

# Cut the Newspeak

LEGITIMATE TAX PLANNING IS NOT 'ABUSIVE', SO GOVERNMENTS SHOULD STOP USING SUCH LANGUAGE, ARGUES WILLIAM AHERN

George Orwell's famous novel *Nineteen Eighty-Four* features an invented language called 'Newspeak'. Its principal purpose is to restrict people's ability to think liberally and rationally by reducing the amount of words available to them to express ideas, feelings and beliefs. It is one way Big Brother can control the subjugated citizenry.

When I read the words that many governments and non-governmental organisations (NGOs) use to describe the behaviour of corporate and individual citizens in relation to their tax obligations, I feel a chilly sense of déjà vu. The taxed are constantly exhorted to 'pay their fair share', not to employ 'abusive' tax arrangements to reduce their tax bills, and generally to 'do the right thing' by their fellow tax citizens.<sup>1</sup> But what do these words actually mean?

## BLAME THE POLICY MAKERS

To consider these concepts rationally, we need to divide our thinking between tax policy and tax compliance. It is in the setting of tax policy – subject matter, base, rates, exemptions, etc – that legitimate arguments about the notions of fairness and morality come into play.

The range of views on tax policy is enormous. Some regard the maximum income tax rate of 75 per cent in France as immoral. Others feel that the US carried-interest exemption available to private equity and hedge fund managers is deeply unfair, while others strongly oppose exempting religious organisations from tax. There will never be anything close to real consensus on such issues, which is why we elect people to decide these things for us.

Once these decisions become law, it is incumbent on the taxman to implement them by extracting exactly that amount of tax stipulated by the law. And it is incumbent on the taxed to pay exactly the amount of tax imposed by the law. As the late, legendary Australian media magnate Kerry Packer is rumoured to have quipped: 'Of course I pay my taxes. I just don't believe in tipping them.'

Morality does not come into this process. Fairness plays no part in the enforcement game. The taxman enjoys extraordinary powers and advantages over the taxed in most places, including reversing the onus of proof and having the unique power to collect taxes

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before a challenge to an assessment can even be determined. In the UK, HMRC recently acquired powers to make taxpayers pay tax before an assessment is actually issued.<sup>2</sup> No-one would objectively say this is fair or moral behaviour, but the time for those arguments is when tax policy is being set.

By way of a recent example, if HMRC does not think Starbucks is paying enough tax in the UK relative to its sales, staff or outlet numbers, it should, if properly within its power, deny the UK Starbucks entity, or reduce, the deduction for the royalty or other payments it makes to its Irish affiliate, thereby increasing its UK taxable profits. Or it should change the legal basis on which its UK activities are taxed.

For NGOs to boycott Starbucks retail outlets and effectively coerce them into making gratuitous donations to the UK Treasury cannot be right. This replaces the rule of law with Newspeak-inspired ideology to shake down those acting within the law. This is hardly consistent with the principles of the nation that gave birth to the *Magna Carta*.

It should also be remembered that, in most cases, these corporates take advantage of special tax concessions offered by governments to get them to set up there, only to be roundly criticised by all and sundry for taking advantage of them, including governments that miss out on tax through other governments' specific concessions.

## NO MORE NEWSPEAK

The taxman has a very full armoury when it comes to countering tax-planning arrangements. Tax planning either works or it does not – something that often turns on fine distinctions. But there is nothing immoral, wrong, unfair or abusive about fully disclosed tax planning.

So let's reject this sloppy Newspeak. Let's return to 'goodthink' (orthodox thinking). Let's reclaim the proper use of language (and thus thought) in this area and so protect taxpayers' rights and the due administration of the tax law.

1 I frame these observations solely in the context of lawful arrangements concerning tax liability. Deliberate tax evasion (a word constantly interchanged with tax 'avoidance' – another deliberate Newspeak technique) is no part of this argument

2 For more on accelerated payment notices, turn to page 75