

The Board Charter needs to go further to be useful

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Mid-tier accounting firm Mazars are seeking to make a name for themselves in the world of business ethics. As a result they have, for example, [helped promote](#) the [Fair Tax Mark](#) for which I am partly responsible. Now I note they are also, in cooperation with the current Lord Mayor of London (but not the City itself, it would seem) promoting [an idea called The Board Charter](#).

This is a new code of corporate ethics. I have no problem with such codes; indeed, I think they can add value by creating benchmarks against which future behaviour can be appraised, so I offer cautious welcome for this code despite apparent linkage to a City institution for which I have inherent distrust. That is because the job of the Lord Mayor is to promote the role of the City as a financial services centre and that activity has, overall, been deeply harmful to many in the UK and elsewhere for reasons well documented, for example, in Nick Shaxson's book [Treasure Islands](#).

Any such code has also to appear internally consistent with the apparent behaviour of those promoting it. I have concern on this issue in this case. I note that the code says:

Above all, ... boards will recognise in everything they do that, as Jamsetji Tata — the founder of Tata Group — put it, their businesses are wholly-owned subsidiaries of society and consequently that the way in which they discharge their stewardship responsibilities is critical both to the success of their businesses and of the society in which they live.

Nothing I have seen or heard from within the boundaries of the City suggests they really believe that business is a wholly owned subsidiary of the society that hosts its activities. I wish it did; I do take this view but I am only too well aware that this has led to my being treated as an outsider. I think very few in the City would be comfortable with that statement. I suspect they think the situation the other way round, and that is the challenge that this code faces.

In fairness though, those suggesting the code do seem to have some belief in this view. On tax they say:

The amount of taxation paid by global businesses in each jurisdiction in which they operate and in overall terms has been attracting much attention especially in sectors such as mining and natural resources and retail. With leading businesses being increasingly global and taxation systems remaining national, and often in competition with each other for taxation revenues and inward investment, significant judgement is required by a business in deciding how to arrange its taxation affairs and in assessing how its decisions will be viewed by investors, other stakeholders and the wider public.

As a guiding principle, it may be appropriate that the amount paid by a business in each jurisdiction in which it operates should be fair having regard to the amount of activity undertaken and/or value created there. Whilst applying this principle in practice is unlikely to be simple, it will be important that taxation arrangements appear reasonable having regard to the substance of the activities of the business and generally that taxation schemes that an independent observer would consider artificial should be avoided. If the reasonableness of the judgements of the management and board is called into question, significant reputational risk and possibly challenges to the 'licence to operate' of the business may arise in some countries. A willingness to be transparent on the taxation policies of the business and the resultant amount of taxation incurred will be of assistance to stakeholders in their deciding whether fair taxation policies are being adopted.

Moreover, the board needs to be aware that public opinion on what is acceptable with regards to tax planning can vary over time and between countries making the need for careful calibration of the most appropriate approach a matter for regular review.

This is welcome. It would be so much more welcome still if Mazars explained how they think a business should be accountable for this commitment. Without country-by-country reporting I do not see how that could be done. And implicitly the code is saying tax payments should align with what a unitary tax system would consider appropriate. In both cases this needs to be made explicit, in my opinion. Otherwise this code is too timid, and that will not do. Codes are only useful when they inspire action and so change. As yet this code is, on this and other issues, simply warm words that nod to issues of importance. It needs to go someways further to be useful.