



FEATURE ARTICLE

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Tax Avoidance or Evasion?

The subject of tax avoidance is in the news recently – especially regarding the tax paid by Barclays and this made me think about the difference between tax avoidance and tax evasion.

Now I fully accept that George Osborne has made several speeches demonising tax cheats and in 2009 the tax gap, the margin between what was collected and what was estimated as owed in taxes, was estimated at £9 billion. (To be frank whether that is an accurate figure or not is anyone's guess.)

But I found myself thinking that the debate about the amount of tax that Barclays have paid is missing one vital point and that is the fact that tax avoidance is legal and everyone has a right to do their utmost to legally pay the least tax they can. It is tax evasion which is illegal and should be tackled.

Thankfully this is not just my opinion. A succession of court cases has enshrined the right to avoid taxes in law. The first such case was *Ayrshire Pullman Motor Services and Ritchie v Inland Revenue Commissioners* (1929). In this case Lord Clyde, who was presiding, said: “No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel in to his stores.” His judgement went on to add that, “The Inland Revenue is not slow to take every advantage which is open to it under the taxing statutes for depleting the taxpayer's pocket. And the taxpayer is in like manner, entitled to be astute to prevent, so far as he honestly can the depletion of his means by the Revenue.”

This was supported in another well known tax case, namely *Inland Revenue Commissioners v The Duke of Westminster* (1936) when Lord Tomlin reiterated the earlier case, saying:



“Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise should be.”

The point is that while tax evasion is the illegal concealment of a tax liability from the authorities, is a crime and should be punished tax avoidance is completely legal.

With reference to tax evasion, as I am sure you are all aware, besides criminal law, the taxman has a powerful anti-evasion tool known as “The Ramsay Principle”. This also derives from a famous court case, *WT Ramsay Ltd v Inland Revenue Commissioners* (1981) Basically, the principle is that where tax is due and a taxpayer makes a transaction or series of transactions with no other purpose than evading tax, then the transactions should be ignored and the tax due at the start should be paid in full.

The three cases I have referred to in this article draw attention to the three key points of tax planning:

- ✓ Taxpayers have a right to pay as little tax as they can.
- ✓ Honest avoidance within the rules is allowed.
- ✓ Taxpayers who break the rules face criminal and financial penalties.

You should therefore make every effort to ensure that your investments are as tax efficient as possible, ultimately meaning, for example, that at the most basic tax free ISAs should be a consideration for every investor.

Unfortunately with reference to tax avoidance even this has come under scrutiny from the current Government. This is because on the 13th November 2010 the Government announced that the Office of Tax Simplification (OTS), which George Osborne set up in July last year, will be carrying out a review into all tax reliefs, allowances and exemptions, for businesses and individuals, across all the taxes administered by HM Revenue & Customs. The Chancellor has asked the OTS to identify reliefs that should be simplified or repealed to help achieve a simpler tax system. The OTS confirmed that there are 1032 reliefs in existence and published a comprehensive list on the Treasury website.

Having compiled the original list, the OTS subsequently published another report in December identifying the 883 reliefs that it intends not reviewing further and a list of the 74 tax reliefs the OTS want to examine with a view to abolishing as well as details of 75 other reliefs they will look at if time permits. This includes, for example, the annual £3000 exemption on gifts for inheritance tax purposes and business property relief from IHT.



Among the 74 'at risk' reliefs are some obvious candidates for abolition. These include the annual exemption from income tax of the first £70 of interest earned from putting money in a National Savings Ordinary Account and the 15p a day Luncheon Vouchers scheme. Unfortunately the list also includes some tax reliefs where the case for abolition is, in my opinion more questionable, particularly, for example, Venture Capital Trusts/Enterprise Investment Schemes, IHT potentially exempt transfers and life insurance policies 5% rule and top-slicing.

We can only wait for the Budget to see what actions the Chancellor decides to take based on the conclusions and recommendations made by the OTS but it may be that a number of currently permissible tax avoidance measures are determined to be no longer available.

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