

Tax avoidance is unacceptable: official

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In response to the BBC Panorama programme last night the government [has said](#):

The government is clear that tax avoidance or evasion is totally unacceptable, whether it is undertaken by businesses or individuals.

I think this statement is incredibly important. Tax evasion is, of course, illegal and therefore is bound to be unacceptable. But tax avoidance is legal: we know that. And yet they two are being bracketed together. And rightly so.

It's important to explain the difference. I do this using my definition of tax compliance — which is acceptable tax behaviour. Tax compliance is:

seeking to pay the right amount of tax (but no more) in the right place at the right time where right means that the economic substance of the transactions undertaken coincides with the place and form in which they are reported for taxation purposes.

There are, therefore, four elements:

- * Right amount
- * Right place
- * Right time
- * Coincidence of substance and form.

Tax evasion usually relates to the amount of tax paid, largely because it is not paid contrary to the law.;

Tax avoidance usually involves paying in the wrong place and / or at the wrong time because a structure has been adopted where the form and substance do not coincide for tax purposes.

So, for example, the Lloyds structure I commented on during the Panorama programme involving UK, Cayman and BVI companies resulted in the right tax being paid in the

right place (the UK) at the wrong time because the form adopted allowed a tax deferral to take place. That was straightforward tax avoidance, no more or less. If legal it was not within the spirit of the law. It also required breaches of International Financial Reporting Standards requirements on coterminous year ends that are also reflected in company law and of which Lloyds must have been aware. The breach was pretty blatant, but legal.

And this is what is unacceptable now.

It so happens that this means just about every secrecy jurisdiction transaction is unacceptable. This is because by definition secrecy jurisdictions provide tax and regulatory privileges to those who do not conduct active business affairs within their own jurisdiction whilst allowing such affairs to be recorded in their domain even though they occur elsewhere. Hence, if one of the privileges provided by using a secrecy jurisdiction is to pay tax in that place (payment being somewhat notional of course if the tax is charged at zero per cent) this is, presumably, a only benefit because tax is not being paid (in full) in the jurisdiction where the actual economic activity takes place (or else, why locate offshore?). Hence the tax due onshore is being avoided, by definition.

The logic is obvious: secrecy jurisdictions are abusive by definition.

There are just two things to add. First, when I and others in the Tax Justice Network began to say avoidance was unacceptable people derided the idea. In 2007 [we had to spell out what we meant](#) and few saw its relevance. Now it is mainstream. Second, and as important, it has to be asked where this leaves the Big 4? Tax avoidance is the backbone of what they do. What now?