3: INSTITUTIONAL INTERESTS: REVERSING THE CORPORATE TAKEOVER OF TAX POLICY

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Changes in tax policy have tightened the grip of big business on tax affairs across Europe, giving undue influence to a tiny minority of tax payers. Reforms to HMRC and European institutions are needed to make tax policy better serve everyone's interests.

Tax avoidance has changed. At one time it was all about large companies making use of aggressive techniques, often involving tax havens, to reduce the amount of tax that they might pay. It was good business for those who sold tax avoidance services and most especially the bankers, lawyers and accountants engaged in this activity. Then along came the tax justice movement to spoil their show. Whether coincidentally or as a consequence, it seems likely that the large company UK corporation tax gap resulting from tax avoidance has reduced as a result. I no longer think it as high as my 2008 estimate of £12bn a year. Indeed, it may not now exceed £5bn a year.

That should be celebrated as good news. It shows that tax campaigning can work. Unfortunately, however, as one gap recedes another one is emerging into view. And it is not one that is just a consequence of sharp practice by clever corporates: it is an intended consequence of government policy. It means that I now think that the total UK large company corporate tax gap has increased even higher than it ever was, to £13bn a year. This is the consequence of the new 'corporation tax policy gap', which might be as high as £8bn a year.

This new tax gap represents the gain that large companies have made since 2008 as a result of the extensive changes in UK tax policy that they have secured. As example, the corporation tax rate for large (but not small) companies has reduced from 30 per cent to 20 per cent over that period. In addition, whilst UK multinational groups were once taxed, at least in theory, on their worldwide income, they are now only taxed in the UK on the income they have arising in this country. This is in direct contrast, for example, to the vast majority of individual UK citizens, who are still taxed on everything they earn (unless, that is, they're non-doms). This policy change has increased the appeal of tax havens to UK based multinational companies enormously. And numerous other changes, such as more generous reliefs for R&D and the tax treatment of offshore treasury functions have also greatly helped big business.

The result is that in 2015 the UK corporation tax yield (excluding North Sea revenues) will be £8bn less than forecast in 2010. Part of this may be down to growth not meeting expectations, but at least £4bn may be due to tax rate reduction, as forthcoming report for the TUC will demonstrate. Meanwhile, it is easy to allocate the rest of the shortfall to specific reliefs and allowances given based on Office for Budget Responsibility and Treasury forecasts at the time that they were introduced.

That then raises the question of how this has happened? Why is it that big business has received such an extraordinary deal since 2010 when no one else has? Could it be that this is down to HMRC governance and the way in which tax decision making is now undertaken in the UK?

When HMRC was formed in 2005, its governance arrangements were explicitly based on the interests of big business.

It was given a board that was required to have a significant number of non-executive directors, all of whom, including the chair, must be drawn from the big business community. There are about 700 companies that meet this brief in the UK at present. HMRC was, therefore, explicitly organised so that their views were not just represented, but heard loud and clear within its governance processes. The remaining 31 million direct taxpayers in the UK were, in contrast, denied a voice.

We have, as a result, reached the absurd situation where the current chair of HMRC is a former senior tax partner in KPMG, a firm whose US branch was fined $456 million for criminal tax abuse in the USA as recently as 2005. Also on the board is a former CEO of Npower, who happened to be director of that group's Maltese subsidiaries which used to route interest payments from the UK to Germany in a manner designed to save tens if not hundreds of millions of pounds in tax. Furthermore, over recent years people associated with PWC, Tesco and Barclays have also served. It would be hard to make up such an arrangement of poachers turned gamekeepers. Many of the large companies accused of tax avoidance in the UK, and those who advise them, now have extraordinary institutional influence over the UK's tax authority, whose prime task is *meant* to be challenging the arrangements those very same companies create.

This is not the only area where large businesses have been afforded undue influence in the tax law making process due to reforms that superficially appear to be about making it more accountable. The consultation processes now regularly undertaken with regard to proposed tax reforms and draft legislation are another area where a process that appears to have democratic intent has actually been captured by big business and its representatives. They can do this because only they can afford the time and effort, and sometimes only they have the spare specific expertise required, to engage in these consultation processes.

A similar story can be told of many of the committees at the OECD, where business representatives have dominated all consultation hearings on, for example, the Base Erosion and Profit Shifting project that is intended to tackle tax avoidance. This is because few others have the time and resources to send people to take part in this process.

The situation is slightly different in the EU, but the effect is the same, with many tax and accounting consultations also dominated by the voices of these companies and accounting firms. Accounting provides the best example here (partly because much of tax law is devolved to member states). In 2001 the European Commission encouraged the creation of EFRAG – the European Financial Reporting Advisory Group. Its task was to advise on the development of accounting standards, an issue that now has significant crossover with tax issues on such matters as country-by-country reporting. The advisory group is, however, made up entirely of accounting, banking and insurance groups: civil society is not represented at all.

The consequences of such selective consultation in the UK are clear. HMRC, as a non-ministerial UK department, has ended up with an unusual range of permanent secretaries. Some have been over-dominant, appearing to have been accepted as policy makers in the absence of ministerial guidance. Meanwhile, others appear to serve the interests of tax abusers, enabling tax evaders to use a tax saving disclosure scheme that they were previously excluded from using. The overall result is that massively undue influence has been given to a tiny minority of taxpayers in the whole tax setting process. That it is these taxpayers that have unduly benefitted, wittingly or unwittingly, as a result of enormous tax cuts that no other group in society has enjoyed is the almost inevitable outcome.

The question is, then, what can be done about this? I have four suggestions.

The first is to appoint a cabinet-level minister to be responsible for HMRC who would be answerable for it in both parliament and to other departments and agencies. This need not in any way breach taxpayer confidentiality, but is essential for accountability on such a key political issue. At present, as a non-ministerial department, HMRC frequently does not take part in inter-departmental discussions related to relevant policy making, which it has a clear interest in. We need to sweep away the historical anachronism of the current unaccountable situation that dates back to the ancient disputes between crown and parliament, and which should have been left behind in the civil war era.

Second, HMRC needs to be subject to more rigorous and independent review than has been provided by the National Audit Office. When that Office went to exceptional lengths to try to deny the supply of information to the Public Accounts Committee during the last parliament it proved itself unfit to be the agent of our elected representatives seeking to hold HMRC to account. What we need instead is an Office for Tax Responsibility, well-funded and well-staffed, accountable to either the Treasury or Public Accounts Committee (or maybe both, in joint session, rather like the joint defence committee arrangements). As Margaret Hodge has proved, it is for our politicians to hold HMRC to account, but they need the resources to do so and such an Office for Tax Responsibility could provide that. If it were also to review all tax policy proposals and associated forecasts independently of HMRC and the Treasury parliamentary debate on these issues would be vastly better informed.

Third, the tax consultations and committees that meet on a regular basis with HMRC and represent the views of taxpayers are important. However, it is for this reason that public funding should be supplied to ensure that those who have opinions that need to be heard can be truly engaged in these processes. Any group seeking to make representation should be able to bid for funding to cover the reasonable costs of making submissions to HMRC during a consultation process, such as hiring expert opinion and costs incurred in attending hearings. Only then will ordinary taxpayers, small businesses, pensioners, charities and others be truly represented in these processes.

And last, HMRC board appointments should be subject to a quota system so that it is ensured that a wide range of taxpayer interests are represented on that board. After all, management experience is not limited to big business and as HMRC has to engage with society in all its manifestations it is vital that its Board represents those various interests.

The same lessons need to be learned elsewhere. It is absurd that neither the OECD nor EU will fund representations from those stakeholders from whom they seek engagement (including those from developing countries in the case of the OECD), and instead demand that those wishing to make representations must be self-funded. The resulting processes are inevitably biased and unrepresentative as a consequence. Relatively modest sums expended on the reasonable costs incurred of those making representations could ensure that consultations were open and balanced.

Tax is too important to be left to very narrow interests, but that is what has happened in the UK and worldwide over the last few years. It is high time that this was changed, and now is the time to begin the process. These suggestions would take us a long way in the right direction.