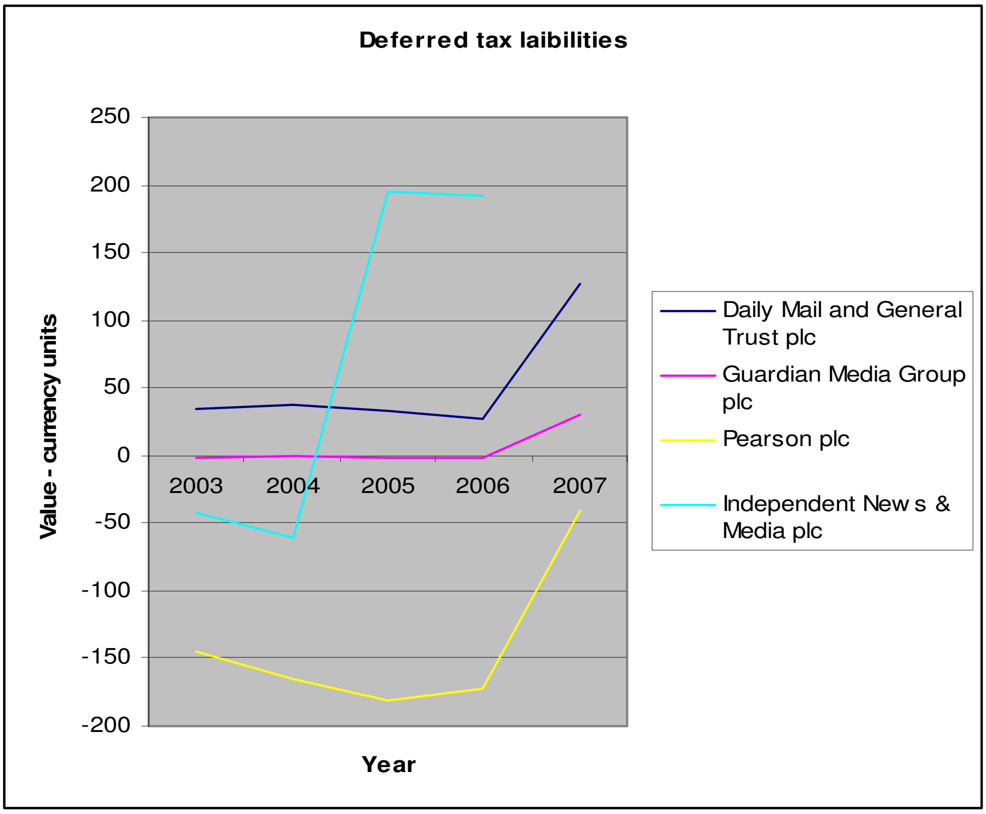
i. That the declared profit for the year is unlikely to approximate to the taxable profit for the year as declared to taxation authorities but the only valid adjustment that can be made to that figure based upon the data included in company accounts is to add back the goodwill amortisation charge shown in the accounts as this is, invariably, not tax allowable. This was, for example, noted as such in the Daily Mail and General Trust plc accounts. Since no goodwill adjustment has been made for News Corporation the validity of this adjustment in the USA is not a matter of concern. This results in an adjusted figure for profit being used as the basis for calculating likely effective tax rates, this figure being net profit before tax with goodwill amortisation charges added back. It is stressed that all the data in question is still extracted from the companies' own accounts.

ii. That deferred taxation charges are accounting entries in the financial statements of the companies in question, and do not represent real assets or liabilities that could, for example, be sold in the case of assets or might be paid in the case of liabilities.

This is true; in the case of Pearson that has substantial deferred tax assets in this survey the asset relates to unrelieved tax losses. It is highly unlikely that these can be sold. The time when they might be utilised is not stated, their worth is as such unknown, although it has to be admitted that in this case the difference between the average current tax rate (20.2%) and the average declared tax rate (28.5%) is almost certainly due to the utilisation of these losses, and any report should refer to this fact.

In the case of News Corporation, the other company with substantial persistent deferred tax balances these are liabilities, have a steady and upward trend and give therefore no indication that the liability will ever be paid.

This steady and upward trend to increased deferred tax liabilities is also seen in all the other quoted companies, as follows:



There is, therefore, in each case a persistent pattern (with News Corporation) of declaring liabilities that are not likely to be paid in the foreseeable future (IN&M data for 2007 is absent, please note)and for which no date of payment is declared and as such overall in each and every case it is fair to assume that the declaration of a deferred tax liability that is unlikely to give rise to real payment of tax can be ignored for the purposes of considering the actual liabilities expected to be paid to the governments involved over any reasonably foreseeable timescale. As such only the current tax charge need be considered in calculating effective taxation rates due by these companies.

Findings

The findings can be summarised as follows:

1. The companies have the following declared tax rates:

Declared tax rate		2003	2004	2005	2006	2007	Average	
		%	%	%	%	%	%	Average
Daily Mail and General Trust plc	1	42.0%	45.9%	32.5%	19.3%	14.3%	30.8%	27.8%
Guardian Media Group plc	2	36.0%	25.0%	56.3%	30.9%	34.3%	36.5%	34.1%
Pearson plc	3	49.3%	36.3%	26.6%	2.4%	28.0%	28.5%	23.5%
Independent News & Media plc	4	12.0%	16.8%	15.9%	20.7%		16.3%	17.0%
News Corporation	5	37.8%	36.8%	34.3%	39.1%	34.2%	36.4%	36.1%
Press Acquisitions Limited	6		32.2%	6.7%	-11.4%		9.2%	-2.0%
Number count		**5**	**6**	**6**	**6**	**4**	**5**	
Average		**35.4%**	**32.2%**	**28.7%**	**16.8%**	**27.7%**	**30.2%**	

It is stressed that the declared tax rate is the tax charge as per the profit and loss account divided by the declared pre tax profit for the year.

It is stressed also that in each of the tables of this sort to be reproduced here the first average column is the average of the percentages to the left of that column, having allowed for the number of variables available to be averaged whilst the second column is an average based on aggregate data i.e. accumulating totals for the five years and then calculating an average based on the accumulated totals. Since tax is calculated for annual periods I believe the first column the more accurate and I use it in most of my work. The second column overcomes aberrations that can be introduced by unusual statistical ratios and is 'check data' in most cases used to ensure data is a fair reflection of the underlying situation.

According to this table News Corporation has the highest tax rate, higher in fact than the 35% headline rate in the USA. The Independent is lowest, appearing to benefit from Ireland's low rates and the Guardian pays more than required of it whilst Pearson and DMGT do not. However, appearances are deceptive.

2. The current tax rate to declared profit shows a different story. The current tax rate is the tax charge less the deferred tax element:

Current tax rate		2003	2004	2005	2006	2007	Average	
		%	%	%	%	%	%	Average
Daily Mail and General Trust plc	1	42.0%	43.4%	35.7%	21.8%	21.9%	32.9%	30.2%
Guardian Media Group plc	2	40.9%	31.2%	62.9%	29.5%	36.3%	40.2%	36.7%
Pearson plc	3	39.5%	29.2%	16.5%	6.6%	9.4%	20.2%	15.2%
Independent News & Media plc	4	28.0%	26.7%	19.2%	19.2%		23.3%	22.2%
News Corporation	5	17.6%	15.9%	7.7%	14.5%	13.9%	14.0%	13.5%
Press Acquisitions Limited	6		32.2%	3.6%	5.7%		13.8%	-0.6%
Number count		**5**	**6**	**6**	**6**	**4**	**5**	
Average		**33.6%**	**29.8%**	**24.3%**	**16.2%**	**20.4%**	**26.8%**	

Now News Corporation is shown to be persistently declaring tax liabilities that it is not paying, and is unlikely to pay. Pearson does, overall (right hand column) do likewise, reducing its tax rate markedly as a result of this adjustment to exclude deferred tax that is unlikely to be paid. The Guardian appears to do worse! But these results are also misleading since goodwill charges must be taken out of account since these are not tax allowable and as such mean that these comparisons have been with the wrong profit figure.

3. When current tax is compared to profit with goodwill charges added back the following table results:

Current tax to pre-goodwill profit rate		2003	2004	2005	2006	2007	Average	
		%	%	%	%	%	%	Average
Daily Mail and General Trust plc	1	26.5%	25.9%	24.3%	16.1%	11.2%	20.8%	19.5%
Guardian Media Group plc	2	37.8%	21.6%	25.5%	28.6%	33.2%	29.4%	29.3%
Pearson plc	3	14.7%	12.7%	11.2%	4.2%	6.0%	9.8%	8.9%
Independent News & Media plc	4	25.1%	25.0%	18.9%	18.8%		21.9%	21.2%
News Corporation	5	17.6%	15.9%	7.7%	14.5%	13.9%	14.0%	13.5%
Press Acquisitions Limited	6		32.2%	3.6%	5.7%		13.8%	-0.6%
Number count		**5**	**6**	**6**	**6**	**4**	**5**	
Average		**24.3%**	**22.2%**	**15.2%**	**14.7%**	**16.1%**	**19.9%**	

Goodwill charges in the accounts of some of these companies are significant:

Goodwill amortisation		2003	2004	2005	2006	2007	Total
Daily Mail and General Trust plc	1	64	84	76	110	135	469
Guardian Media Group plc	2	3	19	34	2	9	67
Pearson plc	3	257	224	221	261	262	1225
Independent News & Media plc	4	14	13	5	5	0	37
News Corporation	5	0	0	0	0	0	0
Press Acquisitions Limited	6	0	0	0	0	0	0

This is especially true of DMGT and Pearson. Unless these non-tax allowable charges are eliminated from the calculations a quite untrue picture of the profits with which their tax charges should be compared is presented.

When it is it is obvious that the Guardian is the only company here that is paying tax at the rate expected of it i.e. at almost exactly 30%. DMGT is paying around 10% less than expected of it, and Pearson cannot manage a

10% tax rate however computed. Despite its Irish base IN&M actually pays at more than 20% because, I suspect, most of its profits are generated outside Ireland. New Corporation is unaffected as it does not appear to write down goodwill in its accounts. Press Acquisitions Limited has almost meaningless accounts in this regard.

It should be stressed, in fairness, that Pearson may have reduced its tax rate by 8.3% (table 1 average to table 2 average) because of the use of tax losses. However, that would still leave it with an effective tax rate of below 20% and less than DMGT.

The monetised loss over five years from these tax savings would be £139 million in the case of DMGT (30% less 19.5% multiplied by aggregate pre-goodwill profit of £1.318 billion. For the Guardian the equivalent saving is £2 million. For Pearson I have allowed for the 8.3% saving for losses and the equivalent tax not paid is £376 million, whilst for News Corporation the figure is $US2.8 billion. For IN&M the comparison is not meaningful as the aggregate tax rate cannot be easily calculated. Press Acquisitions Limited is not, effectively, paying tax so again the calculation has little relevance.

4. This leaves one final story to tell. Journalists have taken tax cash payments as a proxy for the real tax due by companies. In this case if this is done the following table results:

Cash paid tax rate (compared to		2003	2004	2005	2006	2007	Average	
profit pre-goodwill)		%	%	%	%	%	%	**Average**
Daily Mail and General Trust plc	1	15.0%	6.9%	14.9%	4.9%	15.8%	11.5%	10.6%
Guardian Media Group plc	2	3.3%	28.3%	37.6%	31.6%	14.4%	23.0%	23.1%
Pearson plc	3	10.8%	11.4%	9.5%	8.2%	11.9%	10.4%	10.2%
Independent News & Media plc	4	27.4%	24.9%	13.2%	20.3%		21.4%	20.2%
News Corporation	5	15.0%	17.0%	12.8%	14.3%	18.3%	15.5%	15.7%
Press Acquisitions Limited	6		0.0%	-9.7%	-4.5%		-7.1%	-10.1%
Number count		**4**	**5**	**6**	**6**	**4**	**5**	
Average		**3.7%**	**3.3%**	**2.1%**	**2.2%**	**4.3%**	**3.0%**	

It will be noted by how much the cash rate of the DMGT and Guardian is below that of the previous calculation, that Pearson and IN&M are little affected and that News Corporation see its tax go up.

This suggests that this is not a good proxy unless another explanation is available, and to some degree it is. The tax figure is the one number in a set of accounts that has to be corrected in each following year's set of accounts if the provision made was wrong, with explicit disclosure being made as to the adjustment (NB this does not apply in the US and as such News Corporation is not covered by this note). The rate of prior year adjustment for tax between these companies varies considerably. Almost without exception, as this table shows, the adjustment is to reduce the liability previously declared:

Prior Year Tax Adjustment		2003	2004	2005	2006	2007	Total
Daily Mail and General Trust plc	1	-1	4	4	9	29	45
Guardian Media Group plc	2	4	6	2	2	0	15
Pearson plc	3	9	29	-1	58	27	122
Independent News & Media plc	4	0	-1	2	2	0	3
News Corporation	5	0	0	0	0	0	0
Press Acquisitions Limited	6	0	0	2	2	0	4
NB: A positive number means the adjustment is in favour of the company							

As a proportion of the tax charge for each year these are as follows:

Prior year adjustments as a proportion of the tax charge		2003	2004	2005	2006	2007	Average	
		%	%	%	%	%	%	Average
Daily Mail and General Trust plc	1	-2.2%	7.6%	6.5%	13.0%	93.9%	23.8%	17.5%
Guardian Media Group plc	2	23.8%	46.3%	16.7%	9.7%	1.1%	19.5%	14.9%
Pearson plc	3	15.0%	58.0%	-1.3%	193.3%	61.4%	65.3%	46.7%
Independent News & Media plc	4	-0.6%	-1.0%	3.1%	3.3%		1.2%	1.4%
News Corporation	5	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Press Acquisitions Limited	6		0.0%	-133.3%	-440.0%		-286.7%	1900.0%
Number count		**4**	**4**	**5**	**5**	**3**	**5**	
Average		**9.0%**	**27.7%**	**-21.7%**	**-44.1%**	**52.1%**	**-1.0%**	

Press Acquisitions Limited can be ignored. There is no data for News Corporation and IN&M seems to have been amazingly accurate in its tax calculations. The others are not, the Guardian included. Substantial and persistent cancellation of previously declared tax liabilities is taking place meaning that declared current tax charges are not actually being paid, so that the tax paid as a proportion of declared profits really is lower than the current tax rate.

There are various explanations for this. One is caution: that the tax figure for the accounts has always to be finalised before the accounts themselves are finalised and that this means that a cautious estimate is included. That is plausible and it is notable that IN&M that reports more slowly than the others appears to have a lower error rate.

That though offers another possible explanation: this adjustment rate is a measure of the quality of the accounts. There is no reason why the figure should not be used as a proxy for this.

There is, though, a third explanation: that this is a measure of the extent to which the companies are willing to 'try' tax avoidance schemes. They do these schemes and submit them as part of their corporation tax returns but only take credit for them in the accounts when they are subsequently approved. In that case this measure is a proxy for indication of the degree if tax planning inherent in a set of accounts. Since DMGT and IN&M both have lower tax rates and higher (indeed, much higher) prior year adjustment rates than the Guardian this seems the most plausible explanation.

Conclusion - Section 1

The Guardian Media Group was on average during this period the persistent highest payer of tax in its sector, declaring a rate over the period that was almost exactly that expected of it in the UK, and settling a liability only a little less than that.

It does have a tax gap, but it is not significant, its prior year adjustments to its declared tax are lower than average, and it does therefore appear to indicate a high rate of tax compliance within its accounts when compared to the sector and other companies I have researched, for example in the report 'The Missing Billions' for the TUC[1] which showed average tax rates of the largest UK based corporations in this period were significantly below the rates declared and paid by the Guardian Media Group plc.

Section 2 - the Guardian's 2008 accounts

The accounts of the Guardian Media Group for 2008 have been subject to criticism because of the apparently exceptionally low tax rate recorded on them. The profit and loss account of the company for that period was as follows:

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[1] http://www.tuc.org.uk/touchstone/Missingbillions/1missingbillions.pdf

Profit and loss account

For the year ended 30 March 2008

	Note	2008 Before exceptional items £m	2008 Exceptional items £m	2008 Total £m	2007 Before exceptional items £m	2007 Exceptional items £m	2007 Total £m
Continuing operations							
Turnover	2,3	**502.1**	**-**	**502.1**	716.1	-	716.1
Operating costs	4	**(505.8)**	**(59.5)**	**(565.3)**	(610.9)	8.1	(602.8)
Operating (loss)/profit		**(3.7)**	**(59.5)**	**(63.2)**	105.2	8.1	113.3
Income from other financial assets	6	**0.1**	**-**	**0.1**	0.1	-	0.1
Profit on part disposal of subsidiary	9	**-**	**335.2**	**335.2**	-	-	-
Interest payable and similar charges	7	**(8.0)**	**-**	**(8.0)**	(27.0)	-	(27.0)
Interest receivable and similar income	7	**69.7**	**-**	**69.7**	12.2	-	12.2
Share of post tax losses of joint ventures	13(a)	**(24.6)**	**(2.5)**	**(27.1)**	(0.3)	-	(0.3)
Share of post tax losses of associates	13(b)	**(0.3)**	**-**	**(0.3)**	(0.6)	-	(0.6)
Profit before taxation	4	**33.2**	**273.2**	**306.4**	89.6	8.1	97.7
Taxation	8	**(15.3)**	**16.1**	**0.8**	(32.3)	(1.2)	(33.5)
Profit attributable to equity shareholders		**17.9**	**289.3**	**307.2**	57.3	6.9	64.2

The notes on pages 45 to 75 form part of these financial statements.

The notes referred to stated the following:

8. Taxation

Analysis of charge in year	2008 £m	2007 £m
Current tax		
Continuing operations for the period	17.5	35.9
Adjustments in respect of prior periods	(2.1)	(0.4)
	15.4	35.5
Deferred taxation		
Continuing operations	(16.2)	(2.0)
Taxation	(0.8)	33.5

Tax on items charged to the statement of recognised income and expense	2008 £m	2007 £m
Deferred tax charge on actuarial losses	0.2	-

Factors affecting tax charge for the year

The tax for the period is lower (2007 higher) than the standard rate of corporation tax in the UK (30%). The differences are explained below:

	2008 £m	2007 £m
Profit before tax	306.4	97.7
Profit before taxation multiplied by standard rate of corporation tax of 30%	91.9	29.3
Effects of:		
Expenses not deductible for tax purposes	7.0	7.3
Income not taxable	(1.9)	(0.1)
Current year movement on deferred tax	(1.0)	0.6
Foreign taxes	-	0.3
Utilisation of tax losses not previously recognised	(10.5)	(1.8)
Deferred tax asset not previously recognised	-	(2.1)
Impairment of subsidiary goodwill and joint venture company	8.0	-
SSR available on profit on disposal of 49.9% of TMG	(98.4)	-
Adjustment to tax charge in respect of joint ventures and associates	7.7	0.4
Adjustment to tax charge in respect of previous periods	(2.1)	(0.4)
Adjustment for change in tax rate	(1.5)	-
Total taxation (continuing operations)	(0.8)	33.5

What this data shows is the following:

1. That the effective rate of declared tax on trading was 46%.

2. If goodwill were added back to profit the rate would be about 21%, a rate that is lower than in previous years, but largely because much of the profit came from the disposal of assets. If that were adjusted for then the rate would be above the statutory rate.

3. The tax credit on the exceptional part sale of the Auto Trader group was almost entirely deferred tax, and as such is ignored in the comparative analysis noted above. As stated there: such deferred tax liabilities are rarely paid, and they were not in this case, giving rise to their credit to the profit and loss account. Any criticism needs to be of accounting rules that so significantly distort the proper reporting of real taxation liabilities.

4. No complicated planning was needed to produce the low tax charge on the sale of this interest: the government has since 2002 provided that Substantial Shareholdings Relief is due when an asset of this sort is sold and no tax is due. The Guardian was, therefore, being tax compliant: the

company is doing what the government wants, and for which it provides a relief. It would appropriate to criticise the government for introducing a tax relief of this sort: the Guardian cannot be criticised for using it when the law required that it be applied.

In that case the impact of this sale on the accounts needs to be ignored for the purposes of proper comparison, and in that case the goodwill adjusted tax rate of 21% was lower than the anticipated rate, but above that I anticipate for the corporate population as a whole in 2008, so suggesting that the Guardian remained an above average tax compliant company where there is little indication of any significant tax planning.

Overall conclusions

Whatever tax gap there might be in the Guardian Media Group plc's accounts it is modest when compared with that of the corporate population as a whole.

Disclosure

Tax Research LLP has advised the Guardian Newspaper on taxation issues. It has not advised the Guardian Media Group plc.