

## Tax avoidance – Short intro – First draft

Scholars on corporate social responsibility only recently have devoted attention to corporate tax behaviours.

The interest in this topic has been raised by the large number of companies in the world that adopt *aggressive tax behaviours* – tax avoidance, tax inversions, tax mitigation, etc. In the face of this evidence, many scholars have wondered whether these behaviours can be considered ethical and have questioned the compatibility, in the same company, between tax aggressive behaviours and social responsibility.

In this regard, two opposing perspectives can be identified, based on two different views of company's objectives and payment of taxes.

1. Scholars who adhere to the first perspective believe that *it is legitimate for a company to try to lower the tax burden as much as possible*. They also believe that this behaviour is not contrary to the principles of corporate social responsibility.

This position responds to the so-called *shareholder view of the firm*. It argues that the purpose of the company, and therefore of its managers, is to maximize profits for its shareholders. *Taxes are simply considered a cost of doing business* and therefore trying to minimise the tax burden is considered acceptable and consistent with the duties of "good" managers and directors. In this context, the purpose of each company - together with its tax advisors - is to reach the "fair share" of taxation, that is using all legal means to minimize the tax base also by organizing the company's business in various countries in order to receive the maximum deductions offered in various jurisdictions. For multinational companies, this approach would also lead to consider lawful to choose to pay taxes in countries with the lowest tax rates.

From this point of view, the only limit to the freedom of action for those who are responsible for corporate governance is the respect of the law, because obviously behaviours and actions contrary to the law (e.g. tax evasion, etc.) cannot be admitted.

2. In the second group are scholars who consider *tax payments a fundamental example of sense of citizenship and responsible behaviour towards society*. Scholars in this group take an uncompromising position regarding the relationship between tax behaviour and social responsibility. They believe that avoiding taxes while considering themselves socially responsible represents a genuine form of hypocrisy, especially if companies publicly declare to follow socially responsible conduct in their periodic reports. Authors in this group believe that *companies that adopt aggressive tax practices cannot claim to be socially responsible*.

This perspective is consistent with the *stakeholder view of the firm*. According to it companies are not only responsible to shareholders,

but also to a wider audience of stakeholders in the jurisdiction where they operate and profits are generated. This means that companies should pay the due amount of taxes in order to contribute to the government's expenses for social services, like education, transportation, and so on.

From this point of view tax payments represents a clear measure of the direct financial contribution a company makes to the society where they live, and the payment of democratically agreed taxes represents a litmus test for claims of social responsibility.

Some scholars also argue that for a socially responsible company obeying the letter of the tax law is not always sufficient, while it is necessary to obey the spirit of the law. This distinction is necessary—even if very difficult to outline—as companies can apply a number of legal solutions to avoid to pay taxes, also thanks to the high complexity of tax law in many jurisdictions.

This fact gives raise to several problems. In fact it is often very difficult to distinguish between legal and illegal tax behaviours and it is not easy to identify tax avoidance practices. In many countries, for example, tax avoidance means putting into practice behaviours and actions, legal in themselves, but implemented with the only final aim of circumventing tax law in order to obtain undue benefits through the reduction in the tax burden. Therefore, in order to ascertain a tax avoidance practice, it is necessary to verify that transactions without economic substance have been implemented, with the only purpose of obtaining tax advantages. This is why very often these practices give rise to different and contradictory interpretations, which are often the subject of heated debates and discussions in courtrooms.

Even more difficult it is to establish the boundary between respecting the letter of the law and the spirit of the law, and decide whether a company's tax behaviour is consistent with a socially responsible approach to doing business.

Nevertheless many authors believe that respecting the spirit of the law it is an essential condition for a company to be called socially responsible.

Another problem is about the relationship between what companies write and claim in their social reports and how they actually behave in doing business.

Some years ago codes of conduct of a sample of companies based in tax heavens were analysed. This analysis revealed that many companies actually claimed to have behaviours inspired by CSR principles. According to the author of such research, the risk deriving from behaviours like this is to *make the CSR nothing more than window-dressing*. This risk is even increased by the behaviour of many companies that exploit CSR activities to their advantage, completely misrepresenting its basic principles.

In this regard some years ago a scholar revealed that many companies were active in earnings management practices and at the same time they were also very committed to managing their public image through CSR activities. The latter were mainly implemented in order to avoid being criticized by other stakeholders while maximizing shareholders' financial interests.

In conclusion, although the relationship between tax behaviours and corporate social responsibility has recently been the subject of several research and publications, some questions still remain open:

- Should socially responsible companies avoid tax aggressive behaviours?
- Can a company claim to be socially responsible if it adopts tax avoidance practices?
- Which is the role of corporate governance in tax avoidance decisions?
- Paying taxes is a duty or just a cost?
- What is the boundary between legality and ethics in tax behaviour?