

What is the Fair Tax Mark for?

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I have been noticing some commentary of late asking the question 'what is the Fair Tax Mark for?' I think it appropriate to answer that question given I was the creator of the idea and am a director of the [Fair Tax Mark](#).

The objects of the Fair Tax Mark are relatively straightforward. In an era during which the public has become increasingly, and rightly, concerned about the tax paid by companies the Fair Tax Mark is a mechanism to identify those companies, however large or small they might be, that have a number of what, we think, are quite critical commitments in place within their management systems. These cover:

- * Transparency
- * Governance
- * Tax avoidance
- * Explaining how the right amount of tax has been paid by the company

Transparency

The most basic of these commitments is to transparency. In the case of a small company this involves stating some very obvious information that is not required to be disclosed by law, such as where the company actually trades.

In the case of large companies the commitment is similar, although different in nature, inevitably. For a multinational company the requirement is that they declare where they locate their businesses, and what they're called in that place. This information should be provided by law, but research has shown that a very large number of companies are completely unaware of their obligation to disclose this data, and that it tends to be fairly inaccessible if it is published.

Our aim, whatever the size of company, is to show where it impacts upon communities. We think that this is at the heart of social responsibility. It might also indicate where tax

should be paid.

Governance

Governance is an important issue whether a company is large or small, although more formal procedures are inevitably required as companies grow. In both cases, however, the commitment is to positively thinking about the course of action the company might adopt in certain situations, and taking steps to ensure that the right outcome is delivered. In the case of companies, whether large or small, we think that the commitment required is to pay the right amount of tax, but no more, in the right place and at the right time. In this context the word right has a particular meaning, which is that the way in which a transaction is reported for tax must reflect the economic reality of what has really gone on. So, for example, we have significant difficulties with companies that pay royalties within their own group for trademarks that they invented which happen to be have their legal ownership recorded in a tax haven. And we would have similar difficulty with the payment of interest to a tax haven subsidiary if there was no matching obligation to that interest on to a third party supplier of loan finance. So, what we're looking for is a commitment to the process of ensuring that the income of the company, and the expenditure it has incurred, is recorded in ways that reflect what really happens and not in ways that can be constructed to minimise tax bills.

Tax avoidance

This governance issue is, of course, related to tax avoidance.

Tax avoidance is a way of trying to reduce a tax bill in a way that a parliament would never have intended. As a result, for example, claiming legitimate business expenses can never be tax avoidance if they have been genuinely incurred in the way in which they are presented to a tax authority. There are, however, many ways in which a combination of accounting and taxation can be combined to manipulate loopholes in the law that will always be inevitable however long that law might be.

So, for example, recording your income in one place when it very obviously arises in another, as has been commonplace for some multinational companies, looks like tax avoidance to us.

So too do the arrangements outlined in the previous paragraph, were royalties and interest are paid to tax havens without there being any real economic substance to the transactions.

And, there are also marketed tax avoidance schemes that we think no self-respecting company should go near whilst since 2013 the UK has had a General Anti-Abuse Rule in taxation law which does, in some circumstances, allow HM Revenue & Customs to challenge an accounting or tax arrangement the company puts in place where it is obvious that its main purpose is to reduce tax.

We ask, at a minimum, the companies commit to not using marketed tax avoidance schemes and to avoid any arrangement that might be subject to the General Anti-Abuse Rule, but we go further than that.

So, for example, we look quite specifically at the use made by multinational companies of tax havens. It is quite fair to have a company in such a place if it really trades in that community. But, when a tax haven subsidiary appears to only exist to save tax or to hide a transaction from view then we have what we think are quite reasonable concerns about that fact.

And, because tax avoidance is subjective, and exploits loopholes, we reserve the right to reject the application of any company if we decide that although we have not previously said we would refuse accreditation because of the use of a particular scheme or arrangement, that their doing so would be prejudicial to the interests of the Fair Tax Mark and the companies who have already been awarded it.

Explanation

All of which brings us to our last point, which is about offering explanation. There is no doubt that some people, including experienced tax professionals, cannot see why anyone would need the Fair Tax Mark. No doubt these people think that they can extract all the information they need from the accounts of companies already, and that may be true. But, it seems that for the vast majority of people this is not the case and we know, from experience, that many ordinary users of accounts and many people who want to know what a company is up to, including a great many journalists who appear to be skilled in investigative techniques, find most accounting incomprehensible. So, we have laid down what we think a company must publish if it is to be awarded the Fair Tax Mark.

It might sound obvious, but the first thing that we want is a set of accounts. It is a fact that a great many small companies in the UK do not publish on public record full accounts that reveal their profit and tax paid. They must produce those accounts for their shareholders, but are allowed by law to file much less information at the Registrar of Companies and so hide details of their income, profits, taxation, and other matters of inspection. The law might permit this, but quite clearly this makes it impossible to assess whether a company is, or is not, paying fair tax and as a result we expect full accounts to be published or we will not award the Mark. This might seem to some minor issue, but we think that paying tax is the price a company should pay for the privilege of limited liability that it is granted by society. That is why we are happy to suggest the law is wrong in allowing companies to hide details of their affairs, and require full accounts on public record from companies that want the Fair Tax Mark. In this sense the Fair Tax Mark is pioneering what we think is appropriate change that society now expects.

In the case of multinational companies our requirement is a little different. Here we

expect the company to publish country-by-country results. What this means is that for every country in which the multinational company operates we expect it to disclose its sales, the number of people it employs, the profit it makes, the taxes that it both owes and pays and its total investment in that country. This then gives us, and of course the users of the accounts, the opportunity to appraise how significant each country is in its operations, and also provides the opportunity to assess whether or not it is making extensive use of tax havens for what look like artificial purposes. We think that this is vital to the understanding of where the company is, and how it operates.

In addition, whatever the size of a company we want it to explain its tax bills in more detail than is required by current UK and international law and accounting regulation. So, we do not think that a few numbers with bland descriptions attached to them is usually sufficient to explain this, especially when many accounts appear to make little effort to discriminate between the tax bill that is due immediately as a result of the trading of the company during a year, and those tax bills that might be due at sometime in the future (called deferred taxation). We therefore expect those companies who get a Fair Tax Mark to explain in sufficient detail that a lay person can understand what tax they owe as a result of the trading in a year and what tax they might owe as a result of their activities during the year more than one year after the year end. And, as we know that two or three word descriptions are insufficient in very many cases to explain this we expect that when a number is significant that the company explain it in sufficient detail that somebody might understand why, or why not, tax is due.

Tax Rate

The result of all this is slightly contentious, by which we mean that if a company does fully explain why it is not making a tax payment then we are still quite happy to give it a Fair Tax Mark. There are, after all, good reasons why tax may not be due. The most obvious is that the company made a loss, but that is by no means the only one.

For example, if a company decides to clear its pension deficit with new funds it has raised for that purpose then this is, very clearly, a socially responsible act, but it also happens to be the case that the company can then claim tax relief on this over a number of years, and this can have significant impact upon the amount of tax that it pays.

Likewise, some companies engaged in environmental activity receive special tax allowances which disproportionately reduce their tax bills, whilst a company with extensive research and development activity can be in the same position.

All of these are completely appropriate courses of action, provided for in law, and so long as the necessary costs been incurred, if tax relief that reduces the tax rate is provided, and an explanation of how that has happened is given in the accounts, then we do not think we should punish the company for that fact. They may not get full

marks on our assessment process if their tax rate is significantly below the headline rate of tax in the UK at the time that we are looking at them, but with good explanation they may not fall far short.

And, this last point is important: what we want is explanation. What we are encouraging is that explanation. We want companies to communicate how they think about tax, how they plan their affairs with regard to tax, what steps they take when planning their tax liabilities (and it is quite reasonable that they do) and to explain what the outcome is.

There is no point, in our opinion, saying that a company is good or bad depending solely on its tax rate: the company with a very high apparent tax rate can do so because it put lots of expenditure through its accounts which have nothing to do with its business and so can't claim tax relief on them. We doubt that is socially responsible, any more than shifting profits to tax havens is. Tax rate is not enough to assess a company on: more is needed and that is what we seek to supply.

Our goal

So, transparency, accountability, governance, commitment to paying the right amount of tax in the right place and at the right time, and explanation are the core elements of the Fair Tax Mark. Those are the things that we are here to promote, largely because no one has ever done this before, and no one else seems willing to take the task on. If they did and, for example, what we are asking for became accepted practice in UK accounting our job would be over, and we would be happy with that.

But until that happens there will be companies who want to differentiate themselves on the basis that they really are trying to manage their tax affairs responsibly and who want to communicate that fact. We want them to do so, and want to encourage and help them in achieving that goal, and that's why we think that the Fair Tax Mark is important.