



PRESS RELEASE
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Company directors have no duty to avoid tax, formal legal opinion states

London, Sept 8, 2013.

It is commonly asserted that UK company directors have a fiduciary duty to their shareholders to avoid tax. The Tax Justice Network has now obtained a firm legal opinion from prestigious law firm Farrer & Co that provides an unequivocal and authoritative answer to this question: **no such duty exists in English law.**

Tomorrow (Monday, Sept 9) we will send a copy of this legal opinion to the leaders of every FTSE 100 company.

There is a duty, say the lawyers, to promote the success of the company, but this should not be misunderstood as requiring blinkered attention solely to maximising distributable profits. **"It is not possible to construe a director's duty to promote the success of the company", say the lawyers, "as constituting a positive duty to avoid tax".**

The opinion goes on to explain that company directors have a wide discretion to act with a view to the social impact of their decisions, and if they chose to pay tax responsibly rather than structure around tax they would in fact be protected by the applicable law rather than at risk of liability.

Tax justice campaigners, academics, legal experts and many mainstream commentators already know this,¹ but a formal legal opinion is something more: it is authoritative and in this case unequivocal. There is no fiduciary duty to avoid tax.

¹ See, for example, [Directors have a duty beyond just enriching shareholders](#), John Kay, Financial Times, June 4, 2012.

As a formal legal opinion only its addressee can rely on it - but it does publicly display the absolute comfort that any UK company could obtain if it sought its lawyers' view on legal risk in this area.

Alan MacDougall, Managing Director of [PIRC](#), said:

This is a very helpful clarification of directors' duties and confirms PIRC's view that it is mistaken to argue that there is a legal obligation on directors to minimise the tax companies pay. Indeed in the current corporate environment aggressive tax avoidance has the potential to cause significant reputational brand damage, which could be detrimental to companies and their shareholders over the long-term.

We hope that directors, and their advisers, take careful note of this opinion. It is no longer acceptable for them to seek to justify tax avoidance through a misinterpretation of directors' duties.

John Christensen, Director of the Tax Justice Network, said:

"This opinion should make a real difference to company directors who are being told by their tax advisers that they have a duty to adopt anti-social tax measures.

"Legal risk in this area turns out to be a complete fiction, and company directors can stand firm and act according to their consciences rather than being swayed by what is effectively sales puff coming out of the tax avoidance industry".

Tax barrister David Quentin, who was involved in drafting the opinion, said:

"When companies talk about being under a duty to shareholders to mitigate tax, they are not telling the whole story. Board-level executives often benefit from performance-related reward packages which are indirectly affected by the amount of tax the company pays.

"Corporate tax avoidance is presented as a matter of high-minded 'fiduciary' duty, but it is probably better understood as being about personal reward."

Note: while this legal opinion only directly concerns the United Kingdom, it potentially has wide international relevance. In the United States, for instance, law professor Lynn Stout explains:

"The ideology of shareholder value maximization lacks any solid foundation in corporate law, corporate economics, or the empirical evidence. Contrary to what many believe, U.S. corporate law does not

impose any enforceable legal duty on corporate directors or executives of public corporations to maximize profits or share price.²

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² See [The Shareholder Value Myth](#), Lynn Stout, Harvard Law School Forum on Corporate Governance and Financial Regulation, June 26, 2012