Forthcoming British Tax Review 2016

Tax Avoidance: A Threat to Corporate Legitimacy? An Examination of Companies' Financial and CSR Reports.

Kevin Holland[*], **Sarah Lindop**[**] **and Fatimah Zainudin**[***]

Abstract

While there have been regular debates on corporate tax avoidance, a distinguishing feature of the current interest is the involvement of a wider audience which includes society in general. By analysing both tax related disclosures in company annual reports and corporate social responsibility reports the authors examine how managers of companies who have been subject to specific criticism of their alleged tax avoidance respond to such criticism. Using a legitimacy theory framework to identify four disclosure themes: explicit tax philosophy, implicit tax philosophy, tax conduct and tax contribution, companies' reports for the 11 year period 2004–2005 to 2014–2015 have been analysed. The authors have found what appears to be evidence of inconsistency on the part of managers in identifying appropriate responses which the authors attribute to uncertainty as to the status of tax avoidance. The uncertainty is apparent in variation over time both within companies and between companies and is reflected in the incidence of disclosures, their content, and in some cases the absence of a disclosure. This uncertainty is most probably part of a wider reluctance to respond directly to the criticism or to enter into debate and reflects societal ambiguity as regards the legitimacy of tax avoidance. The authors conclude that governments cannot rely on managerial attitudes or voluntary frameworks if they wish to change the behaviour of managers in relation both to tax avoidance or to tax more widely.

Introduction

The taxation of companies and in particular the taxation of corporate profits is currently subject to unprecedented scrutiny. While there has always been debate[1] traditionally it has been confined within the tax profession and business community. A distinguishing feature of the current interest is the involvement of a broader audience including, in particular, wider society.[2],[3] News items on taxation policy and the tax affairs of individual companies appear regularly across a wide spectrum of newspapers and other media.[4]

---

[*] Professor of Accounting and Taxation, Cardiff Business School, Cardiff University.
[**] Lecturer in Finance, School of Management and Business, Aberystwyth University.
[***] Lecturer in Financial Accounting, University of Southampton. The authors would like to thank the two anonymous reviewers for their helpful suggestions and observations.
Part of the research underlying this article was conducted while Holland held a Research Fellowship at the School of Taxation and Business Law, Australian School of Business, University of New South Wales, Australia.
The authors are grateful for the helpful comments from seminar participants at Bangor University, University of Southampton, University of Roehampton, Gregynog Accounting and Finance Colloquium, 17th Annual Financial Reporting and Business Communication Conference, British Accounting and Finance Association Annual Conference, and in particular Denise Baden, Carla Edgley, Mahmoud Ezzamel, Andrew Goddard, Lynn Hodgkinson, Lynne Oats, Doris Merkl-Davies, Mike Peel, Keith Robson, Nina Sharma, Teeven Soobaroyen and Nor Shaipah Abdul Wahab.
[1] M. Devereux, J. Freedman and J. Vella, *Review of DOTAS and the Tax Avoidance Landscape* (2012), available at: *http://eureka.sbs.ox.ac.uk/4428/* [Accessed 16 June 2016].
[2] S. Shaheen, "Unclear tax arrangements make life harder for banks" (2011–2012) 22 *International Tax Review* 12.
[3] V. Houlder, "UK public angered by tax avoidance and believes it is widespread", *Financial Times*, 22 February 2016.
[4] Press coverage was not confined to finance or business specialist press. For example *Women's Wear Daily* reported "The protest [by UK Uncut] is part of a wider action in the U.K. against companies and individuals

Electronic copy available at: http://ssrn.com/abstract=2811599

While a trend of increasing scrutiny predates the banking crisis of 2007–2008, arguably the crisis and the resulting fiscal and societal responses added impetus to demands for greater scrutiny. More recently national and intra-national regulatory and supervisory bodies have argued the need for increased disclosure surrounding companies' tax status. Two contrasting approaches are evident. The Base Erosion and Profit Shifting (BEPS) recommendations on increased disclosure envisage private disclosures between companies and specific tax administrations to assist tax authorities both in administering existing tax laws more efficiently and effectively and in responding in a more timely manner to developments.[5] In contrast, under proposals contained in the Finance Bill 2016 (FB 2016) HMRC[6] would require large companies to publish their UK tax strategy. Similarly, the Financial Reporting Council (FRC)[7] has recently called for increased tax disclosure in companies' annual reports. The FRC's concerns relate to shareholders' being able to assess companies' future tax liabilities and tax risks while in contrast the FB 2016 provisions are designed to change behaviour around "tax planning".

The extent to which public disclosure can change behaviour depends to a great extent on societal attitudes and managers' perceptions of societal attitudes. Although by definition tax avoidance constitutes a legal means of planning, various groups within society are challenging the social acceptability or legitimacy of tax avoidance. For example, in the UK recent criticism in the press[8] and direct action[9] against specific companies alleged to have avoided tax suggests changing attitudes within parts of society towards the "legitimacy" of tax avoidance. NGOs such as Christian Aid, Oxfam and Save the Children have criticised tax avoidance more broadly.

In this article the authors examine how managers of companies subject to specific criticism respond to such criticism by analysing tax related disclosures in the companies' annual reports (ARs) and corporate social responsibility reports (CSSRs). The reports for the 11 year period 2004–2005 to 2014–2015 are analysed using a legitimacy theory framework.[10] The attitudes of these managers to public criticism of tax avoidance together with whether or not there is a likelihood of there being any voluntary change in their behaviour is, arguably, revealed by the nature of their responses.[11] Further a willingness or otherwise on the part of these managers to enter into a dialogue may provide an indication of the usefulness of mandatory disclosure of companies' tax strategy under the FB 2016 proposals.[12]

In "combating" tax avoidance HMRC refers to its "relentless" pursuit of taxpayers, the resulting risk to taxpayers "of having their tax avoidance exposed to public scrutiny …"[13] and any

---

who are perceived to be tax dodgers". "Targeting Topshop", *Women's Wear Daily*, 6 December 2010, available at: *http://wwd.com/eye/fashion-scoops/fashion-scoops-search-function-3396026/* [Accessed 16 June 2016].

[5] OECD, *Base Erosion and Profit Shifting Project—Explanatory Statement—2015 Final Reports* (2015) (see in particular actions 12 and 13), available at: *http://www.oecd.org/ctp/beps-explanatory-statement-2015.pdf* [Accessed 16 June 2016]

[6] HMRC, *Tax Administration: Large Businesses Transparency Strategy* (2015), available at: *https://www.gov.uk/government/publications/tax-administration-large-businesses-transparency-strategy/tax-administration-large-businesses-transparency-strategy* [Accessed 16 June 2016].

[7] FRC, *FRC calls for transparent disclosure of tax risks in corporate reports* (2015), available at: *http://www.frc.org.uk/News-and-Events/FRC-Press/Press/2015/December/FRC-calls-for-transparent-disclosure-of-tax-risks.aspx* [Accessed 16 June 2016].

[8] *Guardian, The Tax Gap*, 2009, available at: *http://www.guardian.co.uk/business/series/tax-gap* [Accessed 16 June 2016].

[9] UK Uncut (2010), available at: *http://www.ukuncut.org.uk/* [Accessed 16 June 2016].

[10] J. Dowling and J. Pfeffer, "Organizational Legitimacy: Social Values and Organizational Behaviour" (1975) 18(1) *Pacific Sociological Review* 122.

[11] By reporting the authors' analysis at the individual firm level, as opposed to reporting only aggregate results for the sample, the potential to identify an industry level influence is not lost.

[12] See HMRC, above fn.6.

[13] HMRC, *Guidance from Anti-Avoidance Group. Risk assessing: factors which may indicate avoidance* (2012), available at:

Electronic copy available at: http://ssrn.com/abstract=2811599

concern "that your reputation and career will be damaged when it becomes known that you are a tax avoider".[14] Such efforts by HMRC and other tax administrations are only effective in changing corporate behaviour if managers perceive that public scrutiny would result in a loss of corporate legitimacy. The academic literature on societal attitudes to tax avoidance is limited and in the context of corporate social responsibility has generally been overlooked.[15],[16] However, the legitimacy of tax avoidance has been examined in the context of the rights and responsibilities of companies,[17],[18] although such examinations do not produce universally accepted conclusions. Similarly there is conflicting evidence on whether managers and stakeholders perceive there to be any reputational risks associated with tax avoidance.[19],[20],[21],[22],[23],[24],[25] While this lack of consensus may in part reflect cultural variation between the countries examined[26] documentary evidence illustrates variations in the attitudes of managers within a single country, specifically the UK. A stark example of contrasting responses is provided by Google and Starbucks following UK Parliamentary criticisms of their tax conduct.[27] Starbucks responded through a series of newspaper advertisements by announcing it would pay "a significant amount of tax during 2013 and 2014 regardless of whether the company is profitable during these years".[28] Meanwhile Google's Chairman Eric Schmidt was quoted as being

---

http://webarchive.nationalarchives.gov.uk/20140109143644/http://www.hmrc.gov.uk/avoidance/aag-risk-assessing.htm [Accessed 16 June 2016].

[14] HMRC, *Tempted by Tax Avoidance?* (2014), available at: *http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372502/Tempted_by_Tax_Avoidance.pdf* [Accessed 15 June, 2016].

[15] G.R. Dowling, "The Curious Case of Corporate Tax Avoidance: Is it Socially Irresponsible?" (2014) 124(1) *Journal of Business Ethics* 173.

[16] I. Hardeck and R. Hertl, "Consumer Reactions to Corporate Tax Strategies: Effects on Corporate Reputation and Purchasing Behavior" (2014) 123(2) *Journal of Business Ethics* 309.

[17] R.S. Avi-Yonah, *Corporate Social Responsibility and Strategic Tax Behavior* (2006), University of Michigan Legal Working Paper Series. Program in Law and Economics Archive: 2003–2009, Working Paper 65, available at: *http://law.bepress.com/umichlwps/olin/art65/* [Accessed 16 June 2016].

[18] J. Freedman, G. Loomer and J. Vella, "Corporate Tax Risk and Tax Avoidance: New Approaches" [2009] BTR 74.

[19] A.K. Davis, D.A. Guenther, L.K. Krull and B.M. Williams, *Taxes and Corporate Accountability Reporting: Is Paying Taxes Viewed as Socially Responsible?* (2013), Lundquist College of Business Working Paper, University of Oregon, available at: *https://scholar.google.com/citations?view_op=view_citation&hl=en&user=_N_HP_MAAAAJ&citation_for_view=_N_HP_MAAAAJ:Y0pCki6q_DkC* [Accessed 16 June 2016].

[20] S.D. Dyreng, M. Hanlon and E.L. Maydew, "The effects of executives on corporate tax avoidance" (2010) 85(4) *The Accounting Review* 1163.

[21] See Freedman, Loomer and Vella, above fn.18.

[22] J. Gallemore, E. Maydew and J. Thornock, "The reputational costs of tax avoidance" (2014) 31*Contemporary Accounting Research* 1103.

[23] J. Graham, M. Hanlon, T. Shevlin and N. Shroff, "Incentives for Tax Planning and Avoidance: Evidence from the Field" (2014) 89(3) *The Accounting Review* 991.

[24] M. Hanlon and J. Slemrod, "What does tax aggressiveness signal? Evidence from stock price reactions to news about tax shelter involvement" (2009) 93(1) *Journal of Public Economics* 126.

[25]R. Lanis, and G. Richardson, "Corporate social responsibility and tax aggressiveness: A test of legitimacy theory" (2013) 26(1) *Accounting, Auditing & Accountability Journal* 75.

[26] See Freedman, Loomer and Vella, above fn.18.

[27] PAC, *HM Revenue and Customs: Annual Report and Accounts—Public Accounts Committee. 1. Tax avoidance by multinational companies* (2012), available at: *http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/716/71605.htm* [Accessed 16 June 2016].

[28] Starbucks *An Open Letter from Kris Engskov* (2012), available at: *http://www.starbucks.co.uk/blog/an-open-letter-from-kris-engskov/1249* [Accessed 16 June 2016].

"proud" of the company's tax structure and summed up the company's attitude to tax avoidance as "It's called capitalism.".[29]

Legitimacy theory posits that an organisation's ability to operate as desired by its managers or, in the extreme, to continue in existence, is conditional on that organisation being perceived as legitimate by key evaluating actors.[30] Achieving legitimacy is necessary for an organisation to maintain its social licence to continue.[31] Organisational legitimacy is an important means by which stakeholders can attempt to exercise control over an organisation.[32] In the face of a challenge or a threat to an organisation's legitimacy, legitimacy theory posits that managers can avail themselves of a range of potential strategies when attempting to maintain legitimacy. These responses range from accepting the criticism as valid and agreeing to conform to expectations to challenging the validity of the criticism. Within these two positions, managers can attempt to defuse the criticism by bringing about a reassessment of their actions or a change in societal expectations as to what is appropriate behaviour.[33] These strategies involve managers disclosing information.[34] A further (non) response is to ignore the threat for fear of legitimising it. In deciding whether and how to respond managers reveal their attitudes to or perceptions of the legitimacy of tax avoidance. The authors use legitimacy theory to identify four disclosure themes linked to organisational legitimacy in the tax avoidance setting, namely "explicit tax philosophy", "implicit tax philosophy", "tax conduct" and "tax contribution" themed disclosures. The authors identify such themed disclosures and interpret their underlying strategy or motivation, that is, acceptance or rejection.

The authors' results can be summarised as follows. Consistent with a fear of legitimising the expressed concerns[35] managers generally appear wary of responding to criticism of tax avoidance. While the authors find a general increase in disclosures over the 11 year period examined, managers reveal an unwillingness to either engage in a debate by challenging the criticism or to confirm their acceptance. This increase in disclosures is consistent with the general observation that managers interpret criticism of tax avoidance as legitimacy threatening. However, behind this general observation there is wide variation both between companies and within companies over time. This suggests uncertainty among managers in identifying both the validity of the criticism and the appropriate legitimising strategy. These company specific responses suggest that responses to policy initiatives designed to reduce tax avoidance may not be universally successful. For example, increased tax related disclosures are by themselves unlikely to change tax decisions made by all managers. There is no universal acceptance of the status of tax avoidance either across companies or over time. Managers recognise the threat but their responses suggest they do not accept its validity or that it is persuasive in changing their explicitly stated tax behaviour.

The remainder of this article is organised as follows: section 2 discusses organisational legitimacy; section 3 provides a discussion of tax avoidance in the context of legitimacy theory; section 4 considers tax avoidance in the UK to provide context to the subsequent analysis; section 5 explains the research questions and research method; section 6 summarises the results; and section 7 discusses and concludes the article.

---

[29] "Google's tax avoidance is called 'capitalism', says chairman Eric Schmidt", *The Telegraph*, 12 December 2012, available at: *http://www.telegraph.co.uk/technology/google/9739039/Googles-tax-avoidance-is-called-capitalism-says-chairman-Eric-Schmidt.html* [Accessed 9 June 2016].

[30] Dowling and Pfeffer, above fn.10.

[31] C. Searcy and R. Buslovich, "Corporate Perspectives on the Development and Use of Sustainability Reports" (2014) 121(2) *Journal of Business Ethics* 149.

[32] T. Parsons, *The Social System* (London: Routledge and Kegan Paul, 1951).

[33] C.K. Lindblom, *The implications of organizational legitimacy for corporate social performance and disclosure*, Conference Proceedings, Critical Perspectives on Accounting Conference, New York, (1993). Reproduced in: R. Gray, L. Bebbington and S. Gray (eds), *Social and Environmental Accounting*, Sage Library in Accounting and Finance (London: Sage Publications, 2010).

[34] D.M. Merkl-Davies and N.M. Brennan, "Discretionary disclosure strategies in corporate narratives: incremental information or impression management?" (2007) 26 *Journal of Accounting Literature* 116, University of Florida. Fisher School of Accounting.

[35] W.L. Benoit, "Image repair discourse and crisis communications" (1997) 23(2) *Public Relations Review* 177.

Organisational legitimacy

Organisational legitimacy is an important means by which stakeholders can attempt to exercise control over an organisation.[36] An organisation's ability to operate, that is, a social licence,[37] as desired by its managers or, in the extreme, to continue in existence, is conditional on its ability to be perceived as legitimate by key evaluating actors.[38] Various definitions of organisational legitimacy exist[39] ranging across a number of dimensions, for example, the identity of the evaluating audience or the features of the organisation being evaluated.[40] The authors adopt Suchman's[41] broad definition of legitimacy to delineate the concept and then examine the specific dimensions or components of legitimacy that combine to provide an overall perception of legitimacy.

> "Legitimacy is a generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions."[42]

An important feature of the Suchman definition is the breadth of potential evaluating audiences which are accommodated.[43] In contrast when only a specialist aspect of an organisation's activities is under scrutiny, the resulting audience may reflect only a narrow "system of norms, values, beliefs, and definitions".[44] The importance of legitimacy to an organisation depends on its public visibility and the extent to which its survival is reliant on social and political support.[45] Organisations can attempt to manage legitimacy strategically in three settings: gaining legitimacy, maintaining legitimacy or defending/repairing legitimacy.[46],[47],[48]

The literature has identified specific legitimacy types; these are constructed around either the identity of the evaluating audience, for example, regulatory legitimacy or features of the organisation's activities.[49] Focusing on the latter, based on Aldrich and Fiol,[50] Suchman[51] and Scott[52] three broadly similar components of an organisation's legitimacy are developed. These comprise *pragmatic, moral and cognitive legitimacy* and are derived from the assessments of key stakeholders'

---

[36] See Parsons, above fn.32.

[37] Legitimacy theory is an appropriate basis upon which to examine the question in this article as at least one of the companies is aware of it. Vodafone plc in its *2013/14 Sustainability Report* states "Operating responsibly is essential to our licence to operate." Available at: *http://www.vodafone.com/content/dam/sustainability/2014/pdf/vodafone_full_report_2014.pdf* [Accessed 16 June 2016], 6.

[38] Dowling and Pfeffer, above fn.10.

[39] D.L. Deephouse and M. Suchman, "Legitimacy in organizational institutionalism" in R. Greenwood, C. Oliver, R. Suddaby and K. Sahlin-Andersson (eds), *The Sage Handbook of Organizational Institutionalism* (2008), 49, 77.

[40] A. Bitektine, "Toward a Theory of Social Judgments of Organizations: The Case of Legitimacy, Reputation, and Status" (2011) 36(1) *Academy of Management Review* 151.

[41] M. Suchman, "Managing legitimacy: Strategic and institutional approaches" (1995) 20(3) *Academy of Management Review* 571.

[42] Suchman, above fn.41, 574.

[43] See Deephouse and Suchman, above fn.39.

[44] R. Suddaby and R. Greenwood, "Rhetorical Strategies of Legitimacy" (2005) 50(1) *Administrative Science Quarterly* 35.

[45] Dowling and Pfeffer, above fn.10.

[46] B.E. Ashforth and B.W. Gibbs, "The Double-edge of Organizational Legitimation" (1990) 1(2) *Organization Science* 177.

[47] See Lindblom, above fn.33.

[48] See Suchman, above fn.41.

[49] See Bitektine, above fn.40.

[50] H.E. Aldrich and C.M. Fiol, "Fools Rush In? The Institutional Context of Industry Creation" (1994) 19(4) *Academy of Management Review* 645.

[51] See Suchman, above fn.41.

[52] W.R. Scott, *Institutions and organizations*, 2nd edn (Thousand Oaks, CA: Sage, 1995).

of the benefits that flow from an organisation.[53] Pragmatic and moral legitimacy can be differentiated with respect to the breadth of the diffusion of the benefit or the effects considered by the evaluating audience in its assessments.[54]

Pragmatic legitimacy is based on an evaluation of the benefits to an immediate audience from its direct exchanges with an organisation. Moral legitimacy takes a wider or sociotropic perspective of an organisation's effects on the evaluator's social group or society as a whole. It moves beyond considering the evaluator's self-interest. Suchman[55] identified four organisational features that can be used in evaluating an organisation's moral legitimacy. *Procedural* and *consequential* legitimacy rely on assessments of the social acceptance of an organisation's behaviour (means) and goals (ends). In contrast *structural* and *personal* legitimacy centre on the form within which the organisation operates. Structural characteristics can include organisational form, for example, presence or absence of specific functions. Personal legitimacy derives from the personal characteristics of individuals within the organisation.[56] An evaluation of pragmatic or moral legitimacy involves an explicit assessment whereas *cognitive* legitimacy is characterised by an absence of questioning, legitimacy is taken for granted.[57] The organisation is accepted as being proper and desirable.[58]

Against a backdrop of increasing public criticism of tax avoidance the authors examine managers' decisions in the context of defending/repairing legitimacy. The legitimacy of an organisation is threatened when an evaluating audience perceives a significant divergence or "gap" between its expectations and an organisation's performance.[59] In response managers must judge whether the evaluating audience has the ability to confer, or in effect threaten, its legitimacy.[60] Managers may decide to ignore a threat if they consider the evaluating audience not to be sufficiently influential and/or that responding could add credibility to the evaluating audience or to the nature of the threat.[61] Fear of "legitimising" a threat is particularly relevant within the tax avoidance setting as, arguably, criticism is emerging as a result of a gradual change in social attitudes and not in response to changes in organisational behaviour.[62] The potential divergence of views on tax avoidance within society adds a further complication in formulating an appropriate response.

Taxation related threats to legitimacy can differ qualitatively from other threats, for example, environmental. Under *International Accounting Standard 12 Income Taxes*[63] managers are required to make quantitative taxation based disclosures on a regular basis irrespective of a company's approach to tax avoidance. Taxation is a continuous (annual) source of potential threat inviting stakeholders to compare the occurrence of disclosures and content over time and between companies. In responding to a discrete threat or to a potential threat managers may be sensitive to the risk of setting a disclosure precedent even though the disclosure could produce an immediate benefit. This can occur even when the content of the disclosure is considered not to be contentious in the current context.

If managers decide to respond they can make either "substantive changes", "symbolic changes" or a combination of both.[64],[65],[66],[67] To conform to societal expectations managers can make

---

[53] See Aldrich and Fiol, above fn.50.
[54] See Bitektine, above fn.40.
[55] See Suchman, above fn.41.
[56] All four attributes may not be observable by a given evaluator. In the absence of an outcome measure an assessor can only rely on observable procedures and structures. See Suchman, above fn.41.
[57] See Deephouse and Suchman, above fn.39.
[58] See Suchman, above fn.41.
[59] Dowling and Pfeffer, above fn.10.
[60] D. Neu, H. Warsame and K. Pedwell, "Managing Public Impressions: Environmental Disclosures in Annual Reports" (1998) 23(3) *Accounting, Organizations and Society* 265.
[61] In response to tax protests Bill Dodwell, Head of Tax Policy at Deloitte, was quoted in *Tax Journal* as stating: "A strategy is needed, which could cover everything from choosing where to pay tax to a PR strategy (which could include simply saying nothing, of course) … ." in A. Goodall, "Tax protests: Companies 'need a strategy'", *Tax Journal*, 20 December 2010.
[62] See Dowling, above fn.15.
[63] *IAS 12—Income Taxe*s, issued in October 1996.
[64] Dowling and Pfeffer, above fn.10.

substantive changes in an organisation's behaviour or "goals, structures or process"; these are referred to as "Conforming" disclosures.[68] A hypothetical example of a conforming disclosure is a company announcing that "it does not avoid corporate taxes". In the disclosure the company is confirming its practices are congruent with those who hold that tax avoidance is an inappropriate or illegitimate activity. If managers consider that their current tax policies do meet societal expectations but that society is incorrectly interpreting their company policies the managers can make disclosures designed to cause a reassessment of current behaviour. The authors describe such disclosure as "influencing". A hypothetical example of an influencing disclosure is where a company states that it currently pays an "appropriate" amount of corporate income tax. By emphasising the consequences of its tax policy the company is attempting to influence societal assessments of its current behaviour. Alternatively, managers may consider that societal expectations are incorrect or inappropriate and respond by making disclosures which challenge, either explicitly or implicitly, societal expectations of what is an appropriate tax policy. These disclosures are termed "challenging"[69] and would to company tax policies which explicitly or implicitly challenges the view of tax avoidance being illegitimate. A hypothetical example would be a disclosure that the company's strategy is to maximise returns for shareholders without any further reference to the other stakeholders. While a company's behaviour remains unchanged under both influencing and challenging disclosures the aims of the disclosures are to induce substantive changes in societal assessments or societal expectations respectively.

Finally, managers may attempt to manipulate societal assessments by making disclosures which draw attention away from the contested practice without any associated change in behaviour. This third option involves identifying behaviour with popular perceptions of what is appropriate without an associated attempt to conform.[70] Such disclosures are described as "deflecting".[71] A hypothetical example of a deflecting disclosure would be a company disclosing that discussions have taken place with a tax based NGO without commenting on any resulting policy change.

To summarise, the four types of disclosure predicted by legitimacy theory are: "conforming"; "challenging"; "influencing" and "deflecting". Managers may of course decide, as discussed above, to ignore the legitimacy threat in which case no disclosure would result. The authors use these potential disclosure/non-disclosure strategies to analyse tax disclosures.

The legitimacy of tax avoidance

Attitudes to tax avoidance are varied and reflect in part different philosophical stances (R.S. Avi-Yonah (2006),[72] J. Freedman, G. Loomer and J. Vella (2009),[73] M. Gammie (2013),[74] J. Hasseldine and G. Morris (2013),[75] P. Sikka (2013),[76] M. Ylönen and M. Laine (2014)[77]). While proponents stress the benefits of tax avoidance, critics warn of its adverse consequences and others

---

[65] See Ashforth and Gibbs, above fn.46.
[66] See Lindblom, above fn.33.
[67] A number of responses to threats to legitimacy identified in the literature are inappropriate in this setting. For example, "disassociation" by attributing the action to an individual employee acting without authority or claiming the outcome was the result of an "inevitable accident".
[68] G. O'Donovan, "Environmental disclosures in the annual report: Extending the applicability and predictive power of legitimacy theory" (2002) 15(3) *Accounting, Auditing & Accountability Journal* 344.
[69] See O'Donovan, above fn.68.
[70] See Dowling and Pfeffer, above fn.10, see Ashforth and Gibbs, above fn.46 and see Lindblom, above fn.33.
[71] See O'Donovan, above fn.68.
[72] See Avi-Yonah, above fn.17.
[73] See Freedman, Loomer and Vella, above fn.18.
[74] M. Gammie, "Moral Taxation, Immoral Avoidance—What Role for the Law?" [2013] BTR 577.
[75] J. Hasseldine and G. Morris, "Corporate social responsibility and tax avoidance: A comment and reflection" (2013) 37(1) *Accounting Forum* 1.
[76] P. Sikka, "Smoke and mirrors: Corporate social responsibility and tax avoidance—a reply to Hasseldine and Morris" (2013) 37(1) *Accounting Forum* 15.
[77] M. Ylönen and M. Laine, "For logistical reasons only? A case study of tax planning and corporate social responsibility reporting" (2015) 33 *Critical Perspectives on Accounting* 5.

claim assessments of benefits and costs are irrelevant as managers have a fiduciary duty to avoid taxes.[78] Tax avoidance can be examined on legal and philosophical grounds though neither approach provides a commonly acceptable conclusion as to its morality. This ambiguity creates uncertainty for managers as to how to respond. Within a legal framework a distinction can be drawn between tax avoidance and tax evasion. However, this distinction may be too broad to assist managers in considering the legitimacy of tax avoidance. Arguing that tax avoidance activities are acceptable or justifiable because by definition they are legal ignores two factors. First, tax administrations are attempting to blur the distinction between avoidance and evasion with the use of terms such as *aggressive* avoidance[79],[80] and *unacceptable* avoidance.[81],[82] The latest HMRC Tax Gap estimate goes further and redefines tax avoidance as "… bending the rules of the tax system to gain a tax advantage that Parliament never intended".[83] Outside of tax administrations it is also recognised that certain practices, while complying with the law, are undesirable from a policy perspective and warrant corrective action.[84] Secondly, the legitimacy of a tax avoidance practice may depend on its legal success. A failed attempt at tax avoidance or "ineffective avoidance"[85] may result because it was deemed ineffective on the grounds of being contrived.[86] Hence unsuccessful attempts at tax avoidance may suggest excessive zeal on the part of the company thereby inviting criticism. The "traditional" distinction between tax avoidance and tax evasion may not therefore represent the perspective of all evaluating audiences.

Alternatively, tax avoidance can be examined from a philosophical perspective by examining the rights and responsibilities of companies.[87],[88] The determination of corporate rights and responsibilities follows on from how companies are viewed.[89] If companies are seen as owing their existence to the state, that is, the "artificial entity" view, taxation can be interpreted as a reciprocal payment for the benefits of incorporation conferred by the state. Consequently, companies have a moral obligation to pay an "appropriate" amount of taxation as judged by society.[90] In contrast, the "real entity" view posits that companies have a personality or existence distinct from both the state and their owners. Consequently companies are in the same position as individual tax payers with the same obligation to pay the legally required amount of taxation.[91] In determining what the legally required amount to pay is, companies can choose either to interpret tax law *literally* or by reference to the *intention* of parliament. Finally, under the "aggregate" or "nexus of contacts" view of companies, a company is viewed as being under the control of its shareholders and, according to neo-classical economic theory, should be guided by profit maximisation in all of its decisions including those

---

[78] For example, the then Chief Executive of Barclays, John Varley, stated in response to questioning by the House of Lords Banking Supervision and Regulation—Economic Affairs Committee, "It is our fiduciary obligation to our shareholders and it is the fiduciary obligation of a lot of our clients to their shareholders to manage their tax in an efficient way." (*Banking supervision and regulation*, House of Lords (2009), available at: *http://www.publications.parliament.uk/pa/ld200809/ldselect/ldeconaf/101/9031706.htm* [Accessed 16 June 2016].

[79] HMRC's Anti-Avoidance Group (AAG) refers to "a list of common features of transactions or arrangements … which have been identified as unacceptable in the past", above fn.13.

[80] See HMRC (2012), above fn.13.

[81] OECD, *Study into the Role of Tax Intermediaries* (2008), available at: *http://www.oecd.org/dataoecd/28/34/39882938.pdf* [Accessed 16 June 2016].

[82] S. Bond, M. Gammie and J. Whiting, "10. Tax Avoidance" in R. Chote, C. Emmerson, R. Harrison and D. Miles (eds), *IFS Green Budget: January 2006*, available at: *http://www.ifs.org.uk/publications/3552* [Accessed 16 June 2016].

[83] See HMRC (2014), above fn.14.

[84] See Devereux, Freedman and Vella, above fn.1.

[85] See Devereux, Freedman and Vella, above fn.1.

[86] See Bond, Gammie and Whiting, above fn.82.

[87] See Avi-Yonah, above fn.17.

[88] See Freedman, Loomer and Vella, above fn.18.

[89] See Avi-Yonah, above fn.17.

[90] See Avi-Yonah, above fn.17.

[91] See Avi-Yonah, above fn.17.

concerning tax.[92] By implication the company owes no duty to pay any more tax than is legally required.

Empirical studies on attitudes to tax avoidance fail to provide a consensus on how tax avoidance is viewed in terms of its legitimacy. Lanis and Richardson[93] found that managers of companies who had been publicly linked to tax avoidance perceived it as a threat to their companies' legitimacy. In contrast both Freedman, Loomer and Vella[94] and Graham, Hanlon and Shevlin,[95] in interviews of managers of UK- and US-based companies respectively, reported variation among managers as regards whether they perceived tax avoidance as carrying significant corporate reputational risk. Taking into account a broader range of groups, Davis, Guenther, Krull and Williams[96] concluded "that managers and other stakeholders of [US] firms for which CA [corporate accountability] reporting is important do not view the payment of corporate taxes as socially responsible". Gallemore, Maydew and Thornock,[97] in a study of US firms publicly identified as participants in tax shelters, examined a wide range of potential indicators of reputational costs, for example, CEO and CFO turnover, auditor turnover, lost sales, increased advertising costs and decreased media reputation. They concluded, "We find no consistent evidence that firms or their top executives bear significant reputational costs as a result of being accused of engaging in tax shelter activities." In contrast, Hanlon and Slemrod[98] found reductions in share prices for a sample of US firms linked publicly to participation in "tax sheltering" activity. The reductions varied by industry in line with the companies' salience amongst final consumers. Differences in attitudes between managers in different countries may reflect variations in cultural norms. For example, to the extent that national legal systems reflect cultural norms, Australia, the US and the UK differ significantly with respect to legislative responses to avoidance and in particular the introduction of a general anti-avoidance rule (GAAR).[99]

Corporate tax avoidance in UK context

Societal attitudes to tax avoidance have changed significantly in recent years[100],[101]). Morrell and Tuck[102] describe the period 2001–2007 as pivotal in the governance of corporate taxation in the UK with two important policy documents published by HMRC, *Tax in the Boardroom Agenda* (HMRC, 2006a)[103] and *Working with Large Business* (HMRC, 2006b).[104] These reflect a change in HMRC's attitudes to corporate tax avoidance and consequential administrative responses. In parallel,

[92] See Avi-Yonah, above fn.17.
[93] See Lanis and Richardson, above fn.25.
[94] See Freedman, Loomer and Vella, above fn.18.
[95] See Graham, Hanlon and Shevlin, above fn.23.
[96] See Davis, Guenther, Krull and Williams, above fn.19.
[97] See Gallemore, Maydew and Thornock (2014), above fn.22.
[98] See Hanlon and Slemrod, above fn.24.
[99] Australia introduced such a provision (s.260) in 1936 which was subsequently strengthened in 1981 to overcome the "inefficient" and "ineffective" earlier provision: L. Xynas, "Tax Planning, Avoidance and Evasion in Australia 1970-2010: The Regulatory Responses and Taxpayer Compliance" (2011) 20(1) *Revenue Law Journal* Article 2, available at: *http://epublications.bond.edu.au/rlj/vol20/iss1/2* [Accessed 16 June 2016]. The US introduced provisions akin to a general anti-avoidance measure in 2010 with the UK following in 2013 (HMRC, *The General Anti-Abuse Rule* (2013), available at: *http://www.hmrc.gov.uk/avoidance/gaar.htm* [Accessed 16 June 2016]).
[100] V. Houlder, "The tax avoidance story as a morality tale", *Financial Times*, 22 November 2004.
[101] R. Crowe, "Tax avoidance is rising up the ethical agenda", *Financial Times*, 29 November 2004.
[102] K. Morrell and P. Tuck, "Governance, Tax and Folk Tales" (2014) 39(2) *Accounting, Organizations and Society* 134.
[103] HMRC (2006a), *Partnership Enhancement Programme—Tax on the Boardroom Agenda* (London: HMRC, 2006).
[104] HMRC (2006b), *Working with Large Business: Providing High Quality Service—Improving Tax Compliance* (London: HMRC, 2006).

tax advisers perceived a hardening in HMRC's attitude in dealing with companies.[105] Freedman[106] observed that press coverage of corporate taxation supported the perception of a "culture of tax avoidance"—a perception that persists.[107]

Subsequently, and possibly in response to the ramifications of the *Global Financial Crisis,* societal attention turned to the tax behaviour of individual companies. During February 2009 under the heading *Tax Gap* the *Guardian* newspaper published a series of articles examining what it described as tax avoidance.[108] The nature of the specific criticisms against named companies in the articles varied: suggestion of participation in a particular tax avoiding transaction (Barclays plc, Diageo plc, Lloyds Banking Group plc (Lloyds plc) and Tesco plc[109]), not publishing a full list of subsidiaries (HSBC plc), acting as a "co-operating" bank in relation to another company's transaction (Royal Bank of Scotland plc (RBS plc)) and using "legal challenges" to "pay less tax" (Vodafone plc).

In March 2009 the Chancellor of the Exchequer announced that HMRC would publish a "Code of Practice on Taxation for Banks" (The Code). The Government justified its focus on the banking sector by claiming it had been more aggressive than other sectors in promoting tax avoidance. At a time when the sector had received more Government help than other industries, the public expected a "high degree of responsibility".[110]

On 20 October 2010 the Chancellor of the Exchequer announced reductions in public spending described as "dramatic austerity measures".[111] Almost immediately a new pressure group, UK Uncut, was formed and on 27 October 2010 undertook its first direct action.[112] Approximately 70 protestors occupied a Vodafone shop in Oxford Street, London. The first press coverage of the occupation was on 30 October 2010[113] with subsequent coverage by the *Guardian* on 5 November 2010. UK Uncut then expanded the number of companies or "targets" for "direct action" to 11 including seven UK quoted companies.[114] These seven companies had also been included in the earlier Guardian Tax Gap series. UK Uncut criticised four of the quoted companies for their involvement in what it described as tax avoidance activities (Diageo plc, HSBC plc, Tesco plc and

---

[105] L. Hickey, *If the trust gap widens, can the tax gap be narrowed?*, *ICAEW Tax Faculty Hardman Memorial Lecture* (17 November 2005).

[106] J. Freedman, "The Tax Avoidance Culture: Who is Responsible? Governmental Influences and Corporate Social Responsibility" in J. Holder and C. O'Cinneide (eds), *Current Legal Problems* (Oxford: OUP, 2007).

[107] See Houlder, above fn.3.

[108] See *Guardian*, above fn.8.

[109] In 2008 Tesco plc successfully sued the *Guardian* for libel. The newspaper had incorrectly stated that Tesco had engaged in a scheme to avoid corporation tax (*Tesco Stores Ltd v Guardian News & Media Ltd* [2009] EMLR 5 HC (QB)).

[110] HMRC, *Code of Practice on Taxation for Banks* (2013), available at: *http://www.hmrc.gov.uk/thelibrary/code-practice-tax-banks.pdf* [Accessed 16 June 2016]. By 30 November 2010 HM Treasury announced that all top 15 UK banks had adopted the Code (HM Treasury, *Top 15 banks sign Code of Practice* (2010), available at: *http://www.hm-treasury.gov.uk/press_66_10.htm* [Accessed 16 June 2016]). Under the Code the Government expects "banking groups, their subsidiaries, and their branches operating in the UK, will comply with the spirit, as well as the letter, of tax law, discerning and following the intentions of Parliament". As part of an accord, "Project Merlin", between the UK Government and "the major UK banks", specifically "Barclays, HSBC, LBG and RBS, and, in the context of lending, Santander", the banks committed to abide by the Code. *Project Merlin—Banks' statement*, which can be downloaded from: HM Treasury, *Government welcomes banks' statements on lending 15% more to SMEs, and on pay and support for regional growth* (2011), available at *http://www.hm-treasury.gov.uk/d/bank_agreement_090211.pdf* [Accessed 16 June 2016].

[111] D. Pimlott and C. Giles in London and R. Harding in Washington, "UK unveils dramatic austerity measures", *Financial Times*, 20 October 2010.

[112] According to its website UK Uncut was formed in October 2010. See UK Uncut, above fn.9.

[113] *BBC*, "Vodafone shops blockaded in tax protest" (2010), available at: *http://www.bbc.co.uk/news/business-11658950* [Accessed 16 June 2016].

[114] See UK Uncut, above fn.9.

Vodafone plc) and three other quoted companies (Barclays plc, Lloyds plc and RBS plc) were criticised for their apparent "bonus culture". While neither the *Guardian* nor UK Uncut questioned the legality of the companies' tax policies both linked the policies to a resulting failure to pay what was described as a "fair share of tax". The criticism was levied at what was considered to be the "morality" of the companies' tax policies. Although the concept of a "fair share" is impossible to determine by law the wider effect of the criticism was to establish the concept as credible amongst a wide public.

UK Uncut's actions in occupying and picketing the companies' business premises received extensive media coverage. In the three month period following UK Uncut's inception, *Nexis* reports 182 newspaper articles referring to UK Uncut in mainstream UK newspapers with further coverage in specialist press.[115] By taking publicly observable direct action UK Uncut ensured its concerns reached a broader audience. In contrast to earlier criticism of corporate tax avoidance by the *Guardian* newspaper, UK Uncut's actions represented a more significant threat because of its wider coverage among companies' stakeholders including customers. A "senior executive" of a UK quoted company stated:

> "This is the most difficult communications issue I have ever faced. Tax is a very complex issue but these protesters [UK Uncut] – egged on by some parts of the media – are reducing it all to a few black and white slogans using information which in some cases is entirely wrong."[116]

Similarly, in assessing UK Uncut's actions against the banks Shaheen,[117] writing in the journal *International Tax Review*, concluded:

> "But for the first time it is not just the hands of the tax authorities that banks have to contend with, but the eyes of the public for whom tax avoidance, evasion and planning have suddenly become dirty words."[118]

Clearly within the UK attitudes to corporate tax avoidance were forming and changing during the 2000s. Managers of companies specifically criticised together with those of other companies were faced with an emerging threat to corporate legitimacy. Without a consensus as to whether tax avoidance represents a "reprehensible act"[119] managers lacked guidance and experience as regards the selection of an appropriate response or non-response.

Research propositions and method

The authors examine tax related disclosures in (Financial) ARs and CSRRs made by the seven quoted companies that featured in both the *Guardian* series and UK Uncut's direct action. The companies are: Diageo plc, HSBC plc, Tesco plc, Vodafone plc, Barclays plc, Lloyds Bank plc and RBS plc.

Propositions

The forgoing discussion highlights changes in societal attitudes and a lack of unambiguous guidance on the legitimacy of tax avoidance from both legal and philosophical reasoning and HMRC administrative guidance. Tax avoidance and its relation to corporate social responsibility is a contested area.[120] Santana[121] argues that tax avoidance can fall in the "grey zone" between legitimate

---

[115] Nexis is provided by Lexis Nexis and focuses on news items. See: *http://www.lexisnexis.com/en-us/products/nexis-ab.page* [Accessed 16 June 2016].

[116] T. Macalister and A. Clark, "Big business goes on the defensive as tax protesters win the propaganda war", *The Observer*, 19 December 2010, available at: *http://www.theguardian.com/business/2010/dec/19/big-business-defensive-tax-protesters* [Accessed 10 June 2016].

[117] See Shaheen, above fn.2.

[118] See Shaheen, above fn.2.

[119] See Benoit, above fn.35.

[120] See Ylönen and Laine, above fn.77.

and illegitimate claims as perceived by management. Managers may reasonably query whether tax avoidance represents a "reprehensible act" threatening their companies' legitimacy.[122] As an emerging and evolving threat managers' perceptions of societal expectation may vary both individually and over time.[123],[124] Against this background of uncertainty managers lack external guidance in deciding upon what is an appropriate response or non-response.

To provide insights into managerial attitudes to the legitimacy of tax avoidance and how managers perceive the validity of related societal criticism, the authors examine incidences of tax related disclosures. Five propositions relating to disclosure practice are examined. First, an increasing incidence of tax disclosures over time would indicate recognition by managers that societal criticism of tax avoidance is potentially damaging to companies' legitimacy (Proposition 1). This proposition does imply that managers consider the criticism to be valid; the authors examine this in Propositions 4 and 5. Secondly, the authors would expect there to be variation between companies in disclosure practice indicative of uncertainty over the legitimacy status of tax avoidance (Proposition 2). Thirdly, over time the authors would expect company specific responses to be revised in the light of perceived changes in societal attitudes, changes in managers' attitudes to tax avoidance and continuing uncertainty (Proposition 3). These three propositions consider merely the presence or absence of disclosures. The fourth and fifth propositions examine the content or strategy of the disclosures using the categories identified earlier, that is: conforming; challenging; and influencing.[125] The authors expect to observe variation between companies (Proposition 4) and variation over time within companies (Proposition 5) consistent with the reasoning given for Propositions 2 and 3 above.

Research method

The authors examine the tax related disclosures of the seven quoted companies identified by both the *Guardian* and UK Uncut as discussed in section 4, above. Table 1 summarises the specific criticisms levied against each company by the two organisations.

Table 1: specific criticism by The Guardian newspaper Tax Gap series and UK Uncut targeting[126]

Company	The Guardian	UK Uncut
Barclays	Specific tax avoidance transaction	Operating a "bonus culture"
Diageo	Specific tax avoidance transaction	Involvement in tax avoidance
HSBC	Published "Incomplete list of subsidiaries"	Involvement in tax avoidance

[121] A. Santana, "Three elements of stakeholder legitimacy" (2012) 105(2) *Journal of Business Ethics* 257.
[122] See Benoit, above fn.35.
[123] D. Campbell, B. Craven and P. Shrives, "Voluntary social reporting in three FTSE sectors: a comment on perception and legitimacy" (2003) 16(4) *Accounting, Auditing & Accountability Journal* 558.
[124] K.D. Elsbach and R.I. Sutton, "Acquiring organizational legitimacy through illegitimate actions: A marriage of institutional and impression management theories" (1992) 35(4) *Academy of Management Journal* 699.
[125] See Ashforth and Gibbs, above fn.46, see J. Dowling and Pfeffer, above fn.10, and see Lindblom, above fn.33.
[126] Sources: *www.guardian.co.uk/business/series/tax-gap* [Accessed 18 June 2016] and web.archive.org/web/20140820182247/http://www.ukuncut.org.uk/targets [Accessed 18 June 2016]

Lloyds	Specific tax avoidance transaction	Operating a "bonus culture"
RBS	"Cooperating Bank" in a tax avoidance transactions	Operating a "bonus culture"
Tesco	Specific tax avoidance transaction	Involvement in tax avoidance
Vodafone	Used "legal challenges" to "pay less tax"	Involvement in tax avoidance

Each company was subject to criticism of potential involvement in tax avoidance by at least either the *Guardian* or UK Uncut. Focusing on the seven publicly quoted companies provides a discrete sample of companies that have been subject to a highly visible and widely reported criticism which has the potential to threaten their legitimacy as defined above.[127],[128] The extent of comment by influential media is an important indicator of the validity of societal criticism and provides an indication of the legitimacy of the particular threat.[129]

The sample frame is the 11 year period 2004–2005 to 2014–2015 during which period societal attitudes towards tax avoidance have arguably changed. The authors analyse each company's ARs and CSRRs.[130] These sources are under the editorial control of the companies and are, therefore, a likely forum for disclosure.[131],[132],[133]

The authors examine only tax related disclosures thereby providing a focused analysis.[134] While the general literature on legitimacy and disclosures finds evidence of increases in general voluntary disclosures in response to specific legitimacy threats as a way of deflecting criticism, for example Lanis and Richardson,[135] the approach adopted in analysing only specific disclosures avoids problems of attribution and aggregation inherent in a multifaceted assessment.[136] Though there is a risk this approach fails to capture associated non-tax compensating or deflecting strategy disclosures, O'Donovan[137] and Deegan, Rankin and Tobin[138] report correspondence between the specific aspects of a company under criticism and those aspects which record increases in disclosure level, that is,

[127] See Suchman, above fn.41.
[128] B. O'Dwyer, D. Owen and J. Unerman, "Seeking legitimacy for new assurance forms: The case of assurance on sustainability reporting" (2011) 36(1) *Accounting, Organizations and Society* 31.
[129] See Bitektine, above fn.40.
[130] The authors use the term Corporate Social Responsibility Reports (CSRRs) as a generic description of reports whose brief is wider than the (financial) Annual Report. For example our coverage includes Barclays' *Citizenship Report* and Vodafone's *Tax Transparency Report*.
[131] See Campbell, Craven and Shrives, above fn.123.
[132] J. Guthrie and L.D. Parker, "Corporate social reporting: a rebuttal of legitimacy theory" (1989) 19(76) *Accounting and Business Research* 343.
[133] P. Kent and T. Zunker, "Attaining legitimacy by employee information in annual reports" (2013) 26(7) *Accounting, Auditing & Accountability Journal* 1072.
[134] N. Brown and C. Deegan, "The public disclosure of environmental performance information—a dual test of media agenda setting theory and legitimacy theory" (1998) 29(1) *Accounting and Business Research* 21.
[135] See Lanis and Richardson, above fn.25.
[136] See Deephouse and Suchman, above fn.39.
[137] G. O'Donovan, "Managing legitimacy through increased corporate environmental reporting: an exploratory study" (1999) 1(1) *Interdisciplinary Environmental Review* 63.
[138] C. Deegan, M. Rankin and J. Tobin, "An examination of the corporate social and environmental disclosures of BHP from 1983–1997: a test of legitimacy theory" (2002) 15(3) *Accounting, Auditing & Accountability Journal* 312.

companies appear to respond to specific criticism with disclosures relating to the area subject to criticism.

All occurrences of the word "tax(ation)" in the companies' ARs and CSRRs were identified by one of the authors using the Adobe Reader search function. The same author then reviewed all occurrences in order to identify and remove from further analysis incidental references where tax considerations were not under consideration.[139] The same author performed this function for all ARs and CSRRs to maximise consistency. Entire ARs were analysed because in addition to mandatory disclosures under *IAS 12 Income Taxes*,[140] there is the potential for disclosures elsewhere in ARs, for example, in the Operating and Financial Report, the Directors' Report and the Corporate Governance Report, etc. Then two of the authors, working independently of each other, coded the extracts.[141] The coding was performed after all the data had been extracted to ensure extraction was not influenced by the coding process itself.[142]

A directed or deductive thematic content analysis was employed.[143],[144],[145],[146] The authors recognise disclosures may not fully encapsulate managers' attitudes and tax strategies thereby hindering comparison between companies. The authors attempt to mitigate these concerns by also examining changes within individual companies over time holding constant any company specific idiosyncratic disclosure practices.

As discussed above criticism of a company's tax avoidance can be viewed as a threat to the company's moral legitimacy and, more specifically, its procedural legitimacy and consequential legitimacy. Linked to procedural and consequential legitimacy, the authors posit three tax related themes along which managers could respond to criticism; namely philosophy, conduct and contribution. Managers may appeal to procedural and consequential legitimacy by signalling their general philosophy on taxation. The signal could be explicit, for example: a reference to how tax legislation is interpreted by the managers, the influence of taxation considerations on their decision making, or a statement about the primacy of the interests of a particular stakeholder group over those of other groups with respect to taxation. Alternatively, the signal could be implicit. For example, managers may reveal their tax philosophy when describing other aspects of the company, for example, in making a reference to tax when either discussing non-audit services or the utilisation of tax losses. The authors separately identify explicit and implicit philosophy disclosures to capture the greater significance of explicit disclosures by avoiding their aggregation with implicit disclosures. The second theme, conduct disclosures, addresses procedural legitimacy. To demonstrate legitimacy managers may refer to the basis of their dealings with tax administrations and governments. The use of adjectives such as "transparent", "open" and "compliant", etc. can be used by managers to attempt to convey propriety and therefore legitimacy in tax matters. Conduct disclosures can be concerned with internal conduct, for example, governance over tax decision making or external conduct, for example, approaches adopted in dealing with tax administrations. The authors separately identify these two types of conduct disclosure as they are concerned with differing stages of procedural legitimacy. The third theme, contribution, is derived from consequential legitimacy. Managers may disclose the amount of taxation paid by a company in an attempt to imply compliant or socially

[139] Examples of incidental references included references to "pre-tax profits" and "post-tax profits" where tax was not under consideration.
[140] *IAS 12*, above fn.63.
[141] The same two authors coded all the ARs, CSRRs and press releases to maximise consistency.
[142] H.F. Hsieh and S.E. Shannon, "Three approaches to qualitative content analysis" (2005) 15(9) *Quality Health Research* 1277.
[143] W.J. Potter and D. Levine-Donnerstein, "Rethinking validity and reliability in content analysis" (1999) 27(3) *Journal of Applied Communication Research* 258.
[144] See Hsieh and Shannon, above fn.142.
[145] V. Beattie and S.J. Thomson, "Lifting the lid on the use of content analysis to investigate intellectual capital disclosures" (2007) 31(2) *Accounting Forum* 129.
[146] R. Franzosi, "Content analysis: Objective, systematic, and quantitative description of content" in *SAGE Benchmarks in Social Research Methods: Content Analysis* (2008), 2–43.

acceptable behaviour by highlighting the consequences of their taxation policies in terms of tax payments.

The initial analysis of the various disclosures documents the occurrence of each type of theme: explicit philosophy, implicit philosophy, conduct and contribution. The second stage of analysis involves interpreting each identified disclosure to form a view as to its underlying motivation or strategy, that is, conforming, challenging or influencing.[147] For example an explicit philosophy disclosure could be made to either challenge or accept criticism of tax avoidance. The authors conduct this analysis for the *explicit* philosophy and *implicit philosophy* only.[148]

To illustrate the themes and coding by strategy a series of examples are shown in Table 2.[149] In making an explicit philosophy disclosure Barclays plc has effectively confirmed its acceptance of the concept of a "fair share" in the context of responsibilities to stakeholders beyond shareholders (see Quote 1, Table 2). While the concept of a "fair share" is vague and undefined by Barclays plc it was used by the *Guardian* and UK Uncut as representing the converse of tax avoidance. The disclosure is interpreted as implying that the company does not avoid taxes, that it confirms agreement with the stated inappropriateness of tax avoidance. RBS plc's explicit philosophy disclosure is interpreted as confirmatory because of its apparent emphasis on the primacy of non-tax consideration in its decision making (see Quote 2, Table 2). The statement however does not define the word "inappropriate" or from whose perspective an assessment of inappropriateness would be made. HSBC plc's disclosure emphasises the tax requirements faced by the company but makes no mention of their effect on the company's behaviour (See Quote 3, Table 2).

Table 2: disclosure strategy—examples by theme

Quote number	Company (year)	Quote	Strategy
Panel A Explicit philosophy disclosures			
1	Barclays (2009–10)	"At Barclays, we are committed to meeting our responsibilities to stakeholders. These include … Pay our fair share of taxes to the revenue authorities." *Source: Group Chairman's statement, page 8, Barclays plc Annual Report 2009.*	Confirmatory
2	RBS (2009–10)	"The Group will only enter into a commercial transaction or customer relationship which is legal and complies with regulatory requirements, has economic substance or business purpose and is not designed or used for inappropriate accounting or tax purposes." *Source: Business review, Risk, capital and liquidity management, page 173, The Royal Bank of Scotland plc Annual Report and Accounts, 2009.*	Confirmatory

[147] See Lindblom, above fn.33.

[148] With respect to conduct and contribution themed disclosures identifying a specific motive is particularly subjective. Further with respect to explicit and implicit philosophy disclosures the authors do not distinguish between influencing and deflecting disclosures. Instead both types of disclosures are described as influencing. In a large number of cases distinguishing between influencing and deflecting disclosures was highly subjective. However, in Table 2 the authors do discus the motives underlying conduct and contribution disclosures for illustrative purposes.

[149] For the sake of brevity and comparability the examples are taken from reports in the period 2009–2010 and 2010–2011 only.

3	HSBC (2010–11)	"We are subject to the substance and interpretation of tax laws in all countries in which we operate. Failure to respond to changes in tax rates and comply with procedures required by tax authorities could lead to increased tax challenges, including financial or operating penalties." *Source: Report of the Directors: Operating and Financial Review, Risk, Challenges and uncertainties, page 88, HSBC Holdings plc Annual Report and Accounts 2010.*	Influencing
4	Vodafone (2010–11)	"Our tax policy is straight forward: we pay taxes that are due in the countries where we make our profits or record capital gains in line with the prevailing legislation of those jurisdictions." *Source: Chairman's statement, Tax policy, page 6, Vodafone Group Plc Annual Report 2011.*	Influencing
5	Barclays (2010–11)	"The Group's strategy is to maximise returns for shareholders whilst complying with relevant tax laws, disclosure requirements and regulations under an appropriate risk control framework." *Source: Risk management and governance, risk factors, 13, taxation risk, page 81, Barclays plc Annual Report 2010.*	Challenging
6	Diageo (2010–11)	"We are committed to the effective, sustainable and active management of our tax affairs in support of outstanding business performance in the territories in which we operate and, as with all other aspects of our business, to maximise shareholder value." *Source: Strategic approach, Our business, Tax affairs page 6, Diageo plc Corporate Citizenship Report 2010.*	Challenging
Panel B Implicit philosophy disclosures			
7	Tesco (2009–10)	"Deloitte LLP also provided advisory services in respect of corporate tax planning … . to the Group during the year." *Source: Directors' remuneration report, The Remuneration Committee, page 57Tesco PLC Annual Report and Financial Statements 2010*	Challenging
8	HSBC (2010-11)	"The most significant tax planning strategy is the investment of capital in our US operations to ensure the realisation of the deferred tax assets."	Challenging

		Source: Report of the Directors: Operating and Financial Review, Financial summary, Critical accounting policies, Deferred tax assets, page 36, HSBC Holdings plc Annual Report and Accounts 2010	
Panel C Conduct disclosures			
9	Lloyds (2010–11)	"The risk of reputational damage, loss of investor confidence and/or financial loss arising from the adoption of inappropriate …… tax reporting, failure to manage the associated risks of challenges in taxation rates, ……. and the failure to disclose accurate information about the Group on a timely basis." *Source: Risk management – financial soundness, page 102 Lloyds Banking Group Annual Report and Accounts 2010. Quote 6*	Influencing
10	Barclays (2009–10)	"The Group takes a responsible and transparent approach to the management and control of its tax affairs and related tax risk, specifically: – tax risks are assessed as part of the Group's formal governance processes and are reviewed by the Executive Committee, Group Finance Director and the Board Risk Committee …." *Source: Risk management and governance, taxation risk, page 85, Barclays plc Annual Report 2009.*	Influencing
Panel D Contribution disclosures			
11	Diageo (2010–11)	"Payment of taxes accounted for the largest slice of the added value that we generated this year. In addition to direct tax contribution, we pay local business taxes, our consumers pay excise taxes and sales taxes such as VAT and our employees and suppliers pay income and corporate taxes." *Source: Strategic approach - Our business - Tax affairs page 6, Diageo Corporate Citizenship report 2010.*	Influencing
12	Barclays (2010–11)	"In 2010 we made global tax payments of £6,149m, made up of £3,138m of taxes borne by Barclays and £3,011m of taxes collected from others on behalf of governments, principally being employee income taxes which arise through Barclays' economic activity. Barclays paid corporate income tax of £1,458m in 2010." *Source: Contributing to Growth, Direct economic contribution, page 46 Barclays Citizenship Report*	Influencing

		2010.	

In the absence of an explicit reference similar to those made by Barclays plc and RBS plc above, HSBC plc's disclosure implies neither a challenge to nor a confirmation of the inappropriateness of tax avoidance, instead it has the effect of potentially trying to influence any assessment of its tax practice. Vodafone plc describes its tax policy as "straight forward" and can be interpreted as implying a passive approach to corporate taxation (see Quote 4, Table 2). This implied absence of tax avoidance suggests an influencing strategy. In 2010 Barclays plc and Diageo plc were both explicit in the influence of tax consequences on their decision making (see Quotes 5 and 6, Table 2, respectively). Both disclosures challenge the premise that companies should not practice tax avoidance. In all cases implicit philosophy disclosures were made in mandatory disclosures relating to either audit firm provided services,[150] (see Quote 7, Table 2) or discussion of forecast amounts (see Quote 8, Table 2) which included the term "tax planning". The references to tax planning suggest an active tax policy which presumably aims to influence the level of resulting taxation which could be described as a practice consistent with tax avoidance.

Mandatory risk management disclosures can be used by managers to emphasise appropriate conduct involving taxation. Internal and external procedures can be emphasised, for example, directors' assessment of tax risks and appropriate reporting to tax administrations respectively. Two examples are given below of influencing disclosures. Lloyds plc explains the nature of risk associated with tax reporting and changing tax rates (see Quote 9, Table 2). While the disclosure does not explain the strategy underlying the company's tax policy and the nature of the transactions subject to reporting, the awareness of the risks and related penalties implies appropriate external conduct as a consequence. In contrast the Barclays plc risk statement is more direct as it states the company is "responsible" in the management and control of its tax affairs and implies appropriate internal conduct (see Quote 10, Table 2). The use of the word "responsible" can be taken as an attempt to influence an assessment of the company's approach to taxation. The reference to transparency is unclear . Finally the authors consider contribution disclosures. The authors classify any disclosures that refer to either specific amounts of taxation paid by the company or a general statement to the effect that the activities generate tax revenues as an influencing contribution. Two examples are given in Quotes 11 and 12, Table 2, for Diageo plc and Barclays plc respectively.[151]

Results

Table 3 summarises the occurrence of disclosures in the AR and CSRRs under the four themes: 1. explicit philosophy; 2. implicit philosophy; 3. conduct; and 4. contribution in panels A, B, C and D respectively.

[150] A possible indication of the sensitivity of such disclosures is given in one example. In each year Tesco plc disclosed in a note to directors' remuneration that Deloitte & Touche LLP had advised the company on remuneration policies as well as providing a range of other advisory services. In all years these other advisory services included "corporate tax planning" except in 2006 when the noun "planning" was absent only to be restored in the following years.

[151] Arguably disclosures that refer to taxes paid other than corporate income taxes could be classified as deflecting. However, as stated above, the authors do not attempt to draw a distinction between influencing and deflecting strategies.

Table 3: incidence of AR and CSRR tax disclosures by theme

Panel A: philosophy—explicit												*Number of disclos period 2004–05—*
												In AR/CSRR
	04–05	*05–06*	*06–07*	*07–08*	*08–09*	*09–10*	*10–11*	*11–12*	*12–13*	*13–14*	*14–15*	
ARs												
Diageo												
HSBC									Co*	Co*		
Tesco												
Vodafone							In	Ch	Ch	Ch	Ch In	
Barclays						Co	Ch Co*		Co*			
Lloyds											Co*	
RBS					In	In						
CSRR												
Diageo	Ch	Ch	Ch	Ch	Ch	Ch	Ch		Ch	De Ch		
HSBC			Ch						Co*	Co		
Tesco												
Vodafone	Ch	Ch	Inf	Ch In	Ch	Ch			Ch In Co	Ch In Co	Ch In Co	
Barclays								Co*	Co*	Co*		
Lloyds									Co*	Co*	Co*	
RBS									Co*	Co*	Co*	
No of companies disclosing	*2*	*2*	*3*	*2*	*3*	*4*	*3*	*2*	*6*	*6*	*3*	

*Where Ch = Challenging; Co = Conforming; and In = Influencing and * = Disclosure represents an explicit reference to complying with "Code of Practice on Taxation for Banks".*

Table 3: continued: incidence of AR and CSRR tax disclosures by theme

Panel B: philosophy—implicit												*Number of disc the period 200*
												In AR/CSRR
	04–05	*05–06*	*06–07*	*07–08*	*08–09*	*09–10*	*10–11*	*11–12*	*12–13*	*13–14*	*14–15*	
ARs												
Diageo	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	*11*
HSBC	Ch	Ch			Ch	Ch	Ch	Ch	Ch	Ch	Ch	*9*
Tesco	Ch		Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	*10*
Vodafone	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	*11*
Barclays	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	Ch	*11*
Lloyds												*0*
RBS												*0*
CSRR												
Diageo									Ch			*1*
HSBC			Ch									*1*
Tesco												*0*
Vodafone												*0*
Barclays									Ch	Ch		*2*
Lloyds												*0*
RBS									Co			*1*
No of companies disclosing	*5*	*4*	*5*	*4*	*5*	*5*	*5*	*5*	*6*	*5*	*5*	

*Where Ch = Challenging; Co = Conforming; and Inf = Influencing and * = Disclosure represents an explicit reference to complying with "Code of Practice on Taxation for Banks".*

Table 3: continued: incidence of AR and CSRR tax disclosures by theme

Panel C: Internal Conduct (IC) and External Conduct (EC)												*Number of disclosures by company o 2004–05—2014–15*		
												IC	*EC*	*IC: AR & C*
ARs	*04–05*	*05–06*	*06–07*	*07–08*	*08–09*	*09–10*	*10–11*	*11–12*	*12–13*	*13–14*	*14–15*			
Diageo							IC	IC	IC	IC	IC	*5*		*7*
													0	
HSBC		IC	IC			IC	IC	IC	IC	IC	IC	*8*		*8*
													0	
Tesco						IC			IC			*2*		*2*
													0	
Vodafone				IC		IC	IC	IC	IC	IC	IC	*7*		*18*
								EC	EC	EC	EC		*4*	
Barclays	IC	IC	IC	IC	IC	IC	IC	IC	IC	IC	IC	*11*		*15*
			EC	EC	EC	EC	EC	EC		EC	EC		*8*	
Lloyds				IC	IC	IC	IC	IC	IC	IC	IC	*8*		*10*
											EC		*1*	
RBS								IC		IC	IC	*3*		*3*
									EC				*1*	
CSRR														
Diageo									IC	IC		*2*		
	EC	EC	EC	EC	EC	EC	EC		EC		EC		*9*	
HSBC												*0*		
			EC							EC			*2*	

Tesco												*0*	
			EC	EC									*2*
Vodafone	IC	IC	IC	IC	IC	IC	IC	IC	IC	IC	IC	*11*	
		EC	EC	EC	EC	EC	EC	EC	EC	EC	EC		*10*
Barclays						IC		IC	IC	IC		*4*	
								EC	EC	EC			*3*
Lloyds										IC	IC	*2*	
									EC		EC		*2*
RBS												*0*	
							EC	EC	EC	EC	EC		*5*
No of IC disclosing companies	*2*	*3*	*3*	*3*	*3*	*5*	*5*	*6*	*6*	*6*	*6*		
No of EC disclosing companies	*1*	*2*	*5*	*4*	*3*	*3*	*4*	*3*	*5*	*4*	*5*		
No of companies disclosing IC and/or EC	*3*	*4*	*5*	*5*	*4*	*6*	*6*	*6*	*7*	*6*	*6*		

Table 3: continued: incidence of AR and CSRR tax disclosures by theme

Panel D: contribution											*Number of disc the period 200*
											In AR/CSRR
	04–05	*05–06*	*06–07*	*07–08*	*08–09*	*09–10*	*10–11*	*11–12*	*12–13*	*13–14*	*14–15*	
ARs												
Diageo							✔	✔	✔	✔	✔	*5*
HSBC						✔	✔	✔	✔	✔	✔	*6*
Tesco											✔	*1*
Vodafone		✔	✔	✔	✔						✔	*5*
Barclays							✔	✔	✔	✔	✔	*5*
Lloyds		✔	✔	✔						✔	✔	*5*
RBS	✔	✔					✔	✔	✔	✔	✔	*7*
CSRR												
Diageo	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	*11*
HSBC	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	*11*
Tesco	✔						✔				✔	*3*
Vodafone	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	✔	*11*
Barclays			✔	✔	✔	✔	✔	✔	✔	✔	✔	*9*
Lloyds		✔	✔	✔		✔	✔		✔	✔	✔	*8*
RBS	✔	✔	✔					✔	✔	✔	✔	*7*
No of companies disclosing	*5*	*5*	*6*	*5*	*4*	*5*	*7*	*5*	*6*	*6*	*7*	

Panel A of Table 3 reveals an increase in the number of explicit philosophy statements over time. Initially such disclosures were only made in CSRRs but over time disclosures were also made in the ARs, though companies disclosing in the ARs were always in a minority. Having initiated a policy of disclosure there were several instances where the policy was reversed, for example, Diageo plc having consistently made a disclosure in its CSRRs, did not make one in 2011–2012 only to reinstate a policy of disclosure the following year. Barclays plc changed its policy on disclosing in its ARs four times in the seven year period 2008–2009 to 2013–2014. HSBC plc and RBS plc also reversed decisions to initiate disclosure. Only Tesco plc adopted a consistent policy throughout the 11 year sample period albeit a policy of non-disclosure. 2012–2013 was the first year in which a company disclosed in both its CSRR and ARs, previously disclosure had been restricted to one or other of these two documents. A significant factor behind the increase in disclosures from 2010–2011 to 2013–2014 was companies disclosing their acceptance of The Code. In the main, disclosures were made in the companies' CSRRs although, with the exception of RBS plc, the other banks referred to The Code in their ARs in at least one year. Post 2013–2014 only Lloyds plc and RBS plc made any reference to The Code either in their ARs or CSRRs.[152] Surprisingly the banks are not highlighting their participation in The Code as a way of sending "a reassuring message" to the public.[153]

In terms of the strategy or content of the disclosures, Diageo plc and Vodafone plc were the only two companies disclosing at the start of the sample period 2004–2005 and in 2005–2006, both made disclosures challenging any condemnation of tax avoidance. At the start of the sample period the initial response in general therefore was either to ignore or not recognise tax avoidance as a potential threat to companies' legitimacy. However by the end of the period in 2014–2015 a wider range of disclosures are observed including: "Challenging" (Vodafone plc), "Conforming" (Vodafone plc, Lloyds plc and RBS plc) and "Influencing" (Vodafone plc). Although in the majority of instances companies adopted a single strategy for example, "Challenge", "Conform" or "Influence" in any one year, Vodafone plc and Barclays plc adopted mixed strategies in some years, for example Vodafone plc in 2014–2015 and Barclays plc in 2010–2012. Variation in strategy is observable within some companies over time. Barclays plc is one example. Having disclosed in 2009–2010 that its "responsibilities to stakeholders" including "Pay our fair share of taxes" (see Quote 1) in 2010–2011 the primacy of shareholders' interests was emphasised. Barclays plc announced the group's strategy was to "maximise returns for shareholders" (see Quote 5). These two disclosures represent a change from a conformatory position to one of challenging. Vodafone plc and Diageo plc are two other examples of companies which changed strategy over time.

The implicit philosophy disclosures are more stable in terms of deciding to make a disclosure and the strategy adopted (see Table 3, panel B). Diageo plc,[154] Vodafone plc and Barclays plc made Challenging disclosures in their ARs each year followed by Tesco plc which disclosed in all but one year. Conversely, Lloyds plc did not disclose in any year and RBS plc only made a disclosure in one year. Again, in contrast to explicit philosophy disclosures, implicit disclosures were in the vast majority of cases made in companies' ARs and when they were made in CSRRs, the practice was short lived for example, Barclays plc and RBS plc. Although the disclosures were in general contained in mandatory disclosures on non-audit fees and risk, management companies adopted distinct disclosure patterns. Lloyds plc and RBS plc made no disclosures with the exception of RBS plc in 2012–2013 whereas the remaining companies made disclosures in almost every year. The vast majority of disclosures were made in the ARs reflecting the influence of mandatory disclosure requirements. The strategies adopted were overwhelming ones of Challenging with only one instance of an alternate strategy being adopted by RBS plc's Conformatory disclosure in 2012–2013.

The occurrences of Internal Conduct (IC) and External Conduct (EC) disclosures are shown in panel C of Table 3. The bottom three rows of the panel record a general increase in the number of companies making disclosures from three in 2004–2005 to a peak of seven in 2012–2013. The increase is reflected in both the number of IC and EC disclosures. Although EC disclosures were initiated in CSRRs and remained more prevalent in CSRRs, over time more companies began to make these disclosures in their ARs. The converse is the case for IC disclosures. Across the seven companies there is wide variation in the frequency of disclosures. Vodafone plc (via CSRRs) and Barclays plc (via ARs) made IC disclosures each year. These two companies were also the most frequent in making EC disclosures in all but one and two years respectively, Vodafone plc (via CSRRs) and Barclays plc (via ARs).[155] Tesco plc was the least frequent discloser

[152] "Tesco Bank" (Tesco Personal Finance plc) is a signatory to The Code. No reference is made to The Code in any of Tesco plc's ARs or CSRRs.

[153] R. Collier, "Intentions, Banks, Politics and the Law: The UK Code of Practice on Taxation for Banks" [2014] BTR 478.

[154] Diageo plc's disclosure related to taxation of beverages. "The group devotes resources to encouraging the equitable taxation treatment of all beverage alcohol categories and to reducing government-imposed barriers to fair trading." Source: Business description, Regulations and taxes, page 29, Diageo Annual Report 2010 and Business description, community Regulations and taxes, page 35, Diageo Annual Report 2011. While not relating to corporate taxation it indicates that the company is not a "passive" taxpayer.

[155] Another example from Barclays plc of what appears to be a change in underlying motivation concerns its conduct themed disclosures. From 2005 onwards in a discussion of risk management the company made a detailed tax risk disclosure which included

with only two EC and two IC disclosures in the entire 11 year period. There are several instances of companies changing the decision to disclose. HBSC plc first disclosed (IC) in 2005–2006, the second year of the sample period, but ceased after the following year—a decision it then reversed in 2009–2010. Tesco plc's only two IC disclosures were not consecutive, occurring in 2009–2010 and 2012–2013. Diageo plc, Lloyds plc and RBS plc exhibit similar changes in disclosure practice.

The trend with contribution disclosures shows initially the majority of companies disclosing in their CSRRs with a move over time to also disclosing in their ARs. By the end of the sample period all seven companies disclosed in both their ARs and CSRRs by comparison with the start of the period in 2004–2005 when only one company disclosed in its AR (RBS plc) and four companies made CSRRs disclosures (Diageo plc, HSBC plc, Tesco plc and Vodafone plc). Diageo plc, HSBC plc and Vodafone plc were consistent in disclosing in each year via their CSRRs. Tesco plc was consistent in not making AR based disclosures until the final year. Within the remaining companies significant variation in disclosure policy can be observed with Vodafone plc, Lloyds plc and RBS plc each changing practice at least twice in the sample period.

There is support for all five propositions. First, the general increase in tax related disclosures implies a realisation that criticism of tax avoidance activities may have the potential to threaten companies' legitimacy. Secondly, the variation between companies in whether or not to make a disclosure supports the second proposition that there is a lack of consensus amongst the companies as to what is the appropriate disclosure response or non-response. Thirdly, the observed lack of consistency on the part of some companies suggests an uncertainty on the part of managers of individual companies as to what is the appropriate response which has continued over time despite increasing public unease. Fourthly, uncertainty is not restricted to the decision whether or not to make a disclosure as the variation in strategy adopted by individual companies' shows. Fifthly, this uncertainty persists over time within individual companies.

Discussion and conclusions

Having until recently been generally overlooked in the CSR literature[156] the preceding analysis shows that managers appear to perceive tax avoidance as an emerging threat to legitimacy. While managers generally appear to be wary of responding to criticism of tax avoidance, which in turn is arguably consistent with a fear of legitimising criticism,[157] the authors have found an increase in thematic disclosures over the 11 year period examined. This increase is consistent with the general observation that managers appear to perceive criticism of involvement in tax avoidance as legitimacy threatening. However, behind this general observation there is wide variation both between companies and within companies over time.

Managers in general did not directly explain taxation policies. Explicit philosophy disclosures increased, though by the end of the period only two companies made disclosures in their ARs. In CSRRs there were greater disclosures with at one stage, 2012–2013 and 2013–2014, six of the seven companies' disclosed before a falloff in numbers in 2014–2015. This lack of direct explicit response is unlikely to result from a fear of disclosing strategically important information to tax administrations or competitors. More likely, uncertainty over the philosophical and legal interpretation and status of tax avoidance adds to the apparent unwillingness of managers to make disclosures or to engage in a debate by challenging the criticism or confirming their acceptance of that criticism. Instead the favoured response was an appeal to procedural and consequential legitimacy through conduct and contribution themed disclosures. In 2004–2005 there was only one instance of a company making a conduct disclosure in its AR and two cases of a CSRR disclosure. By 2014–2015, with the exception of Tesco plc, all the companies made a conduct disclosure in both their ARs and CSRRs. In 2014–2015 for the first time all companies made a contribution disclosure in both the AR and CSRRs, a year in which Tesco plc made its first contribution disclosure in an AR.

Companies exhibit distinctive behaviour. The four banks adopted different responses. Barclays plc and HSBC plc generally increased their frequency of disclosures, RBS plc maintained a relatively low level of disclosures throughout and Barclays plc had several changes of practice. Even within a single industry, there is uncertainty among managers in identifying the appropriate legitimising. One could expect Tesco plc to be the most responsive or sensitive of the companies examined because of its higher public visibility resulting from it being a retail business[158] and its broad geographical presence in the UK. Surprisingly, the company was the least frequent discloser in all four themes.

---

the statement "the tax risks of proposed transactions or new areas of business are fully considered before proceeding" (see for example, "Risk management and governance, taxation risk" *Barclays plc Annual Report 2009*, 85). However, in 2010 the text was not included in the equivalent note.

[156] See Dowling, above fn.15; see Sikka, above fn.76; and see Ylönen and Laine, above fn.77.

[157] See Benoit, above fn.35.

[158] See Hanlon and Slemrod, above fn.24.

The publication of separate ARs and CSRRs by companies is a recognition by companies that they have multiple stakeholders whose information needs are not met by a single report.[159] The observed pattern of philosophy disclosures originating in CSRRs before being replaced in subsequent years by disclosures in the AR could suggest the information needs of the various stakeholder groups changed over the period. Alternatively, in the earlier years managers may have failed to identify the sources of the criticism and their information needs. The apparent reluctance to initially disclose via ARs may have been a deliberate act arising from a fear of legitimising the criticism through the use of the primary reporting medium.[160] The subsequent fall in the use of CSRRs as a place of disclosure may represent a belated realisation of changing attitudes to taxation avoidance within society.

The implication consequent upon of the authors' findings is that if greater disclosure about companies' tax decisions is deemed necessary by society then society cannot rely on voluntary disclosure. Even in the presence of company specific criticism managers are generally reluctant to voluntarily explain the basis of their decisions. Further, the variation in disclosure behaviour suggests that a lack of consistency between companies' disclosures would result from such disclosure being on a voluntary basis. From a tax enforcement perspective tax administrations cannot always rely on managers' attitudes to moderate tax behaviour. The observed variation both between companies and within companies could suggest a lack of consensus as regards managers' attitudes to tax avoidance. Perhaps if society wishes to change corporate behaviour it should do so via changes in legislation aimed at reducing the opportunity and benefits of tax avoidance rather than attempting to use increased disclosure as a means of changing managers' behaviour.

[159] C. de Villiers and C.J. van Staden, "Where firms choose to disclose voluntary environmental information" (2011) 30(6) *Journal of Accounting and Public Policy* 504.
[160] See Suchman, above fn.41.