



# The Campaigning Accountant

**A**ndrew Goodall described me as a 'campaigning accountant' in his article 'Five Live's Tax on Sunday' (*The Tax Journal*, 21 June 2004, Issue 746). Such a description is unusual. It's also uncommon for two practising members of the accountancy profession to offer such differing views as Mike Warburton of Grant Thornton and I did to the listeners of Radio 5 Live on 6 June. This article seeks to explain some of the reasons why I campaign for tax justice and the Tax Justice Network ([www.taxjustice.net](http://www.taxjustice.net)).

Tax justice is a difficult term. It is widely interpreted and easily misunderstood. That is because it is subjective. That means that to understand it requires the exercise of moral judgment.

It may not be surprising as a result that Mike Warburton and I were explicitly contrasted in the programme. Mike Warburton is prone, as he did during our live discussion, to deny that there is any moral basis to decisions on taxation. He usually implies in saying so that the law provides sufficient guidance by itself. Because I find it so hard to believe that anyone as experienced as Mike Warburton can believe that tax law is clear I also find his conclusion that the exercise of judgment is not required very hard to accept.

The fact that many practitioners spend so much time criticising tax law does, I think, prove my point. That criticism is moral judgment, because tax law is a moral construct reflecting the values of the society to which it applies. Some tax law does that well and some does not. Telling the difference is an exercise in moral judgment. And we do that by appraising a tax against our view of what is just. In other words, tax comment is always explicitly concerned with justice. So it's best to have the subject out in the open and not pretend this is a subject in which practitioners have no role to play.

*Richard Murphy takes up the gauntlet laid down by Andrew Goodall and continues the debate on tax avoidance*

That does not mean we will agree on what tax justice is. Some people think it means paying little or no tax. Others think it means all people should pay the same tax, or at least suffer the same tax rate. I don't agree with any of these views.

To me justice implies 'fairness' and since tax requires a payment 'fair' means 'affordable' as well as 'reasonable'. An affordable tax means the person paying the tax has the means to do so within the context of the community in which he or she lives. In the countries of the world where many live on less than \$2 a day the only just tax for such people is no tax.

In contrast, in many developed countries earnings in excess of \$75,000

taxation of corporations, since the modern company clearly has an existence quite different from its members.

That still allows precise taxation rules to vary. These must be appropriate to the circumstances of a particular economy and the wishes of a, preferably elected, government. But that does not alter the overriding principle of 'affordability' in tax justice.

Progressive taxation is not enough in itself though. The tax paid must contribute to the common good of the community if it is to be an appropriate tax. A tax paid to finance the suppression of human rights is not a just tax, even if it meets the affordability criterion.

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a year are common. People enjoying that income can afford to pay quite large amounts of tax and not suffer real hardship.

So I define tax justice as being a system where those who have more absolute income pay both more tax in absolute terms and more in proportion to that income. In other words, tax justice requires progressive taxation. And since income means the ability to enjoy the benefit of the control of resources as well as the return from one's efforts, capital taxation is always a necessary part of progressive taxation. So too is the

As importantly, a tax system that ignores the needs of a population to be educated, enjoy health care, security and to have access to work is unjust. It follows that any tax system has to ensure that the needs of society are met if it is to qualify as just. These ideas make clear the second criterion of 'reasonableness' in tax justice.

But there are still judgments to be made. For example, the boundaries of the population that a tax supports should not be strictly limited if a tax is to be just. It is a fact that the primary duty of any government is to its electorate. It is to



## TAX AVOIDANCE

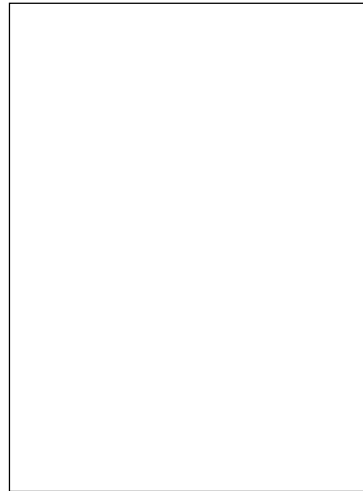
ignore the nature of communities if that is denied. But the world is a community of communities. Any tax system that ignores this is itself unjust. So to impose taxes that deny the poor in one country access to markets in a richer one is unjust.

It is also unjust for one state to offer the wealthy of another country the opportunity to avoid the obligations they owe to the society in which they live and from which they earn their income. Such actions undermine the very concept of society. Since democratic society is the conceptual underpinning of the western way of life and the lifeblood of that democracy is taxation revenues, an action by one state that denies tax to another is not just aggressive, it is tantamount to seizing its revenues. Wars have been fought for lesser reasons. And unsurprisingly so, for this is about the ability of a government to exercise its sovereign rights. It is just that they have such rights. It is wrong to subvert them. For this reason alone it is appropriate to oppose the wholly destructive role of tax havens.

A just tax reflects the society which charges it. As such, tax can and should be used in pursuit of social goals. It is tax justice that alcohol is heavily taxed, just as it is tax justice to tax those resources which are in limited supply and the use of which promotes environmental harm, such as oil. For the same reason tax reliefs should be provided to ensure that socially valuable services, such as health and education, are as widely available as possible. That is why these are fairly treated as charitable. Tax justice is, and should be, a tool for manipulating the behaviour of the market in this way.

But it should not destroy that market, since the exchange of goods and services between the peoples of the world is the basis of our mutual wellbeing. That means taxes must be transparent, consistent, reasonably cheap to operate in proportion to their benefit and must be administered with a high degree of probity. But benefit must be measured as an economist would perceive it, not just as an accountant would. So the social benefits must be considered when assessing effectiveness. In this respect measures that reduce inequality have a significant social benefit, since it is relative and not absolute wealth that creates perceptions of happiness and injustice in society. Tax justice therefore requires taxes that tend to reduce and not increase inequality in society, without seeking to eliminate it.

To achieve all these things would be a tall order. But that does not mean it is not



### Richard Murphy

worth promoting them. If no one seeks the common good we will never achieve it. That's why there is a role for the campaigning accountant.

And that is why I also promote some apparently unpopular ideas. My opposition to tax havens does not make me popular. But I am convinced they are a threat to our society. Aggressive tax planning is, in my opinion, another such threat. It's not legitimate to push the law to its limits. It's as anti-social behaviour as is that of the youth who sees how far he can go in inciting a police officer. It's based on a disregard for authority. It is intended to inflame authority and it does. No one should be surprised that those who cannot live within the spirit of the law make life worse for all those who act with good conscience and seek to comply with it.

The considerable burdens of some current anti-avoidance legislation did not arise by chance. They arose because some practitioners persisted in abusing reasonable legislation. Because they did we all now pay the price in considerably increased administrative burdens. Of course the response is heavy-handed. But that's how anti-social behaviour has to be stamped out. I regret the Government's actions as a practitioner. I resent the practitioners who drove them to it much more. They perpetrated an injustice and the result is tax injustice for all.

Which is why I promote a general anti-avoidance provision (GAAP). I am sure that many practitioners would prefer such a provision to the current plethora of laws. Of course those who say this will kill the tax planning industry are right. It will. And so it should. When an accountant said to the *Guardian* on 18 March this

year 'no matter what legislation is in place, the accountants and lawyers will find a way around it. Rules are rules, but rules are meant to be broken'<sup>1</sup> he, perhaps unwittingly, spoke for a tax planning industry that deserves to be closed down. That industry has sought to subvert the will of society and that's as unwelcome from the professional person as it is from the criminal.

But let me be clear. A GAAP will not close down the tax compliance industry. Nor will it make it harder for that industry to operate. The suggestion that a GAAP will increase uncertainty in tax law is nonsense. We all know we already have that. The sheer mass of legislation we face creates it. Much of it could be simply swept away if we had a GAAP. A simple test would replace it, and any accountant exercising moral judgment could use it. All they must do is ask 'am I doing something purely to obtain a tax advantage'. If they knew they were they'd know they shouldn't do it. If they knew they had ulterior commercial motive with incidental tax benefit they would know they could defend what they were doing. And if the focus of a GAAP was on transaction clearance procedures we could all live in a more certain, simpler and ultimately fairer and more just world.

Subject of course to one final proviso, which is a necessary condition of tax justice and which does not exist at present. All justice systems must work on the assumption that a person is innocent until proven guilty. That assumption is not part of the UK taxation system. That is not tax justice. If our tax system is to be fair this assumption must be a part of it.

That's what I want. That's why I'm a campaigning accountant. There's a lot to do.

### Note

<sup>1</sup> Source of *Guardian* quote: <http://www.guardian.co.uk/business/story/0,3604,1171759,00.html>.

Richard Murphy is a practising chartered accountant. He trained with KPMG and set up his own firm in 1985. After he and his partners sold his original firm in 2000 he re-established himself as a specialist sole practitioner accountant, which still allows him time to be a journalist, campaigner and occasional broadcaster specialising in taxation, pension and predatory lending issues. He has also been chairman, chief executive or FD of ten SMEs. He can be contacted on [rjm@fulcrum-uk.com](mailto:rjm@fulcrum-uk.com).