



Tax and Corporate Social Responsibility

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Abstract

This paper examines the relationship between a company's approach to its tax liabilities and its attitude to corporate social responsibility (CSR). CSR is defined for this purpose as a manner of doing business that takes into account the economic, social and environmental impact of the company's actions (the so-called 'triple bottom line'). A company's approach to this issue will reflect its chosen ethical stance; ie, the set of values or rules of conduct that govern its interactions with other parties. CSR is distinguished from corporate philanthropy (which relates to the distribution of profits rather than to the manner in which they are earned).

The paper adopts the view that CSR is a legitimate interest of business. It argues that, because CSR is a way of doing business rather than an 'add on' to normal business processes, companies should consider how their chosen approach to CSR applies to all aspects of their activity, including the management of their tax liability. They should then be in a position to give a reasoned justification of their approach to key tax issues such as the use of tax minimisation techniques, which is consistent with their approach to other CSR issues. Possible challenges to this approach are also considered.

Quantum is the only significant variable when assessing a company's tax contribution; in contrast to many other aspects of its business activity, the relevant question as regards its tax liability is not how it pays it, but only how much it pays. Accordingly the paper goes on to consider how CSR principles might be applied to the principal means by which a company may reduce its tax payments: ie, broadly, tax avoidance and tax planning (which are defined for the purpose of the discussion). While tax evasion is another means by which companies sometimes reduce their payments, CSR factors are not considered to be relevant in this context because such behaviour is already ruled out on more fundamental ethical grounds.

Consideration is also given to a number of specific areas where opportunities to reduce tax arise; eg, transfer pricing and other cross-border issues, the use of tax havens, and the position of international companies operating in developing nations. In each case various possible CSR approaches are described, with an indication of arguments that might be employed in favour of, or against, their application. The aim is not to prescribe a single set of rules for universal adoption, but to assist companies in their consideration of these issues so that they can develop a coherent policy in this area.

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1 Introduction

In recent years considerations of corporate social responsibility (CSR) have come to play a significant part in the decision-making process within companies. There is now a considerable literature in this field, and many organisations are involved in developing thinking both at a theoretical and a practical level. The application of CSR to tax issues, however, is an area that has not as yet received a great deal of attention. This may reflect in part a general tendency by directors to give inadequate attention to tax matters (as argued in an earlier paper from KPMG's Tax Business School[®])¹ but it may also reflect the fact that the payment of tax liabilities is, to a great extent, a non-discretionary matter. A company may decide for itself what business areas it will be involved in, the suppliers and customers it will deal with and the manner in which it will conduct its business, and it is restricted only by considerations of legality and commerciality. In the area of tax, by contrast, it can deal only with public authorities, and only on the terms laid down by them. While the range of the tax decisions on which CSR factors can be brought to bear is therefore more limited, this paper hopes to show that those factors nevertheless have a significant place in the development and implementation of a company's tax strategy.

Section 2 below defines the general concept of CSR for the purposes of this paper. Sections 3 and 4 explain why this is seen as a legitimate concern for companies, and why CSR is considered to be applicable to tax matters in the same way as to other business decisions. Section 5 examines how 'society' is to be identified in the tax context. Section 6 draws attention to a number of special features of tax payments, by contrast with other business transactions, which may affect the application of CSR principles. The remainder of the paper considers how those principles may bear on various specific aspects of a company's tax strategy, including the way in which taxation matters are reported to the public. It examines the arguments for and against various different approaches rather than seeking to prescribe rules for universal application, in the hope that this will assist companies to develop a coherent policy in this area.

2 What is corporate social responsibility?

2.1 The 'triple bottom line'

2.1.1 General

CSR is not a term of art; different commentators define and use the term in different ways. This paper adopts the definition of the UK Government, which describes it as 'essentially ... how business takes account of its economic, social and environmental impacts in the way it operates – maximising the benefits and minimising the downsides'.² These three (overlapping) strands of thought – economic, social and environmental – are sometimes referred to as the 'triple bottom line'.³

¹ Williams, *Developing the Concept of Tax Governance*; hereafter 'the Tax Governance paper'.

² UK Government, *Gateway to Corporate Social Responsibility* website.

³ The phrase was apparently coined by John Elkington, in his 1994 article *Towards the Sustainable Corporation: Win-Win-Win Business Strategies for Sustainable Development*. It was later used in his 1997 book, *Cannibals with Forks: The Triple Bottom Line of 21st Century Business*.

2.1.2 The economic impact

The economic impact of the company on society must be distinguished for this purpose from the company's own financial prosperity. Often what is beneficial for one will be beneficial for the other, but there are various areas where the two may be, or appear to be, in tension. One such area concerns questions of 'fair trade' with developing countries and 'fair pricing', where the interests of society may conflict (at least in the short term) with the company's desire to maximise its profits. Another is where questions arise as to the location of the company's activities. Moving to a different jurisdiction may result in cost savings or other advantages for the company, but have a negative effect on the economy of the country it is leaving. A third area of tension concerns the nature of the company's activities. A choice to operate in one sector of the economy rather than another may be commercially advantageous for the company but may nevertheless contribute to changes in the nature of the national economy that are unhelpful. A fourth area of tension, particularly relevant in the context of this paper, concerns taxation, where (to oversimplify, but only for the moment) the financial interest of the company is in paying as little tax as possible, while the economic interest of the state is to obtain as much as is possible without prejudicing the continued ability of the company to pay. This statement also raises the question of the extent to which the interests of the state may legitimately be identified with those of society, which again is a point to which this paper will return (at 5.2).

2.1.3 The social impact

The social impact of the company's activities includes such matters as responsibilities to employees, to suppliers and customers, and to others who are affected in some way by the company's operations. As regards employees it might cover such things as terms and conditions of employment, work-life balance and opportunities for personal development and 'life-long learning'. For suppliers it might involve avoiding delays in payment and unreasonable demands on pricing; for customers, the provision of safe, reliable and good-quality products or services; and, for the local community, such matters as making available the company's facilities for social use, co-operation with charitable organisations, and liaison with local authorities or community bodies over planning decisions. Human rights issues may be relevant as regards the wider, or global, community, but these are not necessarily straightforward; for example, boycotting countries governed by oppressive regimes may hasten the day of liberation but cause great suffering to the population in the meantime.

As regards suppliers, companies can have a dual responsibility imposed upon them. As well as being under an obligation to treat them fairly as mentioned above, many commentators argue that companies also have a responsibility to purchase goods or services only from organisations that themselves behave in a socially responsible way, thus avoiding for example suppliers that employ child labour in developing countries or that pollute the environment.

2.1.4 The environmental impact

The third strand of thought within the 'triple bottom line' is the impact of the company's behaviour on the environment. This includes such issues as avoiding pollution by the unintended escape of oil or chemicals, or by the routine emission of substances harmful to health, or by carbon emissions that contribute to global warming. It also extends to the careful use of limited resources (for example, in using fuel-efficient processes and insulating buildings appropriately) and to considering the impact of the company's products on the environment (for example in making packaging biodegradable).

Sometimes this strand of thought is represented by the term 'sustainability' or 'sustainable development', though other commentators use these terms in slightly different ways.

Occasionally ‘sustainability’ is used simply as an alternative to ‘CSR’, perhaps reflecting a view that the environmental strand of CSR thinking is, or should be, the predominant one. Such an approach may distract from a broader view of corporate responsibility.

2.2 CSR as a way of doing business

In a climate where credit attaches to companies for being seen to be ‘involved in CSR’, there is a tendency to identify and report particular ‘CSR activities’. This paper takes the view, however, that CSR is not in principle a range of additional activities that a company may adopt, and which if pursued to excess may perhaps become a distraction from its core business. Rather, it is a way of carrying out that core activity which recognises the company’s responsibility to society as part of the business environment. It follows that CSR considerations should be integrated into a company’s strategy and core processes. On this view, it will be more important for a company to consider critically the features of its existing business, identifying harmful and beneficial effects and possible alternative approaches, than it will be for it to engage in community projects or to move to a different area of business activity. In the words of the James Young song, *T’ain’t what you do (it’s the way that you do it)*.⁴

2.3 The relation of CSR to issues of morality and ethics

Different commentators take different views as to how CSR relates to questions of ethics. Some draw no significant distinction between the two concepts. Others see CSR as a sub-category of ethics, so that behaving in a ‘CSR-compliant’ way is one among a number of ethical obligations to which a company is subject. Yet another view sees ethics as a constituent part of CSR, rather than *vice versa*, so that a company has various responsibilities to society, identified under the broad term ‘CSR’, one of which is to behave ethically.

The view adopted in this paper is that the way in which a company conducts its business will reflect its ethical stance; ie, a set of values or rules of conduct governing its interactions with other parties. That stance may or may not be founded on particular religious or philosophical beliefs; and it may be formally enunciated or simply implicit in established patterns of behaviour. Similarly, it may be clear and well developed in concept, or remain somewhat confused; and it may or may not be applied consistently in practice. Nevertheless, all companies, it is suggested, have such an ethical stance (even if, in the extreme case, it is represented by a conscious decision to ignore ethical issues). CSR then provides a set of principles that can be used by a company in determining how its chosen ethical stance applies to particular business issues which have an impact on society; in particular, as regards responsibilities to stakeholders other than shareholders. CSR is thus not so much a *part* or *subset* of ethics as one of a number of ethical ‘toolkits’ that companies can use in seeking to apply their ethical stance consistently.

Thus a commitment by a company to a particular ethical approach will not lead automatically to a particular approach to CSR. Companies will have to decide how to apply CSR, and indeed whether it is an appropriate tool for their ethical purposes at all. In practice the way in which they do this may be affected by social and cultural norms in different countries. Section 3 below considers various arguments against the use of CSR in general, and section 4 considers the possibility that CSR has no application in the specific area of taxation. While, in each case, this paper in fact takes the view that CSR considerations are relevant, it is important to recognise that a contrary position may legitimately be adopted by companies without necessarily compromising the integrity of their ethical stance.

⁴ Young, James and Oliver, Sy, *T’ain’t what you do*, 1939.

So, for example, directors might impose demanding ethical standards of honesty and probity to govern their company's operations, and might also impose on themselves rigorous standards as to their personal social responsibilities, but might nevertheless consider that CSR was the expression of an altruistic approach to society which was the responsibility of individuals rather than of companies. They might, indeed, go further and say that it would be unethical of them to employ shareholders' funds in any way other than for the benefit of the company (see further at 3.2 and 7.3.3).

2.4 CSR and philanthropy

Companies will sometimes draw attention in the CSR context to the extent of their donations to charitable or community causes, whether in the form of cash payments or loans of company assets. Such corporate philanthropy falls outside the definition of CSR adopted in this paper, because it relates to the distribution of profits rather than to the manner in which they are earned. Accordingly the paper will have little to say on this subject. Special considerations apply to the secondment of staff, and these are considered further in section 11 below.

2.5 What is the society to which companies are responsible?

In determining its CSR policies a company will, almost by definition, have to decide the extent of the society or community to which it has an obligation. Does this consist of people living or working near the company's place of operations, or of all the people in the country in question, or in the world at large?⁵ Arguably the answer is that if people are in a position to be affected by the decisions that the company makes, then they are part of the society to which it has a responsibility. Such an answer does not completely solve all the definitional problems, however, because a company may affect people's lives by omissions; for example, by deciding to set up a new base of operations in one place rather than in any one of a host of others that are thereby disadvantaged.

2.6 Reporting

Considerable attention is devoted in the literature on CSR to issues concerned with reporting. Companies may provide information on their CSR activities by means of a specific CSR report, or through entries in the company's statutory report and accounts, or by other public statements. The matters covered may be specifically concerned with the company's CSR policies and their implementation, or may be in the form of general financial or operating information from which inferences may be drawn about its approach to CSR. A particular issue arises in connection with the reporting of tax paid in different jurisdictions as discussed at 10.6 below.

CSR issues may also bear on the accuracy of statutory accounts. For example, a 'CSR failure' under which no steps are taken to reduce the possibility of environmental damage from the company's activities may mean that the accounts are inaccurate because there are potential financial liabilities for restoration costs that, in error, are neither provided for nor disclosed.

A problem with CSR reports is that, even where a company is taking its obligations in this area seriously, it may be easier to state policies and aspirations than to provide evidence for solid achievements. For example, in certain industries a commitment to the wellbeing of the local community may be expressed more by what a company does not do than by what it does, but

⁵ This section draws on discussion at section 4.4 of the Tax Governance paper. See footnote 1.

this may be difficult to express in a helpful way because the list of evils not perpetrated is potentially limitless. In such cases stated CSR commitments and policies may help to give some reassurance. Even positive achievements may be difficult to measure, and may rely on subjective judgments; for example, where they relate to changes in staff attitudes or improvements in communication.

There is no apparent consensus on what information should be included in CSR reports, but various guidelines and frameworks have been developed by bodies such as the Global Reporting Initiative,⁶ Social Accountability International,⁷ the Institute of Social and Ethical AccountAbility ('AccountAbility')⁸ and the International Organization for Standardization (ISO).⁹ Some of these include arrangements for audit.

A further difficulty in the area of reporting is that, because it is largely voluntary in nature, there are no formal sanctions for those who report erroneously or over-optimistically, or not at all. On the other hand, this voluntary aspect may encourage an approach that looks at what is helpful to users rather than limiting itself to what is strictly required.

Pressure from NGOs and others, sometimes with an 'anti-business' bias, may put companies on the defensive as regards CSR. A CSR report gives them an opportunity to think through and articulate their CSR position, and either modify or defend it as appropriate. In so doing they may be greatly assisted by having a coherent conceptual framework which means that, rather than simply presenting a 'round up' of good deeds of uncertain motivation and impact, they are able to explain why they have adopted their chosen stance, and how it contributes to their social objectives. Particular issues as regards the reporting of tax and CSR are considered in section 10 below.

3 Is CSR a legitimate concern of companies?

3.1 General

This paper proceeds on the basis that CSR, as defined in section 2 above, is a legitimate concern of companies, and a useful tool in applying its chosen ethical stance to its business activities. This is not, however, a universally held view. Some commentators disagree altogether, while even among those who agree there may be differing reasons for doing so.

Underlying the debate are more fundamental questions that are outside the scope of the present paper. One of these concerns the various purposes for which companies exist: whether to provide goods or services, to make money, or to provide employment. This is linked to different understandings of the nature of the company: whether shareholders who are not engaged in the running of the business should be seen primarily as owners or investors, and the extent to which other stakeholders, particularly employees, should be able to influence the company's decisions.¹⁰

⁶ See <http://www.globalreporting.org/ReportingFramework/G3Online/>.

⁷ See <http://www.sa-intl.org/index.cfm?fuseaction=page.viewPage&pageID=4&parentID=0>.

⁸ The 'AA1000' series of standards, see <http://www.accountability21.net/aa1000/default.asp>.

⁹ See <http://www.iso.org/iso/en/ISOOnline.frontpage>.

¹⁰ See Handy, *What is a Company For?*; Avi-Yonah, *Corporate Social Responsibility and Strategic Tax Behaviour*.

3.2 Objections to CSR

The fundamental objection that is advanced against CSR is that to apply the shareholders' funds in any way other than for the advancement of the company's business is contrary to the fiduciary duty of a company's directors and thus diminishes rather than enhances any claim they may have to be acting in an ethical manner. Milton Friedman argues that 'there is one and only one social responsibility of business – to use [its] resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.' He suggests that where directors, whose responsibility is to manage the business for the benefit of the shareholders, spend money for a 'general social interest' they are usurping the functions of government in taxing and spending, but without any democratic mandate and without any particular expertise in the areas concerned. He does, however, make the point that if there is a genuine business case for CSR expenditure it is legitimate for the directors to incur it, in the same way as any other business expenditure.¹¹ In practice, therefore, despite the conceptual differences, it seems that such an approach may not always produce significant variation in behaviour between its advocates and those who see directors as having a wider responsibility to a variety of stakeholders as discussed at 3.3 below.

Other commentators object to the CSR concept on the economic ground that it interferes with efficient resource allocation, and that it is precisely by its profitable commercial activity that a company contributes to the welfare of society.¹² This in turn may reflect a particular stance on the respective roles of the state and of private enterprise, and lead on to a debate on taxation. Once companies take on 'state' responsibilities such as education and vocational training they may see this as being to some extent in tension with the continued obligation to contribute to the state through taxation.

3.3 'Enlightened shareholder value'

A contrasting view is put forward in the paper *Developing the Concept of Tax Governance*, issued by KPMG's Tax Business School[®] in February 2007.¹³ In broad terms, section 4 of that paper, 'To whom do the directors have a duty?' adopts, by reference to s172 of the UK's Companies Act 2006, the concept of 'enlightened shareholder value'. This recognises that in order to promote the success of the company for the benefit of its members as a whole the directors must also have regard to: the interests of employees; the need to foster business relationships with suppliers, customers and others; the impact of the company's operations on the community and the environment; and the desirability of the company's maintaining a reputation for high standards of business conduct. That view is also adopted in the present paper.

However, it remains the case that, in the UK at least, the directors' primary legal responsibility in their capacity as such is to consider the success of the company for the benefit of the shareholders. Such an understanding of corporate governance thus has no place for pure altruism, without reference to its effect on the company's fortunes. (This observation is offered as an analysis of the legal position, rather than as a comment on its desirability.) The justification for the directors' adoption of CSR policies therefore relies heavily on the existence of a 'business case'.

¹¹ Friedman, *The Social Responsibility of Business is to Increase its Profits*; Friedman, *Capitalism and Freedom*.

¹² For example: Henderson, *Misguided Virtue: False Notions of Corporate Social Responsibility*, page 157; Teather, *Corporate Citizenship: A Tax in Disguise*.

¹³ 'The Tax Governance paper'. See footnote 1.

3.4 The business case for CSR

Perhaps most proponents of the CSR concept would say that, on a full analysis of the alternatives, taking the responsible course is likely in most circumstances also to represent the best course commercially. In the words of Dame Anita Roddick, 'Being good is good for business.'¹⁴

Various commercial factors may influence a company towards a socially responsible course of action in any particular case: the possible damage to its reputation with customers and staff if it took the opposite course; potential costs of remedial work after pollution; the fact that merchandise made under oppressive conditions may not be of the highest quality; and the potential political and economic instability of countries governed by dictatorial regimes. In general, perhaps, the reputational effect is one of the most significant factors in making this 'business case' for CSR. It is particularly relevant for companies that trade directly with the public or which are dependent on skilled staff with employment alternatives, who have a highly developed sense of what constitutes responsible behaviour.

In broad terms, the more long-term the company's thinking, the more CSR factors are likely to weigh with it. Once an initial business case for a CSR-orientated approach is accepted, companies are perhaps less likely to require detailed financial justification for applying that approach to subsequent commercial decisions; CSR becomes part of the decision-making fabric of the company.

As the business case for CSR becomes more generally accepted, commercial customers increasingly require formal assurances that suppliers have complied with CSR principles in the production of goods or the delivery of services. This in itself provides further support for the business case.

The question then arises of whether a company that adopts a socially responsible policy on these pragmatic grounds is in fact behaving selfishly and thus, in a sense, does not 'deserve' the credit that thereby attaches to it. This paper does not attempt to explore the complex interactions of the various motivations underlying human, and corporate, behaviour, but contents itself with the observation that the business case and a desire to 'do the right thing' for its own sake (ie, to act in accordance with the company's chosen ethical stance) need not be in opposition. Hence the position adopted in this paper, but not fully argued, that CSR is indeed a proper matter for companies to concern themselves with, albeit they may take different approaches (doing more or perhaps less) to align their behaviour in this area with their particular corporate stance.

4 Are CSR principles applicable to tax?

Having taken the view that CSR is a way of doing business rather than an 'add on' to normal business processes, and that it is a legitimate matter of concern for companies, it appears to follow that companies should consider how their chosen approach to CSR applies to all aspects of their activity, including the management of their tax liability. They should then be in a position to give a coherent justification of their approach to key tax issues such as the use of tax minimisation techniques, which is consistent with their approach to other CSR issues.

¹⁴ Roddick, *Commerce with a Conscience: Can Business Deliver Social Change?* and other speeches and articles; Cameron, *Commercial Responsibility before Profits*. For a contrary view, see Laffer, Coors and Winegarden, *Does Corporate Social Responsibility Enhance Business Profitability?*.

Just as customers may enquire as to a company's CSR record, thus reinforcing the business case as indicated at 3.4, so parties involved in transactions with the company that have significant tax effects may enquire as to its relationship with the tax authorities and how this is affected by its CSR approach. Again, the case for considering the impact of CSR in the tax context is reinforced.

While the view put forward in the preceding paragraphs is the one adopted for the purposes of this paper, it is recognised that a contrary position might be argued on the basis that tax is not a business expense, but an appropriation of profits. From this it might be said to follow that CSR principles as to the conduct of business have no application because tax does not arise as an issue until the business transactions in question are completed. That view is not adopted here because the payment of tax clearly *relates* to the company's business activities even if, in a strict sense, it results from them rather than forming part of them. In addition, as a practical matter tax is widely seen as a commercial cost to be managed like any other; it does not merely fall to be calculated once the business for the year is complete, but influences business decisions throughout the year, particularly in the case of indirect taxes (including environmental taxes) and employment taxes (whether borne by, or merely administered by, the company).

Some commentators argue that 'a tax on profits is not a business cost but a distribution to society'.¹⁵ Thus expressed, the view that tax is an appropriation of profits increases rather than diminishes the obligation of companies to behave in a socially responsible way, but this approach appears to assume an identity of interest between the state and society. This assumption is explored at 5.2.

5 How is society to be identified in the tax context?

5.1 Local, national or global?

As mentioned at 2.5, in determining its CSR policies a company will have to decide the extent of the society or community to which it has an obligation: whether local, national or global.

In the tax area, consideration of the application of CSR principles is perhaps most straightforward when the society being considered is that of one nation with a uniform taxation system. Where there is any element of local taxation, particularly in countries such as the United States or Switzerland with a federal structure, consideration of the effects of tax-related decisions on society becomes more complex, but arguably the basic principles are unchanged.

Many commercial decisions, such as the location of factories or the terms of intra-group trade, may mean that tax is paid in one territory rather than another (leaving aside for the moment the fact that it may also be paid at different rates) and companies will need to consider how to balance their obligations to different host societies, and whether their nation of origin has a superior claim. Often the answers to these questions are expressed in terms of paying what is 'fair', but fairness is not always self-evident, and companies will need to consider the criteria that they will use in reaching their judgments on this issue. The concept of fairness is considered further at 7.4.2 in the context of tax planning; at 8.1 and 8.2 in the context of tax payments to host nations; and at 8.3 in the context of transfer pricing.

¹⁵ John Christensen, *The Corruption Interface: Tax Havens, Bankers and Dirty Money Flows*, page 222; see also Tax Justice Network, *Tax Us if You Can: The True Story of a Global Failure* at page 34.

5.2 How far can society be identified with the state?

5.2.1 General

Where a company's obligation is considered to extend to the totality of people living in a particular nation, the question arises as to how far that society can be identified with the state; ie, the apparatus of government. If the identification were an absolute one, then it could simply be said that to pay tax is to benefit the community and that to fail to pay it, for whatever reason, is to disadvantage the community.¹⁶ However, the identification is, in fact, by no means absolute; much of the economic, cultural, social and welfare activity of society is organised and conducted either completely without reference to the state or independently within broad parameters established by the state. It is true that, for example, welfare payments are financed by taxation, but it does not follow from this either that a company paying more tax thereby automatically improves welfare payments to needy members of the community, or that a company reducing its tax payments thereby disadvantages those individuals. In the former case the government may choose not to use the additional revenue in this way, and in the latter it may find the necessary revenue by increasing taxes on other members of the community.

5.2.2 The state as distinct from society

On one view, therefore, a company cannot give to the community via the tax system; it can only give to the state. As a result some directors will consider, rightly or wrongly, that they can do more good for the community by charitable giving, social projects, welfare services for employees or the economic effects of their normal business activities than the state will do with any funds that they pass to it beyond the minimum taxation required by law. In such cases directors may then feel free, in principle, to use every legal avenue to reduce their tax liability. If, despite feeling no constraint on CSR grounds, they do not in fact use every such avenue, this may be the result of other considerations of reputation or practicality, or of other, more fundamental, ethical considerations.

5.2.3 The state as a surrogate for society

However, a contrary argument may be sustained under which making additional payments to the state in the form of tax is seen as preferable to corporate philanthropy or to the incurring of additional expenditure on the company's own socially responsible behaviour. Because the state has a remit to care for all the population, the payment of tax may be seen as removing the arbitrary element that necessarily exists in corporate philanthropy or CSR initiatives, which must always be directed to some particular chosen end.¹⁷ Arguably, however, this approach fails to take into account the fact that the state, while having a responsibility to all, must still set certain priorities – which may not be those of the taxpayer company.

Nevertheless, for these and other reasons a company may consider that it must discharge its obligations to the community by ensuring that it pays a certain minimum amount of tax to the state, even where it could arrange matters to produce a lower liability. The importance of such a policy is obvious in situations where companies need government approval to continue to operate in the countries concerned (a 'licence to operate', whether literal or figurative), but such an approach may also be motivated by reputational concerns, by altruistic considerations, or by a combination of such motives.

¹⁶ This section draws on discussion at section 4.4 of the Tax Governance paper. See footnote 1.

¹⁷ See Hopkins, *Corporations Should Abandon Philanthropy and Concentrate on CSR*.

The correlation between tax payments to the state and benefits to society may be closer in those cases where a tax is hypothecated; ie, where specific tax revenues are earmarked for specific purposes. If the proceeds from a particular levy are dedicated to the building of new hospitals, for example, then, *prima facie*, the greater the company's liability to that particular tax the greater the benefit to the health of society (assuming that the funds are spent effectively).¹⁸

Some companies may look to governments not only for a licence to operate but also for a significant part of their revenue. The SustainAbility report *Taxing Issues: Responsible Business and Tax* makes the point that companies may lose access to government contracts if they undertake their activities through tax haven vehicles or engage in other forms of avoidance.¹⁹ Again, the considerations here are more practical or reputational than altruistic.

This paper, while recognising the distinction between the state and society, adopts the position that there is sufficient community of interest between the two for the payment of tax to be considered as a contribution to the community. A company's decisions as regards the lengths to which it is prepared to go to reduce its tax liability are therefore legitimately influenced by its attitude to CSR as well as by considerations of legality and more fundamental ethical questions.

6 Special features of tax in relation to CSR

6.1 General

Section 4 above made the general case for the legitimacy of applying CSR principles to taxation. As is the case with any aspect of a business, tax has a number of special features which affect the specific ways in which those principles can be applied in this area.

6.2 Tax paid only to the state

First, for tax transactions there is normally only one counterparty in any jurisdiction. Many of the commercial decisions influenced by CSR relate to choice of supplier or of target markets. Tax, by contrast, is paid only to the state or to subdivisions of it; there is no choice as to whom the company deals with on tax matters, except insofar as decisions on location of activities and transfer pricing determine the state in which the liability arises.

6.3 The absence of choice

Secondly, unlike most business arrangements, the payment of tax and the quantum of the liability are to a large extent not matters of choice. There may be circumstances where tax mitigation arrangements can reduce the liability, as discussed at 7.3 and 7.4, and in general companies will assess the benefit of investment decisions on a post-tax basis. Nevertheless, once a commercial decision has been made, in general specific tax results follow inexorably from it. While the commercial transactions on which tax arises may be influenced by CSR considerations, that influence is generally tax-neutral; the decisions taken will affect the company's fortunes for good or ill, and whatever the resulting profit is, the same proportion of it will be payable in tax.

¹⁸ For hypothecation, see: Barlow, *Hypothecation: the Answer to a Taxing Problem*; Heald and McLeod, *Hypothecation*; Duncan and Jones, *Economic Incentives and Tax Hypothecation*.

¹⁹ Page 17.

6.4 The role of statute

Thirdly (and closely linked to the previous point) tax obligations are determined by statute law rather than by commercially agreed contracts. While there may be room for negotiation on how the tax legislation applies to the company's particular circumstances, there is no scope for negotiation on whether or not the company is subject to that law in principle.

6.5 Quantum the only variable

A consequence of the preceding factors is that, whereas commercial transactions can be varied in a large number of ways to support a CSR agenda (or any other agenda), by far the most significant variable for tax relates to its amount. A company cannot vary the quality of its tax payment; only its quantity.

As a result, the major issues that arise in attempting to apply CSR principles to taxation concern those actions that can reduce the liability: tax avoidance and tax planning. These are considered below, together with (for completeness) the illegal activity of tax evasion. These three terms are defined in the sections dealing with each of them at 7.2, 7.3 and 7.4, while particular issues that arise in the international context are discussed in section 8. One issue of significance that does not relate to the quantum of tax is the way in which companies can make their technical tax expertise available to wider society in support of their CSR agenda, and this is discussed in section 11.

7 Tax minimisation

7.1 The tax minimisation continuum

Some commentators imply that there is a continuum of tax minimisation activity that begins with evasion, shades off through aggressive avoidance and less aggressive avoidance to the planning of commercial activities with tax in mind, and ends with the utilisation of reliefs specifically enacted by governments to encourage certain activities.²⁰ Somewhere along this line, it is suggested, the activity becomes 'acceptable'.²¹ However, the present paper does not adopt that view. The discussion at 7.2.1 suggests that there is a clear dividing line between evasion and avoidance, and that at 7.3.1 adopts a definition which distinguishes between avoidance and planning (although difficulties remain at the margin in determining the category into which particular transactions fall).

The existence of the 'continuum' view, and the practical difficulties of classification in particular cases even for those commentators who accept the distinction between the categories, mean that questions of legality, and more fundamental ethical issues, are perhaps more closely bound up with the CSR debate on taxation than is the case where CSR principles are applied in some other contexts.

²⁰ See SustainAbility Ltd, *Taxing Issues: Responsible Business and Tax*, pages 2 and 14; Oxfam, *Tax Havens: Releasing the Hidden Billions for Poverty Eradication* (executive summary); Tax Justice Network, *Closing the Floodgates: Collecting Tax to Pay for Development*, page 42.

²¹ This section draws on discussion at 5.2.1 of the Tax Governance paper. See footnote 1.

7.2 Tax evasion

7.2.1 A definition

'Tax evasion', as mentioned in 6.5, is discussed here only for the purposes of completeness. It is defined for the purposes of this paper as any criminal activity, or any offence of dishonesty punishable by civil penalties, which is intended to reduce the incidence of taxation. This might involve theft, fraud or forgery in relation to tax, or specific statutory offences of tax evasion, depending on the jurisdiction concerned. The difference between evasion and avoidance is thus not one of degree but one of kind. Evasion involves the misrepresentation of the facts to the tax authorities by deliberate or reckless misstatement, concealment or omission. Avoidance (to be defined more fully at 7.3.1) involves the arrangement of a taxpayer's affairs in such a way that, when all the facts are known, the taxpayer can still legally contend, whether successfully or unsuccessfully, for the reduced tax liability that the arrangements are intended to achieve.

7.2.2 Legality and ethics

Tax evasion is thus by definition illegal. In addition, almost all commentators would see it as unethical, both on the grounds of the means employed to achieve it, and of the result; ie, that tax which is legally due is not paid. This paper will not, however, make any attempt to argue points of ethics from first principles, because that is not its intended focus. As discussed at 2.3, the paper views CSR as a 'toolkit' that companies can use as a means of applying their chosen ethical stance to certain business situations. However, it also takes the view that tax evasion is not an issue to which CSR principles have any application; not because such behaviour is condoned but because it is already ruled out on more fundamental ethical grounds before the company comes to consider its CSR stance.

7.2.3 Tax evasion by third parties

CSR principles may be of more direct relevance to the question of the lengths to which the company should go, beyond any statutory reporting or withholding obligations, in an effort to exclude the opportunity for tax evasion by its suppliers, customers, contractors and employees. For example, in the UK local branches of a large retail company may engage small contractors to carry out repairs and decorating. If such contractors do not charge VAT this may be because they are below the registration threshold, but it might also be because they are evading both income tax and VAT on the transactions in question. Similarly, they may ask for payment in cash because they need to buy materials, or because the bank charges they incur for lodging cheques in a commercial account are high, or because they do not want to wait the many weeks that may be involved if the branch has to submit their invoice for payment through the company's centralised payment system. It may be that the reasons given are perfectly genuine, but it may also be the case that the intention is to evade tax. To what extent should the company attempt either to ascertain the true motives or to frustrate any fraudulent intention of the other parties?

The application of fundamental ethical principles would probably lead most commentators to the conclusion that the company should not conspire to evade tax, nor connive in evasion. However, arguably the application of CSR considerations within the framework of the company's wider ethical stance will impose more extensive obligations in these circumstances, requiring the company to take at least some positive steps to safeguard the tax revenue of the state - because of the state's role in promoting the welfare of society as discussed at 5.2.3.

Opinions may differ as to exactly how extensive such steps should be; presumably there comes a point at which the precautions that would be necessary to prevent third-party evasion

altogether have a cost out of all proportion to the risk, or to the arguably somewhat remote degree of responsibility that attaches to the company for the actions of other parties. A company is perhaps entitled to assume a certain minimum degree of probity in the other members of the business community, unless it has evidence to the contrary.

As regards the company's responsibility to society as distinct from the state, it would presumably be a socially responsible course to take any steps that would restrict the deleterious effects of tax evasion on the economic wellbeing of society (thus having regard to the first strand of the 'triple bottom line' discussed in 2.1.2). However, economists differ on the extent to which such activity is in fact harmful to the national economy (as opposed to the finances of the state).²²

Similarly, action to restrict tax evasion will arguably contribute to social cohesion (the second strand of the triple bottom line discussed at 2.1.3) to the extent that it (i) inhibits the development of a two-strata society where some pay tax and some do not, (ii) encourages respect for the rule of law, and (iii) contributes to the higher standards of customer service and employee care generally associated with the legitimate economy.

The effect of such action on the environment (the third strand of the triple bottom line as discussed at 2.1.4) is likely to be more remote, but it might perhaps have an inhibiting effect on such matters as the dumping of waste by illegitimate traders. There is no necessary link between tax evasion and other illegal activity, but in practice those who are operating outside the boundaries of the law in one area may feel fewer inhibitions about doing so in other areas, and may also be unwilling to take any action that results in them being registered, for whatever purpose, with the authorities.

7.2.4 Overseas tax

When the tax that would otherwise be evaded is overseas tax (ie, tax arising in countries other than that in which the company has its base) the considerations are in principle the same, but the importance that the company attaches to them may vary depending on the extent of its involvement in the country concerned, the nature of the society and political regime in that jurisdiction, and its approach to the question of how 'society' is to be defined (globally, nationally or locally) as discussed in 5.1.

7.3 Tax avoidance

7.3.1 A definition

The remaining ways in which a company's tax liability may be reduced are by tax avoidance and by tax planning. For the purposes of this paper a distinction between the two terms is assumed, while recognising that there are difficult issues of definition, and of demarcation at the margins, that cannot be addressed in any detail here.²³ Working definitions of the two terms are borrowed from the address of Professor David Ulph, then Director of the Analysis and Research

²² See Sartoris, John, *The Ethics of Tax Avoidance*.

²³ This section and the following two sections draw on discussion at 5.2.3 of the Tax Governance paper. See footnote 1.

Division of HM Revenue & Customs (HMRC),²⁴ in speaking at a symposium organised by KPMG in May 2006. To quote the report of that occasion:²⁵

‘He defined “tax planning” as a taxpayer’s adjusting his real social, economic or organisational affairs to obtain the “best outcome” in response to the tax system. This did not necessarily mean paying the smallest possible amount of tax; if the price of earning additional profits was to pay additional tax this might still be advantageous. “Tax avoidance” he defined as using artificial or contrived methods of adjusting taxpayers’ social, economic or organisational affairs to reduce their tax liability in accordance with the law while not affecting the economic substance of the transactions.’

7.3.2 ‘Appropriate’ and ‘inappropriate’

The distinction between what directors in any particular case regard as appropriate and inappropriate behaviour for their company as regards tax minimisation will not necessarily be the same as the distinction between avoidance and planning above. Some directors may regard as acceptable not only planning but also the less aggressive forms of avoidance. Often the degree of artificiality is a major criterion in determining what is ‘too’ aggressive, but there may be other factors, such as the amounts of tax involved, and the subject matter of the scheme. Some taxpayers and advisers, for example, have specifically stated that they will not be involved in schemes that involve the exploitation of reliefs intended to benefit charities.

7.3.3 Fundamental ethical principles and CSR issues

For many directors, the objection to arrangements that are in their view ‘too’ artificial may be framed primarily in terms of fundamental ethical concepts such as honesty, probity, transparency and ‘straightforwardness’ or ‘plain dealing’. Other directors, who are equally determined to behave in an ethical way, and who adopt a very similar basic ethical stance, may consider that the degree of artificiality is not an ethical issue provided no attempt is made to misrepresent the facts or to hide them from the tax authorities. They may argue that the tax system is entirely a creature of statute, though amplified by decisions of the courts; that it is full of anomalies and oddities, based on no universal principles, and has the object simply of raising tax. The system is itself artificial and arbitrary, they would argue, so there is no ‘right’ amount of tax except in the sense of what is arithmetically correct. The only pertinent question is whether the transactions in issue fall inside or outside the wording of the legislation that imposes the particular tax liability under consideration. In the words of Rowlatt J, ‘... in taxation you have to look simply at what is clearly said [in the legislation]. There is no room for any intendment; there is no equity about a tax: there is no presumption as to a tax; you read nothing in; you imply nothing, but you look fairly at what is said and at what is said clearly and that is the tax.’²⁶

Just as there is no scope for a company to contest its tax liability in cases where the taxable profit exceeds the economic profit so, proponents of this view would argue, the company should not hesitate to reduce its taxable profits below its economic profits where it can legally do so.

²⁴ And now Professor of Economics and Head of the School of Economics and Finance at the University of St Andrews.

²⁵ KPMG’s Tax Business School®, *From Debate to Action: Drawing the Lines and Finding the Balance*, pages 6 and 7.

²⁶ *The Cape Brandy Syndicate v The Commissioners of Inland Revenue*, KB (1920) 12 TC 358; see also *Partington v A-G*, (1869) LR 4 E&I App HL 100, 122; *IRC v Duke of Westminster* HL, (1935) 19 TC 490; *Ayrshire Pullman Motor Services and DM Ritchie v CIR*, 14 TC 754, CS 1929; *Helvering v Gregory*, 69 F 2d 809, 810 (2nd Circ, 1934) (a US case).

The only ethical obligations on taxpayers in these circumstances, they would say, are to comply with the law and not to misrepresent the facts.

At one time such a view would perhaps have been more widely held than now. At the present time it represents one end of a range of views in a debate where probably most commentators would hold that within the compass of what is legal there is some behaviour that constitutes good business practice and some that does not.

For some directors, their view of what is acceptable or ‘proper’ (wherever it falls within the spectrum) may be determined solely by reference to fundamental principles such as honesty and integrity, as considered above, because either they do not consider CSR an appropriate matter for companies to take into account in applying their ethical framework (as discussed at section 3), or they do not consider it relevant to the area of taxation (as discussed at section 4). They may thus see the payment on CSR grounds of any ‘unnecessary’ tax liability, which could have been prevented by tax avoidance arrangements without breaching any fundamental ethical principles, as an inappropriate use by the company of funds that could otherwise have been distributed to the shareholders or retained in the business for their benefit. Once such funds had been distributed or had contributed by their retention to the capital value of the shares (such directors would argue) the shareholders would have been free either to use those funds for their own purposes or to give them away to charitable or social causes of their choice, without being bound by the decisions of a government with which they might disagree either in general or in relation to particular issues. Where, instead, a company pays additional and unnecessary tax, the directors’ judgment has effectively been substituted for that of the individual shareholders. This may have been done by reference to the directors’ own social or political views, rather than by reference to what is best for the company. Effectively (the argument runs) the directors have spent other people’s money without those people’s permission, which – far from being socially responsible – is contrary even to fundamental ethical principles. This would appear to be the logical outworking in the tax sphere of the case against CSR put forward by Milton Friedman as discussed at 3.2.

Other directors, however, may wish to apply a wider ethical framework in which the CSR ‘toolkit’ is among the factors taken into consideration (and, as already stated, that is the position adopted in the current paper).

Even once the relevance of CSR considerations to the discussion is conceded in principle, however, that is not to say that they will necessarily inhibit the use of tax avoidance either in general or in any particular case; that will depend on the way in which their application is analysed as discussed in the following sections. Nevertheless, in many cases directors may see the socially responsible course as being not to take advantage of some or all of the avoidance opportunities available to them. Clearly, the more their actions in this area are constrained by the way in which they consider fundamental ethical principles to apply, the less scope there will be for the application of additional CSR-related constraints. While consideration of fundamental principles such as honesty and integrity may tend to focus on the attributes of the proposed avoidance arrangements themselves and the nature of the behaviour required of the company, CSR consideration will perhaps tend by definition to focus more on the wider economic, social and environmental *effects* of the arrangements, as discussed at 7.3.5 below onwards.

As a separate point, directors who do acknowledge the role of CSR in determining the allocation of the company’s funds, and who would not argue that all such decisions should be passed down to the shareholders by the distribution of dividends or retention of funds for their benefit, may nevertheless consider that they would be better judges of how to use the company’s funds for the benefit of society than the government would be. Accordingly, they

would see themselves as having no responsibility to maximise tax payments by declining to engage in tax avoidance.

7.3.4 Pragmatic issues

Other companies may decide that a cautious approach to tax avoidance is required on pragmatic grounds, rather than on the basis of fundamental ethical principles or CSR considerations, because they consider that the prolonged period of uncertainty involved in determining the effectiveness of any tax avoidance scheme, whether through litigation or otherwise, will be disruptive to the proper functioning of the business and will engage too much management time.

Other pragmatic grounds may relate to the effect of the arrangements either on the company's reputation or on its relationship with the tax authorities. The question of the company's reputation may be very closely related to CSR considerations, because it will often be its reputation for social responsibility with which it is most concerned in this context. As indicated in the discussion at 3.4 on the business case for CSR, it is not necessarily helpful to seek to distinguish between 'good' CSR done from altruistic motives, and 'selfish' CSR done with a view to the beneficial effects on the company's reputation. Many actions are carried out with a dual motive, neither aspect of which negates the other. It is therefore possible in what follows to consider how CSR factors may reasonably affect a company's approach to tax avoidance without making any attempt to distinguish between action that is taken because the company actually wishes to behave in a responsible manner and action that is taken because it wishes observers to see it in that light.

7.3.5 Responsibility to the state

As discussed at 5.2.3 (and as alluded to at 7.2.3 in the context of tax evasion by third parties) there is an argument that the company has at least some 'CSR responsibility' to maintain the tax revenue of the state, because of the state's role in promoting the welfare of society. This may perhaps be seen as applying with greater force when – as here – the tax liability at stake is that of the company itself rather than that of third parties, because it cannot then claim any lessening of responsibility on the ground of its remoteness from the tax loss at issue. On the other hand, questions of legality and fundamental ethical principles (such as avoiding dishonesty) do not necessarily buttress the CSR factors in quite the same way when the cause of the tax loss is legal avoidance rather than evasion.

On one view this obligation to the state might be considered to rule out the use of tax avoidance techniques altogether. For those who accept in principle the existence of such an obligation, but who do not see it as having such a wide-ranging effect, the difficulty remains of determining where the line is to be drawn and on what criteria. Arguably the issues are the same whether tax avoidance or tax planning is in point, because the relevant consideration in applying this particular line of argument is not the nature of the tax minimisation in question but only the effect on the revenue of the state. Accordingly, discussion of this issue is deferred to section 7.4.3 below dealing with tax planning.

7.3.6 Economic impact: the first strand of the 'triple bottom line'

As regards the company's responsibility to society as distinct from the state, it cannot be assumed that tax avoidance will necessarily have an unfavourable economic impact, unless it is presupposed that the state (which benefits from taxation) will always use money more efficiently than the private sector (which benefits from tax avoidance). This is perhaps not a proposition likely to gain widespread support. Arguably therefore the economic strand of CSR

is not relevant in this context – not because the public sector is never more efficient than the private, but because companies cannot be expected to assess their CSR contribution on the basis of their own presumed economic inefficiency.²⁷

7.3.7 Social cohesion: the second strand of the ‘triple bottom line’

As regards the social strand of CSR, the main argument against tax avoidance appears to relate to perceptions of the tax system (as mentioned in connection with tax evasion by third parties at 7.2.3). If the system is seen by the general populace as to some extent optional, and open to ‘abuse’ by those who can afford to pay for sophisticated tax advice, then this may engender social discord and discourage compliance by other taxpayers. This may be exacerbated if, as is likely, the distinction between tax evasion and tax avoidance is not always well appreciated by the disenchanted.

The idea is sometimes put forward that those who avoid tax are transferring a burden to other taxpayers, and thus disadvantaging those other members of society. While there is a core of truth in this, it arguably represents an oversimplified analysis. Widespread avoidance will reduce tax revenues, to which governments must respond (if they cannot eliminate the avoidance) either by reducing services or by increasing effective tax rates on the non-avoiding section of the population. However, the reverse is not the case. A reduction in avoidance will increase tax revenues, but this will not always result in either a reduction in effective tax rates or an increase in services. It may simply result in an increase in unproductive government expenditure.

The point is sometimes made that tax avoidance has a cost for all taxpayers, ‘innocent’ as well as ‘guilty’, in terms of the complex anti-avoidance legislation that it necessitates, and with which they must comply. Arguably, the problem could only be eradicated by ensuring that *all* taxpayers abandoned tax avoidance; in any other case the legislation would have to remain on the statute book. Nevertheless, if some taxpayers changed their behaviour this might put pressure on others to conform.

7.3.8 The environment: the third strand of the ‘triple bottom line’

It is difficult to see any but very remote ways in which the environmental strand of CSR thinking would affect the decision in principle as to whether or not to engage in tax avoidance arrangements. Where, however, the tax in question is an environmental tax (eg, a levy on something such as fossil fuel, which adversely affects the environment) then successful avoidance might perhaps tend to make the taxpayer more wasteful of such resources. This argument might not carry great weight with the company if it feels confident that it can guard against this eventuality by other means.

7.3.9 Tax arbitrage

One specific question that arises in the context of tax avoidance is whether it is appropriate to make use of areas where the tax systems of different jurisdictions treat transactions in different ways: where, for example, an allowable payment in one country gives rise to a non-taxable receipt in another; or where different rules as to residence have the effect that a deduction is available in two jurisdictions.

An argument may be made that if each tax authority obtains the tax revenue from the company that is due under the rules of its own jurisdiction, it should be a matter of no consequence to it if

²⁷ See Sartoris, *The Ethics of Tax Avoidance*.

an anomalous result is achieved in the other jurisdiction concerned. Such an approach might be defended on the basis that it is impossible to say which jurisdiction has suffered, if indeed either may be said to have done so; if either dislikes the result it is free to amend its own rules accordingly. An alternative approach would be to say that, notwithstanding the difficulty of allocation as between the two jurisdictions, it is clear that tax has been avoided because the company's total liability is reduced. If this view is adopted, the question of whether the avoidance is appropriate may then be considered on the basis of the criteria discussed under the previous headings within this section (7.3).

7.4 Tax planning

7.4.1 A definition

Tax planning, as distinct from avoidance, was defined in 7.3.1 as, broadly, the organising of genuine commercial transactions in such a way as to give the lowest possible tax charge or, strictly, the highest possible after-tax profit. In many cases the judgments involved in determining whether transactions amount to avoidance or planning will be straightforward, but there may be some middle ground where they are difficult, even where there is agreement on the principles to be employed in making the judgment.²⁸

7.4.2 Companies paying their 'fair share'

Objections to tax avoidance – whether they are based on CSR considerations or on more fundamental ethical principles – focus largely on artificiality as discussed at 7.3.2 and 7.3.3; ie, on the nature of the transaction. Objections to tax planning are perhaps more likely to focus on the *results* of the transaction; ie, on the fact that it produces a tax liability that is considered to be in some sense 'too small'.

Accordingly, many campaigning groups argue that, in order to behave in an ethical or responsible way, companies should adopt an attitude to tax planning that will ensure they pay their 'fair share' of tax. However, this leaves open the question of how 'fairness' is to be determined. Some companies would argue that in a democracy it is perfectly fair to organise commercial transactions in such a way as to pay only the minimum tax determined by the letter of the law, as enacted by the people's elected representatives. This parallels the argument that artificiality is not an ethical issue provided there is no dishonesty, as discussed in 7.3.3 in the context of tax avoidance. Those who argue in this way have the advantage that the amount in question can be determined with precision (by recourse to the courts if necessary). It is therefore clear what the position is for which they are arguing.

Those who argue for a wider understanding of 'fairness', on the other hand, are sometimes dismissed by companies as advancing an anti-business agenda in which, however much tax a company pays, a demand for a 'fair' contribution will always mean 'more than you are paying now'. Those adopting a wider definition are therefore faced with the challenge of framing it in a way that meets this objection. They also face the difficulty that, even among those who reject the 'letter of the law' approach, there is no unanimity on what is fair. Nevertheless, in practice many observers may feel – perhaps with some justification – that they will recognise fairness when they see it. Others, less confident, may consider that at least they will recognise manifest unfairness when they see it. One of the objectives of the present paper is to encourage the development of categories and methods of analysis that will facilitate this debate.

²⁸ This section draws on discussion at section 5.2.4 of the Tax Governance paper. See footnote 1.

Arguably, the ‘fair’ or ‘right’ amount of tax for a company to pay is that which reflects the intention of the legislature, even where the legislative process has failed to enshrine that intention precisely in statute. If what the legislature intended is (by whatever criteria) manifestly unfair, the blame for that situation must rest with that body, rather than with a lack of social responsibility on the part of companies. However, in practice, the difficulty that frequently arises is that there is genuine uncertainty as to what the intention of the legislature was. Companies are often urged to comply with ‘the spirit of the law’.²⁹ This might be taken to mean no more than that companies should avoid relying on unduly literal readings of the legislation. Arguably, however, it requires consideration to be given not only to what the legislature intended by the provisions it made, but also to the effect of the provisions it is likely to have made if it had addressed the particular issues in question; ie, it is necessary to extrapolate from what the lawmakers have done to determine what they would have done in other circumstances. In practice this is not always easy to discern.

The difficulties in this area have been well rehearsed elsewhere, and various proposals have been put forward to address the problem either by the application of over-arching principles of interpretation or by changes in the approach to the drafting of tax legislation.³⁰ In the meantime, the chief weapon in the government’s armoury (in the UK at least) continues to be the introduction of increasing quantities of long and complex technical legislation to apply in narrow areas. Arguably, however, this added complexity makes the spirit of the law even more difficult to discern.

Particular issues as regards ‘fairness’ arise in the context of multinational companies’ obligations to their host nations, and these are considered at 8.1.3.

Having considered how the concept of ‘fairness’ may apply to tax planning, the implications of CSR as more specifically defined for the purposes of this paper in section 2 above may be examined, in the following sections, by reference to the same categories as were employed in the consideration of tax avoidance at 7.3.

7.4.3 Responsibility to the state

In narrow economic terms the effect of tax planning on the state is exactly the same as that of avoidance (and, indeed, of evasion): the government is deprived of funds that it would otherwise have had. As indicated at 5.2.3, there is an argument that the company has at least some responsibility to maintain the tax revenue of the state because of the state’s role in promoting the welfare of society (which may in turn contribute to a healthy business environment). If this is accepted, then to deprive the state by tax planning of funds that properly belong to it will not be considered responsible behaviour.

However, the question of what ‘properly’ or ‘fairly’ belongs to the state, if not the amount strictly required by law, is a contentious one, as discussed under the previous heading. The question is circumvented if one simply argues that the more money a company gives to the

²⁹ For references to the spirit of the legislation see: Tax Justice Network, *Closing the Floodgates: Collecting Tax to Pay for Development*, page 26; Tax Justice Network, *Tax Us if You Can: The True Story of a Global Failure*, pages 8, 25 and 67; Henderson Global Investors, *Responsible Tax*, pages 2, 6, 7, 8 and 9; OECD, *Guidelines for Multinational Enterprises*, page 27.

³⁰ See, for example: Inland Revenue, *A General Anti-Avoidance Rule for Direct Taxes*; Freedman, *Defining Taxpayer Responsibility: In Support of a General Anti-Avoidance Principle*; Freedman, *Tax Avoidance and the Intention of Parliament - a Perspective from a Land without a GAAR*; Avery Jones, *Tax Law: Rules or Principles?*; Brenda Berkeley on ‘Principles-Based Drafting’ at page 29 of KPMG’s Tax Business School®, *From Debate to Action: Drawing the Lines and Finding the Balance*; Pinder, *The Coherent Principles Approach to Tax Law Design*.

state, the more socially responsible it is being. A company taking this view, and seeking to exercise maximum responsibility, would presumably eschew all tax avoidance or tax planning arrangements without regard to the degree of artificiality or indeed to any other features of the particular scheme other than the resulting reduction in tax liability. The question then arises of whether the same principle applies even to planning that is intended to make use of incentives specifically provided by the tax system, or indeed to planning intended to avoid anomalous tax charges that may arise where there is no economic profit. Few companies perhaps would wish to go this far, but it is hard to say on what principle they should draw back from doing so if the basis for their approach is a simple one under which social responsibility is considered to rise in direct proportion to the tax bill.

This difficulty perhaps illustrates the weakness of an approach that accepts uncritically the equivalence of the state and the society that it regulates, or that overemphasises the size of a company's tax liability (as distinct from the way in which it is arrived at) as a factor in assessing its CSR performance. Thus even companies that accept the general principle of a responsibility to maintain the revenue of the state may consider that by paying excessive tax liabilities they put themselves at a competitive disadvantage, which places other stakeholders such as employees and investors at risk. As a result, they may well modify their behaviour in practice by reference to the nature of the tax planning transactions concerned, or by reference to some of the other criteria for applying CSR principles to tax planning as discussed below.

Commentators with an anti-business agenda sometimes set profitability and CSR in opposition to each other, as if the pursuit of profits was in some sense a socially irresponsible objective. However, profits are a prerequisite of any sustained course of socially responsible behaviour. In the tax area, if paying more tax is seen as *per se* socially responsible, then more profits will be needed to finance this. Even where the taxes are not profit-related, but based on turnover or asset values, profits are needed to pay the tax; otherwise the company will cease to exist. This reinforces the idea that CSR and commerciality are not opposed but intimately connected, partly because of the business case for CSR as considered at 3.4, and partly because CSR is not something separate from the company's commercial activity but rather a way of doing business, as discussed at 2.2.

7.4.4 The economic strand of the 'triple bottom line'

As regards the company's responsibility to society as distinct from the state, tax planning (like tax avoidance, as discussed at 7.3.6) cannot be presumed automatically to have an unfavourable economic impact unless it is considered that the state will always use money more efficiently than the private sector.³¹ Arguably therefore the economic strand of CSR is not relevant in this context, any more than it was in the tax avoidance context.

7.4.5 The social strand of the 'triple bottom line'

As regards the social strand of CSR, the main argument against tax planning appears to be, as for tax avoidance, that if as a result of such planning the system is seen by the population at large as to some extent optional, and open to abuse by the well advised, then this may give rise to social tensions and discourage compliance by other taxpayers. This may be exacerbated if there is confusion in the minds of the observers between tax evasion, tax avoidance and tax planning.

³¹ Sartoris, *The Ethics of Tax Avoidance*.

Attitudes to tax planning, however, are likely to be more nuanced than attitudes to tax avoidance. Some observers may see planning as entirely acceptable. Others may see it as acceptable where it involves the use of tax incentives that Parliament has provided specifically to encourage particular patterns of behaviour. Others may draw their line somewhere in between; and perhaps few will disapprove of tax planning in all circumstances. The point at issue in the present context, however, is not how tax planning will affect the company's *reputation* for social responsibility among such observers, but what objective damage such planning may do to society as a result of its interaction with existing social attitudes. For example, will the ill-informed observer view a well known company's legitimate planning as justification for his or her own non-disclosure of income? Or might his or her resentment of the company's behaviour, added to other perceived grievances against 'big business', contribute to widespread 'direct action' against industry? If the company perceived the social damage that would result from its actions as significant, the responsible course might be not to engage in those actions, even if it considered them perfectly proper. However, to the extent that public attitudes to tax planning are less critical than attitudes to avoidance, companies are perhaps likely to feel more freedom to engage in planning.

As indicated at 7.3.7 in the context of tax avoidance, the argument may be advanced that those who engage in tax planning are transferring a burden to other taxpayers, and thus disadvantaging those other members of society in a way that amounts to a breach of their responsibilities to that society. It is suggested at 7.3.7 that this represents an oversimplified analysis.

7.4.6 The environmental strand of the 'triple bottom line'

As suggested at 7.3.8 in connection with tax avoidance, is difficult to see any immediate way in which the environmental strand of CSR would affect in principle the decision as to whether or not to engage in tax planning arrangements. As indicated there, special considerations may apply in the case of environmental taxes.

7.4.7 Reputational issues

As with tax avoidance, there is a complex interplay between CSR and reputational issues in considering tax planning. Strictly, the effect of particular actions on the company's reputation, and the results of that effect in terms of increased or reduced sales, are matters of commercial judgment rather than of CSR. However, a company may act from a dual motive as discussed at 3.4: ie, from the desire to *be* socially responsible and from the desire to *appear* to be so.

7.4.8 How significant an issue is tax planning?

In the nature of the case it is extremely difficult to estimate the relative costs to any particular state of tax avoidance and tax evasion, even assuming there is no dispute as to the definition of those terms. The sums concerned in tax planning are even more difficult to quantify: where the objective is to avoid creating an artificial liability, rather than to create an artificial loss, planning shades into prudent management. Similarly, where a company benefits from a tax incentive – for example, a relief for research and development expenditure – it may not be possible to say with any certainty whether there would have been any change in its behaviour in the absence of the relief. However, the CSR impact of tax planning, to the extent that it derives from public perceptions of, and responses to, companies' activity as discussed in 7.4.5, is arguably less than the impact of tax avoidance – not because the sums involved are necessarily less, but because they are less visible and (to many observers) less objectionable.

7.4.9 Tax planning for employees: particular issues

Planning for tax-efficient remuneration may be seen as undertaken for the benefit of the company (because it allows it to deliver the market rate of net remuneration at a reduced cost), or as undertaken for the benefit of the employee. In the former case it may be assessed from a CSR perspective using the criteria discussed above in 7.4.2 to 7.4.8. In the latter case, it might be seen as a positive socially responsible action undertaken to improve the position of the workforce, which is among the various stakeholders to whom the company has a responsibility. The two positions are not mutually exclusive; a particular tax saving arrangement may be undertaken from a dual motivation. In addition, where arrangements are undertaken solely to improve the position of the workforce there may nevertheless be a business case for this.

In practice the way in which such arrangements are perceived may vary depending upon their particular features, including such matters as the degree of artificiality and whether they extend to the workforce as a whole or only to a select number of employees. In the UK, many employers have implemented 'salary sacrifice' arrangements with the acquiescence of HMRC which, broadly, enable employees to swap salary (liable to income tax and Class 1 national insurance contributions) for a range of benefits which incur a lesser tax and/or national insurance charge than the cash payment sacrificed. This is seen by many observers as a socially responsible extension of employee choice, and some employers make a positive claim to CSR 'achievement' in respect of such schemes. Others see them as no different from any other tax planning arrangement.

8 International issues

8.1 Multinationals: a fair tax contribution to host nations

8.1.1 Why is a fair contribution expected?

Many NGOs and charities place considerable emphasis on the importance of multinational companies paying a 'fair' tax contribution in host nations, particularly in developing countries.³² Attention focuses in particular on the extractive industries.³³ Often companies in these industries are exploiting (in the non-pejorative sense) an asset that may represent the host nation's only immediate prospect of lifting itself out of poverty; there may then be understandable concern that this opportunity should not be squandered.

Companies also, where they are concerned for the societies in which they operate, may consider it important to 'pay their way' in such cases, for the reasons discussed in 5.2.3, which examines the community of interest between the state and society.

8.1.2 How can companies influence their tax liability?

In principle the payment of tax is not a matter of choice, so *prima facie* it would appear that appeals for a fair level of taxation should be addressed to the governments of the host states rather than to the companies concerned. However, in practice companies can affect their liability in a number of ways.

³² KPMG International, *Tax in the Boardroom*, page 16.

³³ See, for example, Riesco, Lagos and Lima, *The 'Pay Your Taxes' Debate: Perspectives on Corporate Taxation and Social Responsibility in the Chilean Mining Industry*.

First, governments may be eager to attract enterprises to their country by means of investment incentives, tax holidays and exemptions, and favourable rates of taxation.³⁴ Where the company concerned is large enough, these matters may effectively become a matter of negotiation with the government prior to the introduction of legislation. If the principle that companies should make a 'fair' contribution is accepted (leaving aside for the moment the question of how that amount is to be ascertained) this may mean that companies will have to exercise some restraint in using the negotiating power at their disposal.

Secondly, companies may in theory reduce their liabilities by tax avoidance or planning techniques as discussed at 7.3 and 7.4. However, the attitude of governments to such techniques may be very unfavourable, particularly in developing nations. Practical considerations relating to relationships with the government may therefore dictate a straightforward approach to compliance with the agreed rules, and CSR factors may reinforce this.

In practice, therefore, it may be in the negotiation of the tax rules rather than in the approach to tax avoidance or planning that CSR principles have the greatest application - not because CSR is not relevant to avoidance or planning, but because those techniques are ruled out on pragmatic grounds. In practice, the position of governments in the negotiation of such rules may be that they expect to receive a stated amount of tax, and the manner in which it is calculated may be a matter of relative indifference. Such negotiations are subject to the considerable difficulty that there is no simple way of determining what is 'fair'. There will normally be a level of taxation beyond which the company would not consider it worthwhile, as a commercial matter, to undertake the enterprise. Similarly, a government is unlikely to enter into any arrangement under which no benefit accrues to the country concerned. Between these two points a compromise will normally be reached, but may be based more on commercial factors and relative bargaining power than on any concept of fairness. A commitment to 'fairness' may however give a company the incentive to concede more in negotiations than it feels that it would necessarily have had to do from commercial necessity.³⁵ Where it suspects that the resulting tax payments will not otherwise be used to benefit society, it may perhaps use its negotiating power to insist on increased social spending.

An additional factor in the negotiations may be that the government can foresee economic benefits other than the revenue that will accrue from taxation on the profits of the company; for example, increased employment and revenue from the taxation of employment income, improved infrastructure, and increased investment by other companies. These benefits may make governments willing to accept a relatively low taxation yield.

Jeremy Oppenheim suggests that the relationship between taxpaying company and host country is a symbiotic one, and that overgenerous tax concessions may inhibit the economic growth of the country, and the development of its infrastructure, from which the companies will themselves benefit in the long term.³⁶

³⁴ However, the effectiveness of such incentives is questioned in: Tanzi and Zee, *Tax Policy for Developing Countries*, pages 8 and 9; Oxfam, *Tax Havens: Releasing the Hidden Billions for Poverty Eradication*, page 8; Tax Justice Network, *Closing the Floodgates: Collecting Tax to Pay for Development*, page 24.

³⁵ See Utting, *Corporate Social Responsibility and Development: Towards a New Agenda?*

³⁶ Oppenheim, *Corporations as Global Citizens*. See also Oxfam, *Tax Havens: Releasing the Hidden Billions for Poverty Eradication*, page 11.

8.1.3 What is 'fair'?

In the light of these factors the question of what is 'fair' is problematic. Rates of tax may vary widely between different regimes and over time. Over the last 30 years the top rate of income tax on investment income in the UK has varied from 98 per cent to 40 per cent. At different times each of these was determined by the democratic process to be appropriate, and presumably in some sense 'fair'. There is no self-evident truth in this area. Comparability will probably be an important factor in determining perceptions; however, even then questions arise as to whether the comparison should be made with other countries in a similar economic situation or with highly developed nations. Political considerations will also play a part; in broad terms left wing governments tend to favour higher tax rates (and higher public expenditure) than right wing governments. Different theoretical approaches to taxation will also be relevant; ie, particular governments' preferences as between direct or indirect taxes, the taxation of income or expenditure, and uniform or progressive rates. Where progressive rates are favoured further questions will arise about the degree of progressivity that is appropriate, and these again may be difficult to answer on any objective basis.³⁷

Where taxation is based on profits, it may be easier to make comparisons than when it is effectively based on gross income; for example in the case of extraction royalties or excise duties. In this context there may also be debates at a theoretical level as to whether royalties paid to governments constitute taxes or costs of production, but where the transactions are transparent perhaps little turns on the classification. Arguably taxes on profits are 'fairer' than royalties in that unexpected gains and losses are shared between governments and the companies concerned. If such unexpected results arose purely from commercial efficiencies or inefficiencies it might be appropriate for governments to be insulated from them by means of taxes based on production, but often they will result from changes in world commodity prices, in which case it may be thought more appropriate for the resulting gains or losses to be shared between the parties.

8.1.4 Factors militating against the payment of tax

Any incentive that companies feel they have to pay additional taxes in host countries may be reduced where they believe that corruption in the countries concerned feeds tax revenue into the pockets of a privileged few rather than helping the community. Similarly, the pressure sometimes placed on them by NGOs and others in this area may be reduced in these circumstances, or at least replaced by demands for alternative socially responsible courses of action.

Where the host nation is ruled by an oppressive regime it might be argued that the smaller the amount of tax companies pay to it the better, because paying tax simply shores it up and extends its life. The issues involved may be complex, including the facts that no one can predict what the nature of any succeeding regime may be, and that any sanctions taken against the regime may have even more harmful results on the population at large. Political realities also mean that there may not be unanimity on whether the regime is in fact oppressive, or whether it is unrealistic to expect Western standards of democracy from developing nations.³⁸

³⁷ See: Tanzi and Zee, *Tax Policy for Developing Countries*; Avi-Yonah and Margalioth, *Taxation in Developing Countries: Some Recent Support and Challenges to the Conventional View*.

³⁸ See Baker, *In Search of the Business Case for Responsible Tax*.

Other regimes may not be corrupt or oppressive, but simply incompetent. In such cases companies may consider that, insofar as they have any control over the matter, the more socially responsible course is to minimise their tax bills but to set up their own health or infrastructure projects, or to pay their workers more in order to move funds directly into the economy.

8.1.5 Do the arguments apply equally to developed countries?

The proposition that a company has a responsibility to pay taxes in the countries where it operates is most frequently heard in the context of developing countries, as discussed in 8.1.1 to 8.1.4. This may reflect an understandable ‘bias to the poor’, or a view that developed economies do not need social commentators to speak up for them. Indeed, such commentators may consider that if developed economies lose revenue to sophisticated tax planning despite the resources that they have available to guard against this, they have only themselves to blame.

In recent years, however, a somewhat different argument in favour of paying tax where a company has a business presence has been heard in connection with US tax liability, based on the idea that to avoid taxation in the homeland – however legally – amounts to unpatriotic behaviour. Thus the SustainAbility report *Taxing Issues: Responsible Business and Tax* indicates that a major element in the presidential campaign of Senator John Kerry in 2004 was a proposal to restrict access to government contracts for companies that had ‘inverted’; ie, moved their headquarters outside the US for tax purposes (often to Bermuda).³⁹ This may reflect a view that charity (or good behaviour, at least) ‘begins at home’. In the US there may also be a feeling, particularly in the post 9/11 context, that to ‘re-flag’ indicates a repudiation of American nationality and values.⁴⁰

Arguably this reaction to the avoidance of tax by a process of relocation highlights the fact that if the principles discussed in 8.1 to 8.4 relating to fair payment of tax in host nations have any validity then they must presumably apply to the presence a company has in any nation, without distinction. It is true that the US has a great deal more material wealth than any developing country, but arguably this is of no relevance in a discussion of what constitutes equitable treatment – though it would be in a discussion of philanthropy, as in the following section.

8.2 Competing tax claims of different jurisdictions

The question of ‘fairness’ to host nations leads on to the question of how companies should deal with the competing claims of different jurisdictions. In most cases where the tax liabilities to different states interact there will be little element of discretion for the company. The liability will be decided by the terms of a double tax treaty, or by the interaction of two domestic systems, with one normally giving an exemption or tax credit in respect of income already taxed in its source country. There may, however, be circumstances in which commercial decisions on where operations are situated, or on the terms of trade between entities in different jurisdictions, will affect the distribution of a group’s total tax liability as between different states. In such cases CSR considerations may enter into the company’s decision-making process.

Where such decisions are revenue-neutral over-all, so that the only point at issue is how the total tax payment should be allocated between different countries, a major factor in reaching the decision will be how the company identifies the society or community to which it has a responsibility, as touched on at 2.5. It may see its primary responsibility as being to its home country. This could be on grounds of patriotism (now often seen as a somewhat ambivalent

³⁹ Page 17.

⁴⁰ See Chandler, *A Guide to Corporate Social Responsibility*.

virtue) or parochialism (usually seen as a vice), and it could be considerably influenced by particular economic, social and political factors, as well as cultural attitudes, in the country concerned.

Alternatively, a company may see itself as having ‘world responsibility’. For companies based in developed countries, the focus is likely to be on responsibilities to developing countries; they are perhaps unlikely to see ‘world responsibility’ as involving significant obligations to other developed nations. This argues that in fact their concern is less to do with ‘fairness’ in the sense of treating all parties equally than with a sense that they have a responsibility not to take advantage of countries that do not have the economic or political ‘muscle’ to take care of themselves. It therefore involves an assessment of ‘need’ or ‘worthiness’ in the same way as a philanthropic project, and may require a judgment to be made between the competing claims of different developing countries. Although companies based in developing countries, and involved in international trade, may not see themselves as having any responsibility for such benevolence towards other nations, they may nevertheless often be very conscious of world opinion, and thus of responsibilities to overseas stakeholders in matters such as governance and reporting.

As with other aspects of CSR, there is likely to be a combination of motives influencing these decisions, including altruistic considerations and reputational issues.

The preceding paragraphs consider the allocation of taxable profits on a revenue-neutral basis. In fact such decisions will rarely be revenue-neutral, because different countries will impose different effective tax burdens on the same amount of profits. Where the decisions affect not only the way in which the company’s total tax burden is allocated but also the size of that burden, then the various CSR considerations already discussed as regards allocation apply, but subject also to the issues discussed at 8.1.3 concerning what represents a ‘fair’ contribution to a host country. In this context it may be appropriate to consider not only whether the tax arising in any jurisdiction is appropriate to the assets and activities situated there, but also the appropriateness of the way in which the company’s assets and activities are distributed between its different areas of operation.

8.3 Transfer pricing

Transfer pricing is a particular issue in the context of the competing tax claims of different jurisdictions. Most sophisticated tax systems impose requirements for arm’s length pricing of transactions between affiliates in different jurisdictions, and the same approach is prescribed by the OECD Guidelines.⁴¹ However, there may be circumstances where the tax systems of less sophisticated countries do not impose any formal transfer pricing constraints, or where those constraints fall short of imposing an arm’s length price, and there is therefore scope for prices to be manipulated legally. Such manipulation might be undertaken to reduce the overall tax burden for the company’s own benefit, or conceivably as a means of directing profits to particular ‘deserving’ nations. Many companies may feel however that, even if the objective is to help ensure a ‘fair’ tax payment in a developing country, the manipulation of transfer prices (however legal, and however transparent) offends against a principle of ‘straightforward dealing’ that itself represents a socially responsible way of doing business or even a more fundamental ethical requirement. They might therefore wish to find some other way to support the economies of such countries.

⁴¹ OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*.

Even in jurisdictions where there are highly developed transfer pricing rules, there may sometimes be a range of prices that expert opinion, including that of the revenue authorities, would be prepared to accept as arm's length. The question then arises of whether a company should seek to take advantage of this margin of discretion, either for its own benefit or for that of particular host nations. Opinions may differ. Some will see no reason not to adopt a price that is honestly calculated on the basis of fully disclosed information and is acceptable to the tax authorities, just because it is at one end of the acceptable range. Others might be uneasy with the idea of always adopting an aggressive line in this area, either on principle or because of the possible effect on relationships with the authorities.

8.4 Tax havens

A further issue concerns the use of tax havens. There are various problems of definition, but in the present context the term is used to mean jurisdictions with low, or nil, rates of tax on income; in particular, where favourable rates are applied to non-residents or where the necessary status to qualify for a preferential regime is established on the grounds of a somewhat slight degree of presence within the country in question.⁴² Some commentators would define tax havens in such a way as to make secrecy or lack of transparency essential features of the definition, but that approach is not adopted here.

Some companies would see nothing socially irresponsible in making use of tax havens to reduce their tax burden, provided there was no deception or illegality involved. They would argue that if their home states wish to impose a tax liability on profits arising in tax havens, whether directly or by means of controlled foreign company or US 'Sub-Part F' type legislation, they are free to do so. Similarly, if those jurisdictions wish to contest the residence status of companies by the use of their own domestic legislation that is an option open to them. If they choose not to do so, the argument runs, then they cannot complain of the advantage that the companies thereby gain. Such companies might argue that, faced with a choice between operating in country A where the tax burden is low, or in country B where it is higher, they would be foolish to contemplate any course other than operating in country A, unless there were countervailing commercial factors. They might also argue that if they did not take advantage of the opportunities available they would be failing in their duties to their shareholders. On this view it is legitimate for countries with limited natural or economic resources to use their tax regimes as an economic tool to attract investment, and it is equally legitimate for companies to take advantage of those regimes.

Companies adopting this position might further argue that those who objected to the use of tax havens were allowing themselves to be unduly influenced by allegations that such countries facilitate tax evasion in other jurisdictions by their banking secrecy laws, by an unwillingness to exchange information with other tax authorities, and by the very fact of not imposing withholding taxes on non-residents. They would argue that just because rules intended to facilitate business by a 'light touch' approach to regulation are abused by other less scrupulous taxpayers to evade tax, this is no reason why they themselves should not make legitimate use of them.

⁴² For fuller definitions see: the EU's Code of Conduct Group, *Report of 29 November 1999 to ECOFIN*; OECD, *Towards Global Tax Co-operation: Progress in Identifying and Eliminating Harmful Tax Practices*; Tax Justice Network, *Identifying Tax Havens and Offshore Financial Centres*.

Others would say that this is precisely why tax havens should not be employed to save tax: because to do so is to be associated with a nexus of economic activity that is at the very least morally dubious, and quite possibly illegal. They would argue that tax avoidance is associated with tax evasion and money laundering, and thus with organised crime, and that the socially responsible course is to do nothing that would appear to countenance or encourage such activity. These factors would apply in addition to any arguments adopted as discussed at 7.3 to the effect that arrangements to reduce tax artificially, whether in a tax haven or not, are by their nature not socially responsible.

Some might respond that these arguments against the use of tax havens would have merit if one could identify a specific diversion of profits from an identifiable 'normal' jurisdiction to a tax haven. However, they might consider them less convincing where the arrangements were such that one could only identify the profits and say that had they not arisen in a tax haven they would presumably have arisen somewhere else. In such a case, where the precise nature of the tax avoided cannot be identified, it may be argued that the mischief is too remote to justify the complaint; it amounts (it might be claimed) to no more than a criticism of the company for not finding some way of arranging its cross-border transactions to ensure that it paid more tax than it is currently doing. Arguably criticism made on this basis loses sight of the fact that while (as this paper argues) there are a variety of circumstances in which a company may not consider it appropriate to reduce its tax payments to the minimum legally possible, yet as a normal commercial matter a company will naturally be no more desirous of paying additional tax than it will be of paying an excessive price for labour or raw materials.

Some commentators might wish to distinguish between 'historic' tax havens and other countries with developed financial and non-financial economies such as Ireland that have decided more recently to attract investment by the introduction of low rates of corporation tax. Such more recent arrivals tend not to have the reputation for secrecy and limited regulation that attaches, rightly or wrongly, to some of the older tax havens. Arguably, therefore, they may be employed without casting doubt on the CSR credentials of the companies concerned. An alternative view would be that such 'tax competition' amounts to irresponsible behaviour on the part of the countries concerned, and that it is equally irresponsible of companies to encourage it by taking up the opportunity offered.

Some would argue that, because of the 'tainted' nature of tax haven economies, companies that wish to behave in a socially responsible way should not do business there at all, quite irrespective of whether they save tax as a result. A contrary view would see nothing irresponsible in being involved in the agricultural, industrial or legitimate financial activity of a tax haven and paying tax in the same way as any other taxpayer in that jurisdiction. To suggest otherwise, it might be argued, would be equally to condemn the native inhabitants of those countries for being involved in the economy of their birthplace, since an activity cannot be nefarious when carried out by one person and legitimate when carried out by another. Perhaps the strength of the argument on either side varies to some extent according to the size of the 'legitimate' economy within the tax haven and the degree to which the economy as a whole is tainted by implications of tax evasion or other criminal activity. However, the problem then arises of how such 'tainting' can be assessed. Some help might be found in measures such as Transparency International's 'Corruption Perceptions Index'⁴³ or the World Bank's 'Worldwide Governance Indicators'.⁴⁴ Arguably, however, corruption will not be eradicated from affected nations as a result of a boycott by legitimate businesses, but rather when such companies

⁴³ See http://www.transparency.org/policy_research/surveys_indices/cpi.

⁴⁴ <http://web.worldbank.org/WBSITE/EXTERNAL/WBI/EXTWBIGOVANTCOR/0,,menuPK:1740542~pagePK:64168427~piPK:64168435~theSitePK1740530,00.html>:

become involved in those nations and show by example how businesses can be operated with integrity.

9 Relations with tax authorities

While there may be many points of disagreement, as discussed in sections 7 and 8 above, in determining the amount that a socially responsible company should contribute to national resources by way of tax, there is perhaps likely to be more agreement on the principle that a company should not waste the resources of the state. This principle has an application as regards the company's relationships with the tax authorities. It implies that the time and resources of tax administrators should not be wasted by companies providing inadequate or delayed information, which generates the need for additional enquiries by the authorities. Neither, arguably, should companies advance technical arguments that they know have very little chance of success.

An alternative view would suggest that companies must be free to advance any technical argument they wish, unless they know it to be completely devoid of merit. On such a view directors have a duty to achieve the best result possible for their company, and it would be a dereliction of this duty to ignore any opportunity to argue for a reduced tax liability, subject only to a commercial assessment balancing the likelihood of success against the professional costs, management time and continuing uncertainty involved in pursuing the matter. (What is in view here is a dispute as to the tax treatment of normal commercial transactions – for example, whether a particular receipt is taxable or a particular expense allowable – rather than a dispute as to the treatment of transactions entered into for tax avoidance reasons. The way in which CSR principles impinge on the latter is discussed specifically at 7.3.)

It might be maintained that CSR principles militate against such an aggressive approach, for exactly the same reasons advanced at 7.3 against engaging in tax avoidance arrangements; ie, that there is a tax liability that is in some sense 'fair' or appropriate and which exceeds the legal minimum. On the other hand, if the courts decide that a receipt is tax-free, or an expense is deductible, that decision thereafter represents the legal position that has obtained throughout the life of the relevant legislation (albeit previously in doubt). Arguably, therefore, there is no more reason for a company not to take advantage of this than there is for it to decline to take the benefit of any more long-established tax rule. The argument applies equally if the tax authorities concede the point rather than proceed to litigation, as they will presumably only take this course on the basis of their informed opinion as to how the courts are likely to decide the matter. An exception perhaps arises where a court finds in favour of the taxpayer on the basis of a statutory provision that it specifically identifies in its judgment as a loophole resulting from a drafting error. Even here, supporters of the strict approach to statutory interpretation associated with the *Cape Brandy Syndicate*⁴⁵ and *Duke of Westminster*⁴⁶ cases as mentioned at 7.3.3 might maintain that this was simply a consequence of the arbitrary nature of any tax system, and that it was no more irresponsible of the company to take advantage of this than it was to comply with any other aspect of the tax code.

Even where companies consider a relatively aggressive approach justified on the grounds discussed above, it may be argued that this does not extend to an approach based on 'portfolio negotiation' where positions are taken simply in order to have something to concede in a 'horse-trading' settlement. Still less would these arguments justify an approach of 'playing the audit

⁴⁵ KB, (1920) 12 TC 358.

⁴⁶ HL, (1935) 19 TC 490.

lottery',⁴⁷ where unreasonable positions are adopted simply on the ground that they are unlikely to be selected for challenge.

A reputation gained by a company for plain and straightforward dealing with the tax authorities, eschewing avoidance or complex tax planning, may sometimes reassure shareholders that they too will be dealt with in an honest and straightforward way. Desai and Dharmapala write that 'shareholders and tax collectors share a common interest in restraining opportunistic managers.' They also suggest that, 'anecdotal and systematic evidence ... shows that corporate tax avoidance is often linked to acts of managerial malfeasance.'⁴⁸ Even those who would require fuller evidence before being convinced of that link themselves may be prepared to accept the point that this psychological mechanism does indeed operate in some cases. Other shareholders may take a very different view, regarding what they see as a subservient attitude to the tax authorities as indicative of a failure properly to safeguard the company's interest.

In the light of these points, directors may wish to establish a policy or internal code of conduct governing relationships with the tax authorities, covering matters such as honesty, openness, courtesy and promptness.⁴⁹

At the time of writing the suggestion has also been put forward that a tripartite code of conduct should be introduced governing the behaviour of taxpayer companies, tax advisers and HMRC, and developments in this area are awaited.⁵⁰

10 Reporting of tax and CSR

10.1 Statutory accounts and CSR reports

Where, on CSR grounds, a company discloses to the public tax information beyond that which is required by statute, the question arises of whether this is best included in the statutory accounts or in a separate CSR report. Much depends on the quantity of information concerned. If a small amount of analysis is required to elucidate a statutory figure then this may be best included with that figure in the statutory accounts. If extensive material is to be published, particularly in narrative form, this may be better in a dedicated CSR report where there is an opportunity to clarify the way in which these details fit into the company's overall CSR strategy.

10.2 Reporting of policies

Companies may wish to disclose the way in which their policies on tax matters are affected by CSR considerations; for example, the policies they adopt on tax avoidance, tax planning, and tax payments in developing nations. In so doing they may wish to bear in mind that while a failure to make disclosure of a policy may be subject to a certain amount of criticism, a failure to abide by such a policy once it has been disclosed may be subject to much greater, and arguably more justified, criticism. Similarly a change in policy, for example to adopt a more aggressive approach to tax avoidance, may be subject to greater criticism than would have arisen if either no policy had been disclosed in the first place, or if that more aggressive policy had always been in place.

⁴⁷ See Keinan, *Playing the Audit Lottery*.

⁴⁸ Desai and Dharmapala, *CSR and Taxation: The Missing Link*.

⁴⁹ See HM Revenue & Customs, *Tax in the Boardroom*.

⁵⁰ See *inter alia* Hickey, *If the Trust Gap Widens Can the Tax Gap Be Narrowed?*

It is not self-evident that because a policy exists it should be disclosed. A company may adopt many policies, formally and informally, on a variety of business issues, that it either wishes to keep confidential for commercial reasons, or simply sees no reason to disclose. The commercial argument for disclosing tax policies that are regarded as 'CRS compliant' might be the reputational benefit or the comfort thereby given to investors that risks are being appropriately managed. The 'CSR motive' for the disclosure (as distinct from the motive for the adoption of the policy) might be that the company's adherence to it is thereby reinforced, and that other companies may be encouraged to adopt similar policies. It is difficult to see how the disclosure of a 'CSR compliant' policy, once adopted, could disadvantage a company except in the most unusual circumstances. There is therefore perhaps less likely to be a commercial case for not disclosing a policy than there is for not disclosing detailed tax figures that may have commercial implications (see 10.4).

It might be argued that a CSR 'non-compliant' or 'less compliant' policy would be better not disclosed, in view of its possible impact on the company's reputation. Against this it might be maintained that such a policy, disclosed and defended, would be less harmful to the company's reputation than the same policy if it was not formally disclosed but came to light as a result of 'leaks' or in response to insistent questioning.

Even where it is considered inappropriate, for whatever reason, to make public disclosure of tax policies, companies will often wish to make sure that they are clearly promulgated and understood within the organisation itself.

10.3 Disclosure of tax avoidance and planning

There might be a case for companies to supplement the disclosure of their policies in the area of tax avoidance and tax planning by giving details of what transactions they have undertaken, and what they have rejected. In practice, however, commercial considerations may militate against the disclosure of 'bespoke' planning arrangements, because this could involve giving details of the company's confidential business arrangements. As regards 'pre-packaged' schemes that are not taken up by the company, there may also be practical difficulties as often the vendors may give very limited details, offering more information only if confidentiality agreements are entered into. Companies' approaches may vary according to the prevailing business climate in the jurisdictions where they report. While they may wish to be as transparent as possible, they may also be conscious of commercial disadvantages if they disclose what others do not.

10.4 Disclosure of tax figures

The disclosure of certain tax figures will be a statutory obligation in almost all jurisdictions. As discussed at 7.4.3, in very broad terms the higher the tax charge the easier it is to sustain an argument that the company has behaved responsibly as regards tax matters. However, the lower the tax charge the easier it may be to defend the contention that the directors have exercised proper stewardship of the shareholders' funds. It may be that this tension is best resolved by providing, in addition to the relevant figures, sufficient information to establish how (or whether) that amount is 'fair' or 'appropriate' according to whatever criteria the company has established to govern its behaviour in this area. In practice it may be argued that country-by-country figures are necessary in order to reach realistic conclusions, as discussed at 10.6.

10.5 Disclosure of uncertainties in tax figures

Companies may also think it appropriate to disclose the extent of any uncertainties inherent in the tax figures included in the accounts, in order to enable users to gain a better understanding of their significance. For fiscal years beginning after 15 December 2006, companies filing US GAAP accounts are obliged to comply with *FASB Interpretation No 48*, which ‘prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return [and] also provides guidance on de-recognition, classification, interest and penalties, accounting in interim returns, disclosure and transition’.⁵¹ It is quite possible that other jurisdictions will adopt similar approaches in the future, but clearly companies are not obliged to wait for such requirements to be introduced before adopting this practice.

10.6 Tax paid analysed on a country-by-country basis

One area where disclosure beyond the statutory requirements is often recommended as the socially responsible course is the analysis of tax charged, and paid, on a country-by-country basis.⁵² At the time this paper was being written this was a matter on which the International Accounting Standards Board was being pressed to take action as regards reporting in the extractive industries by the ‘Publish What You Pay’ coalition.⁵³ Country-by-country reporting of tax and many other figures was also recommended for the extractive industries in a 2005 report by Global Witness,⁵⁴ and similar principles were put forward in the ‘Extractive Industries Transparency Initiative’ announced by Tony Blair, then the UK Prime Minister, at the World Summit on Sustainable Development held in Johannesburg in September 2002.⁵⁵ The 2007 Tax Justice Network report *Closing the Floodgates: Collecting Tax to Pay for Development* suggests that the results of the EITI have been disappointing: ‘As the EITI has evolved it has become clear that all it does is reconcile the figures that companies say they have paid to governments with the payments government[s] say they have received. ... As campaigners came to realize, knowing that 95 per cent of the revenues companies have declared are accounted for by governments is of little value if the declared payments are only half the real sum due.’⁵⁶

The *Sustainability Reporting Guidelines* published in October 2006 by the Global Reporting Initiative apply to ‘organisations of any size, sector or location’,⁵⁷ and not simply to the extractive industries. They include in their protocol for *Economic Performance Indicators* details of the information that should appear in a table of ‘Economic Value Generated and Distributed’. This includes ‘all company taxes (corporate, income, property, etc) and related penalties paid at the international, national and local levels. This figure should not include deferred taxes because they may not be paid.’⁵⁸ The protocol adds, ‘For organisations operating

⁵¹ Financial Accounting Standards Board, *FASB Interpretation No 48: Accounting for Uncertainty in Income Tax – An Interpretation of FASB Statement No 109*.

⁵² This section draws on discussion at section 5.5.1 of the Tax Governance paper. See footnote 1.

⁵³ Publish What You Pay, *International Accounting Standard 14: Segment Reporting – 2005 Update*. See also Publish What You Pay’s website generally.

⁵⁴ Global Witness, *Extracting Transparency: The Need for an International Financial Reporting Standard for the Extractive Industries*.

⁵⁵ Department for International Development (UK), *Extractive Industries Transparency Initiative – Core Script; EITI Statement of Principles and Agreed Actions; and EITI Revised Draft Reporting Guidelines*.

⁵⁶ At pages 31 and 100.

⁵⁷ Page 2.

⁵⁸ Paragraph 2.2(e), page 5. See also SustainAbility Ltd, *Taxing Issues: Responsible Business and Tax*, page 17.

in more than one country, report taxes paid by country'.⁵⁹ Very similar requirements appear in the *Guidance on Corporate Responsibility Indicators in Annual Reports* issued by the United Nations Conference on Trade and Development (UNCTAD).⁶⁰ In *Taxing Issues*, a study of the link between corporate responsibility and tax prepared by SustainAbility in 2006, part of the proposed programme for moving 'from passive to active tax responsibility' involved moving from segmental disclosure of tax paid to 'full disclosure of all taxes paid by country with relevant supporting data'.⁶¹

Current tax charged in the accounts (ie, excluding deferred tax) may differ from the tax eventually paid for the period. The alternative of country-by-country reporting by reference to payments made, rather than to amounts charged in the accounts (ie, on a cash-flow basis), however, raises a number of practical difficulties.

The argument for country-by-country disclosure, from a CSR perspective, is that it might assist users of accounts to assess the extent to which the company is behaving in a socially responsible way; in particular, whether it is making a 'fair' tax contribution in the host nations where it operates. It is thus not so much the disclosure itself that is seen as beneficial to society, but the pressure that is thereby put on the company as regards its behaviour. The arguments against such disclosure would be based on considerations of commercial confidentiality, and the administrative burden of producing, or digesting, a mass of detailed data.

On occasion, countries may object to the disclosure of such information.⁶² It is perhaps of limited use to them as far as their own jurisdiction is concerned, in that the relevant details are already available to them. They might nevertheless favour the publication of country-by-country figures because it would enable them to see how their performance in obtaining tax revenue from the company in question compared to that of other countries. Of necessity, however, this would involve other countries having access to the same data. A relatively low tax revenue for any particular country might give the impression of a lack of political or administrative success in collecting tax revenues; a high figure might give other countries an incentive to seek a larger share of the total. Neither would be a desirable outcome from the point of view of the country concerned.

The point is also made by commentators⁶³ that the disclosure of tax figures alone has limited value unless they are accompanied by sufficient country-by-country information on the company's commercial results to enable users of the accounts to judge whether the amount of tax paid is appropriate (by whatever criteria they wish to apply). In practice, the provision of such information, or its analysis by users, could impose a significant administrative burden. Presentation of figures by alternative categories such as industry sector or broad geographical region would reduce that burden but might be criticised for a lack of transparency. However, the provision of vast quantities of unanalysed data might also be criticised for lacking transparency. One compromise approach might be to limit disclosure of other information in support of the tax details to stipulated key figures, but to make specific reference to any additional factors which produced anomalous results or affected comparability with other companies. Another might be to focus more on the availability and accessibility of financial statements for national subsidiaries rather than on increasing the information given in consolidated accounts.

⁵⁹ Paragraph 2.2(e), page 5.

⁶⁰ Paragraphs 30, 32 and 33.

⁶¹ Pages 5, 20 and 24. See also Henderson Global Investors, *Responsible Tax*, pages 12 and 13.

⁶² Shaxson, *Tax Justice and the Oil Industry*; Murphy, *Calling Multinationals to Account*.

⁶³ For example, Richard Murphy at page 20 of SustainAbility Ltd, *Taxing Issues: Responsible Business and Tax*. See also Murphy, *Disclosure Debate*.

10.7 Statements of total tax paid

One particular area where companies may wish to consider the merits of additional disclosure is the inclusion of a 'statement of total tax paid'; ie, including items such as payroll taxes, VAT and excise duties as well as tax on the profits of the company.⁶⁴

Opinions on the merits of such statements are sharply divided, and this paper cannot attempt a full discussion.⁶⁵ In broad terms, the argument in favour is that a fuller picture is thereby presented of the company's transactions with the state; the PAYE or VAT that it pays may not ultimately be borne by the company, but they arise on economic activity that would not be taking place in the absence of the company. The argument against such statements is broadly that the company is effectively claiming 'credit' for having paid sums that are in fact borne by other people. A crude use of total figures from such statements, under which the payment of an amount of tax is seen as being equally 'meritorious' whatever the particular levy that gives rise to it, might indeed be seen as misleading or unhelpful. However, a case may perhaps be made that provision of the relevant information in a form that enables users to make their own analysis can only be useful, and socially responsible insofar as it facilitates a more informed discussion.

11 Tax education, debate and community action

Companies may contribute to the community by making the tax expertise of their employees available in different ways for socially useful objectives; for example, by secondments to charities or community bodies, by supporting programmes of staff volunteering to organisations such as the Citizens Advice Bureaux⁶⁶ and TaxAid,⁶⁷ or by encouraging individuals to contribute to tax-related education, debate and policy development via schools, universities, professional bodies and government consultations. It might be argued that this belongs more properly to the area of corporate philanthropy rather than to that of CSR, as discussed at 2.4. However, there is perhaps a distinction to be drawn between such activity and the situation where a company gives away money, the use of its premises, or the time of its employees to carry out unskilled tasks such as clearing waste land. Where tax expertise is made available, this may be considered as an example of the company making use of its intellectual assets for the good of society. Because the staff concerned are utilising their particular business-related skill, albeit diverting it to different ends, this may arguably be seen as part of a 'way of doing business' rather than something completely extraneous to that business. In addition, as regards contributions to the development of tax policy, CSR factors may also be of relevance in determining the positions that companies and their employees will advocate in the course of their involvement, and may result in a more collaborative approach to working with government on these matters.

⁶⁴ This section draws on discussion at section 5.5.1 of the Tax Governance paper. See footnote 1.

⁶⁵ See KPMG's Tax Business School®, *From Debate to Action: Drawing the Lines and Finding the Balance*, pages 23 to 27; PricewaterhouseCoopers' website at <http://www.pwc.com/Extweb/insights.nsf/docid/75D58AF8B3774A3C80256F8800586AC6>; McIntyre, *Transparently Dishonest*.

⁶⁶ See <http://www.citizensadvice.org.uk/index/aboutus.htm>.

⁶⁷ See <http://www.taxaid.org.uk/index.cfm>.

12 Government encouragement of CSR via the tax system

While corporate social responsibility is by definition the task of companies, governments have a role to play in fostering a climate where companies are encouraged to meet this responsibility. In the tax system this may be done by the adoption of environmentally friendly taxation policies, such as taxes on consumption of fossil fuels or on polluting processes, or reliefs for socially desirable expenditure.⁶⁸ In the latter case there may often be an argument for relief at a rate of more than 100 per cent, because in the majority of tax systems almost all revenue expenditure genuinely incurred for the purposes of the business will qualify for 100 per cent relief, irrespective of whether it represents a socially responsible course of action. However, precisely because CSR is, as considered at 2.2, a *way* of doing business rather than an ‘add on’ to commercial activities, it will often be the case that there is no identifiable additional expenditure associated with a socially responsible approach. In some tax systems expenditure may even be excluded from relief because it is incurred with an altruistic purpose rather than for the purposes of the trade.⁶⁹

A reservation as to the appropriateness of such relief is expressed by Professor Judith Freedman, who makes the point that if a government gives tax reliefs for countless worthy activities (including CSR expenditure) it is encouraging the perception that paying tax is a bad thing – from which the good are excused – rather than a socially responsible thing.⁷⁰

There is a paradox that with ‘carbon taxes’, a socially responsible company will be aiming to pay less tax, as a result of a reduced ‘carbon footprint’, whereas for taxes on profits there is a tendency, in very broad terms, to regard the reduction of tax liabilities as casting doubt on a company’s CSR commitment as discussed at 7.4.3.

Some commentators suggest giving a tax credit or rebate to companies that can show evidence of an effective CSR programme (as distinct from reliefs for specific forms of CSR).⁷¹ In practice, it might be difficult to establish objective criteria for eligibility, given the wide divergence of opinion on what constitutes CSR and on how performance should be measured.

13 Conclusion

This paper adopts the view that CSR is a legitimate interest of business. It argues that, because CSR is a way of doing business rather than an ‘add on’ to normal business processes, companies should consider how their chosen approach to CSR applies to all aspects of their activity, including the management of their tax liability.

Accordingly, the preceding sections have considered how CSR principles might be applied to the various means which a company may use to reduce its tax payments (ie, broadly, tax avoidance and tax planning) and have also examined a number of specific areas where particular CSR issues arise.

⁶⁸ For a list of UK measures, see Deeks, *Green Is The Colour*.

⁶⁹ See *Warner Lambert SA (Pty) Ltd v Commissioner for the South African Revenue Service*, judgment of the Supreme Court of Appeal of South Africa, 30 May 2003, at http://www.supremecourtofappeal.gov.za/judgments/sca_judg/sca_2003/27702.pdf.

⁷⁰ Freedman, *The Tax Avoidance Culture: Who Is Responsible? Governmental Influences and Corporate Social Responsibility*, page 369. See also Tax Justice Network, *Closing the Floodgates: Collecting Tax to Pay for Development*, page 64.

⁷¹ For example, Oxfam, *Tax Havens: Releasing the Hidden Billions for Poverty Eradication*, page 20.

The aim has not been to prescribe a single CSR-based approach to each of these issues for universal adoption, but to assist companies in assessing the merits of various possible approaches so that they can develop a policy for tax that is consistent with their policy on other CSR questions, and which enables them to give a coherent justification for the positions they adopt in various contentious areas. In a climate where there are increasing pressures to behave in a socially responsible way, and where a more carefully nuanced debate is developing about the acceptability of different tax minimisation techniques, these are matters that companies need to consider carefully if they are to make the most of the commercial opportunities available to them while meeting their obligations to shareholders and other stakeholders.

The paper illustrates the deficiencies of a simplistic equation under which the more tax a company pays, the more socially responsible it is deemed to be. Nevertheless, it suggests that there is a 'way to do tax' that is responsible in its attitude to the society within which the company operates, and which is good for business. It also suggests that this will sometimes involve making higher tax payments than the legal minimum to which the liability could be reduced if advantage were taken of all available opportunities without regard to the degree of artificiality involved in the arrangements concerned. In some sense this means 'playing fair' and paying a 'fair share' of the total tax burden, even while recognising that the concept of fairness is a subjective one on which there will be genuine differences of view between companies that are equally committed to the principle of behaving responsibly.

While it may be difficult in principle to establish universal rules to determine what is fair and responsible, in practice it may be easier to recognise, and to avoid, behaviour that falls well short of these goals. A careful debate around these issues may help to establish a consensus on some basic principles, and a reasoned rather than a judgmental approach may encourage companies to be open not only on the details of their activities but on the way in which they have attempted to analyse them from a CSR perspective.

Oliver Wendell Holmes Jr, Justice of the US Supreme Court, said that 'Taxes are what we pay for civilized society'.⁷² Most commentators appear to believe that corporate social responsibility is good for society and good for business. If this is so, then it can only be beneficial to continue to explore how the principles of CSR operate in an area, such as taxation, that is of such great significance for all businesses and all members of society.

⁷² This is engraved on the front of the Internal Revenue Service building at 1,111 Constitution Avenue, Washington DC, but the circumstances in which Holmes said it have proved impossible to trace.

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