

Robert Maas flies in the face of reason

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Long standing tax commentator and adviser Robert Maas [has written the first part](#) of what he suggests might be a two part review of my book '[Over here and under taxed](#)'.

Now Maas and I are unlikely to agree: when he writes the following it is unlikely we have common ground:

I have written elsewhere about Google, Amazon and Starbucks (Taxation, February 2013). None of them seem to me to be avoiding UK tax, even under Richard's definition.

In fact the best thing he says about the book is:

Although I disagree with most of the content, it flows well and I thought it value for money.

More acerbically he says:

But back to Richard's book. I found it very facile — although it is obviously not aimed at tax specialists. It is very heavy on Richard's personal involvement in challenging tax avoidance; he seems to be behind, or involved in, an awful lot of the public criticism of tax avoidance.

So let's deal with that facile point - which seems to figure on my argument that tax should be paid where the economic impact of a transaction arises and look at Maas' analysis of where tax should be paid on 'Over here and under taxed', where he says:

What is the fair share of tax to be paid in the UK on Richard's book? It was presumably written in the UK, published by a large US company, and sold to me by a Luxembourg website that I clicked through to from my house in the UK. Which country should fairly get the tax on my £1.83 (or rather on whatever profit has been made out of my £1.83)? Or should it be divided amongst the US, Luxembourg and the UK, and if so, how? The tax rate in the US is 35%, that in Luxembourg is 28.8% (effective) (I suspect actually that Amazon Europe are based there because it has a low VAT rate rather than

a low corporate tax rate) and it is 23% in the UK. Richard appears to think that it is fair for the UK government to get the tax. It is not clear to me why.

Well let me explain tow things Robert. The first are some facts. The book was indeed written in the UK. I will pay tax on it. It was commissioned by a UK company, from the UK. It was produced here by them. And I suspect most copies will be [sold on Amazon.co.uk](https://www.amazon.co.uk) where they say the book is only available for download in the UK. Now if that does not prove a link with the UK, what does Robert? Only the legal fiction of Amazon's Luxembourg location and the place of residence of Random House UK's shareholders in Maas' view - and that's enough, apparently, to mean that a transaction wholly located in the UK is taxed elsewhere in hi opinion. It's an interesting suggestion - but so obviously absurd I suspect few would agree with Robert Maas. Indeed, many might think his suggestion facile.

Others might think his reading of the book similarly deficient. And maybe just a little literally legalistic. Which brings me to my second point. Seeking to analyse a transaction in the way Maas does - by micro analysis of its component parts - as is also done in transfer pricing - is never going to result in a proper, or dare I say it, fair basis of taxation. For one very good reason that is because a transaction does not automatically give rise to a profit (ask a publisher, if in doubt). For another, the answers just are not obvious - and no arm's length pricing will ever make them so. Which is precisely where unitary taxation comes into play. It looks at real economic drivers - sales, labour, capital - and where they are located and apportions profits to the place where they are. Note: it does not allocate. It apportions. There is no argument in unitary taxation that one event suggests a profit on a transaction is in one place or another. There is instead a macro over-view of economic reality - which assumes, rather obviously that a group of companies exists and that legal contracts can be, and often are, little more than a sham - and then apportions profit on a basis that is closely linked to reality.

Is that fair? Well, not precisely - because fairness is ultimately and always an irreconcilable goal since there will always be differing perceptions of it. But it's a darned sight closer than Maas' rather odd view. And maybe that's why he's losing the debate and the tax justice campaign is winning it.