

I had a conversation at a party on Saturday with a person of my occasional acquaintance, who admits to being a reader of this blog. He repeated to me the often asserted claim that companies have a legal duty to maximise their profits, believing it to be true, and despairing of the prospects of reform for business if that were the case.

I was able to assure him it is not true: companies have no duty to whatsoever to maximise their profits. A company's directors have a legal duty to promote the success of their company, but that term is both widely defined and subject to considerable constraints, as the law shows. This is the law in question, 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 avoidance 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. And 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. It could even harm commercial prospects, as Starbucks are finding.

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 clear 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. Cheating, which is what tax avoidance is, represents an exercise in poor judgement. As such it is contrary to company law.