tax justice network

The Tax Justice Network UK published the following press release on 6 December 2006:

PRESS RELEASE

Immediate issue

41% of all UK tax legislation tackles tax avoidance

The most common complaint heard from tax practitioners is about the volume of legislation that they face. New research by the Tax Justice Network-UK shows that this is unjustified. 41% of all tax legislation comprises anti-avoidance measures designed to tackle tax planning schemes created and sold by tax practitioners.

The research was done by Richard Lupson-Darnell CTA on behalf of the Tax Justice Network and looked at the purpose for enacting every section and schedule of all 1503 pages of tax legislation in the Finance Acts passed in the period 2004 to 2006. It found that just 48 pages dealt with routine issues like tax rates, 841 were the result of government driven initiatives and 614 were anti-avoidance measures.

Richard Lupson-Darnell said "The tax avoidance industry and tax advisers in general are constantly complaining about the volume of legislation they have to contend with. However, this research shows that they and their clients have to take a lot of the responsibility

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themselves. They have a choice to make; continue camping over the boundary of what the Government considers acceptable with the result of more legislation, or retreat to more compliant pastures and see the volume fall"

Richard Murphy, Research Director of the Tax Justice Network-UK and a practicing chartered accountant added "This research adds much needed perspective to the discussion on the growing volume of legislation. It's clear that much legislation is being driven by the need to tackle tax avoidance promoted and sold by the UK's lawyers and accountants. That also influences the design of new initiatives, which could be much shorter if the government knew they would not be abused the moment they were introduced."

Richard Murphy added "We think it's time these professions stopped moaning about the volume of tax regulation in this country and recognised the major role they play in its creation. What is clear is that much of the burden of tax legislation is self inflicted on UK business or is there to stop the practices its advisers promoted. When this is appreciated we hope that a new and more constructive dialogue on tax management can be opened between government, taxpayers and their professional advisers from which all will benefit. Until this happens and whilst the professions continue to antagonise and abuse the government, ordinary business will suffer this volume of legislation".

Ends

Background note:

PricewaterhouseCoopers claimed in a recent report for the World Bank that the UK has the most complicated legislation in the world, bar India. This research was deigned to offer explanation for that, if it is true.
http://www.pwc.com/extweb/pwcpublications.nsf/docid/6FE224AC0BA720BB85257214004DA2E9/$file/paying-taxes.pdf

The purpose of this paper is to provide background information on the research to which that press release referred.

This research was prompted by comments we had noted published by all the professional institutes related to tax in the UK and from many industry lobby groups suggesting that there has been an increasing volume of tax legislation in the UK, and that this legislation was burdensome for

business. This has given rise to persistent calls on their part for the simplification of tax legislation. The references to this are so numerous that examples need not be given here.

It was our opinion that the institutes and lobby groups made an implicit but unstated assumption that the UK Government passed all this legislation as a matter of free will, and without regard to the consequence for business. We thought this an untenable assumption on their part. It was our hypothesis that there were three reasons for passing legislation:

1) Because it was needed for routine changes to taxation laws which happen as a consequence of the passing of time e.g. changing rates of personal allowance and so on. We called this routine updating.

2) To enact new initiatives. These might be to promote particular economic activity, to change taxation law or to put economic policy into effect where tax is being used to influence behaviour. We would stress that if we were in doubt as to the purpose of legislation we allocated it to this grouping. Any anti-avoidance provisions in such new initiatives (and there are many) were considered part of the new initiative, and not as anti-avoidance provisions in themselves. Both are cautious assumptions that have inherent bias against our hypothesis. We thought that fair.

3) To tackle abuse of legislation already in existence. This is commonly called 'anti-avoidance' legislation. Such legislation amends or extends existing legislation which is usually in our opinion fit for purpose and would achieve its objectives but for the action of taxpayers and their advisers who make it their business (quite literally in the latter case) to circumvent that purpose, so requiring continual amendment by government to circumvent and negate the consequence of their actions by the creation of new legislation.

We would stress that we know there are some occasions where legislation has not proved to be fit for purpose. For example, the introduction of a 'nil rate band' for small corporations operating in the UK did not achieve the desired effect that the Government sought to promote. But, we would contend that the ability of many people to identify the few examples where this has happened supports our general hypothesis that tax legislation is fit for purpose but for the actions of those who seek to subvert it. We do not believe these rare exceptions do as a result undermine our hypothesis.

We would add that to allocate legislation in this way did not require us to identify what tax avoidance might be. It only required us to be able to identify legislation which was intended to amend or reinforce previous

legislation to ensure that it achieved its desired intent in the face of challenge from taxpayers and their advisers.

It was an implicit assumption inherent in our work that a seasoned tax practitioner, used to reading and using legislation could readily identify the purpose of each section and schedule in tax legislation and could allocate it to one of these three categories (or by default to the 'new initiatives' category). In reality, no problem was found in doing this.

It is accepted that the allocation was judgemental or normative to use the language of social science research. We have no problem with that. All social science research is, in our opinion, normative.

This allocation was done for every section and schedule of the four Finance Acts passed in the years 2004 to 06 inclusive. There were in all 686 sections and 89 schedules in those acts, split as follows:

Tax Legislation
Analysis of origin

	Sections					Schedules				
	Routine Maintenance	New Initiatives	Amending And Anti-Avoidance	Total	Pages	Routine Maintenance	New Initiatives	Amending And Anti-Avoidance	Total	Pages
FA 2006	24	89	67	180	148		14	12	26	358
FA 2005	20	44	42	106	81		4	6	10	122
FA 2005 (no2)	3	46	23	72	59		1	10	11	101
FA 2004	13	226	89	328	276		30	12	42	358
	60	405	221	686	564	0	49	40	89	939
%	9%	59%	32%			0%	55%	45%		

The volume of legislation is the feature that is most commented on. We therefore felt that 'volume' by page count was the issue we should concentrate on. To do this we assumed that each section and each schedule was of equal length and then weighted the total number of pages dedicated to sections or schedules in each Act according to the number of such schedules and sections included in each of the three categories we had identified. In other words, the number of pages dedicated to routine maintenance in the Finance Act 2006 was found by multiplying the number of pages (148) by the ratio 24 / 180 to give the answer 19.7. When this was done the following page weightings resulted:

Page weightings

	Sections				Schedules			
	Routine Maintenance	New Initiatives	Amending And Anti-Avoidance	Total	Routine Maintenance	New Initiatives	Amending And Anti-Avoidance	Total
	Pages	Pages	Pages	Pages	Pages	Pages	Pages	Pages
FA 2006	19.7	73.2	55.1	148	0.0	192.8	165.2	358.0
FA 2005	15.3	33.6	32.1	81	0.0	48.8	73.2	122.0
FA 2005 (no2)	2.5	37.7	18.8	59	0.0	9.2	91.8	101.0
FA 2004	10.9	190.2	74.9	276	0.0	255.7	102.3	358.0
	48.4	334.7	180.9	564.0	0.0	506.5	432.5	939.0
%	9%	59%	32%		0%	54%	46%	

When aggregated the following overall statistics were produced:

Total page weightings

	Routine Maintenance	New Initiatives	Amending And Anti-Avoidance	Total
FA 2006	19.7	265.9	220.3	506.0
FA 2005	15.3	82.4	105.3	203.0
FA 2005 (no2)	2.5	46.9	110.7	160.0
FA 2004	10.9	445.9	177.2	634.0
	48.4	841.1	613.5	1503.0
	3%	56%	41%	100%

To check whether our assumption on page weighting was reasonable an alternative test was undertaken. The Finance Act 2006 was reanalysed, counting the actual pages of amending and anti-avoidance legislation. When calculated this way there were 291 (58%) pages of such legislation instead of 213 pages (44%) as noted above. In other words, the methodology used to reach the published conclusion was conservative.

Finally, we sought to explain this extraordinary volume of amending and anti-avoidance legislation. We assumed that the Government would not wish to amend most legislation that it thought already achieved it purpose of its own freewill, and if it did we had anyway sought to describe it as a new initiative. There must, therefore be an alternative reason for dedicating so much effort to this task. Our conclusion was that the only reason why amendment takes place was to counter the abuse of legislation by tax payers and their advisers, who seek to subvert the original intention of legislation for their own benefit. Given that this is the declared intention of the tax avoidance industry this appeared a fair

conclusion to reach. Furthermore: we have not been able to formulate a plausible alternative.

In that case the anti-avoidance legislation that we identified was enacted as the direct consequence of taxpayer action.

That legislation amounted to at least 41% of all legislation in the period. If we had been less cautious in our approach the result could have exceeded 50 per cent (if all anti-avoidance provisions / new legislation were included). Three conclusions followed:

1. A substantial part of all current tax legislation is passed to counter the activities of the tax avoidance industry, which exploits legal loopholes for personal gain;

2. This activity imposes a considerable burden of legislation on those who do not partake in the avoidance activities they pursue;

3. Radical alternatives are needed to address the culture of avoidance in the UK, and to more effectively curtail the activities of those who seek, in the opinion the Tax Justice Network, to subvert the will of parliament.

Richard Murphy

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