

Companies do not have a duty to avoid tax

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I'm told that someone from the Chartered Institute of Tax has been claiming today on BBC News 24 that companies have a duty to their shareholders to avoid tax.

I really do wish people who should know better would not put forward arguments that are factually untrue. There is absolutely no such implicit or explicit obligation imposed upon the directors of any company, public or otherwise in the UK. Section 172 of the Companies Act 2006 lays out the duties directors have to their shareholders and to other parties. That section actually says:

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.*

There is, as you will note, nothing absolute about that at all. The exercise of judgment is required, and the exercise of good faith is essential. There is of course a duty of care to the shareholders, but remember that they have no way of enforcing it: they cannot sue the director if he or she fails in their opinion to maximise profit or minimise tax. No shareholder has that right. As a result it is very clear that there is no absolute guidance to behaviour in company law.

More than that, company law explicitly suggests that companies may take into account the impact of tax avoidance on their relations with customers, tax authorities, the community and more besides. In other words - you can explicitly decide, very legally, not to tax avoid.

So might I suggest the profession stop telling mighty porkies on this issue?