Over here and undertaxed: the story of Google, Amazon and Starbucks

Richard Murphy

<chapter head>Contents

Chapter 1 Anything more than a storm in a latte?

Chapter 2 HM Revenue & Customs, it looks like we’ve got a problem

Chapter 3 Why US companies love the rest of the world – and its tax laws

Chapter 4 Playing hide and seek – Google and Amazon, over here or are they?

Chapter 5 My price is the price unless it’s a transfer price – the Starbucks story

Chapter 6 Pulling it all together – what Google, Amazon and Starbucks do next

Chapter 7 Why corporation tax?

Chapter 8 What can be done?

Chapter 9 Will change happen?

The author

Notes

<chapter head>Chapter 1 Anything more than a storm in a latte?

At the close of 2012 tax had become the second most interesting three-letter word ending in ‘x’ in the English language. Even a year earlier that was not true. Tax avoidance was then an issue for the authorities and tax campaigners like the Tax Justice Network, UK Uncut and the Occupy movement. Before 2012 companies reacted to being accused of tax avoidance in much the same way as authors greet the threat of a bad sex award. Some saw it as a badge of honour; others responded with vehement denial. What happened in 2012 was that many such denials ceased to be believed by the UK public.

Google, Amazon and Starbucks claimed the headlines but were not, however, alone. Apple, eBay, PayPal, Facebook and other tech companies have all been subject to comment. So have Premier League football clubs, major government suppliers like Accenture and some well-known individuals – comedian Jimmy Carr may now be as well known for his tax affairs as his television appearances. Gary Barlow may have organised the Queen's Jubilee celebrations but many wondered if his efforts to avoid tax should have barred him from receiving an OBE.

Why did this change happen? It’s not as if tax stories of the sort published in 2012 were new. I first worked on a tax avoidance story about a tech company in 2005. Then the subject was Microsoft and the story, by journalist Glenn Simpson, got in the *Wall Street Journal*.[[1]](#endnote-1) And while it’s not true to say it died a death, nor did the story fly around the world, despite it being remarkably similar to the Google tale of 2012. Nor was the Google story new in 2012. I had worked with the *Sunday Times* on an investigation of Google's tax affairs in 2008. We found then something very similar to what we know now. And yet the story did not fly. So what changed in 2012? Why is tax avoidance now a hot topic? There are a number of reasons.

The first might now seem almost ridiculous, but it is a simple fact that before 2008 almost no one cared about tax avoidance. I and a few others in the Tax Justice Network did, but the general public and politicians certainly did not. And to some extent they had an excuse for their indifference. Although during 2010 and 2011 a popular narrative was developed, especially in the UK, that the economic crisis was the fault of overspending by Labour when in office, there is no evidence to support this. Labour inherited a deficit of 3.9 per cent of current tax spending compared to income in 1997, and by 2007 had reduced that to just 1 per cent – although it had peaked at 4.9 per cent in 2003. In fact, Labour ran current budget surpluses from 1998 to 2002, in the process spending less on current spending than it raised in taxes. There were certainly issues with Labour's economic management but overspending was not one of them. As they found, and as governments all over the world found during this period, raising tax revenue was, if you will excuse the pun, not taxing. And if they needed to borrow to fund investment, as Labour did to some degree, then they also found that banks and pension funds fell over themselves to lend money at rates of interest vastly lower than those seen a decade or so earlier. No wonder things felt good.

Then 2008 happened and the banks tried to fall off a cliff. But for government intervention, every single bank all over the world would likely have failed before October 2008 was out, either because they needed a bailout, or because those that didn’t would have been dragged down by those that did. Gordon Brown may not have saved the world by his timely intervention as he once, inadvertently, claimed, but there's no doubt that he led the world in saving the banks, and in doing so prevented the greatest simultaneous social disruption the world might have ever experienced. One day history may give him the credit. It hasn't yet because he was previously an exponent of the 'light-touch regulation' that helped bring the banks low, so he had to blame something else for their failure, and he chose tax havens.

There is much we can and should blame tax havens for, and no one has done more to do so than me, but they did not create the financial crisis of 2008. It is true that the opacity they create may have prevented some seeing it coming, but the fact is that nothing really happens in tax havens: in the true secrecy jurisdictions such as Jersey, Cayman and the British Virgin Islands there are just armies of accountants, lawyers and bankers.[[2]](#endnote-2) They undoubtedly record transactions in order to avoid (and sometimes evade) taxes, but no one can claim that doing so brought the banks down.

Nevertheless Gordon Brown chose to blame them for the banking failure, and at the April 2009 G20 Summit in London he said that the end of tax havens was in sight as a result of decisions made at this meeting. This was a big mistake. Firstly the Organisation for Economic Cooperation and Development failed to deliver on its promise to tackle tax havens. By creating a black listing system from which a tax haven could remove itself by signing just twelve extremely limited information exchange agreements with other states, which could, quite extraordinariliy, be other tax havens, the OECD created a toothless sanction on tax havens that did not demand real reform from them. Secondly, by picking the wrong target he allowed another narrative to catch hold of the popular imagination.

That alternative narrative was, of course, that he was to blame for what had happened. This allowed his opponents to suggest that if the levels of spending he had supported were cut through a programme of austerity then the economy would be rebalanced, the public finances would be stabilised and the deficit defeated. This was the logic of the ‘maxed out credit card for the UK’.[[3]](#endnote-3) The Conservatives were able to sell this idea, most especially to a willing media, even if not well enough to win the 2010 general election outright, but they secured office anyway, and for two years the narrative of cuts predominated, the public believing the tale that this was all that was needed to restore prosperity.

However, as 2012 opened the deficit had shown no signs of clearing and George Osborne’s forecasts of growth kept slipping to two years hence.[[4]](#endnote-4) The March 2012 budget then pretty much confirmed the gloom, while being one of the most politically damaging budgets in terms of misjudgements made and U-turns demanded in decades. No one was surprised that in December 2012 Osborne confirmed he had missed all his targets and austerity was not working ,[[5]](#endnote-5) but during the transition from a belief in austerity to a belief that it was no cure in itself for the problem of fiscal deficits another realisation dawned.

This was an awareness that if the deficit had to be closed and private-sector growth in a period of austerity was not going to do that, the only way to deal with the crisis was yet more cuts or previously largely unmentioned increases in taxation. As a result people’s attitude towards the whole financial crisis changed. From 2008 to 2011 it had been possible to believe that the crisis was someone else’s problem and would leave most people a little worse off but largely unscathed. In 2012 it became apparent that this was not the case. What’s more, it became clear that if some people or companies were not paying their fair share of tax, what they weren’t paying would have to be made up by someone else. It was, therefore, no longer a case of ‘we’re all in this together’ but ‘them or us’.

At the very time this realisation was spreading along came a new story about Google’s tax. It was published in the USA in October 2011 by Jesse Drucker of Bloomberg, and this time the story stuck.[[6]](#endnote-6) More than that, it ran all over the world. In the process it made people realise that there were large companies – not just Google, but many others – not paying their fair share in taxes. And what that meant was that ordinary people were going to have to pay more.

<chapter head>Chapter 2 HM Revenue & Customs, it looks like we’ve got a problem

So, as 2012 dawned tax avoidance was appearing on the political agenda, one reason for this being that to ordinary people the sums involved seemed huge.

By April the *Mail on Sunday* was suggesting that just five US Internet giants (Google, Amazon, Apple, eBay and Facebook) were between them avoiding £666 million of tax a year in the UK.[[7]](#endnote-7) Other estimates have since emerged. For example, it has been put forward that Microsoft may be avoiding more than £100 million of tax in the UK.[[8]](#endnote-8) BBC *Newsnight* suggested in November 2012 that Intel might be avoiding £321 million a year and Coca-Cola £57 million. Their estimate of the total tax lost to the UK as a result of tax avoidance by nineteen companies was £3 billion.[[9]](#endnote-9)

Unsurprisingly these reports provoked outrage. As Catherine McKinnell MP, Labour shadow exchequer secretary, put it in a House of Commons debate on 7 January 2012,

<display prose>People are angry, however, at the apparent ability of multinational corporations to use extremely complex and, indeed, aggressive tax-planning arrangements, devised and promoted by highly paid tax experts, to shift profits offshore that have actually been generated from economic activity here in the UK. These profits have been generated from hard-working, UK tax-paying consumers and firms, in what appears to be yet another example of one rule for those at the top and another rule for everybody else.

People are also angry at the hugely significant amounts of money being lost to the Exchequer at a time when living standards are being squeezed, Government borrowing and debt figures are up, growth forecasts have been downgraded yet again, and the public services on which we rely are being cut up and down the country. The Government’s priorities are to give a tax cut to millionaires while striving, low and middle-income families and pensioners are struggling to make ends meet, so it is little wonder that we are seeing increasing hostility to those multinational corporations that are managing to avoid paying their fair share – and, indeed, to a system that allows them to do so – when it appears that the poorest and often the most vulnerable in society are bearing the brunt.[[10]](#endnote-10)

<end>

What is strange, given the widespread credibility that these estimates for tax lost are now given, is that they are disputed by HM Revenue & Customs. Its latest estimate of the tax gap suggests that in total UK tax avoidance costs the exchequer just £5 billion a year, with at most £1.4 billion of that due to tax avoidance by large companies of the sort noted above.[[11]](#endnote-11) As a result there are sharply conflicting opinions on this issue. The fact that the government, through HMRC, is on one side of the debate with almost all journalists and commentators aligned on the other just adds piquancy to the debate. How this situation came about, with HMRC paradoxically appearing to be one of the organisations most relaxed about tax avoidance and offering an extremely low estimate of it is worth noting given the current importance of the topic.

Until 2009 HM Revenue & Customs did not publish estimates of any tax gap except that for VAT. It only started doing so then in direct response to a report I wrote for the UK’s Trade Union Congress called *The Missing Billions.*[[12]](#endnote-12) In this I suggested tax avoidance by large companies in the UK (maybe 700 of them, in all) could amount to some £12 billion a year. That figure is consistent with the losses now attributed to Google, Amazon, Starbucks and so on; the figures that HMRC has posited then and since clearly are not.

So HM Revenue & Customs appears to be in denial about a problem of enormous scale, and this is not just my opinion. A report of the Public Accounts Committee (PAC) of the House of Commons in December 2012 stated,

<display prose>HMRC needs a change in mindset in the way it approaches collecting tax from multinationals. At the moment there is a pervasive acceptance of the status quo by the top officials in HMRC and we have seen little evidence of a desire to be more assertive.

This change of mindset needs also to apply to HMRC’s approach to the tax gap – the difference between tax collected and that which, in the Department’s view, should be collected.[[13]](#endnote-13)

<end>

This book partly seeks to explain why HMRC turns a blind eye to the tax avoidance of so many companies in a way that the PAC has so roundly condemned; it also aims to clarify the difference between HMRC’s approach to this issue and the approach adopted by other researchers, a divergence which give rises to starkly contrasting figures for tax lost. It additionally seeks to do something rather more important: to look at why tax avoidance is important and if it can be reduced if not eliminated. The good news is that in Chapter 8 I detail a range of ways in which this issue can be addressed. On the way to reaching that conclusion some of the apparent conundrums inherent in this debate will be looked at. So I ask why US companies apparently pay most of the tax expected of them in the USA but not here. I also ask how they get away with this. Most importantly, I ask important questions which underpin the debate on this issue, including why we have Corporation Tax, why the role of tax havens is subversive, and what impact tax avoidance by multinational corporations has on other businesses in the UK.

That’s a big agenda. Let’s start by looking at the curious structure devised by the US to tax companies based in that country but trading abroad, and the impact of that system on the UK tax take.

<chapter head>Chapter 3 Why US companies love the rest of the world – and its tax laws

Let me make a really important observation at the outset of this chapter. The problem we are looking at is not just one found in the UK subsidiaries of US companies. What is true is that this problem is very much easier to identify in the UK subsidiaries of US corporations than it is in both UK-based concerns and in the subsidiaries of companies based in other states. I’m absolutely not indulging in xenophobia about US businesses.

All that said, the USA has created an extraordinarily dysfunctional tax system for its multinational corporations. It may not have intended to provide the most perfect opportunity for multinational tax avoidance, but it has nonetheless done so with its corporate tax laws. Indeed, it could fairly be said that never in the field of taxation has so much incentive been given to anyone to use a tax haven. The fact that no one else has a system quite like it just exacerbates the problem.

To explain this it’s important to note that from the US tax perspective the world is split into two bits. There’s the USA. The Americans really care about that. And then there’s the rest of the world, about which, to be candid, it appears they care much less. Let me explain.

The US corporate tax system, unsurprisingly, charges a US company tax on all the profit it earns in the USA. The system is, however, riddled with loopholes, many of which have been deliberately created, with the result that, as Citizens for Tax Justice has found, the average effective US corporation tax rate is currently 18.5 per cent .[[14]](#endnote-14) That is much less than the headline rate of 35 per cent. However, nothing compares with the biggest loophole of all, which stipulates that the profit made by an overseas subsidiary of a US corporation is not taxed in the USA until it is paid back into the USA by way of a dividend. What this means is that if a US company working on a multinational basis can record profits in a low-tax jurisdiction (which for these purposes we’ll call a tax haven or secrecy jurisdiction[[15]](#endnote-15) – the terms are largely interchangeable) and can keep those profits out of the USA by not paying them to the parent company by way of a dividend, then there’s no US tax to pay on the money earned.

This does not suit all US companies. As Citizens for Tax Justice also found, some American corporations pay more tax on their non-US profits than they do on their US earnings. That is because they cannot find a way to shift those profits out of the relatively highly taxed jurisdictions where they are earned (the UK, Germany and France for example, but you could add Italy, Norway, Denmark, a lot of African countries and many others[[16]](#endnote-16)) into tax havens. However, the current evidence is that for many major US companies this difficulty does not arise: shifting profits is something at which they have become highly skilled.

Shifting profits is key to the whole debate in this book. Before talking about it though it’s important to remember that maybe 95 per cent of the world’s companies (by number) never shift profits between states. That is because they are privately owned and only work in one jurisdiction. That one country where they trade is, therefore, the only country in which they pay tax. These companies are also, of course, by and large the world’s smaller companies.

The remaining 5 per cent or so are multinational corporations. These companies trade in more than one country and have subsidiary companies in more than one jurisdiction. They therefore have the opportunity to shift profits between countries to reduce their tax bill, and this creates a plethora of tax-paying possibilities. How they move their money around will be explained in Chapters 4 and 5. Right now the point is they can, and they do. And the net result is that when, as is the case with the US tax system, an incentive to do so is created, whether intentionally or not, they set about doing so with vigour. In September 2012 US Senator Carl Levin, who has a long track record of campaigning on this issue, estimated that US companies had at least $1.7 trillion of their earnings stashed offshore in tax havens like Bermuda, hidden from the US tax authorities and relocated to those places to ensure that tax was avoided in countries like the UK.[[17]](#endnote-17)

Before we consider how companies do this, we have to consider what their motives are, how they get away with it and what the consequences are. These issues are not straightforward, and without understanding the true nature of the problem no solution can be evaluated.

In simple terms those companies that avoid tax claim they are doing so because they are good capitalists. No one has put this more bluntly than Eric Schmidt of Google. After Bloomberg revealed in December 2012 that Google had put $9.8 billion into Bermuda the previous year[[18]](#endnote-18) he responded by saying, ‘I am very proud of the structure that we set up. We did it based on the incentives that the governments offered us to operate. It’s called capitalism. We are proudly capitalistic. I’m not confused about this.’[[19]](#endnote-19) Gordon Gecko would have been proud of him. And yet the problem is that he’s wrong: just about the last thing these companies are is good capitalists.

There are several reasons for saying this, not the least of which is that a according to the economics textbooks a well run capitalist concern is managed in the interests of its shareholders. In Google’s case it happens that the net earnings after tax for 2011 (the year the $9.8 billion went to Bermuda) were $9.73 billion.[[20]](#endnote-20) So all the money Google earned that year was put offshore, and Google reckoned it had saved at least $2 billion in tax as a result, which increased reported earnings.[[21]](#endnote-21) The problem was that by doing this all the money was kept from the shareholders: if the tax savings recorded in Google’s accounts are to be maintained, the money in question can never be sent to the USA, and the shareholders will never get their hands on it. That’s an extraordinary situation which challenges the whole idea that US companies are run on behalf of their shareholders.

It may be argued that in the short term this difficulty can be overcome by the markets pricing the increase in the company’s cash by increasing the share price, so giving shareholders access to their income via a capital gain, if they so wish. But the question that has to be asked is whether this is sustainable in the long run. Will markets continue to value offshore cash that can’t be accessed at a dollar per dollar? In 2012 there were several reasons why corporations thought this might be the case. The first was that they hoped Mitt Romney would win the US presidential election. As is now well known, Romney has an affinity for offshore.[[22]](#endnote-22) Many US corporations must have hoped he’d win and then change the rules of US corporation tax in their favour.

First, they hoped he would offer an offshore tax amnesty to large corporations as George W. Bush did in his 2004 Homeland Investment Act, in which he offered a 5.25 per cent tax rate on remitted profits for a year.[[23]](#endnote-23) Obama has refused to have anything to do with such a scheme, and Romney won’t be having any influence on this issue any time soon. Second, those companies have been hoping to change US tax law as part of the ‘fiscal cliff’ negotiations. The CEOs of many large companies have suggested tax increases for some of the wealthiest Americans (themselves included) as part of the required bipartisan settlement to prevent massive US spending cuts and tax increases at the beginning of 2013.[[24]](#endnote-24) This offer does not, however, come without a string attached. The string is the introduction of what is called territorial taxation, which would mean the profits of US corporations earned outside the USA would always be free of US tax, even when remitted back to the parent company. They would be able to remit all the profits they now hold in Bermuda, Cayman and other such places to the USA totally tax-free some time in the future.

The attractions of this change for them are obviously enormous, and they have reason to be optimistic of securing it. In 2009 the UK had a completely residence-based corporation tax system, but by 2014 it will have an almost entirely territorially based corporation tax system in which, just as the US lobbyists now demand, profits earned outside the UK can almost never be taxed on their return to the UK, even if they have come from a tax haven.[[25]](#endnote-25)

US corporations are also funding another, more radical, demand for tax reform. This is a call for the total abolition of US corporation tax. The argument made by those who propose such a move is that companies are artificial creations of law and therefore cannot pay tax since tax can only ever be paid by real human beings – the shareholders, customers or employees of the corporations. Since the tax bill is always shifted onto these three group it would be better to be honest about this and tax them instead. In the current febrile state of US politics, in which the Tea Party wing of the Republican Party – the group most associated with this demand – holds significant power in Congress, this proposal is on the agenda and is discussed in mainstream publications .[[26]](#endnote-26) It’s important enough as a result to demand a separate chapter in this book, although there is no certainty that any of these changes will happen, and so far Barack Obama seems unattracted by all of them.

In that case another question has to be asked: why given these considerations is tax avoidance happening? My best suggestion is a simple one: that tax avoidance fuels executive bonuses. There’s probably no better way of inflating after-tax earnings in the USA than by reducing tax on profits through hiding them offshore. This means that the management of these companies has an enormous incentive to engage in tax avoidance even if it makes no sense for the shareholders. This also suggests that as long as management is incentivised by share options to an absurd degree, especially in the USA, this tax avoidance will continue. All of which means that exploring the detail of what happens is important. That’s where we go next.

<chapter head>Chapter 4 Playing hide and seek – Google and Amazon, over here or are they?

As mentioned in the previous chapter, profit shifting is fundamental to multinational corporation tax avoidance. It’s time to look at it.

The objective of profit shifting it simple: what a company wants is the maximum amount of profit it can get away with taxed in the place in which it claims to trade which has the lowest tax rate. Let’s ignore for a minute the steps taken to stop companies doing this and recall what I have already said of the US tax authorities, which is that they do not seem to mind mind if US-based companies do profit shift as long as they do it between places outside the USA with the result that for US companies seeking to shift their profits from high-tax to low-tax countries is always worthwhile if they do not need to return their profits to the USA in the foreseeable future. That is a perverse incentive in US corporation tax law that has great consequence for the rest of the world: much of the debate in the book would not exist without that incentive existing. That is, in itself, the clearest indication that enhanced cooperation on international tax is now needed to ensure that such anomalies can be removed from the tax system so that everyone is better off.

Whilst the existing system remains however, in most cases a company does not care where it makes or records its income as long as it can eventually get its hands on the money. In other words, while geography may be very important to a company when, for example, locating mineral resources or securing access to markets, it really does not matter when it comes to accounting for the resulting profits. As far as a company is concerned, when accounting for profit the only things that matter are tax and maybe secrecy (which we’ll also come back to). In contrast, geography really matters to national tax administrations because, by and large, it’s difficult for them to tax things that do not take place within their countries. It’s not impossible, as we’ll see, but it’s hard. These contrasting views create conflict between those companies indifferent to where they pay their taxes as long as they are low and nation states, which are very particular about where taxes are paid, especially if they think they are owed to them. In this ongoing war the companies have the upper hand because they can move around, whereas national tax authorities have little clout beyond their geographical frontiers.

The basic strategy companies use to win this war is twofold: they shift sales from high-tax locations to low-tax jurisdictions and they move expenses the opposite way. We’ll look at these two processes in turn.

A perfect example of sales shifting is relocating sales that could be recorded in the UK, which had a corporation tax rate of 24 per cent in 2012, to Ireland, where the equivalent tax rate is supposedly 12.5 per cent but is in practice often much lower. Ireland is just one example. Sales could alternatively be shifted to, say, Luxembourg, where tax rates can also be kept very low by allowing the offset of very large expenses almost without question (for explanation as to how this is done, see Chapter 5). The point is that in both cases the destination for the sales is within Europe and covered by the EU’s VAT rules, which make the process of sales shifting relatively easy, and both places are well established states with significant international relationships. This makes them very different from the traditional tax havens, like Jersey and the British Virgin Islands, both of which, like other such places, are largely removed from the normal network of international relations, including those relating to tax. It’s this combination of apparent respectability and integration with low tax rates that makes countries like Ireland and Luxembourg so attractive to multinational corporations, and companies such as Google, Apple, Microsoft and many others have accepted the open invitation to relocate their sales operations in such jurisdictions.

In some cases this relocation is ridiculously easy. Take software companies. Most of their sales are made by way of downloads from a file server. Microsoft’s sales of software and iTunes’ sales of music both fit this model perfectly. So do Amazon’s sales of Kindle e-books. For these companies to relocate sales is completely straightforward: they direct their Internet enquiries to a file server in their chosen low-tax state, process the credit card, send the bill including local VAT if appropriate to the customer wherever they might be, let them download the software, music or book from the low-tax state, and simply save the tax. It’s like taking the proverbial candy off a baby.

Having tasted the candy though, such companies want more: in fact they want a tax-saving feast. And that’s why the stories of Amazon and Google are so interesting, because they demonstrate just how companies can play the rules to relocate their sales, using slightly differing techniques.

The Google story got the whole latest round of tax stories going, so let’s start with that. Google does not make most of its money selling software from a file server, unlike for example Microsoft; Google sells adverts. In the year to 31 December 2011 $4,057 million of those sales were in the UK[[27]](#endnote-27) – some 10.7 per cent of their worldwide sales according to their group accounts. That’s £2,530 million in sterling. And yet the accounts of Google UK Limited for the same year showed total revenues of £395 million, some of which we were told is for the supply of technology within the group.[[28]](#endnote-28) This follows a pattern that has been documented since 2008. That’s the nub of the Google story. That and the fact that Google UK made a loss of £20.7 million before tax while the global company made a profit of $12,326 million.

Now, it so happens that because a lot of Google UK’s losses related to share payments to employees that were not tax deductible it actually had a tax liability in the UK totalling £6.1 million for 2011.[[29]](#endnote-29) But that’s not the point for UK fair tax campaigners. If Google’s UK sales as stated in the group’s global accounts of £2,530 million had been recorded in the UK and the profit margin on those sales had been the same in the UK as the margin Google made worldwide, UK profits before tax would have been £822 million. Tax on that would have been at the rate of 26.5 per cent on average in the year to 31 December 2011, and that would have resulted in a UK tax bill of £218 million. So by shifting sales out of the UK, Google has saved itself something like £212 million (about $340 million) in one year, and all at the expense of the UK exchequer.

Google challenges this methodology, of course. It says that it could not make the same profit margin in the UK as it does in the rest of the world as its profits relate largely to its search algorithm, which was developed in the USA, which is where they say their profit is therefore really earned. This argument would have more credibility if the profits Google earned from sales in the UK ended up back in Silicon Valley, but they don’t. They end up in Bermuda, as Google admitted at the hearing of the House of Commons Public Accounts Committee (PAC) in December 2012.[[30]](#endnote-30) What becomes clear, therefore, is that Google is in fact very keen on the geography of where it records its profits, but for it that geography is not driven by where those profits are really earned, because that does not seem to be Bermuda, but where they are best recorded to minimise tax, for which Bermuda is ideal. That in turn means though that there appears to be no good reason at all why an accurate apportionment of revenue and profits between the states in which they make sales could not be reported (because Google must have that data) and form an appropriate basis for taxation. After all, and quite fundamentally, Google does not make money because it wrote an algorithm, however good that algorithm might be. Google makes money because people use that algorithm and pay to advertise next to the results it produces. Those advertisers, spread throughout the world, generate the profit, not the algorithm. No one generates a profit without customers. The logic that tax should be paid where the customer is located is quite compelling, and something that will be returned to in Chapter 8.

How has Google been able to shift its UK sales out of the country? Simple. By structuring their business so that although Google UK Limited has some 723 marketing staff in the UK they never get to make a sale to anyone here. As Google’s Matt Brittin, vice president for northern and central Europe, told the PAC in December 2012, ‘Everybody who buys advertising from Google – because that is how we make our money – buys advertising from Google in Ireland.’[[31]](#endnote-31) So not a penny of sales revenue is generated by Google UK from a real customer in the UK; all those sales are recorded in Ireland. So what then of the UK operation – what does that do? As Matt Brittin told the PAC, ‘What the people in the UK do is provide services that are charged to Google Ireland. Those services are principally around promoting our products and making sure they work in the UK for UK consumers.’

Now here are 3,000 people in Ireland serving the whole of the world, bar the USA. And there are 723 Google marketing people in the UK supported by 268 admin and management staff. But despite that apparently not one person in the UK ever makes a sale. Only the really amazingly productive and proactive people in Ireland ever do that. Except this is not the whole story. The reality is that Google makes very sure it looks like this happens (for tax purposes) by requiring that all sales contracts be completed online from Ireland. We’re pretty much back to the sale of software from a server again – because of course an Internet advert is a piece of software driven by a server, however local it may be when it is displayed on someone’s Internet browser. The candy’s been taken from another baby.

Amazingly, HMRC accept this arrangement. They even dedicate part of their internal manual to describing it. They consider it a commissionaire arrangement[[32]](#endnote-32) with the UK company being recognised as responsible for marketing and maybe encouraging sales. And that’s what they’re rewarded for. Nothing more. Because in this particular case the UK company does not have to carry stock (of which there is of course none, physically), and the order can be made direct to the Irish company online without any apparent involvement from the UK marketing team. The result is that Google can and does argue that Google Ireland has no presence in the UK at all; only the UK commission agents – earning their 10–12.5 per cent or so on the total values of sales generated in the UK are considered to be in the UK.

Now that’s not what HMRC anticipated when they originally agreed to such sales and marketing deals with companies. They presumed that there would also be a UK operation to actually supply the customer with the goods that the agent sold. So the parent company would have a taxable presence in the UK alongside the commission agent, and profit could therefore be attributed to the UK operation supplying the goods. This was a reasonable presumption in the days when making a sale meant you either had to physically give someone something or supply them with a service. The Internet has let companies like Google invalidate that presumption, and the result is a gaping hole in UK tax law. The fact that Google UK very carefully avoids any direct contractual relationship with UK customers lets them foster the claim that they do not ever make a sale and merely support customers of Google Ireland.

This is tax avoidance. It so happens that HMRC and I pretty much agree on what tax avoidance is. Tax avoidance involves taking steps to secure a tax advantage never intended by parliament. This means avoiding the intention of the law – hence the name 'tax avoidance'. Tax avoidance is not is simply reducing your tax bill. Paying money into a pension, claiming your personal allowance when completing your tax return and saving in an ISA (Individual Savings Account) all reduce a person’s tax bill. And so they should. Parliament created all three (and plenty of other allowances and reliefs) with the intention that people should reduce their tax bills by right or by reason of undertaking an economic activity that it wanted to encourage. When that tax-incentivised activity is undertaken, claiming the allowance is wholly appropriate.

Tax avoidance is different. This is claiming the tax benefit provided by Parliament without suffering the associated anticipated economic consequences. To explain in the case of Google: advertising sales are clearly made to UK customers and some of those sales are clearly promoted by the marketing operations of Google UK. However, because of the structure Google has adopted, those sales never exist in the UK for tax purposes and so cannot be taxed here. Parliament allowed a concession on commission sales but did not anticipate the existence of the Internet and so never expected the sales themselves to fall outside UK tax. Google’s tax avoidance is not the result of the application of the detailed rules of the tax system, which it complies with; Google’s strategy was to set up a structure that ensures that its advertising sales are not ever delivered into the UK for tax purposes and that’s the core of their tax avoidance

This makes a mockery of Google’s claims that ‘we pay all the tax you require us to pay in the UK’[[33]](#endnote-33) and that they take advantage of ‘the incentives that the governments offered us to operate’[[34]](#endnote-34). Neither is accurate, which is of course why Margaret Hodge MP, chair of the PAC said in response to Matt Brittin of Google, ‘We are not accusing you of being illegal; we are accusing you of being immoral.’[[35]](#endnote-35)

The allegation is that Google has not used incentives in the way the government intended and does not, as a result, pay all the tax Parliament anticipated would be payable. The suggestion is that it has achieved this by ensuring that a key sales operation that the UK expected would be located in the country and therefore be taxed here is in fact located in Ireland. Google has achieved this by exploiting the rules on the tax residence of companies, and in turn, therefore, of sales. The rules on tax residence in question were written in the steamship age – literally – which means they assume several now wholly anachronistic things which Google uses to run rings round the UK tax authorities.

The first such rule is that each company in a group of companies is entirely independent of its parent concern. So it is assumed for the purposes of tax residence that the board of directors of a company acts wholly in the interests of the individual subsidiary that it controls, and that the parent company, even though in most cases it owns 100 per cent of the subsidiary and can therefore replace its board at any moment, has no control over its subsidiary’s policies, commercial conduct or tax affairs. Under this rule – drawn up in the 1920s – where the board of directors meets indicates where the company is managed and controlled, unless some other rule comes into play. So, if Google Ireland is not a UK company – which is important, as all UK incorporated companies are deemed to be tax resident in the UK – and is instead an Irish company – which, quite logically, it is – then as long as its board meets in Ireland, that is where it is supposedly managed and therefore that is where its tax is due.

In contrast, if Google UK – which is a UK company – decides that all it wishes to do is act as a sales commission agent for Google Ireland and not make direct sales to the customers it meets, then likewise that is assumed for tax purposes to be what it has, quite independently, decided to do in its own best interests, and therefore only the relatively small profits arising from that sales commission arrangement will be taxed in the UK. Importantly, by structuring in this way what Google also ensures is that Google Ireland does not have what is called a permanent establishment in the UK. This is a concept explained in some detail in Chapter 5. Right now it is enough to note that it ensures none of the profits from sales of Google adverts to customers in the UK by Google Ireland are taxed in the UK.

The fact that this whole structure has obviously been contrived by Google as a whole to be in its best global tax interests is completely ignored. The rules of tax etiquette do not allow states to make such unseemly allegations: unless they can find a transfer pricing arrangement to challenge (about which I say a lot more to say later), states can only look at where board meetings are held and make sure they have been properly constituted in the location where it is claimed they have occurred. The meeting minutes alone determine where the company is taxed. Tax havens like Ireland have deliberately created laws to exploit this situation.

The US loses out as a result of this farce because it is assumed that Google Inc. does not control its subsidiaries outside the USA, despite Google’s own group accounts very clearly suggesting otherwise by portraying all the subsidiaries in question as parts of one seamless global trading operation. This means that Google’s profits outside the USA remain untaxed by the Internal Revenue Service (IRS) because they are deemed not to be under the control of the US operation, even though for anyone to really believe that requires a leap of faith verging on complete suspension of disbelief.

The UK also loses out. Because great care is no doubt taken to ensure that Google UK never makes a sale to a UK customer, all contracts are with Ireland and the two companies never appear to act in concert on this issue, the UK is left with a tiny tax take. And all because a set of rules suggests that companies are independent even when it’s glaringly obvious they’re not. No wonder it’s easy to avoid tax.

In many ways Amazon takes the exploitation of the concept of company tax residence a step further. Amazon, as the PAC made clear in its hearing, takes orders from UK customers on a website called Amazon.co.uk and then ships those orders from a UK warehouse using UK-based staff through the UK mail to a UK address, with the goods in question in some cases having also been made in the UK and having never left these shores. Despite all that, the bill printed in the UK to be sent in the UK parcel to the UK customer says it comes from a Luxembourg company, with the result that the transaction is not taxed in the UK but in Luxembourg instead. How did that happen? And how did HM Revenue & Customs agree to it?

The answer is to be found in some different and rather obscure – but very important – international tax regulations. The rules in question were written by the Organisation for Economic Cooperation and Development (OECD), which writes many of the rules for international taxation. The OECD is commonly referred to as a think tank – although this somewhat understates its importance – and has no power to enforce its rules, but the rules have force anyway because almost all countries use the OECD’s model double-tax agreement as the basis for their international tax agreements with other countries.

Double-tax agreements are made between two sovereign states or territories with the intention of ensuring as far as possible that income generated in one and received in the other is taxed only once, which is a totally laudable objective. To achieve that goal some pretty complex rules have been devised, and one of the issues they address is what happens when a business located in one state that is party to an international tax agreement also trades in another state that has signed up to the same deal. In this case a business from the first state is considered to have a permanent establishment (PE) in the second state.

You will, I suspect, be pleased to hear that this is not the place to consider all the rules on this concept, but it is important. In essence a permanent establishment is a fixed place of business through which a company undertakes its trade, and its importance relates to the fact that anyone, using common sense, would presume that Amazon has a permanent establishment in the UK through which it conducts the trade of Amazon.co.uk. After all, what else are those warehouses in places like Milton Keynes, Dunfermline and Swansea doing?[[36]](#endnote-36) Come to that, what are all the clever people at Amazon UK HQ in Slough doing? After all their website boasts, ‘Since 1998, our teams have developed a genuinely British site with the same commitment to customers, cutting-edge technology and rich editorial content that has made Amazon.com such a success. Our Slough teams manage all corporate functions, including buying, marketing, software development, sales and legal.’

Well, they might well be doing all this, but what they’re not doing is running Amazon.co.uk, because that, as we now know, is done by Amazon EU Sarl, a Luxembourg company.[[37]](#endnote-37) According to a submission from Amazon to the PAC, ‘Amazon EU Sarl owns the inventory, earns the profits associated with selling these products to end customers and bears the risk of any loss. From Luxembourg, Amazon EU Sarl processes and settles payments from its European customers.’[[38]](#endnote-38) You might well ask how come Amazon EU Sarl is not UK tax resident, at least through a PE based in Slough, Milton Keynes or wherever else Amazon operates in the UK? The PAC did, but they weren’t told. In fact it’s because of the way Amazon exploits the OECD rules on permanent establishments, but no one mentioned that to the PAC.

The exploitation is subtle, is at the core of Amazon’s tax avoidance, and as is always the case with tax avoidance strategies, uses rules in a way that was never considered likely when they were written. While the OECD rules say a permanent establishment can be an office, factory, workshop, mine, and even (I kid you not) the home office of an employee,they also quite specifically say that there are exceptions.[[39]](#endnote-39) The exception that Amazon exploits states that despite all the other forms a permanent establishment might take, the concept does not include the use of facilities solely for the purpose of the storage, display or delivery of goods.

So Amazon maintains that Amazon Sarl uses the storage and warehousing facilities that Amazon UK runs to store and arrange the delivery of the goods that Amazon Sarl owns. Amazon Sarl pays Amazon’s UK subsidiary to run warehouses for it, paying a fee to do so rather like Google Ireland pays a fee to its UK marketing arm. This means that all the products in all the warehouses Amazon runs in the UK actually belong to the Luxembourg company. What is more, all the goods in question are bought and sold by the Luxembourg company. The UK operation technically just ships those goods for Amazon Sarl. This results in a net outcome remarkably similar to that which Google achieves. Amazon might look as though it trades by selling goods and services in the UK, but by exploiting company residence and permanent establishment rules it does not. For tax purposes it sells goods into the UK from Luxembourg, even if in all likelihood the vast majority of those goods have never been anywhere near the Grand Duchy nestling between Belgium, France and Germany.

How similar the Google and Amazon arrangement are was revealed by a *Guardian* newspaper investigation by Ian Griffiths in April 2012.[[40]](#endnote-40) According to his report, Amazon EU Sarl made sales in the UK of between £2.3 and £3.2 billion in 2011. This was achieved with just 134 employees, who serviced not just the UK but the whole of the EU, where total sales amounted to £6.5 billion. The UK company, on the other hand, reported total sales income of just £147 million.

It has to be said in Amazon’s defence that these sales figures are a little misleading. Like many retailers its profit margins are low. Worldwide in 2011 it made a pre-tax profit of $934 million (£583 million) on sales of $48,077 million (£30,048 million).[[41]](#endnote-41) That’s just 1.94 per cent – although Amazon itself said this was a poor year; the margin was 4.37 per cent in 2010 – but if that margin had been applied to UK sales, £62 million of profit may have been made here and tax of maybe £16 million would have been paid. Instead, as the *Guardian* noted, just £1.9 million tax was paid in 2011, and only £1.1 million in the eight years before that. It looked very much like profits had been shifted by exploiting a loophole in the law.

That loophole, created by the OECD, has existed for some time and was never intended to be used in this way. It is perfectly fair that a company shipping goods into the UK is not deemed to be trading here simply because it keeps some goods in a warehouse in this country before sending them on to a customer. It is unreasonable for a company to be taxed in the UK simply because it sends goods here. On the other hand, a company with 15,000 employees in the UK, as Amazon has, does not look like a branch operation of an overseas organisation,[[42]](#endnote-42) especially when that overseas company has 134 employees. It looks like the UK is the place where the action occurs, especially when, as already noted, Amazon states on its website that its Slough teams manages all corporate functions, including buying, marketing, software development, sales and legal. How that office is not a place of management and therefore a permanent establishment acting on behalf of Amazon EU Sarl is hard to understand. Maybe that is why the *Guardian* reports that the company has itself said in its accounts that it is currently under investigation by HMRC, which has not and will not comment: nor have Amazon.

In summary, by exploiting rules on where a company is located in a way not anticipated when those rules were drawn up, Google and Amazon have managed to shift their sales out of the UK to low tax jurisdictions. The result is that almost no tax of any consequence has been paid in the UK, and tax losses to the UK exchequer running to hundreds of millions a year may have resulted.

Tax avoidance – getting round tax laws – is implicit in the structures the companies have adopted. The structures in question are legal, as both companies claim. No one says otherwise. But is avoiding tax in this way immoral, as Margaret Hodge said at the PAC hearing? If seeking to shift a tax burden onto others by exploiting a grey area of law is not immoral, then what is? It could be said that avoiding tax is a fair and reasonable policy for management to pursue. However, the next case to look at is Starbucks, and there some customers seem to be deciding otherwise.

<chapter head>Chapter 5 My price is the price unless it’s a transfer price – the Starbucks story

In Chapter 4 we looked at Google and Amazon and how they have exploited one way of profit shifting to reduce their UK profits: they reduced their sales here. Another way of reducing taxable profits is to increase costs until little or no profit is made. This approach was used by the third company subject to examination by the Public Accounts Committee in the House of Commons in December 2012. This company was Starbucks.

The Starbucks story broke later than the Google and Amazon revelations but was a game-changer because for the first time it was alleged that a high street store was avoiding tax. The story was investigated by Tom Bergin for Reuters and only came to light in October 2012.[[43]](#endnote-43) I discussed the story with Tom throughout its development, much as I worked with Jesse Drucker on the Google story.

The allegation against Starbucks was not that it underprices its UK coffee (at the PAC hearing it confirmed it charges 20 per cent more for coffee in the UK than it does in the USA[[44]](#endnote-44)); the charge was that it overcharge its UK operation for goods and services supplied to it from other Starbucks operations. It so happens that all of those operations are located in lower tax jurisdictions.

The first specific allegation raised in the Reuters report was that Starbucks makes its UK operation (and to be fair its other non-US operations) pay a royalty for the use of the Starbuck group’s ‘intellectual property'. This includes its brand name and its business processes. The royalty was paid at a rate of 6 per cent until 2012, since when, it has now been revealed, it has been cut to 4.7 per cent in the UK. Whatever the rate paid, these payments reduce taxable income in the UK while increasing Starbucks’ profits elsewhere. And that is the core of the suggestion made by Reuters and investigated by the PAC: that the payments had as their main purpose the movement of profit, and the intellectual property right to which they relate is just a convenient mechanism for achieving that goal.

The payments were made, as the PAC interview of Starbucks Chief Financial Offer Troy Alstead revealed, to the Netherlands, but from there half went back to the USA.[[45]](#endnote-45) Alstead was very keen to tell the PAC that Starbucks ‘have no tax haven [subsidiaries] in Bermuda, Cayman or anywhere else around the world. We never have and never intend to.’ That, though, was a claim that was less straightforward than it first seemed, made it seems in the hope that if the committee believed such places were not being used then Starbucks was not tax avoiding. Further questioning from the PAC made it clear that the committee did not accept such a simple line of reasoning at face value. Having first claimed that tax was paid at about 16 per cent on royalties, although without saying where, Alstead then admitted that the rate paid in the Netherlands was somewhat different, but he declined to say what.[[46]](#endnote-46) When questioned about the Dutch tax rate by Stephen Barclay MP the exchange went like this:

<display dialogue>

*Q246 Stephen Barclay*: What is the tax rate you pay in the Netherlands?

*Troy Alstead*: I am very happy to provide that to the Committee, but I am bound by conﬁdentiality to the Dutch Government on that. My request would be: could I follow up afterwards and provide it just to the Committee? I am very happy to do that – just conﬁdential.

*Q247 Chair*: Conﬁdential to whom?

*Troy Alstead*: The tax authority, under our Dutch ruling, has asked us not to share that publicly. I will absolutely share it with the—

*Q248 Stephen Barclay*: You have just answered my next question, which was whether you have a Dutch tax ruling – you do.

*Troy Alstead*: Yes, we do.

*Q249 Stephen Barclay*: You have a special arrangement to allow you to pay less tax in the Netherlands.

*Troy Alstead*: Yes, it is a low-tax ruling that we have in place.

*Q250 Stephen Barclay*: And it is for that reason that you transfer the proﬁts from the UK, which are booked as losses in the UK, into the Netherlands. Some of that then goes back to the States, but the rest of it pays a lower rate in the Netherlands under a Dutch tax ruling. That is correct, is it?

*Troy Alstead*: Respectfully, that is not at all the—

*Q251 Stephen Barclay*: In what way is it incorrect?

*Troy Alstead*: Respectfully, that is not at all the right characterisation. Again, we have a higher tax rate than just about any other multinational around the world.

<end>

Subsequently it was revealed that the Dutch government had not imposed any conditions on disclosure of this deal, which was in fact an advance transfer pricing arrangement. These are not uncommon, but the rate remained undisclosed by Starbucks. The overall 16 per cent tax rate on this royalty that Alstead mentioned is, in that case, in all likelihood the tax paid on the half-share of the total royalty paid to the USA. So Starbucks was using the Netherlands as a tax haven. While not widely seen as a tax haven, the Netherlands is in fact well known as such in the corporate world. On the legal advice website Mondaq.com an article by Joseph Peters of Merlyn Holding BV in May 2012 spelled out all the advantages of the Netherlands as a tax haven for the management of royalties.

<display prose>

One of the best guarded secrets of the Netherlands is its role in international tax planning via so-called conduit companies, which collect interest, dividends, capital gains and royalty payments for multinational enterprises worldwide. The Dutch Central Bureau for Statistics recently published details on the importance of this sector to the Dutch economy, based on Dutch Central Bank filings of so-called trust companies. An astonishing amount of some €400bn hits the Netherlands every month for tax reduction purposes! [[47]](#endnote-47)

<end>

The point is a very important one: tax havens are not just small tropical islands; they’re also places like the Netherlands, and by using the Netherlands to route royalties Starbucks has undoubtedly saved considerable tax that would otherwise be paid in the UK.

Quite what the royalty payment was for baffled the PAC: as they noted, ‘Starbucks was not prepared to breakdown the 4.7 per cent payment for intellectual property.’[[48]](#endnote-48) So while Lin Homer, chief executive of HMRC, was willing to argue before the committee that intellectual property was a real thing that had to be paid for,[[49]](#endnote-49) the committee was left to wonder why and how Starbucks could spend to half a billion dollars a year developing products like Frappuccino.[[50]](#endnote-50)

What is clear is that as Starbucks UK made sales of £397 million (as shown in its accounts to October 2011[[51]](#endnote-51)) then at a rate of 4.7 per cent some £88.6 million in royalty payments presumably left the UK, where they might have been taxed at about 26 per cent, to be enjoyed instead by Starbucks in the Netherlands, where the tax rate was much lower and possibly negligible. This is the essence of profit shifting: loading costs onto the UK operation of a multinational corporation from other companies within the same group located in jurisdictions where the tax rate is much lower.

Before looking at the detail of what’s involved and just how this works let me note that this was not the only way Reuters suggested that Starbucks was moving profits. They also said that Starbucks might be overpaying for its coffee beans. These also happened to come from the Netherlands but with the additional twist that it was known that the Starbucks-owned roasting operation there was in turn buying its beans from Switzerland, where no accounting information was available to show how much money was being made. Reuters' concern about this arrangement appeared justified. As the PAC found, the price of the Starbucks coffee beans traded through Switzerland was inflated by a margin of 20 per cent added to cover the costs of the small buying unit located in that country, where, as Starbucks admitted, the profit made was taxed at just 12 per cent.[[52]](#endnote-52) As the PAC concluded, ‘The Committee was sceptical that the 20 per cent mark-up that the Netherlands-based company pays to the Swiss-based company on its coffee buying operations, with a further mark-up before it sells to the UK, is reasonable.[[53]](#endnote-53)

In addition Reuters suggested that Starbucks UK was paying over the odds for the money it borrowed from another Starbucks operation, again in Switzerland. As Reuters noted, Starbucks group bonds carried a coupon of Libor plus 1.3 per cent in October 2012 and yet Starbucks was charging its UK unit interest at Libor plus 4 percentage points.[[54]](#endnote-54) A margin over the group borrowing cost might be acceptable but, as we’ll discover, the rate charged has to reflect a market price, and as Reuters noted by way of comparison KFC charges its subsidiaries around Libor plus 2 percentage points while the UK units of McDonald's pay their group interest at or below the Libor rate. In the circumstances 4 per cent appeared high.

What Reuters suggested and what the PAC confirmed was that Starbucks had entered into at least three arrangements that appeared to shift profits out of the UK into tax havens, although both Switzerland[[55]](#endnote-55) and the Netherlands[[56]](#endnote-56) would of course reject that label since, as the Tax Justice Network has often noted, all tax havens do. Each of these arrangements might be an example of what the PAC has called transfer mispricing.

Transfer pricing is something that needs explanation because it is subject to much confusion. Transfer pricing happens whenever a sale takes place between two legally independent but nonetheless related entities. In the present context this usually happens when the two entities are both subsidiaries of the same multinational corporation. So this might be Google trading with Google, or Starbucks with Starbucks, but let’s be clear: you could substitute the name of any company with a subsidiary and transfer pricing could take place.

Transfer pricing is legal, which is a point many forget. Companies under common ownership are allowed to trade with each other, and the OECD has estimated that 60 per cent of world trade takes place between the subsidiaries of multinational companies.[[57]](#endnote-57) It’s fair to say we’d likely be a lot worse off without much of that trade. It’s just that it’s subject to potential tax avoidance through transfer mispricing, which is the name given by tax campaigners to the process of setting a price to avoid tax.

The problem is that transfer mispricing is incredibly easy. All it takes is to misstate a transfer price, and profits are shifted across international borders. If the aim is to reduce profits in a higher tax location, transfer prices into that location are overstated (which is the allegation made by Reuters against Starbucks) or transfer prices out of that location are understated. Both have the same effect: suppressing profits in the higher tax location and increasing them elsewhere, usually (and not by coincidence) in a lower tax location.

National tax authorities have been aware of the ploy for decades: it was well known about before World War II and the subject of much debate at the League of Nations in the 1930s, the intention being to protect tax revenues.[[58]](#endnote-58) The League of Nations saw two ways of tackling the issue. One was unitary taxation, which is discussed in Chapter 9, and the other was to regulate transfer pricing. They opted to regulate transfer pricing, and that still remains (via the OECD these days) the preferred international method for tackling international profit shifting by multinational corporations.

The problem is that the methods adopted to regulate transfer pricing are inherently flawed, and multinational corporations are all too well aware of this. This is because the OECD says that a transfer price is valid if it is the price that would be paid between the two companies party to the deal if they were not under common ownership or control. There are three erroneous assumptions implicit in this requirement.

The first is the massive assumption that the companies undertaking the trade that is transfer priced would exist if they were not under common control. The likelihood is that in very many cases they would not. For example, Google would not operate as it does in the UK if there were not another company called Google Ireland to make the actual sales into the UK which the UK operation is prevented from making. The whole structure of Google is dependent upon a tax result being achieved by having its companies under common control. If they were not under common control then a very different arrangement would be in place. The transfer pricing rules entirely ignore this obvious fact: the assumption they make – that there could be independent entities undertaking the trades that are transfer priced – is in many cases quite simply wrong.

Second, to make sure the transfer pricing rules work on what is called an arm’s-length basis (which means it is assumed that the companies involved are independent of each other) it is necessary for the companies undertaking the transfer pricing to prove that there is a market price equivalent to the price they are using. This might have been relatively easy in the 1930s, when there was much less international trade, multinational corporations were much smaller, there were many more multinational corporations than now, and perhaps most importantly the trade between companies was largely in goods and not services. It is relatively easy to price raw materials traded between group companies as there will usually be an equivalent market price. However, that is not true for those many services which are tailor made for a particular purpose. Moreover, there are almost invariably no comparable prices for many items traded within multinational groups, whether goods or services.

For example, a half-complete component shipped from one group factory to another in a different country for completion – a common practice – may have no market value because the item would never be sold in that state. Intra-group services such as marketing or intellectual property rights would simply not be sold to anyone else but another group company. There is no market price and the OECD assumption that there must be an equivalent is just wrong. What’s more, since 60 per cent of all trade is now undertaken within multinational corporations, this problem is going to get worse: as more and more prices in international trade become transfer prices there are fewer and fewer market based prices left for comparison, and using market prices as the basis for transfer pricing becomes increasingly absurd.

Finally, the entire economic logic of the OECD arm’s length pricing system is wrong. What the OECD seeks to do by use of this system is to tax each and every company in a multinational group as if it was an independent third party entity undertaking the same trade that it actually undertakes within the group. The problem with doing so is that this ignores the fact that the group of companies exists for a good economic reason. That reason is that more money is made by having a group in existence than could be the case without it. But if the OECD seek only to tax the profits that would be made if the group did not exist – which is what its arm’s length pricing does – then the part of profits attributable to the activities of the multinational corporation group as a whole rather than the operation of its individual components will always be tax free under the OECD arm’s length pricing system. The result is that the excess profit resulting from being in a group is not taxed at all under the OECD method – and perversely that guarantees that every multinational corporation will always have some untaxed profits it can locate in a tax haven without fear of challenge. A more illogical way of taxing multinational corporations would be hard to find, yet that is what we have.

No wonder Starbucks found it so easy to get round the UK’s transfer pricing rules for so long that it reported a loss for fourteen out of its first fifteen years in the UK.[[59]](#endnote-59) The fact that HMRC has only sixty-five transfer pricing specialists[[60]](#endnote-60) to assess hundreds of billions of pounds’ worth of transactions a year also means much transfer mispricing remains largely unidentified and unchallenged. It’s a recipe for international tax avoidance, and that’s what we’ve got.

<chapter head>Chapter 6 Pulling it all together – what Google, Amazon and Starbucks do next

From Chapters 4 and 5 it should be clear that certain strategies adopted by Google, Amazon and Starbucks in the UK are motivated by a desire to avoid tax. The shifting of profits from the UK would be pointless, however, if those profits were then taxed elsewhere at anything like an equivalent rate. In each case this seems unlikely, although the reasons why this is the case vary slightly in each case. Understanding how the profits shifted from the UK also fall out of tax elsewhere is important before moving on to consider solutions to the problems of taxing multinational corporations.

Starbucks is in many ways the easiest of the companies to understand when it comes to what next happens to its profits shifted from the UK. The royalties it pays from the UK go to the Netherlands, where as already noted a secret deal with the Dutch tax authorities means that little tax is paid there. Starbucks admits that half the royalties then go to the USA – presumably how they end up with an overall claimed tax rate of 16 per cent on the royalties paid, which is still less than the UK rate, of course.[[61]](#endnote-61) Those left in the Netherlands appear to attract very little tax at all. The recurring role of the Netherlands as a tax haven in this story should be noted.[[62]](#endnote-62)

The remaining benefits of the trading Reuters says Starbucks conduct to shift profits, whether in overpriced coffee or interest paid, appear to end up in the Swiss Canton of Vaud, where the tax rate is 12 per cent.[[63]](#endnote-63) Because Vaud does not require companies like Starbucks subsidiaries to place accounts on public record we have no idea what happens to the profits recorded there. They may of course be remitted to the USA, but given Starbucks has an overall tax rate outside the US some 12 per cent lower than it pays there, and remitting profit to the US only increases its US tax, that seems unlikely.[[64]](#endnote-64) Starbucks may not use Bermuda or Cayman to locate funds in low tax jurisdictions outside the USA, but the Netherlands and Switzerland do the job for them just as well.

Amazon’s profits go to Luxembourg because that is where Amazon Sarl, which runs Amazon.co.uk, records them.[[65]](#endnote-65) There they may be paid on to Amazon Europe Holding Technologies SCS, Amazon Sarl’s holding company, also based in Luxembourg. According to evidence supplied to the House of Commons Public Accounts Committee, the unaudited accounts for Amazon Europe Holding Technologies SCS for 2011 showed a profit of €301.8 million and no tax payments.[[66]](#endnote-66) Since the UK is responsible for 25 per cent of all Amazon sales outside the USA,[[67]](#endnote-67) a good chunk of that profit is surely derived from the UK, and it looks likely that Amazon pays little or no tax on it.

Amazon stated in its 2011 group accounts,

<display prose>

[Our] effective tax rate in 2011, 2010, and 2009 was lower than the 35 per cent US federal statutory rate primarily due to earnings of our subsidiaries outside of the US in jurisdictions where our effective tax rate is lower than in the US. Earnings of our subsidiaries outside of the US primarily relate to our European operations, which are headquartered in Luxembourg.[[68]](#endnote-68)

<end>

Amazon made a group profit before tax of $934 million that year. Its total current tax bill – the bill it knows it will actually pay – in that year was $153 million,[[69]](#endnote-69) giving it an effective current tax rate of 16.4 per cent. Of its total sales of $48,077 million $21,372 million were in Europe.[[70]](#endnote-70) Assuming this profit can be divided in proportion (and there is no reason to think otherwise), European profits would have been $415 million. The total Amazon tax bill outside the US was $52 million. That means a possible current tax rate in Europe of 12.5 per cent, way below the UK rate for 2011 of about 26.5 per cent. It is also, of course, way below the US rate of 35 per cent.

It seems that Luxembourg provides Amazon with a low tax trading location just as Bermuda does for Google and the Netherlands and Switzerland do for Starbucks. And remember, such tax havens not only deny the UK money, they also keep the money out of the USA and so its tax system too.

And what about Google? Jess Drucker of Bloomberg, working at least in part with me, provides the clearest explanation.[[71]](#endnote-71) As he noted in 2010, Google Ireland may make all that company’s sales into the UK but the profits do not stay in Ireland. Indeed, Google Ireland makes only a very small profit each year – €24.4 million on sales of €12.5 billion in 2011.[[72]](#endnote-72) This is because Google Ireland makes substantial royalty payments to another Irish company, Google Ireland Holdings. This company plays a trick possible in Irish law but not in the UK. Under Irish law a company is not resident in Ireland just because it is incorporated there; it is instead resident where its central management is located. In the case of Google Ireland Holdings Limited that is in Bermuda, where, according to Drucker, the directors are two attorneys and a manager at Conyers Dill & Pearman, a local law firm.

This arrangement has now become notorious as a ‘double Irish’ so called because it involves two Irish companies. The first collects the revenues in Ireland but then, exploiting Ireland’s lax corporation tax regime, goes on to pay very high royalties for the use of intellectual property, generating expenses in the process that reduce Irish taxable income to something very small indeed. As the second Irish company is resident elsewhere, it avoids Irish taxes altogether, meaning that even Ireland is exploited by this arrangement.

However, the Dutch also exploit the Irish on the way. If the royalties went straight from one Irish company resident in that country to another resident in Bermuda, Irish tax would have to be deducted in much the same way that tax is deducted from interest payments made into most people’s bank accounts in the UK. However, the royalty is not paid direct but goes instead via the Netherlands (yet again playing a starring role as a tax haven), where Google runs Google Netherlands Holdings BV just for this purpose. EU law prevents tax being deducted in Ireland on payments to a Dutch company, and the Dutch let the royalties go on to Bermuda without any questions being asked, because that is its policy. This process is known by a second term put into popular usage by the Google saga, the Dutch sandwich. As I was quoted saying in Drucker’s story, ‘This sandwich leaves no tax behind to taste.’

What we end up with is a tale of multiple exploitation. The UK is exploited. Some of the tax haven states involved are even exploited: in the case of Google, Ireland by the Netherlands, while in the Starbucks case the Netherlands by Switzerland. The US loses out in terms of tax as well, of course. And all around the world national fiscal deficits get ever larger. But someone, somewhere, must be winning. My suggestion is that –albeit indirectly - it is mainly the executives of the companies in question who are benefitting from the tax avoidance that their companies undertake. That is because their remuneration is related through bonus schemes to company performance and that performance is inflated by the savings in tax these companies can make by using the tax avoidance arrangements that have no come to light.

In 2011 Eric Schmidt, then Google CEO and now its chairman, received total remuneration of $101 million.[[73]](#endnote-73)

Amazon CEO Jeff Bezos only received $1.68 million the same year, but he did own 19 per cent of the company as well.

At Starbucks boss Howard Shultz picked up $68.8 million in 2011.

Who funds these payments? I suggest we start with the UK taxpayer. These extraordinary rewards, I am sure, reflect the success of these three companies in avoiding tax. And that is why the problem exists. If that is the case it is time to look at three areas. The first is what is happening with regard to corporation tax at present and why recent changes in the UK, which many want to replicate in the USA, will only make it harder to crack down on the tax avoidance described here. The second is policies that could tackle the problem of multinational corporation tax avoidance. The third is why there are reasons for optimism, in particular why there is now such hostility towards large companies.

Before doing so there is, however, one last question to ask, which is was what these three companies were doing tax avoidance at all? Although David Cameron clearly thinks the case is proven – or he would not have made a strong speech on the issue at Davos on 24 January[[74]](#endnote-74) - it is clear that not everyone agrees. For example, Bill Dodwell, the Chairman of the Technical Committee of the Chartered Institute of Tax in the UK and a partner at Deloitte, on of the ‘Big Four’ forms of accountants, rejected the idea that any of these companies were tax avoiding when giving evidence to the House of Lords on 23 January, saying[[75]](#endnote-75):

*I do not agree that there is a mismatch between the substance and the form, I*

*am afraid, in the cases we have seen. I do not represent any of those three companies but in a globalised world where companies make commercial choices to centralise activities because that is a more efficient and effective way of delivering those activities, they will then have to choose a location for them. At that stage, they will inevitably consider a range of factors, and taxation will no doubt be one of them. The fact that somebody chooses to locate a central operation of that sort in Ireland, let us say, partly because it has a 12.5% rate, is not tax avoidance. That is a choice that it is free to that company to make. That is he end of it. What we do see, of course, is that in the modern internet world it is possible to provide some services in a wholly different manner that was not contemplated by any of those international agreements.*

It seems that Starbucks too may be getting irritated by the allegation that they are tax avoiders: on 26 January the Daily Telegraph reported that[[76]](#endnote-76):

*Kris Engskov, the multinational’s UK managing director, demanded talks at Downing Street after the Prime Minister said tax-avoiding companies had to “wake up and smell the coffee”.*

*Mr Cameron’s use of the phrase at the World Economic Forum in Switzerland last week was taken as a direct attack on Starbucks which has been criticised for not paying corporation tax in Britain.*

*Mr Engskov was so concerned about the “politicisation” of the tax issue that he asked for the talks at No 10, where he met officials last Friday. Starbucks argues that it makes no profits in the UK and so is not required to pay the tax. “The PM is singling the business out for cheap shots, a company that, it should not be forgotten, has pledged to pay tax now and into the future,” said a source close to the firm.*

Whilst the matter seemed to have been resolved between Starbucks and Downing Street by 27 January[[77]](#endnote-77) it is apparent that there are sensitivities that need to be considered here.

What this book has suggested is that tax avoidance occurs when steps are taken to secure a tax advantage never intended by parliament. As a matter of practice I have suggested that this means that the wrong amount of tax is paid, compounded by the fact that it may be settled in the wrong place and at the wrong time. That happens because, I have suggested, the economic substance of the transactions undertaken do not coincide with the place and form in which they are reported for taxation purposes.

In the case of Google and Amazon the reason why this suggestion can be made is easy to see: these companies actually record their sales in the UK economy from other countries and in both cases the mechanisms established to permit this do look to have a very strong tax motivation. Of course it can be argued that those structures are legal; they obviously are and nothing I am saying here suggests anything to the contrary. What is more, being legal is a pre-condition for tax conduct to be considered tax avoidance. To therefore say that because something is legal it cannot represent tax avoidance, as Bill Dodwell and many commentators within the accountancy profession seem to suggest[[78]](#endnote-78), makes no sense since such comment effectively denies that there can be such a thing as tax avoidance when it is generally and widely recognised as a behavioural phenomena.

In the case of Starbucks the case is not as clear cut, despite which it has come in for what might seem to be the greatest criticism. In their original article on Starbucks Reuters made three allegations against the company; that they shifted profit out of the UK by over-charging for the use of intellectual property, over-charging for coffee and charging too high an interest rates on loans to the UK operation[[79]](#endnote-79). It is, of course, important to note that Starbucks may charge for all three without problem arising: the Reuter’s allegation was that by doing so over time Starbucks had only declared one profit in its history in the UK and paid only £8.6 million in tax in total on sales made of over £3 billion in the UK. The evidence for saying that there was over-pricing was not in the accounts as such; it came from Reuter’s analysis of the reports Starbucks made to its shareholders on its UK operations that were positive as to its performance and prospects. It is in that commentary that the mis-match between substance (a profitable operation) and form (a loss making operation not paying taxes in most years) was alleged to have arisen. The point is that the allegation is consistent with that made about Amazon and Google: what was reported to be happening in accounts filed in the UK and what appeared to be happening when viewed from a group perspective seemed different. The avoidance was suggested to be in the mechanisms used to achieve that difference of outcome in all cases.

For many in the accounting profession that cannot be tax avoidance: they consider it to be the simple exercise of choice and leave the matter at that. However, that fails to reflect the change in public perception over time. As Patrick Stevens, chair of the Chartered Institute of Taxation said when also giving evidence before the House of Lords on 23 January[[80]](#endnote-80):

*I suggest the term tax avoidance then gets us into a whole lot of definition problems as to what one thinks is acceptable and what is not. To a large extent, certainly over the last year or two, that has changed very much daily with the newspapers and various committee inquiries and so forth. It has not stopped yet.*

This book, the popular press and the Prime Minister are using an understanding of the term tax avoidance that is now in widespread usage, but which the accountancy profession has yet to embrace wholeheartedly. Using that popular definition Google, Amazon and Starbucks are tax avoiding. Equally, some do not agree.

That though gives rise to a question with regard to the reaction the companies have offered to the allegations made. As has been noted, Google has defended its behaviour and is clearly intent on continuing it. Amazon appears to have had little to say. Starbucks has, in the face of consumer criticism, reacted strongly and has offered to pay up to £20 million in corporation tax over two years[[81]](#endnote-81). The mechanisms by which it is to do so are unusual. It has suggested it will not during those two years claim tax relief for the royalties it is due to pay to other group companies, or for interest paid to other group companies, or for coffee purchased in this way. It would in addition not use past losses against current profits or claim for allowances on spending on new stores and equipment. In effect it is going to voluntarily give up tax claims it could make to ensure it pays tax even though it maintains the position that it does not make a profit in the UK[[82]](#endnote-82).

The reaction to the offer made has been mixed. The payment has, for example, been called “a charitable donation”[[83]](#endnote-83). Without doubt it’s being done on a basis that is not in line with the normal basis for computing taxes: it is hard to think of any precedent fro such behaviour. What seems clear is that it is has not won Starbucks the goodwill it hoped for: if it had the Prime Minister would not have sniped at the company at Davos[[84]](#endnote-84) and there are grounds for thinking that the gesture is no more than that. Firstly, the company has not said it has changed its operations or structuring in any way: in two years it can and presumably will go back to operating the way it has done to date and so pay no tax. Secondly, if it does go back to its old ways of working then the losses from the past will be available to it still, meaning tax is unlikely to be paid for a while even if profits were made in the future. In other words, the suggestion that this payment is a gesture appears to have foundation. And that is the problem with what Starbucks have done. It looks like an expensive public relations gesture and does not look like real reform on its part. It is real reform that people now want.

<chapter head>Chapter 7 Why corporation tax?

Before considering how to reform corporation tax and other measures to ensure that multinational corporations pay the tax they should, another issue has to be addressed: why we have corporation tax at all. This may seem like an odd question to ask, but since the question is on the political agenda in both the UK and USA it is one that has to be addressed.

Corporation tax was introduced in the UK in 1965 by the then Labour government. Before that time companies were charged income tax on their profits while, like individuals, being entirely free of tax on any capital gains. By the mid-1960s, with personal tax rates reaching 98 per cent (or more) in some cases – to the chagrin of the Beatles among others – it was obvious that a different tax solution for companies was needed. Around the world other governments were reaching the same conclusion and corporation taxes were born.

Corporation taxes had, when introduced, three distinct aims and to some degree they retain those now. The first aim was to subject the income and, as importantly, capital gains of companies to one single tax; this also being true from wherever in the world the income was received. In this sense this makes corporation tax quite different to the taxation of individuals who might suffer different taxes depending upon the income or gains they receive. Secondly, corporation tax was intended to ensure payments of dividends from companies were taxed by way of tax being deducted at source when the payment was made. This objective was seriously undermined by Gordon Brown’s reforms of corporation tax in the late 1990s but was highly effective before then. Lastly, by integrating with income tax (which it did and to some degree still does do) corporation tax was meant to provide a seamless way of taxing income whether a person traded in their own name or through a company and so was, in itself, an anti-tax avoidance mechanism. This goal has largely been lost now. Partly as a result, fast-forward to the twenty-first century, and arguments for their abolition are being put forward by both academics and think tanks, a cause taken up by some, mainly right-wing, political groups.

Professor Mike Devereux of the Oxford University Centre for Business Taxation[[85]](#endnote-85) – partly funded by the Hundred Group of Finance Directors[[86]](#endnote-86) and based at the Said Business School – is a key proponent of this argument. The title of an article he wrote for the *Financial Times* in December 2012 makes his position quite clear: ‘The best reform of corporation tax would be its abolition.’[[87]](#endnote-87) The essence of the argument is simple. What those who oppose corporation tax argue is that companies are just artificial legal creations. As such they say they cannot actually be taxed; only human beings can ever really pay tax is their argument. The tax charges supposedly paid by a company are, they say, in reality paid by the human beings who engage with that entity, whether they like it or not. Those people fall into three groups: shareholders, customers and employees.

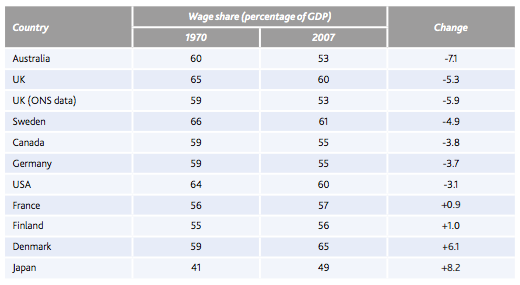
Such arguments may work in a lecture room, in the pages of economics journals and even in the publications of right-wing think tanks,[[88]](#endnote-88) where the assumptions used permit the manipulation of data and allow economists to argue that corporation taxes are borne in large part by a company's employees.[[89]](#endnote-89) There are, however, major flaws in the argument.

First of all, while it might be possible to assume in in an academic environment that there are no such things as corporations, but out in the real world there appear to be an awful lot of them, and they seem to have a massive influence on people's lives. The assertion that they are all simply, as one finance director once put it to me, ‘just a pile of contracts’ is so very obviously untrue that it is an affront to common sense to suggest it. Economists are remarkably good at making assumptions that have little relation to reality. Doing so was one reason for the 2008 financial crash.[[90]](#endnote-90)

Second, the argument that there are really no such things as corporations presumes that a company can only be the sum of its parts. Very obviously this is not true: indeed, if it were true the same economists who promote this idea would surely argue that there was in that case no point forming the company since a simple amalgam of contractual arrangements could achieve the same result. However, we know this is not the case. Companies achieve profits because of the synergies they can create by getting people to work together in relative harmony and under common direction to release talents and ideas that would never be produced on the basis of contractual obligations alone. To put it another way, some economists might think we are just rational economic agents undertaking the minimum required to fulfil the obligations we have undertaken to deliver in law, but the truth is we are much more complex, and generous, than that. Companies appreciate that; good managers know and capitalise on it and profits in excess of any that might otherwise arise result as a consequence. Companies are clearly real economic agents which achieve outcomes greater than the sum of their parts. How the resulting excess belonging to the company is to be taxed is a real question needing answering. Suggesting the abolition of corporation tax is no answer.

Third, there is a very real problem with the claim that tax is not really paid by a company or its shareholders but by its employees or customers. For example, Prof. Devereux and his co-authors conclude in his most notable work on this theme ‘that an exogenous rise of $1 in [corporation] tax would reduce the wage bill by 75 cents’, suggesting that 75 per cent of all corporation tax increases are paid by the employees of a company.[[91]](#endnote-91) There is, however, a flaw in this logic. In February 2012 *The Economist* noted that between 1981 and 2010 the unweighted average corporation tax rate of OECD countries fell from about 48 per cent to 25 per cent while the weighted average rate fell from 50 per cent to just under 30 per cent.[[92]](#endnote-92) Using economist’s logic, workers in these countries should have been laughing all the way to the bank. If those economists were right, after all, falling corporation tax rates would have meant increasing real wage rates. The trouble is that hasn’t been happening. As Howard Reed and Jacob Mohun Himmelweit have shown for the UK’s Trades Union Congress, in many advanced economies wages as a percentage of total GDP have fallen heavily from 1970 to 2007.[[93]](#endnote-93)

<display table>



<caption>Source as noted, using OECD data for all countries bar the UK where Office for National Statistics data is used instead

<end>

Even the major exception to the trend, Japan, challenges Devereux’s claim since it has always had one of the highest corporation tax rates in the world, currently standing at more than 40 per cent. Denmark is also atypical in having traditionally high rates of income tax.

What is clear is that falling corporation tax rates do not appear to have induced increases in wages as a proportion of GDP within economies. Indeed, capital has won instead, and there may be a good reason for that. Whether intentionally or not, it’s clear that what Prof. Devereux actually suggested was that corporation tax increases give rise to wage cuts. What he did not say was that corporation tax cuts give rise to wage increases. The argument appears to be unidirectional but has been used as if multidirectional. It would seem that those who have concluded that cutting corporation taxes will result in wage increases have made a logical, but unfortunate error: that is not what the empirical work on this issue seemed to find. In that case those seeking to win support for corporation tax cuts on this basis appear to be making a misleading claim.

Maybe this is why others have not replicated Prof. Devereux’s findings. For example, a US Congressional Budget Office report concluded in May 2010 that capital (shareholders) bears the majority and maybe all of the corporate tax burden .[[94]](#endnote-94) It was not alone: another Congressional Budget Office report in March 2011 hedged its bets: it suggested when offering advice on measures that could help close the US fiscal deficit that increasing corporation tax would in the short term (by which it implied several years) increase the tax burden on companies themselves. Thereafter it recognised that there could be a theoretical shift of the burden onto labour, but by then no one could be sure because other factors would have intervened.

There is another reason why the conclusions of economists working in this area might well be wrong. The work of most economists who have undertaken research in this area uses information from corporate databases. These in turn take their data on tax paid by a company as being the tax charge on the profit and loss accounts of the companies in question. Unfortunately, however, this tax charge figure frequently bears little relation to the tax actually paid by companies – for sound technical accounting reasons relating to deferred taxation.[[95]](#endnote-95)

‘Deferred tax’ is an entry in a set of accounts denoting a tax bill that may (or may not) be paid at some time in the future but which will definitely not be paid now. I recognise this fact in my own work on effective tax rates and tax avoidance and use instead the current tax charge as the basis for my work, which is the figure for tax which the company actually knows it will pay. Unfortunately you can only get this data by going to the accounts themselves, as I do in my work. This is important: because much tax avoidance is intended to defer when tax is paid its existence is hidden by using a figure for tax paid that includes deferred tax and as such I believe that analysis based on this data can give misleading results, which is why I will not use it. .

It therefore seems wiser to reject all the calls of right-wing academics and think tanks for the abolition of corporation tax since the logic and data on which they are based appear flawed, and instead use a more practical test of opinion on this issue, which business itself provides.

It would seem that business very strongly believes that it pays corporation tax, and that if cuts in the rate are made it has the choice as to what to do with the funds thereby released. For example, in February 2012 the *Financial Times* reported that the UK’s Confederation of British Industry had called on the chancellor of the exchequer to cut corporation tax in his March budget, saying that this would encourage investment in infrastructure and raise investment by mid-sized businesses.[[96]](#endnote-96) Despite economist’s predictions, the CBI did not say companies would put 75 per cent of the cut into wage increases; instead it said they would use the money to boost profits by investing, so increasing the return to shareholders. It seems reasonable to think that if business believes this is the case then this is actually what is happening: businesses *do* pay corporation tax and they *do* think that it is a cost borne by their shareholders. The glaringly obvious is in this case seemingly the right answer as to who pays corporation tax: it is likely that in large part shareholders do.

When on average the operating surpluses of businesses have increased from about 23 per cent of GDP in the mid-1960s to around 28 per cent before the 2008 crash it is clear that to ignore taxation of such a significant part of the economy would be reckless. This means that suggestions made, for example by the Institute for Fiscal Studies in the Mirrlees report[[97]](#endnote-97), that corporation tax should be amended so that the ‘normal return to equity investment’ is excluded from the tax charge makes no sense. That would simply provide yet another opportunity to exploit a tax exemption. What is needed instead is a coherent plan for taxing profits.

Such a plan must be based on a corporation tax. As we have seen, some try to argue otherwise, suggesting that income streams flowing from companies (taxes on dividends, wages and sales) are more appropriately charged and that companies themselves should not be taxed ,[[98]](#endnote-99) but there are very good reasons for rejecting this argument in addition to those already noted.

The first is simple. If corporation tax was abolished, there would be a very obvious incentive for a person to accumulate their income in a company without paying any of that income out as a dividend or wage – if they could afford to do this, and by definition the wealthy can and those without wealth can’t. At some time in the future that person could either sell the company – which would by then be laden with cash – and pay capital gains tax. In most economies this is lower than income tax. Alternatively they could move offshore and have the income locked up in the company paid to them tax-free.

What this example shows is that companies are not tax neutral. They can significantly change where and when tax is due, who pays it and at what rate. For this reason alone it is vital that there is a corporation tax to tackle the worst of the distortions that the mere existence of companies can create in a tax system. What is also clear is that those in favour of the abolition of corporation tax are arguing for the creation of more loopholes for exploitation by the UK tax-planning industry because the first and most obvious reason for having a corporation tax is that it prevents the avoidance of income tax by the transfer of income into companies. The fact that those arguing for the abolition of corporation tax include organisations like the Institute of Directors, whose members would appear to have much to gain from the creation of such loopholes, must always be borne in mind .[[99]](#endnote-100) Finally, this example shows that it is equitable to have a corporation tax, as it ensures everyone pays tax on income earned whether gained personally or through a company.

The second reason for having a corporation tax is that taxing companies is efficient when compared to taxing shareholders on the profits companies make. We simply do not know who the shareholders in many companies are, with this being especially true in the case of multinational corporations. Moreover shares are traded frequently: indeed economist Michael Hudson claims that the average period for holding a share in the USA is now around 20 seconds.[[100]](#endnote-101) That estimate is distorted by what are called high-frequency trades, but on other measures the entire value of the New York Stock Exchange is traded every six months,[[101]](#endnote-102) and my own analysis suggests a broadly similar holding period for the London Stock Exchange. The sheer volume of trading makes taxing shareholders difficult, while many shareholdings are themselves hidden in other companies and trusts, many of which in turn are in tax havens to hide their true ownership in an attempt to avoid the taxes due if the true ownership was revealed. In combination these facts mean that replacing corporation tax with a tax on shareholders on the income streams they derive from companies would be a recipe for ensuring some of those owners would pay no tax at all. That would be profoundly unjust.

Third, corporation tax charges companies for a benefit provided by society. That benefit is limited liability. This is an extraordinary privilege created, for all practical purposes, in the Victorian era, which if put forward as a new idea now would fail all tests of reasonableness let alone human rights. The idea that a single person may, by signing a few pieces of paper, escape responsibility for paying their debts would be absurd but for our familiarity with it. That privilege imposes costs on society, partly from tax lost when tax debts are not paid, and partly from society bearing the cost of failed companies. Nothing better illustrates this than the cost of bailing out the banks in 2008. It could be argued that this cost could be recovered by increasing the annual fees charged by most states to the companies that are registered within their domains for the privilege of keeping a company on its official register of companies, but that would be unreasonable: it would be equivalent to a poll tax. The answer comes instead in the form of a tax on profits that compensates society for the costs companies impose on it. That is corporation tax.

Finally, and perhaps most importantly in many ways, without corporation tax significant economic activity could be undertaken in a country without any tax charge arising on it. As I have already argued in Chapters 4 and 5, Google, Amazon and Starbucks have been doing their very best to achieve this goal and have been succeeding in large part, albeit that Starbucks will be paying corporation tax in the UK for the next two years. Without a corporation tax the situation would be very much worse. This hypothetical situation needs careful explanation, because without consideration of this issue the threat to corporation tax around the world cannot be understood.

Suppose for a moment that those who say the shareholders of a company rather than the company itself should be taxed got their way. Then suppose there is a large and profitable company in the UK which is owned by a US corporation with which it shares a name. And let’s presume that this US corporation decides to record its ownership of the UK business through another of its subsidiary companies located in the British Virgin Islands, which is a tax haven with no tax charges on companies and no requirement that companies put any meaningful information of any sort on public record. Now, where would the income from the UK company be taxed if the law had been changed so that only shareholders were taxed on company profits as and when they received them?

The UK company would not be taxed in the UK, because there is no shareholder in the UK to be taxed. Should it be taxed then in the British Virgin Islands, which is where its notional ownership is recorded, ignoring for a moment the fact that there is no tax there? Or should it be taxed when the shareholders in the US corporation get their reward from ownership of the UK operation, if they ever do (which, as I have already noted, is not guaranteed)? And what if the US corporation is in turn owned by a company owned by a family trust in Cayman determined to roll up its wealth for the foreseeable future because the family is wealthy enough to never need the income from that company? This is what those who argue against corporation tax or who argue for a tax on shareholders only would end up permitting.

But why should the UK support the operations of the UK company by providing it with educated and healthy employees, transport a legal infrastructure and so on, all without recompense so that the company in question can accumulate profits entirely tax free? It is an absurd to suggest that the UK should tolerate no tax being paid in this country on the profits of an employer making significant profits – possibly by employing large numbers of low-paid staff, many of whom might be in receipt of UK work-related benefit payments because they could not otherwise make ends meet – simply because that company has recorded its ownership as being outside the UK. No wonder the wealthy and big business are so willing to fund research into the abolition of corporation tax.

A tax that seeks to ensure all profits arising in a place are taxed there is known as source based. What is obvious is that not only do we want a corporation tax, we also want one that guarantees all profits made here are subject to UK corporation tax. This is the first goal. Preventing profits being shifted out of a country in the way Google, Amazon and Starbucks have done is the second goal. The third is the prevention of artificial relocation of activity to tax havens. As Google, Amazon and Starbucks have proved, and as this example shows, tax havens directly undermine source-based taxation. And let’s be clear what that means: less tax paid in the country where profits are earned results in a bigger tax bill for everyone else. That’s little less than an act of economic warfare, as well as being an assault on the democratic right of a government to collect the tax owing to it.

Having a sourced-based corporation tax is, however, not enough to ensure fair taxation of corporate profits. Let’s go back to the example and suppose that the US trading corporation that ultimately owns the UK operation is family owned, but not via a Cayman trust, simply by individual members of a family. If those family members had undertaken their trade without the use of corporations they would have been taxed on their worldwide income in the USA wherever in the world it had arisen. (The same, incidentally, is true in most developed countries in the world, the UK being an exception in the case of the so-called non-domiciled.[[102]](#endnote-105)) But simply recording that UK-sourced income in a company in the US cannot be enough to ensure it falls out of the scope of UK tax, can it? Such distortions should not be possible in a tax system if it is to be just. This means is that a tax system must have a residence component as well.

Residence-based tax means that a company is not only taxed on its source income in the country where it is located, it is also taxed on its worldwide income as well. To be reasonable, full credit has to be given for taxes already paid in another country on a source basis when it comes to assessing that same income on a residence basis in the country where its owners are actually located. Despite all claims to the contrary, this is not technically difficult in most cases and rarely results in double taxation: tax is simply paid at the highest rate applying anywhere in the income stream, and it is that which is objected to. This way the anomaly that might otherwise exist between receiving income personally and also through a company is reduced as far as is possible.

This all suggests that a good corporate tax system: first requires that a corporation tax exists, second that it operates in the first instance on a source basis, and third, to ensure fairness, that it also operates on a residence basis to eliminate anomalies that would otherwise arise. And that was, in very broad outline, the corporation tax system the UK had until 2009.

In that year everything began to change.[[103]](#endnote-106) Big business, exploiting EU law, put massive pressure on the UK government to change the UK corporation tax system from this comprehensive and rational basis to what is called territorial taxation. Under pressure, the Labour government conceded in 2009 that dividends received from overseas subsidiaries, even if those subsidiaries were located in tax havens, need no longer be treated as taxable when paid to a parent company resident in the UK. Suddenly a massive loophole had appeared in UK tax law. If a UK company could transfer price profits into a tax haven – from its overseas subsidiaries and even from the UK itself – those profits would, when sent to the UK, avoid British tax for the first time ever, meaning that transfer pricing manipulation by UK companies became, at the stroke of a Whitehall pen, one of the most profitable activities any company could undertake. When announced in 2008 the forecast was that this exemption would cost the UK £275 million a year by the tax year 2011–12.[[104]](#endnote-109) There is no way of knowing if this estimate is accurate.

In his June 2010 budget George Osborne took this change a considerable step further, making clear that he wanted to move to a full territorial basis for UK corporation tax .[[105]](#endnote-110) This means that UK companies would not be taxed on their dividends received from their non-UK subsidiaries; they would also not be taxed on the profits of their overseas branches and would not be taxed, as far as possible, on the income of their tax haven subsidiaries unless those subsidiaries were seen to be blatantly shifting income from the UK. Again the message could not have been clearer: George Osborne was allowing UK multinational corporations unfettered use of tax havens with the explicit aim of reducing their tax bills and with minimal questions to be asked about their doing so.

No cost was forecast for this change in policy in 2010, but in the 2011 budget statement an estimate of £945 million a year by the tax year 2015–16 was given.[[106]](#endnote-111) Some challenged this estimate. The charity Action Aid, for example, suggested that the estimate excluded the loss to developing countries as a result of UK multinational corporations now being encouraged by the tax system to manipulate the transfer pricing rules to shift profits into tax havens, knowing that those profits would not now be taxed again when sent on to the UK. It estimated that the resulting loss to developing countries might be £4 billion a year.[[107]](#endnote-112)

No one can be sure if this estimate is accurate. What do know is that in its pursuit of what the current government calls its goal of creating ‘the most competitive corporate tax regime in the G20’[[108]](#endnote-113) it has radically reformed the whole basis on which UK corporation tax is charged. As Richard Brookes of *Private Eye*, a former tax inspector with HMRC, said in evidence to the House of Commons Treasury Committee in January 2011,

Display prose>

HMT’s proposals make the UK corporate tax system a largely territorial one under which UK income is taxed, while tax allowances are still given for costs, including funding costs, that might support non-taxable overseas operations. This is an extremely lenient arrangement that will see large multinationals’ effective tax rates fall drastically. In adopting the most generous features of two contrasting systems of taxation (a territorial view of income, and a residence-based view for allowances) it is unique.[[109]](#endnote-114)

<end>

The inescapable conclusion is that not only companies like Google, Amazon and Starbucks seek to exploit the UK tax system, but so does the UK government. The impact is apparent from HMRC’s own data.[[110]](#endnote-115) In 2002–3, a year of recovery from corporate recession, the total corporate tax take from large UK companies was £20.9 billion. In 2011–12 it happened to be the same sum, but adjusted for inflation using the Retail Price Index the 2002 figure would have been £27.9 billion in 2011. Some £7 billion of tax revenue was lost in about a decade. Of course part of this is undoubtedly recession related, but the rest may well be due to changes in the UK corporate tax system, increasingly aggressive multinational corporations and a policy of denying HMRC the resources it needs to tackle the problem.

The time to look at the policies and laws that can change this situation has arrived.

<chapter head>Chapter 8 What can be done?

On 4 January 2013 David Cameron made clear his position on Starbucks, Google and Amazon. In what seems to have been an unscripted comment in response to a question from a business audience he said,

<display prose>

We’ve got to crack that, you’re absolutely right. This is a really important issue. We’re saying [we] are going to have a really low rate of corporation tax but I want to make damn sure that those companies pay it.

We do need a debate in this country, not only what is against the law – that’s tax evasion, that is against the law, that’s illegal and if you do that the Inland Revenue will come down on you like a ton of bricks – but what is unacceptable in terms of really aggressive tax avoidance.

Because some people say to me, Well, it’s all within the law; you’re obeying the law, it’s okay. Well, actually there are lots of things that are within the law [that] we don’t do because actually we have some moral scruples about them and I think we need this debate about tax too.

I’m not asking people to pay massive rates of tax. We’ve got a low top rate of income tax now; we’ve got a low rate of corporation tax now; we are a fair-tax country. But I think it’s fair then to say to business, You know, we’re playing fair by you; you’ve got to play fair by us.

I’ve put it right at the top of the agenda for the G8 this year as well as making sure we fix it nationally too.

It’s simply not fair and not right what some of them are doing by saying, I’ve got lots of sales here in the UK but I’m going to pay a sort of royalty fee to another company that I own in another country that has some special tax dispensation.

That is, that’s not right, and so we are looking at it. I’m chairing the G8 this year so I’m going to be getting the Americans and the French and the Germans and the Italians and the Japanese all to look at this together at how can we try and stop unfair tax farming practices?

Because look, you know, we’ve got a very low rate of corporation tax; we’re already giving business a good deal, but I think to take that deal and then say, I’m actually going to find a way of not paying any corporation tax at all, that’s not right.[[111]](#endnote-116)

<end>

It was a fascinating outburst. It made clear, as Cameron’s previous comments about the G8 meeting had not, that he intends to tackle tax avoidance. It also showed that he understands some of the issues involved, specifically royalty payments and Dutch tax deals. What is surprising is his apparent conviction that tax is not just a legal matter. He clearly believes there is a social contract between companies and the state on this issue, which is welcome. But perhaps most importantly of all he obviously thinks significant reform is needed to achieve his view of what that relationship between companies, tax paid and the state should be, and not just here in the UK but internationally. Whether he has fully appreciated the scale of the reforms needed is hard to know. In this chapter I look at just what is needed to achieve Cameron’s goals.

<A head>8.1 Changing corporate attitudes towards tax

There is a myth that companies have a duty to avoid tax. This is definitely not true in the UK and whilst in the USA state law variation makes it harder to be as emphatic the practice appears broadly similar to the UK. Despite this the claim is used to hide corporate tax avoidance behind a veil of supposed legitimacy.

The UK law on this issue is to be found in Section 172 of the Companies Act 2006. It is important enough to reproduce here, precisely because it is a revelation to most people.

<display prose – layout as shown>>

<B head>172: Duty to promote the success of the company

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to –

(a) the likely consequences of any decision in the long term,

(b) the interests of the company’s employees,

(c) the need to foster the company’s business relationships with suppliers, customers and others,

(d) the impact of the company’s operations on the community and the environment,

(e) the desirability of the company maintaining a reputation for high standards of business conduct, and

(f) the need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.[[112]](#endnote-117)

<end>

The words profit and maximisation do not appear in this statement of a company director’s duties. Certainly it can be argued that the obligation to ‘promote the success of the company for the benefit of its members’ implies a duty to generate a profit, or at least a positive cash flow, but to suggest that there is a legal obligation to maximise that profit is clearly wrong. Indeed the obligation is severely constrained, as is clear from sub-paragraphs a–f.

In that case what the law requires is that judgement be exercised, and tax avoidance may not be sound judgement. It is easy to argue, for example, that tax avoidance by companies is harmful to employees, who benefit from the services that corporation tax pays for and which might not otherwise be available but it is not much harder to see that corporate tax avoidance can also be harmful to the shareholders of a company, who may have to pay more tax as a result in a personal capacity. In addition, corporate tax avoidance can even be harmful to the company itself since if the practice becomes widespread the consequence will, inevitably, be that reduced resources are available to the state. That in turn will means less infrastructure, training and other investment by the state and there is no doubt that companies could suffer as a consequence of that. It could even harm commercial prospects, as Starbucks are finding with customers now boycotting its stores.

So if in UK law there is no duty to maximise profits, there is no duty to minimise tax bills, which many think the obvious corollary. Seeing tax as an expense in a profit and loss account is possibly dubious anyway. As Cameron makes clear, he sees tax not as a cost to a company but a distribution to society, more akin to a dividend to shareholders than an expense. What is left is a very clear duty to exercise judgement on this issue, which Ed Miliband noted before Cameron when promoting the idea of responsible capitalism.[[113]](#endnote-118) There is even doubt as to whether tax avoidance can be reconciled with the legal obligations of company directors because it is clearly damaging to the interests of pension fund members, employees, the long-term stability of the company and therefore its suppliers, customers and others.

If David Cameron wants to change corporate behaviour this is a message he has to deliver.

<A head> 8.2 Change the approach to UK corporation tax

If this change in approach to corporation tax is to be realised there is, however, a policy change that David Cameron has to deliver first. Shortly after coming to office the coalition government published what it called its ‘Corporate Tax Road Map’.[[114]](#endnote-119) In this document the government set out a case for a territorial basis for taxation excluding all income arising from out of the UK from tax when received by UK companies. It was, as has already been noted, a massive change in direction for UK taxation.

That change arose by design. Large companies both directly and through the research they funded (as noted in Chapter 7) created the myth that if only they were taxed less then they would invest more in this country and so create more jobs. The coalition accepted that as true when devising its corporate tax strategy. The result will be a massive increase in the availability of tax avoidance opportunities for UK-based companies (as explained in Chapter 7), which they will exploit to the full.

The reality is that not one of the claims on which this myth is built is true. In particular, the UK tax regime has not been an impediment to business or the availability of cash for investment in this country. As ‘Big Four’ accountants Ernst & Young noted in April 2012, ‘The cash balances of private non-financial companies are worth over £754bn, a staggering 50 per cent of GDP , but business investment last year only increased by 1.2 per cent.’[[115]](#endnote-120) The fact is that, small businesses apart, which have been deprived of cash by the UK’s banks,[[116]](#endnote-121) the money needed by business to invest in the British economy is already in the possession of those UK companies most able to invest. They are choosing not to invest not because tax is an obstacle to investment but because there is a lack of demand for what they make. That is the fault of the recession and not the tax system.

In that case the tax policy and the related cuts in corporation tax to which the coalition has committed itself are wholly detrimental to the UK. This is firstly because they create an unlevel playing field in the UK between nationally based companies, which will have no opportunity to exploit the new rules on territorial taxation, and multinational corporations, which will have ample opportunity to do so. Secondly this is because they create another unlevel playing field between large businesses, which by 2014 will be paying corporation tax at a notional rate of 21 per cent[[117]](#endnote-122) compared to the small company tax rate of 20 per cent.[[118]](#endnote-123) But because those small companies are usually based solely in the UK and so cannot shift their profits out o f the UK what often happens is that they pay tax on a higher proportion of their overall profits than larger, multinational companies. This will mean that smaller companies will effectively pay higher tax than their bigger competitors. Finally and worst of all, the entire credibility of the UK tax system will be compromised in the way that Ireland’s has been, because once tax becomes the centre of a country’s economic and industrial strategy, its tax authority cannot meaningfully challenge the tax affairs of any company located in the country without it threatening to leave.

For all these reasons the politics of corporation tax in the UK has to change, and soon.

<A head> 8.3 Reforming HM Revenue & Customs

As Margaret Hodge said in the report of the Public Accounts Committee on HM Revenue & Customs in December 2012, ‘The UK Government needs to get a grip on large corporations which generate significant income in the UK but pay little or no tax,’ and, ‘HMRC needs to be seen to challenge practices to prevent the abuse of transfer pricing, royalty payments, intellectual property pricing and interest payments.’[[119]](#endnote-124) At present neither is happening because to do so would conflict directly with the coalition government’s stated policy of creating the most competitive corporate tax regime in the G20, as noted in the previous chapter.

As the Irish government has discovered, you cannot make a low tax rate and tax competitiveness the basis of a country’s industrial policy and at the same time be aggressive with multinational corporations on issues such as transfer pricing. Google is in Ireland for its low tax rate and more importantly because in practice it pays almost no tax there.[[120]](#endnote-125) This is an issue I discussed at length in 2010 in a report for the Irish Congress of Trade Unions.[[121]](#endnote-126) The UK government therefore has a choice: it has to either change its tax policy or admit that it ignores tax avoidance. It is not possible to promote tax competitiveness and tackle tax avoidance at the same time. That is because tax competition embraces the notion of tax avoidance. We can infer what decision the government has taken on this issue because it will be reflected in its behaviour towards its tax authority, HM Revenue & Customs.

In 2005 HMRC had 104,000 staff.[[122]](#endnote-127) By 2012 that number had fallen to about 71,000,[[123]](#endnote-128) and HMRC says it intends to cut that number to 61,000 by 2015.[[124]](#endnote-129) Of course some of those cuts were due to automation, but by no means all. Unless this policy of cutting back the only department in the UK government with a capacity to close the fiscal deficit is reversed, there is no hope of tackling the problems posed by the likes of Google, Amazon or Starbucks, as the resources to do so will not be available.

There is another problem with HMRC, and this is right at the top. Ian Barlow, its chair,[[125]](#endnote-130) is a former senior partner in KPMG in the UK. Barlow is not alone in having such past links to firms that have been associated with tax avoidance[[126]](#endnote-132): as Channel 4 reported in a *Dispatches* programme in July 2012, a worrying number of non-executive directors of HMRC appear to have had connections with the tax avoidance industry at some time in their past.[[127]](#endnote-133) There is little prospect of HM Revenue & Customs taking tax avoidance seriously when its management is permeated by those who embrace it as a normal business activity.

<A head> 8.4 Reappraising the tax gap

There is a further problem within HM Revenue & Customs. As the PAC noted, it is too ‘passive’ about the tax gap – the difference between tax collected and that which should be collected. This is, according to HMRC itself, £32 billion a year.[[128]](#endnote-134) It is notable that the report in which they make this claim does not carry an Office for National Statistics seal of approval. Maybe that is because, as the *Financial Times* noted in October 2012 of the report, ‘It’s an intriguing document, if only because a casual leaf through the 47 pages gives the awkward impression that this is one long exercise in random guesswork.’[[129]](#endnote-135)

As the *FT* notes, for example, when it comes to tax lost to ‘ghost’ employees the report says, ‘Ghosts are individuals who receive income from employment or self-employment but are not known to HMRC because they and/or their employers fail to declare their earnings. Ghosts are not accurately recorded by any government agency or survey and therefore any estimate as to their number or the consequential loss of duty is approximate.’ This approach is typical of the report. So too is the fact that none of the tax lost to Google, Amazon or Starbucks is included in its estimates of tax avoidance. Since the arrangements used by those companies have not, as far as we know, been challenged by HMRC, it refuses to classify them as tax avoidance. The consequence is that the tax gap data they report is a serious underestimate.

My own work on this issue challenges the HMRC approach to measuring the tax gap and demands that they adopt a more rigorous approach and use a broader sample base than their own investigations to estimate it. This is particularly important since the number and scope of such investigations is decreasing rapidly as a result of the staff cuts at HMRC, and there is a good chance that the apparent decline in the tax gap reported over the last three years may simply be a result of HM Revenue & Customs detecting fewer problems than it once did.

I have estimated the tax gap due to tax evasion in the UK at some £70 billion a year, using two quite different methodologies,[[130]](#endnote-136) while I estimate UK tax avoidance at £25 billion a year.[[131]](#endnote-137) Of the figure for avoidance I estimate £12 billion is due to the activities of large companies, which, given that a few US companies may between them account for £1 billion, is not hard to think plausible. The official line on this issue is that I am wrong,[[132]](#endnote-138) and several attempts to prove this have been commissioned by the Treasury[[133]](#endnote-139) and HM Revenue & Customs. None of these attempts has made my estimates go away or it seems harmed their credibility. Maybe that is why the National Audit Office commissioned a further review of the issue in 2012.[[134]](#endnote-140). It, like the others, concluded that I should not be using the data in accounts to assess the tax gap. The difficulty in this argument is, however, rather obvious. If, as is being suggested, the data in accounts is not a reliable basis for assessing tax paid then three questions need to be asked: Why not? What should be used instead? and What are they doing to make sure reliable data is available? No one at the Treasury, HMRC or elsewhere has ever seemed to want to answer these questions.

What that then implies is that the Public Accounts Committee is right: HM Revenue & Customs is too relaxed about the tax gap and too passive in its approach to determining what that gap is and what can be done about it. My figures may be wrong: certainly budgets many times bigger than I have ever expended in researching them have been spent by the UK government trying to discredit them when what would have been much more useful was proper research of the issue.

This is the key point: if David Cameron has to admit his government’s tax policy – based largely as it is on advice from the Oxford Centre for Business Taxation – is wrong, as is implicit in his comments that opened this chapter, then proper research is required if a considered alternative view of what is required is to be developed. That view cannot be based on the advice of those heavily involved in previous policy, which with regard to corporation tax the Oxford Centre and the Institute for Fiscal Studies (with whom it has considerable staff overlaps), both are. Entirely new research is needed on both the tax gap and tax policy, and a budget to undertake that work has to be provided.

<A head> 8.5 Putting tax paid on public record

One reason why tax avoidance by multinational corporations has gone on for so long is that they have been able to conceal it. Multinationals often hide what they’re doing (as Starbucks does in Switzerland and Google does in Bermuda) behind the veils of secrecy that tax havens provide, which allow them to keep the accounts of companies operating from those places secret. It is not clear whether this is a deliberate act on their part of not or whether there is an unthinking acceptance that they are entitled to the secrecy these places permit those who trade there: in either case as noted in Chapter 8 it is time for this to change.

That secrecy is compounded by the nature of the accounts that multinational corporations produce. These are consolidated accounts: they only show the transactions between the group as a whole and third parties – suppliers, customers, employees or tax authorities. Every dollar, pound, euro or yen of intra-group trading within multinational corporations is hidden from view, which means, as previously noted, that 60 per cent of world trade remains invisible.

There is a way to penetrate the secrecy of tax havens and the obscurity of consolidated accounts. This is an accounting reporting method I created a decade ago called country-by-country reporting.[[135]](#endnote-142) This would require every multinational corporation to declare every country in which it worked and the names of all its subsidiaries working in each place and to then publish a full profit and loss account, partial cash flow and limited balance sheet for each such location. There is an important caveat: these accounts would have to include not just the third-party trading taking place in a location, but the intra-group trading too, with each shown separately. That way we would see how internal group trading is used to shift profits between countries. So, if a multinational corporation had an operation in Cayman that made all its sales and purchases internally, had no staff costs but very high profits and paid no tax, it would be glaringly obvious that a tax avoidance operation was going on.

Most arrangements are not as blatant as that, but the simple fact is that at present the accounts of multinational corporations are not adequate to tell us all we need to know about the profits made and tax paid by those companies, let alone where either occurs. As Margaret Hodge said, ‘country-by-country reporting … seems like a really good idea’,[[136]](#endnote-143) and it is now more than that. In limited form, and for the extractive industries alone at present, it is now becoming a legal requirement in the USA[[137]](#endnote-144) with Europe to follow soon.[[138]](#endnote-145) The EU Parliament also endorsed full country-by-country reporting in, unfortunately, a non-binding resolution on mechanisms to tackle tax avoidance in April 2012.[[139]](#endnote-146) In other words, the momentum for this reform is growing, and with good reason. The world’s tax authorities need the data that country-by-country reporting can provide, but so too do all the users of the accounts, the regulators and perhaps most importantly company shareholders, if they are to fully understand what a company is actually doing and where.

Publishing that information would most likely have a significant consequence. If shareholders (and others) understood what companies were really doing, it is likely those companies would change their behaviour. As is very apparent from the reaction of Starbucks and Amazon (but maybe not Google) to being accused of tax avoidance, this has significant economic and social consequences for many businesses. Some companies only undertake certain activities now because it is not clear that they are doing so. If it were clear – and country-by-country reporting can makes sure it is - then they would stop.

The UK could introduce country-by-country reporting if it wished, although it would be difficult because doing so would take its accounting requirements outside the framework currently demanded by the European Union and the International Accounting Standards Board, the body that issues the EU-endorsed International Financial Reporting Standard. Progress has so far been slow to meet the EU’s demand for country-by-country reporting, but in January 2013 a new review of the relevance of International Financial Reporting Standards was announced by the EU, which is showing signs of increasing concern at their indifference to socially relevant issues. The opportunity for change now exists, and it is time for the UK to pressure the EU and International Accounting Standards Board into delivering country-by-country reporting.

<A head>8.6 Investing in change at the OECD

As is clear from Chapters 4 and 5, many of the problems on tax shifting result from outdated OECD rules exploited by Google and Amazon, in particular, to avoid tax in the UK.

The obvious way to address this issue is for the OECD to review its rules and update them to make them relevant to the Internet era. The good news is that the OECD has begun such a project, specifically looking at the issue of profit shifting; the bad news is that the project, which is funded by the UK, Germany and France, has been given a total of €450,000 to undertake this work.[[140]](#endnote-147) The UK contribution is just £120,000. This needs putting in context: at a time when the UK is spending £6.6 million to remove rats from South Georgia,[[141]](#endnote-148) which has a permanent population of 30[[142]](#endnote-149), it can apparently find just £120,000 to solve one of the biggest threats to our national income, costing billions of pounds a year. It seems that priorities may be skewed in HM Treasury, or is it that no one there has any desire for the OECD to come up with the necessary reforms?

What is certain is that if David Cameron is serious about achieving change in this area he needs to fund adequately the necessary work at the OECD. He also has to realise that funding the research will not be enough to achieve change on the ground. Even if a new rule on permanent establishments is created and adopted by the OECD, the existing double-tax agreements based on the old rule will remain. Although no one appears to know how many double-tax agreements there are,[[143]](#endnote-150) what we do know is that they are all based on the OECD standard in place at the time they were concluded and that updating to the latest version of the standards is not automatic.

In that case, while rewriting the OECD rules is vital, it is at least as important that consideration be given to how automatic mechanisms can be agreed to incorporate changes and updates into this vast and complex network of agreements. These were intended to prevent double taxation, but, because of the force of inertia, are increasingly used to facilitate double non-taxation. Unless a mechanism for general automatic updating is introduced this network of treaties will become increasingly discredited. The UK will have to lead the way on this issue if real change of the sort David Cameron is demanding is to happen.

<A head> 8.7 Changing the rules on corporate tax residence

The OECD has another issue to address: what make a company resident in a country. As is clear from Chapters 4 and 5, the current rules have been exploited by tax avoiders as much as those relating to permanent establishment.

The changes needed are in a number of areas. The first relates to general rules on corporate tax residence. The idea that this is determined primarily by where a board of directors of a company meets is absurd, especially when many companies now explicitly allow for electronic meetings of their board of directors to take place. No tax law should be based on evidence of behaviour from a past era, and yet this OECD-approved rule does just that.

The concept of corporate residence needs to be based not on the legal form of where control might be exercised from but on where that control actually resides. So, if a company has what is for all practical purposes and as shown by its organisational structures and management practice a head office in London, then the UK is where it should be considered resident irrespective of the tax haven to which some of its board fly once a month in an attempt to claim otherwise. The clear need is for a test that looks at what actually happens, and when the reality is that a board is based in London, works in London and has offices off the same corridor in London, for it then to be claimed that the decisions of the organisation are made in a tax haven is absurd, and the OECD and double-tax treaties should recognise that fact. Nor should the board alone be used as the basis for this test. It is all too easy to pack a board with people who will do what is asked of them to achieve a tax saving. The company’s entire organisational structure should be reviewed in determining corporate tax residence.

The second residence issue for the OECD to consider concerns subsidiary companies. The idea that a wholly owned subsidiary of a company managed by a board of directors which clearly does not control its actions because it could be voted out at any moment by the parent company is resident where that puppet board makes its decisions is another mockery within modern corporate taxation law. Where the subsidiary board meets may (or may not, and the substantive tests noted in the previous paragraphs should apply to subsidiaries as much as they do to parent companies) determine where that company is initially considered resident for tax purposes, but this should only be a first consideration. The time has come for the OECD to recognise the influence of a parent company on its subsidiaries and to suggest that every company within a group has a secondary residence, the place from which it is really controlled – the location of its parent company.

The concept of secondary residence does not exist at present, but if profit shifting is to be stopped, the country in which a corporation’s secondary residence is located must have three rights. The first is the right to receive information on the subsidiary’s activities as a matter of course. In other words, it should have the right to receive the accounts and tax returns of the subsidiary companies of all parent entities located within its jurisdiction. The second is the right to require the information on the subsidiary to be put on public record to the same standard as required for a company primarily resident in that country. This would mean all the accounts of all the subsidiary companies of all UK parent companies would have to be published by the UK’s company registry.

The third residence issue is the right to determine whether a subsidiary of a parent company resident in its territory is in fact primarily resident. If it considers this to be the case – based on behavioural evidence on management and the motivation for structuring the subsidiary as it exists – then after allowing for any source taxation paid in the company’s supposed place of primary residence, the country of secondary residence must be allowed to tax that subsidiary as a matter of right. If this were done, all the existing troublesome and complex rules on controlled foreign companies could be replaced with this simple and effective rule, which reflects the reality of what happens in multinational corporations in a way that existing rules never have.

In combination these rules would deal with the apparent absurdity of Amazon being able to say on its website, ‘Our Slough teams manage all corporate functions, including buying, marketing, software development, sales and legal,’ and yet at the same time claim that Amazon.co.uk is not UK resident. They would also create the changes necessary to prevent the use of tax arrangements (like those in the USA) that permit companies to locate profits in overseas subsidiaries.

<A head>8.8 Changing the OECD rules on permanent residence

As noted in Chapter 5, multinational corporations also exploit the rules relating to permanent establishments. As with corporate tax residence, the problem is that the regulations are prescriptive and open to manipulation by lawyers drafting contractual arrangements that comply with them (a point not in dispute) but fail every test of common sense. If there is no reform to these arrangements the day will soon come when most shops in Britain will sell items owned by offshore companies of the same group, with the profit on each sale being recorded outside the UK and the shop being paid just enough of a handling fee to ensure that the UK company breaks even, but does little more and so pays no tax here. Indeed, there is some evidence that one chain store might already work in this way.

This problem has to be addressed. When everything from the customer to the supplier, from management to dispatch and most of the things in between happens in the UK, with just minor elements being shifted outside the country for tax reasons, then the right to overrule the OECD’s rules on permanent establishment has to exist. Alternatively the OECD needs to revise its model tax agreement to allow for this and create the opportunity for that revision to be applied to all agreements now in force.

<A head>8.9 Changes to the arm’s-length pricing rule for allocating profits between states

As was discussed in Chapter 5, the OECD’s regulations for allocating profits between states based on what it calls the arm’s-length pricing rule not only do not work in practice, they cannot ever work in theory. At present they allow companies to shift profits almost with impunity and as a result avoid paying tax in the right place at the right time.

There is an alternative to arm’s-length transfer pricing called unitary taxation. As Professor Sol Picciotto explained in a Tax Justice Network briefing on this subject published in December 2012, unitary taxation directly addresses the problems inherent in the OECD’s transfer pricing rules.[[144]](#endnote-151) Unitary taxation does not allow a multinational corporation to be taxed as if it was a collection of separate entities in different jurisdictions, each national company trading as if it were independent, but instead treats the multinational as a single entity. Unitary taxation requires a multinational corporation to submit a single set of consolidated worldwide accounts in each country where it has a business presence. The data would have to include information based on country-by-country reporting. The global profit is then apportioned to the various jurisdictions in which the multinational corporation trades according to a weighted formula reflecting its genuine economic presence in each country. Each country involved can then tax its portion of the global profit at its own rate.

The most important reason for adopting unitary taxation is that its assumptions reflect the economic reality that multinational corporations are usually oligopolies based on distinctive or unique technologies or know-how. They exist to exploit these advantages on a large scale and in different locations, knowing that they cannot be attributed to a single location but to the whole global entity. Treating each affiliate as a separate entity for tax purposes, as the OECD currently seeks to do, is impractical and economically unrealistic. Unitary taxation overcomes this obstacle.

Unitary taxation would greatly reduce the opportunities for international tax avoidance through profit-shifting and the use of tax havens. The formula needed to allocate profit to countries would have to be agreed, but would likely be based on where the multinational’s customers are located (so for Google Ireland the profits would be taxed in the places to which its sales are made), where its employees are (Amazon’s 15,000 staff in the UK would mean most profit on the UK operation would be recorded in this country as they vastly exceed in number the 134 employed in Luxembourg) or where the company’s real physical assets are (so Starbucks’ hundreds of shops in the UK would hugely outweigh its small coffee buying unit in Switzerland). Under unitary taxation, a multinational corporation shifting its profits into a tax haven where there were no real third-party customers, almost no staff and the only physical asset was a filing cabinet, would be unable to obtain a significant reduction in its corporation tax bill, just as David Cameron would wish.

The result would be that there would be a considerably greater chance that companies would pay the right amount of tax (but no more) in the right place at the right time. Here ‘right’ means that the economic substance of the transactions undertaken coincides with the place and form in which they are reported for taxation purposes, which has to be the goal of any reform of corporation tax. There are other advantages too. By simplifying tax administration, unitary taxation would cut the costs of compliance for firms – which are enormous with the current arm’s-length rules, under which every transaction has to be documented to prove (supposedly) it is taking place at the right price – and would especially benefit developing countries because they would be allocated profits at present denied to them, particularly if the formula allowed for the exploitation of natural resources as use of physical assets.

It has been known since the 1930s that unitary taxation can control profit shifting better than the OECD’s preferred arm’s-length pricing model. Now is the time to adopt it.

<A head>8.10 An alternative minimum corporation tax

The main objections to unitary taxation – usually made by those who benefit from the status quo, which facilitates tax avoidance – are that it would take time to introduce and would require extensive international cooperation. Although the OECD is looking at the problem of profit shifting and could recommend the adoption of unitary taxation if it wished, it probably will not do so in the near future. Given this is the case and that the objections are widely heard, a measure to permit transition from the existing arm’s-length system of apportioning profits between states to a unitary taxation basis is needed. An alternative minimum corporation tax is a way of achieving this goal.

This concept of an alternative minimum tax is only really familiar in the USA where it is largely applied to individual incomes[[145]](#endnote-152) and so is very different from the proposal made here. What an alternative minimum tax seeks to do is ensure that if for any reason the rules of the tax system as enacted result in an outcome that means less than a minimum percentage of a person (or company’s) taxable income is paid in tax, then that minimum proportion is paid instead.

An alternative minimum tax could be applied to the profits of UK corporations with multinational associates and could work in a number of ways to tackle the current failings in the corporation tax system. For example, it could be used to determine the minimum proportion of the profits of a multinational corporation subject to tax in the UK. Using the principles of unitary taxation, this proportion could be based on sales to UK companies as a percentage of worldwide sales. The resulting proportion of the globally declared profits of the multinational would be attributed to the UK, with the alternative minimum tax rate being applied if what the corporation was proposing to pay was less. This would take out of the equation a great deal of what Sir Martin Sorrell has called the ‘question of judgement’[[146]](#endnote-153) in deciding the sum that multinational corporations should pay in tax.

Another approach would be to look at the total declared income from all sources of the UK operations of a multinational corporation and to ensure that a minimum rate of tax was due on them, whatever other rules might apply. This would prevent likely future avoidance when territorial taxation is in full operation, when large parts of the British profits of a UK company could be shifted outside the UK to a tax haven (using mechanisms similar to those in use at Google, Starbucks and Amazon) before being sent back to the UK in the form of tax-free dividends. An alternative minimum tax would include those dividends in the income base of the company and subject them to a minimum tax rate, so negating much of the benefit of the profit shifting.

Other variations on this theme are possible, but three important points can be made. First, the UK could adopt these measures unilaterally. Second, doing so would not breach its international obligations or EU law if they were applied to solely UK-based companies. Last, and perhaps most important, any alternative minimum tax rate must be lower than the notional tax rate at which companies are charged tax in the UK. If that notional tax rate was 21 per cent, as it will be for large companies from 2014 onwards, then the alternative minimum tax rate would have to be several percentage points lower. A rate of 15 or 16 per cent would seem appropriate to allow for the fact that having taken into consideration the allowances and reliefs available in tax law taxable profit in the UK can legitimately be lower than accounting profit, and an alternative minimum tax should not seek to change that. What needs to be stopped is the payment of tax becoming, as Sir Martin Sorrell implied, a matter of choice for multinational corporations. That will always be unacceptable and is at the heart of the current tax debate in the UK.

<A head>8.11 A general anti-avoidance principle

I have long argued that UK law needs a general anti-avoidance principle. I stress that what I propose is a principle and not a rule. There is good reason for this. A rule presupposes a legal interpretation of law while a principle is based on the idea that there should be an equitable construction. The difference between the two is that a legal interpretation is indifferent to the outcome of the analysis: whatever the precise wording decrees, applies. It is precisely because this has far too commonly applied in tax law that we have so much tax avoidance. The notion of equitable construction is neatly summarised by an Australian law of 1901 on legal interpretation, which states, ‘In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.’[[147]](#endnote-154)

In this context the idea behind a general anti-avoidance principle is simply expressed. If a step is added to a transaction with the sole or principal aim of securing a tax advantage (which would be defined as a saving in tax) then that step in the transaction is simply ignored for tax purposes. This would deal with premeditated attempts to subvert the intention of the tax system by simply saying they do not exist and charging tax as if they do not. It could be argued that the structures adopted by Google, Amazon and Starbucks are all arrangements entered into with the sole or principal aim of securing a tax advantage. If that were to be accepted and if the UK were to adopt a general anti-avoidance principle, I would argue that principle could be used to challenge those structures. Curiously, the OECD seems to agree. It says of its model double-tax agreement, ‘States do not have to grant the benefits of a double taxation convention where arrangements that constitute manipulation of the provisions of the convention have been entered into .’[[148]](#endnote-155)

It would seem that there is no conflict between a general anti-avoidance principle and the UK’s double-tax treaties, but I am aware that some disagree with that opinion. They argue that the structures discussed in Chapters 4 and 5 are compliant with the OECD’s rules implicit in the UK’s double-tax agreements and therefore beyond the reach of a general anti-avoidance principle. It is hard to see how they come to that conclusion. The intention of double-tax agreements is to produce outcomes that prevent double taxation; they were never intended to produce situations that resulted in non-taxation. A properly worded general anti-avoidance principle should be able to attack arrangements that achieve that result.

It is important in this context to note that European Union law (which is important here, since much tax avoidance flows through EU states) contains specific provisions that already allow member states to apply safeguards to avoid abusive tax planning.[[149]](#endnote-156) This is no doubt why, in December 2012, the European Union suggested that all member states adopt a general anti-avoidance principle into their tax law of the type I have proposed,[[150]](#endnote-157) justifying that recommendation by saying,

<display prose>

As tax-planning structures are ever more elaborate and national legislators are frequently left with insufficient time for reaction, specific anti-abuse measures often turn out to be inadequate for successfully catching up with novel aggressive tax planning structures. Such structures can be harmful to national tax revenues and to the functioning of the internal market. Therefore, it is appropriate to recommend the adoption by Member States of a common general anti-abuse rule, which should also avoid the complexity of many different ones.[[151]](#endnote-158)

<end>

While this refers to a ‘rule’ the wording implies a principle, which is consistent with the European approach to such laws.

Unfortunately the UK government has ignored this advice. Although a general anti-avoidance principle was presented to the House of Commons as a private member’s bill in September 2012 by Michael Meacher, for whom I drafted the legislation, the coalition chose to oppose the measure and so it will inevitably fail.[[152]](#endnote-159) The government has instead put forward what it calls a general anti-abuse rule. This is a much weaker proposal based on a report by Graham Aaranson QC published in 2011.[[153]](#endnote-160) In that report he wrote, ‘I have concluded that introducing a broad spectrum general anti-avoidance rule would not be beneficial for the UK tax system. This would carry a real risk of undermining the ability of business and individuals to carry out sensible and responsible tax planning. Such tax planning is an entirely appropriate response to the complexities of a tax system such as the UK’s.’[[154]](#endnote-161)

The government has taken this to heart, saying in its draft proposals that responsible tax planning has to be reasonable in all the circumstances, adding that when determining what this means (my emphasis added)

<display prose>

The legislation sets out that a court or tribunal may take into account any guidance, statements or other material that was in the public domain at the time the arrangements were entered into. Examples of matters that may be taken into account include: Hansard, Explanatory Notes, Written Ministerial Statements, academic literature, external practice, HMRC guidance *and evidence as to how particular arrangements are normally structured in the market place* (so as to compare or contrast such practice with the arrangement under consideration).[[155]](#endnote-162)

<end>

What is immediately apparent from this, however, is that if the avoidance being addressed is ‘normal’ (as the arrangements of Amazon, Starbucks and Google suggest it appears to be) then it will be considered reasonable under the terms of this rule, no matter how abusive it is. In consequence the government’s proposals will, very deliberately, only outlaw a very few highly artificial schemes and leave entirely out of its remit the tax avoidance of companies like Google, Starbucks and Amazon, completely failing to meet the expectations of the public as a result.

<A head>8.12 Reforming the UK’s tax havens

The UK’s tax havens have not, with the very notable exception of Bermuda, which is a British overseas territory and for which the UK is responsible, played a significant role in the Google, Amazon and Starbucks stories. This is because those stories primarily relate to the structures used to extract profit from the UK. Places like Ireland, the Netherlands, Luxembourg and Switzerland are the major players in that enterprise. The role of Bermuda, Cayman, the British Virgin Islands, Gibraltar, Jersey, Guernsey and the Isle of Man – for all of which (plus other tax havens) the UK is responsible – is often more difficult to pin down because with rare exceptions (Google being one) the use made of these locations by multinational corporations is shrouded in secrecy.

However, what no one should believe is that because it is hard to identify what happens in most of the UK’s highly secretive tax havens, nothing happens there. Very clearly it does, as Google proves. Its cash sits in Bermuda. Apple is currently reported to be sitting on more than $80 billion of cash outside the USA.[[156]](#endnote-163) The fact that its location is not known suggests it is likely to be Cayman or Bermuda. These companies use such locations legitimately, of course, but not all do. As the *New York Times* reported, as recently as 2008 HSBC had more than 50,000 accounts for clients in Cayman over which it exercised no real control and through which it now seems money laundering was rife. HSBC is paying close to $2 billion in fines as a result.[[157]](#endnote-164)

The UK’s tax havens say they don’t want business of the sort HSBC did in Cayman, and they may be telling the truth. But the fact is that all of them can be technically described as secrecy jurisdictions, a term I defined through my work with the Tax Justice Network and which has come into common use as a result. Secrecy jurisdictions are places that create regulations intentionally for the primary benefit and use of those not resident within their borders. Those regulations are designed to undermine the legislation or regulations of other jurisdictions. Secrecy jurisdictions also deliberate erect legally backed veils of secrecy to ensure that those making use of its regulations cannot be identified.

Those UK crown dependencies and overseas territories that are tax havens are a major problem if tax avoidance is to be tackled. It is simply not possible to tackle tax avoidance in the UK and expect nations like Ireland, the Netherlands, Luxembourg and Switzerland to cooperate, and yet allow the tax havens for which the British government is responsible to continue their activities. The UK cannot demand action on tax havens when it provides the same services through its notionally self-governing territories. If David Cameron is serious about tax avoidance he has to address the problems for which the UK is responsible. For a start the secrecy has to go: these jurisdictions must be required to enter into full and open tax-information exchange agreements on all income and assets located in these places, and all accounts of all companies and other entities incorporated there must be put on public record, as must full details of the beneficial ownership of those enterprises. Only then can the UK ask that other countries begin to join it in tackling tax avoidance. The Isle of Man has agreed to take a small step in the right direction on this issue; all the others are a long way behind.[[158]](#endnote-165)

<A head>8.13 International tax cooperation

One of the biggest problems that any tax authority faces when tackling tax avoidance is the indifference of other jurisdictions to its requests for assistance. Unsurprisingly the Netherlands, Ireland and Luxembourg do not go out of their way to help the UK collect tax. They have, after all, created tax systems deliberately designed to undermine the UK tax system. The EU recognises this needs to change, stating in December 2012 that increased cooperation between member states is a major objective for its future work in tackling tax fraud and evasion.[[159]](#endnote-166) It had a good record in this area when targeting the issue in the late 1990s under the framework of the EU Code of Conduct on Business Taxation.[[160]](#endnote-167) David Cameron should be using the UK’s membership of the EU to encourage that cooperation rather than threatening to leave and so undermine that work. In the same spirit the UK has to argue that where member states appear to offer opportunities for avoidance, as the Netherlands and Ireland clearly are by permitting the transfer of royalties to tax havens without questions being asked, then countries like the UK must have the right to withhold tax from payments such as royalties and interest going to such states. This is contrary to current EU rules, but when those same rules are manipulated by some member states to undermine the tax revenues of others, there has to be the right to take defensive measures or an effective market cannot be maintained.

<A head>8.14 Codes of conduct

Too many codes of conduct have come and gone with remarkably little impact on corporate behaviour. For example, in February 2012 it was widely reported that Barclays Bank had tried to avoid £500 million in UK tax despite only shortly beforehand signing the voluntary banking code of practice with the government that specifically barred such practices.[[161]](#endnote-168) Despite this the European Union believes codes of conduct have a role in taxation governance[[162]](#endnote-169) and so do I. Indeed, I wrote such a code a number of years ago.[[163]](#endnote-170) There was a twist to my proposal that few others have embraced. To secure the advantages of the code (essentially a lighter-touch inspection regime) any company signing up to it had to accept the risk of larger penalties if they were found to have breached its requirements. I continue to believe this is a basis for a genuine bargain between tax authorities and taxpayers and think more work is required in this area.

<A head>8.15 Better regulation of companies

Amazingly, in the tax year 2010–11, the latest for which data is available,[[164]](#endnote-171) just 922,289 companies paid corporation tax in the UK. During that same year there were, on average, 2,650,000 companies in the country.[[165]](#endnote-172) That means 34.8 per cent (at best) of British companies paid corporation tax in 2010–11. Some 324,000 of the companies that did not pay tax did not do so because they were struck off the Register of Companies and dissolved during that year.[[166]](#endnote-173) My research showed that in most cases this was because those companies had not filed documents demanded from them by Companies House, including their accounts .[[167]](#endnote-174) As a result those accounts were never seen by HM Revenue & Customs.

In this process of striking off or dissolving companies that have not filed accounts it is implicitly assumed that the non-provision of accounts means that a company has stopped trading. There is, however, no reason to think that this is actually true – it is simply assumed to be the case. But the result is an extraordinary aberration: the company might have legally ceased to exist and therefore have no further obligation to file accounts or tax returns, but unless it has a very observant bank there is no reason why being dissolved means it has to actually stop trading. Indeed, a struck-off company provides an almost perfect opportunity for trading in the shadow economy. There may be tens of thousands of companies trading in this way: we just don’t know and no one asks.

In addition, at least 374,000 companies filed dormant company accounts in 2010–11, implying they had undertaken no trading of any sort during the course of that year.[[168]](#endnote-175) Some of those companies were undoubtedly dormant, but HMRC takes very few steps to verify this, usually checking with such companies only once every five years. This laxness can be exploited. As Global Witness has reported, some UK companies that claim to be dormant actually have billions of dollars passing through their accounts with none of it being reported, which is required by law.[[169]](#endnote-176)

The simple fact is that UK companies are not just lightly regulated, they are for all practical purposes not regulated at all, and significant cuts in staffing at Companies House, which is tasked with what little regulation there is, has not helped.[[170]](#endnote-177) This is likely to be a major reason why so few companies pay corporation tax, which has effectively become a voluntary donations system. There is a simple way to tackle this. It would require a change of attitude by politicians on the issue of regulation and a belief by government that proper regulation is fundamental to creating a level playing field for honest businesses to operate on, where they cannot be undermined by those manipulating the system. That would necessitate more staff at Companies House and a shift of emphasis towards regulating businesses rather than processing the returns of those companies who choose to comply with the law.

A more fundamental reform is needed too. This was proposed in a House of Commons bill presented by Caroline Lucas in 2011.[[171]](#endnote-178) I assisted her with that bill. If enacted it would have required banks to report the opening and closing of all bank accounts for companies operating in the UK to HM Revenue & Customs and Companies House. This would inform HMRC which companies were likely to be trading, so focusing resources on the right targets. The banks would also have had to say who was really running the company, as indicated by their account opening procedures, and where those people were located, so that those shadowy registered office addresses which have allowed too many companies to hide from regulation could be eliminated from the regulatory system. HM Revenue & Customs could then demand tax returns from real people at real addresses for every company having a bank account, and no such company could be struck off until it had filed all its accounts and tax returns. Much of the data on who owes corporation tax in the UK could have been captured at a stroke.

The coalition did not support this bill, and so it failed. If David Cameron is serious about tax avoidance and tax evasion, regulation is one of the many issues on which he needs to change his mind. The reasons why the politics of this issue might demand that he does so are the subject of the final chapter of this book.

<chapter head>Chapter 9 Will change happen?

This book has addressed the issue of tax avoidance in the UK by a number of mainly US-owned companies. In doing so I have shown that underneath that concern there is a whole raft of problems that need to be addressed, most of which have yet to be appreciated by the politicians who run the UK. These are not just issues of administration. Nor are many of them technical matters that can be fixed with a quick change in the law. While real changes in law and administration would undoubtedly help address the problems (as I explained in Chapter 8), there is a deeper significance to this issue. The battle over corporate taxation is in microcosm the front line of the war between the state and the global corporation, but also the latest flashpoint in the clash of philosophies at the heart of neoliberal thinking, which has dominated the politics of the Anglo-Saxon world for the last thirty years.

Today corporations say that they do not think locally; they claim to occupy a world of global supply chains, integrated systems and increasingly cross-continental markets. They say that geography does not matter. However, the fact that they are so careful about where and how they locate their profits (as noted in Chapters 4 and 5) shows that these claims are disingenuous: the geography of tax matters very much to them. The myth that multinational corporations float free above the world, unconstrained by its limits is therefore just that. It’s an argument as baseless as their oft-stated threats to leave any country that seeks to tax them appropriately. In the UK, where this threat has been used many times, there are more than 60 million potential customers for their products and services. No company turns its back on an opportunity like that because it might have to pay tax on the resulting profit – it would be an irrational thing to do, and its shareholders would be livid.

But myths such as these, including the belief that the global elite can relocate wherever it wishes, have been the rationale for the UK’s current tax policies. For example, the only explanation for the introduction of territorial taxation is that both Labour and Conservative governments have believed that multinational corporations will leave if the UK were to tax those companies on their non-UK earnings. This is despite the fact that the UK taxes all its resident and domiciled people in exactly that way. What both governments should have realised was that the tax law being demanded was a blatant attempt to secure a privilege for multinational corporations not available to ordinary people. However, no doubt because the same thinking that resulted in the light-touch regulatory regime that contributed to the 2008 global crash prevailed with regard to tax, the UK government (and many others around the world) gave in to the demand for light-touch taxation.

Extraordinarily, until recently very few have protested about the resulting shift in income, power and wealth. Nor for some time did there seem to be much concern about the accumulation of that wealth by a new global elite of corporate managers, many of whose extraordinary remuneration packages appear to be boosted by the tax avoidance of the companies they control. So why has this tacit acceptance of corporate tax avoidance ended? What happened in 2012 to put this issue on the agenda in such a big way, when previous attempts to do so had not captured public imagination to the same extent?[[172]](#endnote-179)

Of course the crash of 2008 was a part of that process, but in 2009 the tax gap was not a major issue in the media, the *Guardian* apart.[[173]](#endnote-180) As I noted earlier, stories about Google’s tax published before 2011 did not attract the attention they got when published late in that year and since. So something happened, but it was not one event, rather progress towards a tipping point. The reality was that the issue had been bubbling under the surface for some time. Before the formation of the Tax Justice Network in March 2003 (of which I was a founder) there was, amazingly, no civil society movement in the world dedicated to the issue of tackling tax avoidance, tax evasion or the harm caused by tax havens. However, it’s fair to say that by 2011 many of the world’s major development NGOs had come to share the Tax Justice Network’s view that, after aid, trade and debt, tax was the fourth component in releasing the developing countries of the world from poverty. Collecting their fair share of tax from the world’s multinational corporations trading within their boundaries would be a huge step forward for these states.

Through the work of many NGOs around the world, organisations like Christian Aid,[[174]](#endnote-181) ActionAid[[175]](#endnote-182) and War on Want[[176]](#endnote-183) in the UK on these issues and Oxfam on the Robin Hood tax,[[177]](#endnote-184) an awareness grew that the world’s corporate tax system was not only not collecting the tax due in developed countries, but also causing actual harm in the developing world. Even the World Bank began to take notice, holding a conference on the issue in Washington DC in September 2009 at which I spoke. The perception had been created in a strong and committed constituency that change was needed.

The same was true in the trade union movement. The TUC first became involved with the 2008 publication of my report on the tax gap, *The Missing Billions*.[[178]](#endnote-185) It has maintained that commitment and has been powerfully supported by unions such as PCS, which represents the majority of staff at HMRC. PCS has devoted considerable energy to the tax gap campaign and the fact that if the issue were tackled, the levels of public sector cuts, tax increases and austerity measures that have been proposed would not be necessary.[[179]](#endnote-186) Work I have done for that union has become key to the tax gap debate.[[180]](#endnote-187)

The consequence was that when in 2010 UK Uncut began to operate there was in existence a range of material that suggested there was a real problem within the UK tax system that was systematically denying resources to the government. What that same material supplied was an agenda for action, some of which is reflected in Chapter 8. In other words, UK Uncut arrived on the political scene with a campaign ready for use, and use it they did, to great effect. The international Occupy movement, which reached London in October 2011, built on UK Uncut’s tax theme with that group’s active help and participation. When Occupy issued its first statement of objectives tax justice appeared high on the agenda.[[181]](#endnote-189) Subsequent demands reinforced the tax focus of much of what Occupy did.[[182]](#endnote-190) The Occupy protestors in the City of London were forced to move on in early 2012, but together with UK Uncut and the trade union movement they played a pivotal role in changing public perception of the tax issue during this period.

The result was that when George Osborne delivered his politically disastrous budget in March 2012, and realisation that austerity was not working began to spread, an alternative narrative was available to challenge the view he had promoted. This narrative suggested that some people or companies were avoiding tax, while those who had no choice about paying it were picking up the tab and/or suffering the consequences of cuts. At the same time the feeling that bankers and big business had got away with the recession almost unscathed while ordinary people were suffering became commonplace. Even George Osborne called tax avoidance ‘morally repugnant’ in his budget speech.[[183]](#endnote-191) The mood changed, and the demand for stories on tax avoidance increased.

It is impossible to imagine David Cameron making the comments noted at the start of Chapter 8 in January 2012. Cameron has now gone much further. Under pressure from the Liberal Democrats, a general anti-avoidance rule (of which I persuaded them of the merits before they unexpectedly found themselves in government[[184]](#endnote-192)) has been proposed, although as envisaged it comes nowhere near meeting public expectations. Pushed to counter Ed Miliband’s embrace of responsible capitalism and ‘one nation’ rhetoric, Cameron is also keen to show that inequality matters to him too. He has carefully deflected the issue away from the UK government and towards the G8 agenda for the time being,[[185]](#endnote-193) but the reality is that these pressures, combined with the highly effective Public Accounts Committee hearing in December 2012,[[186]](#endnote-194) mean the coalition needs to deliver. The notion that there is something profoundly wrong with our corporate tax system is now deeply embedded in public consciousness.

More than that, many are also questioning what large multinational corporations have done to deserve having their tax cut from 28 to 21 per cent between 2010 and 2014 when those same multinationals have so clearly failed to deliver growth in this country. And cutting corporation tax does not appear to have changed the attitude of companies towards tax avoidance, to which they appear as committed as ever – which David Cameron tacitly acknowledged in January 2013[[187]](#endnote-195). The idea that the multinationals might have taken this government for a ride will occur to many.

The issue will not go away, not least because it is clear that a great many of the actions listed in Chapter 8 could be taken by the UK in isolation. The argument that this is a matter on which Cameron would love to see action but his hands are tied by the G8 (even when he is chairing it) will not stand up. Pressure on David Cameron to reform corporate taxation is unlikely to fade because if there if there are lightning rods that reveal we are not ‘all in this together’, then corporation tax is clearly one of them. While it is unlikely that all the changes listed in Chapter 8 will happen in the near future, the momentum for change has been created, and will not disappear until the electorate thinks it enjoys tax justice. And since that seems unlikely to be any time soon this story will run, and run and run.

But then no one should be surprised about that. After all, as Benjamin Franklin said, in this world nothing can be said to be certain except death and taxes. For Cameron, failure to address this issue effectively may be fatal to his coalition government. What is sure is that as long as companies over here are under-taxed, the issue will survive.

<chapter head>The author

Richard Murphy is a UK chartered accountant. He was senior partner of a practising firm and director of a number of entrepreneurial companies before becoming one of the founders of the Tax Justice Network in 2002. He now directs Tax Research UK and writes, broadcasts and blogs extensively, the latter at [http://www.taxresearch.org.uk/Blog/](http://www.taxresearch.org.uk/Blog/" \t "_blank).

Richard created the country-by-country reporting concept and has been credited with creating much of the debate on tax gaps in the UK and Europe. He also defined the term secrecy jurisdiction, now widely used in debates on offshore.

Richard has been a visiting or research fellow at a number of UK universities and is joint author of *Tax Havens, The True Story of Globalisation*, Cornell University Press, 2010, and sole author of *The.Courageous State*, Searching Finance, 2011. He is now working on a new book entitled *The Joy of Tax*.

<chapter head>Notes

1. # Irish Subsidiary Lets Microsoft Slash Taxes in U.S. and Europe, Glenn Simpson, *Wall Street Journal*, 7 November 2005; http://online.wsj.com/article/SB113132761685289706.html

   [↑](#endnote-ref-1)
2. # For a full explanation see Palan, R., Murphy, R. and Chavagneux, C., *Tax Havens: How Globalization Really Works*, Cornell University Press, 2009

   [↑](#endnote-ref-2)
3. See <http://www.conservatives.com/News/News_stories/2008/11/Labour_have_maxed_out_Britains_credit_card.aspx> [↑](#endnote-ref-3)
4. See http://touchstoneblog.org.uk/2012/12/vanishing-growth-forecasts-in-one-chart/ [↑](#endnote-ref-4)
5. See <http://www.ft.com/cms/s/0/f7398a7e-3eee-11e2-a095-00144feabdc0.html> [↑](#endnote-ref-5)
6. http://www.bloomberg.com/news/2011-10-21/google-2-4-rate-shows-how-60-billion-u-s-revenue-lost-to-tax-loopholes.html [↑](#endnote-ref-6)
7. http://www.thisismoney.co.uk/money/markets/article-2129798/Big-internet-firms-paid-0-8pc-tax-UK-profits.html [↑](#endnote-ref-7)
8. http://www.taxresearch.org.uk/Blog/2012/12/09/microsofts-potential-tax-avoidance-a-more-realistic-estimate/ [↑](#endnote-ref-8)
9. <http://www.bbc.co.uk/news/business-20182105> [↑](#endnote-ref-9)
10. [http://www.theyworkforyou.com/debates/?id=2013-01-07a.77.0&s=speaker per cent3A10427#g130.0](http://www.theyworkforyou.com/debates/?id=2013-01-07a.77.0&s=speaker%3A10427#g130.0) [↑](#endnote-ref-10)
11. <http://www.hmrc.gov.uk/statistics/tax-gaps/mtg-2012.pdf> [↑](#endnote-ref-11)
12. <http://www.tuc.org.uk/touchstone/missingbillions/1missingbillions.pdf> [↑](#endnote-ref-12)
13. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 3 [↑](#endnote-ref-13)
14. http://ctj.org/ctjreports/2012/04/the\_us\_has\_a\_low\_corporate\_tax.php [↑](#endnote-ref-14)
15. Secrecy jurisdictions are defined as places that intentionally create regulation for the primary benefit and use of those not resident in their geographical domain. That regulation is designed to undermine the legislation or regulation of another jurisdiction. To facilitate its use secrecy jurisdictions also create a deliberate, legally backed veil of secrecy that ensures that those from outside the jurisdiction making use of its regulation cannot be identified to be doing so. [↑](#endnote-ref-15)
16. <http://en.wikipedia.org/wiki/List_of_countries_by_tax_rates> [↑](#endnote-ref-16)
17. http://www.levin.senate.gov/newsroom/speeches/speech/opening-statement-at-psi-hearing-offshore-profit-shifting-and-the-us-tax-code [↑](#endnote-ref-17)
18. http://www.bloomberg.com/news/2012-12-10/google-revenues-sheltered-in-no-tax-bermuda-soar-to-10-billion.html [↑](#endnote-ref-18)
19. http://www.telegraph.co.uk/technology/google/9739039/Googles-tax-avoidance-is-called-capitalism-says-chairman-Eric-Schmidt.html [↑](#endnote-ref-19)
20. Form 10-k filed Jan 26 2012, linked from here <http://investing.businessweek.com/research/stocks/financials/secfilings.asp?ticker=GOOG> [↑](#endnote-ref-20)
21. Ibid. [↑](#endnote-ref-21)
22. http://www.vanityfair.com/politics/2012/08/investigating-mitt-romney-offshore-accounts [↑](#endnote-ref-22)
23. http://www.nytimes.com/2009/06/05/business/05norris.html?\_r=2&scp=3&sq=tax&st=nyt& [↑](#endnote-ref-23)
24. <http://online.wsj.com/article/SB10001424127887324461604578189960633266322.html?mod=hp_opinion> [↑](#endnote-ref-24)
25. See <http://taxfoundation.org/article/united-kingdoms-move-territorial-taxation> [↑](#endnote-ref-25)
26. See, for example, <http://www.businessweek.com/articles/2012-02-26/should-we-abolish-the-corporate-income-tax> [↑](#endnote-ref-26)
27. <http://investing.businessweek.com/research/stocks/financials/drawFiling.asp?docKey=136-000119312512025336-3F2MFUSH8OHTCS260L899HOL81&docFormat=HTM&formType=10-K> [↑](#endnote-ref-27)
28. https://www.duedil.com/company/03977902/google-uk-limited/financials [↑](#endnote-ref-28)
29. Data from accounts filed with Companies House in the UK. [↑](#endnote-ref-29)
30. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> pages 39 and 40 [↑](#endnote-ref-30)
31. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page Ev38 [↑](#endnote-ref-31)
32. <http://www.hmrc.gov.uk/manuals/intmanual/INTM441050.htm> [↑](#endnote-ref-32)
33. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 40 [↑](#endnote-ref-33)
34. <http://www.telegraph.co.uk/technology/google/9739039/Googles-tax-avoidance-is-called-capitalism-says-chairman-Eric-Schmidt.html> [↑](#endnote-ref-34)
35. Ibid. [↑](#endnote-ref-35)
36. <http://www.amazon.co.uk/Locations-Careers/b?ie=UTF8&node=203040011> [↑](#endnote-ref-36)
37. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/writev/716/m03.htm> [↑](#endnote-ref-37)
38. Ibid. [↑](#endnote-ref-38)
39. <http://www.oecd.org/tax/taxtreaties/48836726.pdf> page 12 [↑](#endnote-ref-39)
40. http://www.guardian.co.uk/technology/2012/apr/04/amazon-british-operation-corporation-tax [↑](#endnote-ref-40)
41. <http://investing.businessweek.com/research/stocks/financials/drawFiling.asp?docKey=136-000119312512032846-65U07V1542N4RBOCDQ5E0EDGLK&docFormat=HTM&formType=10-K> [↑](#endnote-ref-41)
42. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 32 [↑](#endnote-ref-42)
43. <http://www.reuters.com/article/2012/10/15/us-britain-starbucks-tax-idUSBRE89E0EX20121015?feedType=RSS&feedName=everything&virtualBrandChannel=11563> [↑](#endnote-ref-43)
44. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 30 [↑](#endnote-ref-44)
45. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 23 [↑](#endnote-ref-45)
46. Ibid. [↑](#endnote-ref-46)
47. ### Netherlands: Independent Dutch Royalty Conduit Entities And Their Benefits For Multinational Enterprises;

    http://www.mondaq.com/x/175588/International+Tax/Independent+Dutch+Royalty+Conduit+Entities+And+Their+Benefits+For+Multinational+Enterprises [↑](#endnote-ref-47)
48. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 8 [↑](#endnote-ref-48)
49. Ibid. page 5 [↑](#endnote-ref-49)
50. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 28 [↑](#endnote-ref-50)
51. <https://www.duedil.com/company/02959325/starbucks-coffee-company-uk-limited/financials> [↑](#endnote-ref-51)
52. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 27 [↑](#endnote-ref-52)
53. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 8 [↑](#endnote-ref-53)
54. <http://www.reuters.com/article/2012/10/15/us-britain-starbucks-tax-idUSBRE89E0EX20121015?feedType=RSS&feedName=everything&virtualBrandChannel=11563> [↑](#endnote-ref-54)
55. <http://www.google.com/hostednews/afp/article/ALeqM5hgDgR507_1xL1O4ybpJeSl8t9-TQ?docId=CNG.a3d8f6f6aa4c9643bffb399a9520db3d.401> [↑](#endnote-ref-55)
56. <http://www.dutchnews.nl/news/archives/2009/05/holland_no_longer_a_us_tax_hav.php> [↑](#endnote-ref-56)
57. <http://www.oecdobserver.org/news/archivestory.php/aid/670/Transfer_pricing:_Keeping_it_at_arms_length.html> [↑](#endnote-ref-57)
58. For a full description of the issues involved and their history see Professor Sol Picciotto’s December 2012 article ‘Towards Unitary Taxation Of Transnational Corporations’ for the Tax Justice Network. <http://www.taxjustice.net/cms/upload/pdf/Towards_Unitary_Taxation_1-1.pdf> [↑](#endnote-ref-58)
59. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 8 [↑](#endnote-ref-59)
60. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 7 [↑](#endnote-ref-60)
61. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> EV23 [↑](#endnote-ref-61)
62. See ‘The Netherlands, a tax haven?’, Weyzig, F., Dijk van, M. and Murphy, R., *SOMO*, 2006 <http://somo.nl/publications-en/Publication_1397> [↑](#endnote-ref-62)
63. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> EV29 [↑](#endnote-ref-63)
64. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> EV24 [↑](#endnote-ref-64)
65. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> EV57 [↑](#endnote-ref-65)
66. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> page 9 [↑](#endnote-ref-66)
67. Ibid. [↑](#endnote-ref-67)
68. <http://investing.businessweek.com/research/stocks/financials/drawFiling.asp?docKey=136-000119312512032846-65U07V1542N4RBOCDQ5E0EDGLK&docFormat=HTM&formType=10-K> page 29 [↑](#endnote-ref-68)
69. Ibid. page 65 [↑](#endnote-ref-69)
70. Ibid. page 69 [↑](#endnote-ref-70)
71. <http://www.bloomberg.com/news/2010-10-21/google-2-4-rate-shows-how-60-billion-u-s-revenue-lost-to-tax-loopholes.html> [↑](#endnote-ref-71)
72. <http://www.ft.com/cms/s/0/72bbdbc6-58d9-11e2-99e6-00144feab49a.html#ixzz2HMiVawFy> [↑](#endnote-ref-72)
73. <http://www.reuters.com/article/2012/04/21/us-google-idUSBRE83K03020120421> [↑](#endnote-ref-73)
74. http://www.guardian.co.uk/business/2013/jan/24/david-cameron-tax-avoidance-trade-davos [↑](#endnote-ref-74)
75. <http://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/ucFBSC20130123Ev2.pdf> page 10 [↑](#endnote-ref-75)
76. http://www.telegraph.co.uk/news/politics/9829108/Starbucks-threatens-Cameron-after-unfair-tax-attacks.html [↑](#endnote-ref-76)
77. http://www.guardian.co.uk/business/2013/jan/27/starbucks-investment-threat-more-stores [↑](#endnote-ref-77)
78. See, for example, commentary at <http://www.accountancyage.com/debate/4/tax-avoidance-fair-or-foul> [↑](#endnote-ref-78)
79. http://uk.reuters.com/article/2012/10/15/us-britain-starbucks-tax-idUKBRE89E0EX20121015 [↑](#endnote-ref-79)
80. See <http://www.parliament.uk/documents/lords-committees/economic-affairs-finance-bill/ucFBSC20130123Ev2.pdf> [↑](#endnote-ref-80)
81. <http://uk.reuters.com/article/2012/12/06/uk-starbucks-idUKBRE8B518K20121206> [↑](#endnote-ref-81)
82. http://www.telegraph.co.uk/news/politics/9829108/Starbucks-threatens-Cameron-after-unfair-tax-attacks.html [↑](#endnote-ref-82)
83. http://www.ft.com/cms/s/0/ac97bb1e-3fa5-11e2-b0ce-00144feabdc0.html#axzz2JFxyQawB [↑](#endnote-ref-83)
84. http://www.guardian.co.uk/business/2013/jan/24/david-cameron-tax-avoidance-trade-davos [↑](#endnote-ref-84)
85. <http://www.accountancyage.com/aa/feature/1782228/profile-christopher-wales-browns-buddy-goldman-sachs> [↑](#endnote-ref-85)
86. <http://one-hundred-group.production.investis.com/> [↑](#endnote-ref-86)
87. <http://www.ft.com/cms/s/0/cac9ebe8-3d5c-11e2-b8b2-00144feabdc0.html#axzz2GcH5OgXA> [↑](#endnote-ref-87)
88. See *Briefing Note – Corporation Tax*, Evans, Anthony J., Institute of Directors and Taxpayers’ Alliance, 2011 <http://www.taxpayersalliance.com/corporationtax.pdf> [↑](#endnote-ref-88)
89. See Arulampalam, W., Devereux, M. and Giorgia, M., *The Direct Incidence Of Corporate Income Tax On Wages*, Oxford Centre for Business Taxation, August 2009, <http://www.sbs.ox.ac.uk/centres/tax/Documents/working_papers/WP0917.pdf> [↑](#endnote-ref-89)
90. This is a tale I recount in the opening chapters of my book *The Courageous State*, Searching Finance, 2010 [↑](#endnote-ref-90)
91. Ibid. [↑](#endnote-ref-91)
92. <http://www.economist.com/node/21548245> [↑](#endnote-ref-92)
93. ‘Where Have All The Wages Gone?’, Howard Reed and Jacob Mohun Himmelweit, TUC 2012, <http://www.tuc.org.uk/tucfiles/466.pdf> [↑](#endnote-ref-93)
94. *Corporate Tax Incidence: Review of General Equilibrium Estimates and Analysis*, Gravelle, Jennifer C., Congressional Budget Office , Washington DC <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/115xx/doc11519/05-2010-working_paper-corp_tax_incidence-review_of_gen_eq_estimates.pdf> [↑](#endnote-ref-94)
95. It is every accountant’s perennial nightmare to explain deferred tax, but in essence it is any corporation tax that *may* be due for any reason at some time more than twelve months in the future. Note the stress on *may* and that when is not known. To include this data in a survey on tax paid, as Devereux has done, is therefore completely misleading. Deferred tax is, by definition, not paid when included in the accounting charge of a company. [↑](#endnote-ref-95)
96. <http://www.ft.com/cms/s/0/9a2a41a0-5cb0-11e1-8f1f-00144feabdc0.html#ixzz2GiYciQrU> [↑](#endnote-ref-96)
97. <http://www.ifs.org.uk/mirrleesreview/pamphlet.pdf> [↑](#endnote-ref-97)
98. For example, the Taxpayers’ Alliance and the Institute of Directors; <http://www.taxpayersalliance.com/corporationtax.pdf> [↑](#endnote-ref-99)
99. <http://2020tax.org/2020summary.pdf> page 1 [↑](#endnote-ref-100)
100. <http://www.therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=6000> [↑](#endnote-ref-101)
101. <http://blogs.reuters.com/james-saft/2012/03/01/saft-on-wealth-the-wisdom-of-exercising-patience/> [↑](#endnote-ref-102)
102. People who are resident in but not domiciled in the UK have no long-term ties with this country. They are granted favourable tax status, meaning that subject to certain conditions they need only pay tax on their worldwide income they remit to the UK, unlike UK-domiciled individuals, who pay tax in the UK on their worldwide income whether or not they remit it to this country. [↑](#endnote-ref-105)
103. http://taxfoundation.org/article/united-kingdoms-move-territorial-taxation [↑](#endnote-ref-106)
104. HM Treasury, *2008 Pre-Budget Report*, page 10 <http://www.hm-treasury.gov.uk/d/pbr08_completereport_1721.pdf> [↑](#endnote-ref-109)
105. HM Treasury, *June 2010 Budget Report*, pages 25 and 26, <http://www.hm-treasury.gov.uk/d/junebudget_complete.pdf> [↑](#endnote-ref-110)
106. HM Treasury, *2011Budget Statement*, page 42 <http://cdn.hm-treasury.gov.uk/2011budget_complete.pdf> [↑](#endnote-ref-111)
107. See <http://www.actionaid.org.uk/102822/budget_changes_to_tax_haven_rules_could_cost_poor_countries_4_billion_pounds.html>. [↑](#endnote-ref-112)
108. <http://www.hm-treasury.gov.uk/d/corporate_tax_reform_part1a_roadmap.pdf> page 9 [↑](#endnote-ref-113)
109. <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/memo/taxpolicy/m46.htm> [↑](#endnote-ref-114)
110. <http://www.hmrc.gov.uk/statistics/ct-receipts/corporation-tax-statistics.pdf> page 23 [↑](#endnote-ref-115)
111. <http://www.telegraph.co.uk/news/politics/david-cameron/9779983/David-Cameron-Tax-avoiding-foreign-firms-like-Starbucks-and-Amazon-lack-moral-scruples.html> [↑](#endnote-ref-116)
112. <http://www.legislation.gov.uk/ukpga/2006/46/section/172> [↑](#endnote-ref-117)
113. <http://www.labour.org.uk/ed-miliband-on-responsible-capitalism,2012-01-19> [↑](#endnote-ref-118)
114. <http://www.hm-treasury.gov.uk/d/corporate_tax_reform_part1a_roadmap.pdf> [↑](#endnote-ref-119)
115. <http://www.ey.com/UK/en/Newsroom/News-releases/12-04-16---UK-economy-will-continue-to-stutter-until-UK-PLC-fuels-future-growth--says-ITEM-Club-forecast> [↑](#endnote-ref-120)
116. See for example <http://www.dailymail.co.uk/news/article-2208692/Small-firms-crippled-lending-drought-says-Bank-England-director.html>. [↑](#endnote-ref-121)
117. <http://www.guardian.co.uk/uk/2012/dec/05/corporation-tax-rate-cut-autumn-statement> [↑](#endnote-ref-122)
118. <http://www.hmrc.gov.uk/rates/corp.htm> [↑](#endnote-ref-123)
119. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> Page 5 [↑](#endnote-ref-124)
120. See <http://www.bloomberg.com/news/2010-10-21/google-2-4-rate-shows-how-60-billion-u-s-revenue-lost-to-tax-loopholes.html>. [↑](#endnote-ref-125)
121. *Pot of Gold or Fool’s Gold*, Richard Murphy for the ICTU, 2010; <http://www.taxresearch.org.uk/Documents/CorpoTaxlores.pdf> [↑](#endnote-ref-126)
122. <http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_025710> [↑](#endnote-ref-127)
123. <http://www.hmrc.gov.uk/about/annual-report-accounts-1112.pdf> page 30 [↑](#endnote-ref-128)
124. <http://www.hmrc.gov.uk/about/business-plan-2012.pdf> page 42 [↑](#endnote-ref-129)
125. <http://www.hmrc.gov.uk/governance/non-exec.htm#barlow> [↑](#endnote-ref-130)
126. See the work of Prof Prem Sikka in particular on this issue such as <http://visar.csustan.edu/aaba/PINSTRIPEMAFIA.pdf> [↑](#endnote-ref-132)
127. <http://www.channel4.com/info/press/news/hmrc-directors-connected-to-potential-tax-avoidance> [↑](#endnote-ref-133)
128. <http://www.hmrc.gov.uk/statistics/tax-gaps/mtg-2012.pdf> [↑](#endnote-ref-134)
129. <http://ftalphaville.ft.com/2012/10/18/1218731/counting-ghosts/> [↑](#endnote-ref-135)
130. <http://www.taxresearch.org.uk/Documents/PCSTaxGap.pdf> and <http://www.tackletaxhavens.com/Cost_of_Tax_Abuse_TJN_Research_23rd_Nov_2011.pdf> [↑](#endnote-ref-136)
131. <http://www.tuc.org.uk/economy/tuc-14238-f0.cfm> [↑](#endnote-ref-137)
132. <http://www.ft.com/cms/s/0/99ee21fa-a0c8-11e1-9fbd-00144feabdc0.html#axzz2GcH5OgXA> and <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmtreasy/124/12405.htm> [↑](#endnote-ref-138)
133. The first was in 2009 by international accountants Deloitte, reporting to HM Treasury; <http://webarchive.nationalarchives.gov.uk/+/http://www.hm-treasury.gov.uk/d/foot_review_deloitte.pdf> [↑](#endnote-ref-139)
134. <http://www.sbs.ox.ac.uk/centres/tax/Documents/reports/TaxGap_3_12_12.pdf> [↑](#endnote-ref-140)
135. For a short description of country-by-country reporting see <http://www.taxresearch.org.uk/Documents/CBC.pdf>. For a much fuller briefing see <http://www.taxresearch.org.uk/Documents/CBC2012.pdf> [↑](#endnote-ref-142)
136. <http://www.internationaltaxreview.com/Article/3125309/Margaret-Hodge-backs-country-by-country-reporting-and-a-UK-FATCA-to-end-tax-avoidance.html> [↑](#endnote-ref-143)
137. <http://www.publishwhatyoupay.org/about/stock-listings/cardin-lugar-amendment-dodd-frank-1504> [↑](#endnote-ref-144)
138. <http://economia.icaew.com/news/september2012/country-by-country-reporting-gets-go-ahead> [↑](#endnote-ref-145)
139. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0137+0+DOC+XML+V0//EN> [↑](#endnote-ref-146)
140. <http://www.telegraph.co.uk/finance/economics/9699818/Europe-campaign-against-companies-that-dodge-tax.html> [↑](#endnote-ref-147)
141. <http://www.bbc.co.uk/news/science-environment-13282806> [↑](#endnote-ref-148)
142. <http://en.wikipedia.org/wiki/South_Georgia_and_the_South_Sandwich_Islands> [↑](#endnote-ref-149)
143. UNCTAD has had a go at a database: [http://unctad.org/en/Pages/DIAE/International per cent20Investment per cent20Agreements per cent20(IIA)/Country-specific-Lists-of-DTTs.aspx](http://unctad.org/en/Pages/DIAE/International%20Investment%20Agreements%20(IIA)/Country-specific-Lists-of-DTTs.aspx). [↑](#endnote-ref-150)
144. <http://www.taxjustice.net/cms/upload/pdf/Towards_Unitary_Taxation_1-1.pdf> [↑](#endnote-ref-151)
145. <http://en.wikipedia.org/wiki/Alternative_Minimum_Tax> [↑](#endnote-ref-152)
146. http://www.guardian.co.uk/business/2013/jan/02/martin-sorrell-starbucks-tax-arrangements [↑](#endnote-ref-153)
147. Section 15 AA of the Acts Interpretation Act, 1901 downloaded 4 December 2006 from http://www.austlii.edu.au/au/legis/cth/consol\_act/aia1901230/s15aa.html [↑](#endnote-ref-154)
148. Quoted at page 11 here <http://www.hmrc.gov.uk/budget-updates/11dec12/gaar-guidancepart-a.pdf> [↑](#endnote-ref-155)
149. See <http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/com_2012_722_en.pdf> page 6. [↑](#endnote-ref-156)
150. <http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/c_2012_8806_en.pdf> [↑](#endnote-ref-157)
151. <http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/c_2012_8806_en.pdf> page 3 [↑](#endnote-ref-158)
152. <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120913/debtext/120913-0004.htm> [↑](#endnote-ref-159)
153. <http://www.hm-treasury.gov.uk/d/gaar_final_report_111111.pdf> [↑](#endnote-ref-160)
154. <http://www.hm-treasury.gov.uk/d/gaar_final_report_111111.pdf> page 3 [↑](#endnote-ref-161)
155. <http://www.hmrc.gov.uk/budget-updates/11dec12/gaar-guidancepart-b.pdf> page 3 [↑](#endnote-ref-162)
156. <http://www.huffingtonpost.com/2012/11/05/apple-income-taxes-paid-outside-us_n_2073238.html> [↑](#endnote-ref-163)
157. <http://dealbook.nytimes.com/2012/12/11/hsbc-to-pay-record-fine-to-settle-money-laundering-charges/> [↑](#endnote-ref-164)
158. <http://www.iomtoday.co.im/news/isle-of-man-news/chief-minister-s-statement-about-uk-fatca-1-5214933> [↑](#endnote-ref-165)
159. <http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/com_2012_722_en.pdf> page 3 [↑](#endnote-ref-166)
160. <http://ec.europa.eu/taxation_customs/resources/documents/coc_en.pdf> [↑](#endnote-ref-167)
161. For example, <http://www.thebureauinvestigates.com/2012/02/29/analysis-barclays-tax-avoidance-the-story-so-far/>. [↑](#endnote-ref-168)
162. <http://ec.europa.eu/taxation_customs/resources/documents/taxation/tax_fraud_evasion/com_2012_722_en.pdf> page 10 [↑](#endnote-ref-169)
163. <http://www.taxresearch.org.uk/Documents/TaxCodeofConductFinal.pdf> [↑](#endnote-ref-170)
164. <http://www.hmrc.gov.uk/statistics/ct-receipts/corporation-tax-statistics.pdf> page 44 [↑](#endnote-ref-171)
165. <http://www.companieshouse.gov.uk/about/pdf/companiesRegActivities2010_2011.pdf> page 6 [↑](#endnote-ref-172)
166. <http://www.companieshouse.gov.uk/about/pdf/companiesRegActivities2010_2011.pdf> page 22 [↑](#endnote-ref-173)
167. <http://www.taxresearch.org.uk/Documents/500000Final.pdf> [↑](#endnote-ref-174)
168. <http://www.companieshouse.gov.uk/about/pdf/companiesRegActivities2010_2011.pdf> page 37 [↑](#endnote-ref-175)
169. [http://www.globalwitness.org/sites/default/files/library/Grave per cent20Secrecy per cent20briefing per cent20document.pdf](http://www.globalwitness.org/sites/default/files/library/Grave%20Secrecy%20briefing%20document.pdf) [↑](#endnote-ref-176)
170. <http://www.bbc.co.uk/news/uk-wales-south-west-wales-12647065> [↑](#endnote-ref-177)
171. <http://services.parliament.uk/bills/2010-11/taxandfinancialtransparency.html> [↑](#endnote-ref-178)
172. For example, the *Guardian*’s Tax Gap series in 2009: <http://www.guardian.co.uk/business/series/tax-gap>. [↑](#endnote-ref-179)
173. Ibid. [↑](#endnote-ref-180)
174. <http://www.christianaid.org.uk/images/deathandtaxes.pdf> [↑](#endnote-ref-181)
175. <http://www.actionaid.org.uk/102912/feed.html> [↑](#endnote-ref-182)
176. <http://www.waronwant.org/campaigns/tax-not-cuts/extra/info/action/16474-tax-justice-not-tax-havens> [↑](#endnote-ref-183)
177. <http://www.oxfam.org.uk/get-involved/campaign-with-us/find-an-action/support-the-robin-hood-tax> [↑](#endnote-ref-184)
178. <http://www.tuc.org.uk/touchstone/missingbillions/1missingbillions.pdf> [↑](#endnote-ref-185)
179. <http://pcs.org.uk/en/campaigns/tax-justice/index.cfm> [↑](#endnote-ref-186)
180. For example, <http://pcs.org.uk/en/campaigns/tax-justice/why-are-they-increasing-the-tax-gap.cfm>. [↑](#endnote-ref-187)
181. <http://occupylsx.org/?page_id=575> [↑](#endnote-ref-189)
182. <http://occupylsx.org/?page_id=2843> [↑](#endnote-ref-190)
183. <http://www.hm-treasury.gov.uk/budget2012_statement.htm> [↑](#endnote-ref-191)
184. <http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf> page 30 [↑](#endnote-ref-192)
185. <http://www.bbc.co.uk/news/uk-politics-20886448> [↑](#endnote-ref-193)
186. <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/716.pdf> [↑](#endnote-ref-194)
187. http://www.telegraph.co.uk/news/politics/david-cameron/9779983/David-Cameron-Tax-avoiding-foreign-firms-like-Starbucks-and-Amazon-lack-moral-scruples.html [↑](#endnote-ref-195)