



Five Live's Tax on Sunday

BBC Radio Five Live's Julian Worricker programme marked the 60th anniversary of the Normandy landings on a glorious Sunday, 6 June. The 'Live News, Live Sport' menu also featured the England cricket team heading for a nine-wicket victory at Headingley, and two accountants discussing tax avoidance.

Reporter James Silver declared that there were 'plenty of euphemisms for legal tax avoidance'. It was 'otherwise known as tax planning' and it was how individuals or companies could legally 'side-step taxes by exploiting loopholes'. The big accountancy firms marketed clever 'tax planning products'.

Jersey under scrutiny

The focus was on Jersey which, said Silver, critics viewed as the 'very heart of the tax avoidance industry'. People of influence, he said, deny that Jersey has ever been a 'tax haven', preferring to call it a low-tax centre or offshore finance centre. One told Silver that a 'tax haven' was a place where you go and hide money, whereas Jersey was not one of those. Later Senator Frank Walker, President of Jersey's Policy and Resources Committee, defended the tiny island's tax regime and spoke of 'the very considerable contribution that Jersey makes to the City'.

Silver read from one of the long lists of registered companies that had replaced brass plates in St Helier: 62 companies being listed in a foyer at JP Morgan. 'They're not really companies at all in the way you or I would understand them to be,' he said. 'They simply exist to hold people's assets, be that money, property or, say, a big yacht.'

But Phil Austin, Chief Executive of Jersey Finance, insisted that the management of those companies would 'have to have a physical presence here. This is not a brass-plate jurisdiction ...

Andrew Goodall CTA reviews a BBC Radio debate on tax avoidance

all those companies have to have directors here and a physical presence to manage them here.'

I was wondering about those euphemisms when Silver introduced John Christensen, co-ordinator of the Tax Justice Network (TJN) and a former economic adviser to the States of Jersey, who had been 'collecting' them. Christensen said:

'I've come across this marvellous lexicon of terms used by the lawyers and accountants, including "tax efficiency, tax minimisation, tax management, tax planning, tax mitigation, tax avoidance obviously, using tax products" but my favourite by a long way is "manicuring your tax position".'

This does not mean that everything that tax advisers do is now to be called 'avoidance'. The TJN has its sights firmly on 'harmful tax competition' and 'aggressive' tax avoidance structures, and tax havens in particular. Christensen added:

'I have always felt that at some stage the international community would need to protect itself from tax havens. They act as a cancer at the very heart of global capitalism.'

Campaigning accountant

Richard Murphy was in the studio. A practising chartered accountant, writer, former KPMG man and former Chairman, CEO or FD of ten companies, he now argues that businesses do not provide the Inland Revenue with enough information, that business does not pay enough tax, and that the Revenue is 'not harsh enough' on big business or non-domiciled UK-resident individuals.

Murphy campaigns for 'tax justice'. He told Five Live he believed legal avoidance was costing the UK between £20 billion and £25 billion a year. He said this was '£750 for every person who's working in the UK or 4p on the UK basic rate of income tax'.

The very largest companies in the UK were meant to be paying 30% tax but 'we are discovering that they are paying nothing like that', he said. 'Rates of between 22% and 23% appear to be about average for our FTSE 100 companies, in other words they are paying their accountants a lot of money to avoid tax liability.' They alone might be contributing £8 billion, VAT avoidance was reckoned to be at least a further £5 billion and stamp duty avoidance might be £1 billion. 'It would go on and on, there's any amount that makes this sum up,' Murphy said.

Timing difference

Mike Warburton, Senior Tax Partner at Grant Thornton, entered the fray. Did he accept the £25 billion figure? 'I don't know what the figure is. The Government, I don't believe, can actually put a finger on it but I do have a difficulty with this concept that it's somehow been lost or vanished,' he said.

Warburton explained that you could not simply look at the rate of corporation tax paid by companies and say that if it's not 30%, it must be avoidance:

'For example, the Government have introduced a number of measures deliberately to reduce the amount of tax where companies invest in research and development. It's a deliberate policy by



HEADING

the Government ... because it's good for the UK economy, and there's a host of other things which encourage the companies to invest in things which are good economically. That's not money wasted, it's what the Government actually wants.'

The perceived loss of tax was 'essentially a timing difference'. It was the job of business to minimise its costs and tax was essentially a cost of business, said Warburton:

'If it minimises that tax cost, it can spend the money on other things, growing the business, with benefits ... that in time will flow back into the growth of the economy and higher taxes in the future.'

New world, old law?

Silver had been to Jersey to track down the offices of three of Express-Newsletters-owner Richard Desmond's companies with headquarters in St Helier. On a Thursday afternoon Silver found an office 'with just one gentleman sitting behind a computer'. Desmond's Channel Island connection was 'estimated to save him £2 million annually' but was 'all legal and above board'. A spokesman for Desmond had told the *Financial Times* that the auditors were happy and that the company had made all necessary disclosures.

Worricker asked Murphy whether in general it was, to some extent, a 'sham' that the Revenue required companies registered in Jersey to be 'genuinely run in Jersey to qualify for tax exemption'. Yes it was, said Murphy, because 'the definition of "run in Jersey" means fundamentally that the directors' meetings take place in Jersey'. These were old rules, created when getting anywhere in the world was not as easy as it is now. 'You can get to Jersey and back in a morning. It's very easy to have a directors' meeting there and not disrupt the flow of your business in the UK. People do it every day, why are there so many fights from Heathrow to Jersey? ... We have an outmoded law which is being abused.'

Warburton took issue with the suggestion that the law was outdated. Government held most of the aces, it could change the rules, and there was an 'absolute armoury of tax avoidance legislation available to tax inspectors which challenges things like transfer pricing'. He also cited the controlled foreign companies rules and spoke of a 'whole stack' of other legislation. In his

Andrew Goodall

view the United Kingdom was 'the biggest and most successful tax haven in the world'. It was a magnet for international business and non-domiciled people. 'We are the major beneficiaries,' he argued.

A savvy listener's email cited TA 1988, s 739, and Murphy accepted that the anti-avoidance legislation was there but argued that 'if you pay somebody enough you find a way to get round many of these problems'.

For Warburton, a key issue was that a lot of 'the complex tax avoidance schemes' derived from complex legislation. The Labour Party in opposition had said in 1994 that it was the complexity of the system that had encouraged the growth of a flourishing tax avoidance industry, he said. 'Yet Gordon Brown, I believe, will go down as the Chancellor who's introduced more complex tax legislation than any Chancellor in the history of the UK, so the problem's just got worse in that sense.'

Silver returned to the growth of tax havens and described transfer pricing as one of the main ways in which tax avoidance was achieved, adding: 'Classic transfer pricing cases include a company which set up a subsidiary based in a tax haven and then billed itself for bios at \$500 each, thereby moving cash from high-tax country A to tax haven B'.

Full disclosure

Warburton emphasised that accountants were purely interested in doing what was legal and that meant a process of full disclosure. It was not a matter of hiding

anything. But Murphy's concern was what he regarded as a 'difference between knowingly complying with the law and knowingly trying to push it to its limits'. He welcomed the new disclosure rules but a general anti-avoidance provision (GAAP) was needed. It would 'kill the whole tax avoidance and planning industry stone dead', he said. Warburton said Labour had rejected a GAAP in 1994 because citizens were entitled to know where they stood in relation to the law.

For Warburton, there was no legal basis for the Government's present distinction between acceptable and unacceptable avoidance. 'It's as if there is some sort of moral ground on which someone should or should not carry out a transaction, but ... directors have a job to minimise their costs.'

According to Murphy, Warburton was living in a world before corporate social responsibility:

'There is ethical tax avoidance, although I call that tax compliance. If I claim my personal allowance and reduce my tax bill I'm just complying with the law, I'm doing what Parliament wanted me to do, but if I read the law and try and find loopholes as most firms of accountants do and undertake "tax mitigation" ... I'm not actually complying, I'm avoiding and that is unethical.'

Warburton was unmoved and objected to the Government's stance: 'It is for governments to say what they want to do on tax ... the electorate have the opportunity at the time of a general election to vote for whether that's what they want or don't want, that's what democracy is all about. But I don't believe it's incumbent on a government part-way through a process to introduce some stance that says it's somehow moral to pay tax you don't actually have to pay, because "it's not due if you plan your affairs such that it's not due". That's a different argument and I think it's one we're not ready for yet.'

That was Five Live's Sunday offering, a debate worthy of the *Today* programme although, like this brief summary, it could only scratch the surface of some difficult issues.

Andrew Goodall, CTA is a freelance writer specialising in tax. Please see his website at: www.taxinpractice.com.