Tax avoidance is real, and not the same as tax evasion

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Richard Brooks of Private Eye is chair of Tax Watch UK, and he has written to me this morning saying that the characterisation I have made of George Turner's comments to a meeting yesterday, on which I have commented, is unfair. He has objected to the underlined words here:

George Turner of Tax Watch UK published a paper and made a claim at an event yesterday that tax evasion is the same as tax avoidance, and both should be considered to be illegal. I regret to say that this is decidedly unhelpful.
George Turner's suggestion that the distinction between tax evasion and tax avoidance should be eliminated in considering how HMRC tackle tax abuse and that, instead, all activity that seeks to reduce a tax liability should be treated as illegal, and so be subject to prosecution on the basis that it is cheating the public revenue.

He has suggested I should quote what George Turner said, and has suggested the relevant quote I should have extracted is this:

"*Given widespread and targetted anti-avoidance rules, schemes often require an element of concealment, which is why accountants and lawyers fight so hard to keep their advice from entering the public domain, or from being disclosed to tax authorities.*

Now putting this together, we can see that many, and in my opinion the majority of tax avoidance schemes could easily fall foul of the law on cheating. Where there has been an active attempt to conceal the scheme, or a failure to [provide] information relating to a scheme, that is clearly fraud".

But as I advised him, what that quite clearly shows is that George Turner thinks that there is almost no such thing as tax avoidance anymore, because anything left of consequence that passes by that name is only possible with the use of concealment. But that is not what tax avoidance is accepted to be. Tax avoidance is, as I noted earlier, and in the words of HMRC:

"*Tax avoidance involves bending the rules of the tax system to gain a tax advantage* *that Parliament never intended.*

It often involves contrived, artificial transactions that serve little or no purpose other than to produce this advantage. It involves operating within the letter, but not the spirit, of the law."

Note there is no reference to concealment there. And in the work of Claire Quentin, to which I referred, concealment would only happen as avoidance merges into evasion.

So what has George Turner done? I suggest his generalisation (as implied by his use of the word 'majority') about avoidance does indeed suggest that avoidance is in effect the same as evasion and is as a consequence cheating, and so tax evasion. I think the quote that Richard Brooks referred me to makes that clear: he says avoidance now often involves concealment, and so cheating, and so should be treated as illegal. What I am saying is that this is already true: this is tax evasion and is as a result illegal. Turner is saying that the majority of avoidance is in this category, in which case what I conclude from his generalization is correct: using George Turner's own words he is saying that avoidance is usually evasion and no distinction can be drawn.

But what he has also done is suggest that there is now no such thing, at least of any consequence, as tax avoidance. He has effectively eliminated it from consideration now by his generalisation. And yet what HMRC describe, what I described, what Claire Quentin described, and numerous other sources also describe, clearly still goes on. And I do no think it tax compliant behaviour. It does still *bend the rules of the tax system to gain a tax advantage that Parliament never intended* but does so, cards face up on the table, and some of it works. Hence the need for new legislation to prevent it, as still happens. This cannot, surely, be denied? But if it isn't denied, what is it to be called if not avoidance? And it's not cheating, however abusive it is, because no law is broken, however much that offends, as it does. So the generalisation that most tax avoidance is the same as tax evasion is simply not true: they are not the same, except when what is called avoidance is actually evasion. And it follows that it cannot be said that all tax avoidance is cheating and so should be subject to prosecution as such. That is simply not true, in my opinion.

In other words, I think George Turner has made two mistakes. The first is to confuse avoidance with evasion in a way that is not helpful. If avoidance requires concealment it is evasion: denying information to HMRC is what evasion is: that's the definition of it. In other words, Turner claims to have found something new that has always been there, and could always have been prosecuted if HMRC wanted to do so. The point he is making is of no consequence then, and certainly not worth making a campaign issue.

And at the same time what he's effectively saying is of inconsequence is the existence of something that does still exist and which is abusive, and does require further action to remedy it. And that something is ongoing tax avoidance as it is commonly, and correctly understood to be, and not as George Turner describes it, which has always been evasion. And that means he undermines the case for tackling avoidance. And that really does not help at all. Which is the whole point I have been seeking to make, and why I raised this issue in the first place.

To clarify, my point is that by offering an incorrect generalisation, which I think I fairly summarised (but which Richard Brooks does not), George Turner does not advance a new argument on tax evasion but does hinder one on tax avoidance. And I can't see how that helps tax justice.