

Companies do not have a duty to maximise their profits ...

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There has been recent dispute both on this blog and on Twitter about whether a company has a duty to maximise its profits, or not. This is the law, from the Companies Act 2006:

172: Duty to promote the success of the company

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to-

(a) the likely consequences of any decision in the long term,

(b) the interests of the company's employees,

(c) the need to foster the company's business relationships with suppliers, customers and others,

(d) the impact of the company's operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

So, where does it say that profit maximisation has to be the object of the company? Quite clearly it doesn't.

Sure, 'success of the company for the benefit of its members' clearly implies a duty to generate profit, or at least a positive cash flow, but maximise it? No way! This is at best a constrained requirement, as is clear from sub-paragraphs a to f.

And in that case judgement has to be exercised. Tax cheating may not in that case be sound judgement. It is harmful to employees. It may be harmful to the members, who may have to pay more tax as a result in a personal capacity. It may harm the long term interests of the company whether by reason of risk of tax challenge or because the directors' believe that the resources they need from the state may not be available to them.

So what is abundantly clear is that in UK law there is:

- a) No duty to maximise profit
- b) No duty to minimise tax bills
- c) A duty to exercise judgement.

And there is no way tax cheating can be reconciled with the legal obligation of the directors because it is clearly contrary to the interests of pension fund members, employees, the long term stability of the company and as such to its duty to suppliers, customers and others.

So shall we stop the absurd claim that tax avoidance is a duty once and for all? It's not. And it's time we said so, loud and clear.

Cheating is an exercise in poor judgement. As such it is contrary to company law.