Tax and Corporate Responsibility

Rob Fox

I'm sure those whose encounter with tax is a deduction line on their pay slip will allow me a little indulgence on a topic not only dear to my heart, but by which I earn a meagre crust. This is also one of the ways I can *do* MSE, and doing will re-appear later.

The Law Society on Chancery Lane was a suitable venue for what proved to be a well-attended half-day conference organised by the Chartered Institute of Taxation. The accountancy and tax adviser professions were well represented in the close on 100 audience, but there were many from industry too, plus a handful from the 'good guys' of HM Revenue & Customs. This particular aspect of corporate responsibility is, frankly, still a minority subject and does not yet register on the radar of many Chief Financial Officers in the corporate world, let alone the media. It is nonetheless a legitimate area of concern as the how much tax is paid, where and when has far reaching consequences, especially for national economies.

The first speaker was **David Hartnett**, Director General of HMRC, whose major theme was the nature of the relationship between the taxed and the tax authority. He noted the move in recent years to greater transparency in business towards stakeholders, including the tax authorities, adding however that the peak years for tax avoidance were 2002-5, when disclosure rules were implemented and the UK courts started to apply a purposive approach to interpreting legislation. He noted that both 'sides' wanted a relationship based on trust, transparency, certainty, a risk-based approach, and dialogue. This mirrored the wider trend in the business world to consider corporate responsibility and the ethical aspects of business impact. As part of considering shareholder value companies now look at the impact of reputation and public perception on that value. Paying tax that is properly due is part of this. What can business expect from HMRC in this developing landscape? A tough stance on non-compliance, consistency, clarity of roles, good guidance, faster responses and a link-up between top level thinking in HMRC and delivery. (It has to be said that the last one is the trickiest; those at the top level need to discern "you can't do that" from "you can't do that now like that, but give us a little time and we can do more than you ask").

Next came **Richard Murphy** of, among other roles, the Tax Justice Network (http://taxresearch.org.uk; look out for Richard's blogs). I think its fair to say that Richard is a controversial figure among tax accountants and advisers, with many forthright and well worked through views. It is also true to say that many professionals have a growing respect for him and PricewaterhouseCoopers recently co-sponsored a project by SustainAbility (http://www.sustainability.com/, see page on *Taxing Issues – Responsible Business and Tax* and link documents) to which he was a major contributor. He started by addressing the three questions begged by the conference theme:

- What is a company? A legal fiction, an agent for its owners, the sum of its parts. Richard noted that he had heard a company described as a collection of assets or contracts, but never of people – and the term comes from the breaking of bread. The law recognises companies because society created them, and they consequently have duties.
- What is responsibility? A duty, obligation or liability – but not just reporting it – 'doing' is required. Not 'greenwash' but action.
- What is tax? Not just Corporation Tax but any charges due to governments (including local), which are a cost to the company or for which it is an agent.

Richard then went on to pose six further questions to relate tax and corporate responsibility:

1. Why are corporations responsible for tax?

Tax is central to the social contract between a company and its host society, which is embedded in its licence to operate (implied to otherwise), a licence that is embodied in the legitimacy of the state.

2. To whom are corporations responsible for tax?

Their stakeholders – all of them – because they each participate in some way in the company.

3. How do they act responsibly?

By balancing the conflicting claims made by the stakeholder relationships, which is the key obligation of management. He noted that this is more about politics as economics and the company is a moral agent (he was the only speaker to acknowledge a moral dimension here; three others used 'ethical') in the process of deciding when to pay tax, where to pay tax, and therefore who will benefit from that tax. Here and elsewhere Richard used examples of how multi-national companies exercise a great deal of choice on the how, when and where of paying tax, moving profits between countries to pay less and later. His native Eire came in for some forthright criticism, and the Democratic Republic of Congo much sympathy.

4. How do you know you are responsible?

A company is responsible when it ignores the power (or lack of it) of the claimant but acts in accordance with the legitimacy of the claim. Does it smell right?

5. How do you decide?

By being tax complaint, paying the right tax (but no more) in the right place at the right time. And 'right' means that the economic reality coincides with the from of tax reporting.

6. How do you evidence responsibility?

Richard is very keen on multi-nationals preparing accounts on a national basis so that taxing authorities can see more easily that the tax that should be paid in their regime is. Also by saying who is responsible for tax and by disclosing how they decide what tax gets paid where and when, because this is the reality and it should be transparent.

Clearly there is still a long way to go to achieve this but given the response to this presentation at least some in the UK are willing to go down this road. Richard is certainly willing to show the way and both his formidable grasp of data and his ability to put across complex points incisively equip him well. The Tax Justice Network is due to publish a Code of Conduct for taxation in October this year.

After a much needed tea break (I think some drank that stuff that comes from beans) we were given an industry perspective by **Ian Brimicombe**, Head of Tax at AstraZeneca plc (well known to me!). He started by putting tax within the broader considerations of corporate responsibility, for any company has responsibility for the conduct of its business to customers, suppliers, general public and government. The underpinning principles are transparency, openness, honesty and accountability for actions. Tax is one area of this and he set out a spectrum of responses to this aspect:

- Pay a fair share;
- Pay to the letter and spirit of the law;
- Pay in accordance with advice as to the most likely legal interpretation of the law;
- Pay as little as possible as tax is just another cost.

He hears the last infrequently these days!

In recent years businesses have become increasingly aware of the impact of taxation on shareholder value and the company's reputation. The former requires a sustainable tax rate that adds predictable value to business earnings. Tax is seen in relation to 'peer' businesses operating in the same environments. To be able to predict and control the future tax burden brings a greater degree of certainty to business planning. Tax planning is therefore legitimate, but should proximate to the business objectives (or economic reality). In conclusion he noted that responsible tax management is shaped by all stakeholders and is a balanced response to deliver a competitive, sustainable contribution to earnings and enhances the company's reputation.

It was a useful contribution to the debate for the tone as well as the content. A great deal of what Ian said was in the context of responding to events such as Enron, Sarbanes Oxley and changes to financial and tax reporting in the UK. I came away with the impression that while the corporates are willing to be responsible, the driver has been external.

Ian was followed by the always-entertaining **Michael Conlon** QC, a tax barrister, who gave a survey of what the authorities call tax avoidance and the taxpayers good planning. He did agree that there is such a thing as 'unacceptable avoidance', and therefore implied that some planning was not responsible. In particular he drew attention to a number of ECJ decisions on tax in the last three years. Disappointingly though he did not really address the main themes.

The final speaker was **John Whiting**, PricewaterhouseCoopers (PwC), who gave the tax advisers' perspective. Tax he said involves a tripartite relationship between the taxing authority, the taxpayer and their professional advisers. He too noted that the tax environment is changing, with concerns about the competitiveness of that tax system, Government attacks on 'unacceptable' tax planning, a wider stakeholder interest in tax, a link being made between tax and corporate responsibility and a lack of transparency about tax paid by companies. A response is needed and John drew attention to the CIOT's high professional standards and rules. He then mapped out the main stakeholder groups, internal and external, observing that realistically meeting the competing demands is tremendously difficult.

PwC has responded to the changing landscape by developing the Total Tax Contribution framework, to enable companies to understand how much tax they bear, how much they collect of behalf of others, and the costs of tax compliance. It takes the widest view of what is a tax, so including statutory licences and fees, for example, and enables a company to the picture at local, national and trans-national level. The framework also enables the company to assess the wider impact on society and economy of the taxes it pays. It therefore informs tax strategy, which should include:

- Clear discussion of the company's tax objectives and strategy;
- Disclosure of how the tax strategy and function is managed and who in the organisation has responsibility for governance and oversight;
- Clear disclosure of the material tax risks faced by the company.

Where the Corporation Tax actually paid differs from the rate of CT there should be clear disclosure of the reasons and a transparent reconciliation of tax paid and the tax charge in the income statement. The TTC should also include details of how tax impacts on: the wider strategy and results of the company, shareholder value, and the economic contribution to society and economy that the company makes. (I could see Richard Murphy smiling and nodding at a great deal of what John said).

Corporate responsibility as a whole, and in relation to tax in particular, is very much a work in progress. It looks well on the way to rising up the agenda over the next few years, having been the preserve of NGOs until very recently. It is clear that for progress to be sustained all parties with an interest must work as closely as is reasonably possible to create an environment in which responsible action is rewarded. And action is the watchword; unless faith leads to action it is a dead thing. There look to be interesting times ahead, and some entrenched cultures to challenge. Comforting to know there are others out there committed to doing it.