

## M & S 'does an Amazon'

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The [Guardian](#) late yesterday:

*Marks & Spencer has become the latest in a string of UK companies to face criticism from tax campaigners over the way it structures its online sales to Europe — with one describing the its sales operation as similar to that of the internet retail giant Amazon.*

I suspect that was not the name most expected to appear next on the list of tax avoidance suspect, but as the Guardian notes:

*The British retailer has been expanding its online operations to several countries across Europe with a new [marksandspencer.eu](#) site, as part of its hopes to grow its business in a difficult economic climate. But internal M&S documents seen by the Guardian show that the firm's structure involves shipping goods from one country — the UK — while invoicing the transaction to another — Ireland. Orders made through the new site by customers from France, Germany, Ireland or other countries are all shipped from M&S's UK warehouses — but the transactions are all made with, and charged to, Marks & Spencer (Ireland) Limited, a subsidiary located in the Republic of Ireland, which has the lowest corporation tax rates in Europe.*

Now let's be clear: there's nothing illegal about this (it has to be said). And it's also true that, as the Guardian notes:

*Marks & Spencer's UK branch is paid a wholesale price for the goods it ships by M&S Ireland, and this is subject to UK corporation tax, but then the rest of the retail markup is then subject instead to Ireland's much lower corporation tax rate of 12.5%.*

As a result the defenders of such schemes will, no doubt say that this is not tax avoidance at all. But it looks very likely that it is since as the Guardian also note:

*A specification document prepared last year when the new site was being designed specified that "[t]he corporate tax structure will be aligned to that of the Irish website".*

*The document then detailed how, while the goods would be shipped from the UK, M&S*

*UK would only receive a wholesale — not retail — price: "Goods issue from Hardwick DC [distribution centre] in the UK at cost price ... intercompany invoice at cost price in GBP with a variable mark-up % by country (of order) plus UK VAT".*

Whilst in another mail, sent when the UK corporation tax rate was cut this was said:

*"Given that it was developed as a means to avoid UK corporation tax when it stood at 26% it now seems appropriate to reassess this," it read. "Corporation tax will be 21% by next year. Does this not render many of the advantages of having an Irish company obsolete?*

*"From a tax management perspective there may have been advantages in avoiding the UK 26% tax rate but the process and IT overhead with the additional VAT complexity may negate these advantages. Needless to say there is also the reputational damage to M&S should it be seen to be avoiding UK tax in the current climate, as seen with recent examples such as Starbucks [and] Amazon."*

I think the motive for the Irish operation is more than abundantly clear, although M & S issued all the usual defences, including references to their being good enough to pay over their staff's PAYE to HMRC, and the following:

*"These are not UK sales, these sites do not serve UK customers and there are no sales made in sterling. All tax is legally and fairly paid both in the UK and in Ireland."*

Sorry: that does not wash. These are goods shipped by UK staff from UK warehouses on which the full resulting profit is not recorded in the UK. As was noted in the paper:

*Richard Murphy, an accountant who writes for the [UK Tax Justice Network](#), agreed. "There is no doubt that this is Marks & Spencer is 'doing an Amazon' by setting up an arrangement in a low tax jurisdiction where little or nothing happens to avoid tax where the trade really takes place.*

*"As Ernst & Young told the public accounts committee last week, such arrangements are common. But what that means is big business is now used to playing games with tax authorities, who appear to have meekly accepted there is nothing they can do about it. That has to change."*

I stand by that.