A tax avoidance Q & A

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Late last week the Independent newspaper asked me and some others a series of questions on tax [as the basis of an article published this weekend]. However, the individual answers were not published so I thought I'd offer the Q & A here:

1. What is the difference between tax evasion and tax avoidance?

Tax evasion is about breaking the law: not declaring income or claiming expenses inappropriately.

Tax avoidance is about getting around the law: finding loopholes and abuses never intended by parliament e.g. by routing income through a tax haven.

Tax planning is about choosing between the options intended you should have available to you e.g. between saving in a pension or ISA.

2. Who pays corporation tax? The corporation, its owners, or the people who buy its products or services?

The honest answer is the long-term evidence is unclear. The short-term answer is that without a doubt the payment falls on shareholders, and since we can never be sure who they are the company must pay on their behalf. As in the long term we're all dead I'll settle for the short-term payment by shareholders and risk the rest.

3. What is the problem (in 50 words) with the current tax model?

The biggest problem with the current tax model is that there is an army of lawyers, accountants and bankers who are willing to abuse it for personal gain, in the process seeking to undermine the legitimate claims of democratically elected governments and so threaten our whole way of life.

4. If most tax avoidance is because taxpayers exploit loopholes, why do governments create those loopholes?

Governments don't create loopholes. They never have and will. But all words have uncertain meaning and when you have a great many words you end up with uncertain outcomes. The immoral seek to abuse that uncertainty to free-ride the tax system at cost to the rest of society. But that's not government's fault. That's the fault of the avoider and those who help them.

5. Can we ever get rid of tax avoidance? If not, why not?

We can mitigate avoidance. But whilst we have 194 countries in the world and differing tax and accounting systems there will always be some loopholes somewhere for the unscrupulous to abuse. In the meantime the aim is to secure cooperation to limit the damage, just as we do with all anti-social behaviour and crime, none of which has ever been eliminated.

6. What is the estimated annual cost of tax avoidance lost to individuals? And to corporations?

My work for the TUC in 'The Missing Billions' http://www.tuc.org.uk/touchstone/missingbillions/1missingbillions.pdf suggests personal tax avoidance is £13 billion a year and corporate £12 billion. I now think both are underestimates.

7. Can we crack down on corporate tax avoidance without losing things like duty-free products and ISA savings accounts? Should we be cracking down on those as well? If not, why not?

Parliament has always intended people should have the right to use specific allowances and reliefs in pursuit of social policy. They're part of tax planning. They're legitimate, intended for use and have nothing to do with tax avoidance, which is about getting round the law. So of course we can keep those reliefs and tackle tax avoidance because they're not the same thing.

8. Will the General Anti-Avoidance Rule (GAAR) that the government is proposing work?

I do not think it will because it is only intended to tackle the most abusive of pre-packaged tax avoidance schemes e.g. film partnership abuse and the likes of K2 of which Jimmy Carr was a member. That's important but it deliberately goes nowhere near the sort of corporate tax avoidance Starbucks, Google, Amazon and many others have done. As such it falls far short of public expectation and could even provide an excuse to those avoiding by saying since it does not impact on their behaviour it must be acceptable. That's worrying.

9. If not, what would?

We need a General Anti-Tax Avoidance Principle. Michael Meacher MP has such a Bill before parliament now. [***http://services.parliament.uk/bills/2012-13/generalantitaxavoidanceprinciple.html***](http://services.parliament.uk/bills/2012-13/generalantitaxavoidanceprinciple.html) ***Now, I'm biased because I wrote his Bill, but the simple fact is that this says that if someone puts an artificial step into a transaction with the sole or main aim of seeking to avoid tax (and routing a deal through a tax haven without commercial any other commercial justification would be such a step) then H M Revenue & Customs could ignore that step when coming to calculate the tax due. That's not that radical: we thought we had such a rule for 20 years from 1981 after the House of Lrds appeared to create it. The EU has also called for all member states to have such a rule this week*** [***http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/c_2012_8806_en.pdf***](http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/c_2012_8806_en.pdf) ***It's the UK that's out of line by not planning such a rule.***

10. How would we ensure that any new regulations would be followed by all and not manipulated by clever accountants and lawyers?

The penalties for those who sell tax avoidance have to become significant. First their professional institutes have to crack down on this practice. Second, if pressure does not work then penalties have to apply to the vendors of schemes. I would suggest that they should be as much as the tax lost from the use of the scheme. And for persistent offenders the option of prison has to be considered. The vendors of tax avoidance have to be treated a bit like pimps: their penalties should be greater than those using the arrangements just as pimps pay bigger penalties than prostitutes, and rightly so. Both live off immoral earnings after all.