



Paul Captieux

# Doing the Right Thing

Words David Cameron used repeatedly in the 2010 election campaign which have since been adopted by politicians of all colours. Overused? Absolutely. But what does "doing the right thing" really mean in the context of UK taxation? Other common phrases are over used such as "paying your fair share". What does that mean?

**I** will be clear on my position from the outset of this article. My stance is that we all have the right to undertake tax planning and that by doing so we should not be questioned about our morality nor demonised for carrying out tax planning.

The debate has always been an emotive one, but tax planning has been around for as long as there has been taxation. In the 18th and 19th centuries people were bricking up window space on houses to minimise the amount of tax they had to pay when there was a 'windows tax'. Some allege that the term "daylight robbery" originated from this tax. Were they doing the right thing?

The UK currently has a top rate of income tax of 50% which is the 4th largest in Europe – behind Sweden, Denmark and the Netherlands. In relation to earnings when factoring in the additional cost of national insurance the overall tax burden is well above 50%. If an owner-managed business company makes profits and decides to pay a dividend to its shareholders, because dividends are paid out of taxed income, the overall tax burden can be well in excess of 50%. In other words the recipient retains less than the taxman. Is this fair?



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Unsurprisingly there is an appetite for planning to try and shelter tax from the 50% rate. Factoring in national insurance and with the VAT rate currently being at 20%, the real tax burden far exceeds 50% when you consider both income and consumption.

Successive governments have tried to cloud the issue by attempting to imply that tax avoidance and



tax evasion amount to the same thing, but of course, the former is legal and the latter is not. They have then gone on to try to make a distinction between what is 'acceptable' tax avoidance and what is 'unacceptable' tax avoidance. Again this is emotive, what is acceptable to someone may be unacceptable to someone else. The Government would argue that Individual Savings Accounts (ISAs) are in place to encourage people to save and ISAs have a clearly defined legislative footing. Therefore they are 'acceptable'. However, tax planning using Employee Benefit Trusts (EBTs) to avoid PAYE and national insurance on earnings is regarded by HMRC as 'unacceptable'. However, both save tax, pure and simple!

The reality is that government could stamp out tax avoidance at a stroke if it wanted to. There is currently consultation taking place with regard to the introduction of a General Anti-Avoidance Rule (GAAR). Business has mixed views on this because of the concern that a GAAR could have unintended consequences and affect normal commercial transactions. A GAAR pre-transaction clearance may be the answer to these concerns but is HMRC sufficiently resourced or prepared to invest in a

clearance resource by recruiting appropriately qualified and experienced tax professionals?

Currently, in order to discourage taxpayers from perhaps flirting with tax avoidance in these times of austerity, there is current consultation around introducing a penalty. The proposal is that certain registered schemes that HMRC regards as 'unacceptable' would be earmarked. If the taxpayer doesn't pay the tax upfront and the scheme fails, the taxpayer would be required to pay the tax and interest (as he does now) plus a 15% penalty. Whether this would achieve its aim is a matter of further debate.

Whether the introduction of a GAAR and, or, a 15% 'discouragement' penalty will reduce the appetite for tax planning only time will tell. In the meantime there is a range of tax planning strategies available to mitigate tax and these are of interest to many businesses.

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