

# The only certainty we need in tax is that you'll be cau...

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The Independent has reported today:

*Britain could slash its £30bn a year corporate tax avoidance industry in one swoop — and raise more money from higher tax revenues — if it switched to a principles-based approach rather than the present one of "legal certainty", according to the Queen's lawyers.*

*Robert Field, the head of tax at Farrer & Co, lawyers to the Royal Family, said last week: "Rather than tinkering with the present system of specific rules which leads to companies looking for loopholes to avoid tax, there are grounds for arguing that the UK could generate billions more by introducing a principle-based approach to the rule-book."*

I can hardly disagree. I have [argued for a general anti-avoidance principle](#) until I'm blue in the face. I can also take some credit for the fact that this is now on the government's agenda, having convinced Vince Cable and Matthew Oakeshott of its merits when they were in opposition, which led directly to it being in the Coalition agreement.

And I am certain what Mr Field has said is right.

As I mentioned last week, [when Dawn Primarolo did this in 2004](#) with regard to PAYE the impact was immediate and effective. The Chartered Institute of Taxation agreed. By saying all cheating in this area would be blocked by legislation which would be backdated to December 2004 whenever the abuse was discovered henceforth the impact was unambiguous: all purveyors of tax abuse knew they'd be found out and that the schemes they were selling would not work.

The result was enormously beneficial. Considerable certainty of the sort we want in tax law was provided, for perhaps the first time in the UK: cheats would be found out and would pay.

That's the certainty we want in tax law.

All other certainty is designed to allow tax cheats to abuse rules. Rules always have limits. Tax avoidance is always intended to get round those limits. That's why principles work.

There's another way to do this, which adds considerably to the force of any principles based law. It [is explained here, by me, where I say:](#)

*There is a further vital issue to resolve [when one has a general anti-avoidance principle], relating to how the law of taxation should be interpreted. There are two options. Interpretation can be based upon the principles inherent in legislation or the strict construction of legislation. The legal systems of the world vary considerably, as do the jurisprudential systems that they use. These two possibilities do, however, accord with the broad categorisation of determining obligations in accordance with the principles of either equity or law.*

*For these purposes "equity" is the name given to the set of legal principles which supplement strict rules of law where their application would operate harshly. The intention is to achieve "natural justice."*

*In contrast the "law" refers to laws enacted by Parliament or established by "common law", the latter being based on precedents set by judges when they decide cases.*

*It has been commonplace for tax to be charged in accordance with "law". For example, it was decided in a legal opinion given in the House of Lords in the United Kingdom in 1869 that:*

*If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute what is called an equitable construction, certainly such a construction is not admissible in a taxing statute.*

This principle remains enshrined in most British tax law (in particular) and appears to heavily influence taxation thinking in general. This decision has implicit within it the following assumptions:

- 1.□ That the right to hold property is sacrosanct and that taxation violates that property right. As such tax may only be charged when specifically sanctioned irrespective of the equity of the resulting payment, or absence of payment of taxation;
- 2.□ The letter of the law can be determined without reference to the intent of those who created it or the context which gave rise to it, even if the circumstance in which it is used was not envisioned by those who created it;

3. That it is equitable as a result that some will, or will not, fall out of the charge to tax on the basis of the strict interpretation of the meaning of words which could not have been envisaged by those who passed them into law and whether or not (as is explicitly noted in the legal opinion, above) the resulting charge to tax is equitable or just.

The alternative approach to legal interpretation with regard to taxation is purposive. It may be summarised by an Australian law of 1901 on legal interpretation which said:

*In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.*

In this context interpretation 'looks through' the strict structure of the words in the law to determine their just and equitable meaning, and uses that meaning in deciding upon the application of the law. .... In that context a purposive or equitable approach to the interpretation of law is essential if miscarriages of justice contrary to the spirit of equity, noted to be possible in the UK legal decision of 1869, are to be avoided.

Equitable construction of the law is therefore considered an essential element of any set of principles for taxation that recognise the rights of the citizen and the mutuality of obligation inherent in the relationship between the citizen and State, and between states.

And curiously the very thing business save it craves would be delivered in the process: they'd know that if they were in doubt they should not do a tax scheme.

It's really as simple as that.

It's called tax justice for all.

It's what we want.