

Funding the Future

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I recently applauded Mark Lee's "[cards on the table](#)" test for acceptable tax planning. In this Mark says, when talking about the new requirement to disclose tax planning to the UK's HM Revenue & Customs, that:

If your tax advice to clients includes a requirement to (effectively) keep some of their cards face down and hidden, then it probably falls within the disclosure regime. If however all the cards are face up and nothing is hidden from HMRC, you will have nothing to fear from the disclosure regime.

In effect, Mark's principle is simple. If transparent tax planning appears to comply with the law then it works. I like this but having mused on it for a bit think it's worthy of extension, because the test does not cover all the possibilities that might need consideration including whether the person doing the planning thinks that current interpretation of the law is wrong and should be challenged (I have taken such a case before now and won it when I felt an injustice was being done) and whether, even if the scheme is transparent and accords with current thinking it offends the practitioners own sense of ethics.

As a result I think the test should, perhaps be threefold and go like this:

Test 1

* Can you place all your cards face up on the table and still think the scheme will be acceptable to the tax authorities within the constraints of current thinking?

Test 2

- * Does it comply with your values?
- * If you do it, will you feel bad?
- * Will it look acceptable to the majority of other people in the newspaper if it's found out?

If it passes these two tests, most people would say it is acceptable planning. If there is still doubt then the following test should be used:

Test 3

- * If you know it's wrong having checked these out, don't do it!
 - * If it fails test 1 but it feels right ask for further advice
 - * Keep asking until you get an answer.
 - * If having got an answer it fails Test 1 but passes Test 2 does the client know the risks and want to take them?
 - * In this unusual case, proceed with caution, and with all cards on the table, knowing that a challenge is likely.
- This logic does, in effect, combine Mark's thinking with the **Texas Instruments ethics test**. **Any thoughts?**