

Position Paper - Tax Justice

1. Introduction

- 1.1. The payment of tax is a contribution to the common good that enables a state to provide a range of public services for the benefit of all. It is the position of the Church that individuals and corporate bodies have an ethical obligation to obey the spirit, as well as the letter of the law on tax.
- 1.2. Tax justice has become a significant political and ethical issue in recent years. Scandals highlighting tax avoidance on the part of some large multinational companies in particular have raised the profile of tax justice, not least during years of restricted growth in public spending. This has contributed to growing pressure on Government and international agencies, such as the G7, G20 and OECD to improve legislation and enforcement, and on companies to organise their tax arrangements in a responsible manner that is within both the spirit and the letter of the law.
- 1.3. Tax is a complex, technical issue; it is not for the individual investor necessarily to engage with the detail, but on general principles of transparency and disclosure. This Position Paper sets out the biblical background, the position of the Methodist and other Churches, and scopes how the CFB may seek to engage with companies on tax justice.

2. Biblical background

- 2.1. Tax and an obligation to pay are mentioned in the Old and New Testaments. Biblical tradition points to the important role tax plays in creating a more just society and in establishing correct relationships. Deuteronomy 26:12-13 has a clear expectation that a tithe (one tenth of annual produce or earnings), should be used to support “the Levite, the foreigner, the fatherless and the widow, so that they may eat in your towns and be satisfied”. When, in the New Testament, Jesus is asked whether it is lawful to pay taxes to an (oppressive) emperor his reply, “give back to Caesar what is Caesar’s and to God what is God’s” (Mark 12: 13-17), highlights that the Roman Empire has a legitimate demand on people’s incomes, but reminds us that God’s demands are even more important.
- 2.2. Tax facilitates complex beneficial economic relationships within society. Not all of these relationships can be reconciled through a simple contract. Income or profit is generated using labour, skills, services and infrastructure, some of which it does not directly pay for. Tax provides for the payment of security, education, welfare and healthcare, as well as the legal framework to ensure fair transactions and property rights. Tax is therefore part of the complex and interconnected web of human relationships. In Romans, Paul writes “pay to all what is due to them – taxes to whom taxes are due, revenue to whom revenue is due... honour to whom honour is due... Love does no wrong to a neighbour; therefore, love is the fulfilling of the law” (Romans 13:7).
- 2.3. The Bible also makes clear that the payment of tax, when rightfully due, is legitimate; “therefore, it is necessary to submit to the authorities, not only because of possible punishment, but also as a matter of conscience. This is also why you pay taxes, for the authorities are God’s servants, who give their full time to governing. Give to everyone what you owe them: If you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honour, then honour” (Romans 13:6).

3. The position of the Methodist Church

- 3.1. Biblical tradition highlights the importance of taxation, and the legitimate demands the State may make. This interdependent relationship suggests that tax must be demanded in a way that is fair and proportionate. In return, tax that is legitimately demanded should be paid. Methodist Conference in its reply to Memorial 30 at the 2015 Conference also recognised that in seeking to build a just society, institutions and individuals have a responsibility to respond not just to the letter, but to the spirit of the law on tax. This responsibility applies with particular gravity to the Church itself, given its role in building a more just society.
- 3.2. The Methodist Conference has received reports of particular relevance to the question of tax justice, including “The Ethics of Wealth Creation”¹ (1990), and “Of Equal Value: Poverty and Inequality in the UK”² (2011).
- 3.3. Conference also received a Memorial in 2012 (M32)³ on Tax Justice from the Birmingham District Synod, welcoming the 2011 report (above) and asked Conference (inter-alia) to:
 - Urge all relevant sections of the Connexional Team to give active support to the issues being raised by the Methodist Tax Justice Network (MTJN) as and when they are able.
- 3.4. In reply, it was noted that “The Joint Public Issues Team (JPIT) is already working with Christian Aid, Church Action on Poverty and the embryonic Methodist Tax Justice Network to explore how these issues might be further promoted. The Conference therefore accepts the Memorial, asks the Methodist Council to ensure that these issues are included within the work-plans of the Connexional Team as resources allow, and recommends that churches and individuals use the study resource material from both the ‘Trace the Tax’ and the ‘Close the Gap’ campaigns⁴ to aid understanding of the issues raised in the Memorial.
- 3.5. In “Of Equal Value: Poverty and Inequality in the UK” (2011), the Methodist Church acknowledged the importance of tax in creating a just society by stating that “money paid in fair taxation is a gift freely given; a contribution to the common good. When a proportion of this money is fairly paid in benefits to the least well off, it contributes to creating the just and compassionate society that the Church would wish to see. Those who would abuse these systems by not abiding by either their letter or their spirit push the goal of a just society further from our grasp.”

- 3.6.** In the “Ethics of Wealth Creation” (1990) the importance of structuring capitalism so as to achieve international as well as national justice was highlighted. “Christians must struggle with the fact that we have a clear idea of a global common good, but no structure that embodies our common citizenship. Capitalism must be shaped to address this problem and so must the Church.” In 2014, Christian Aid estimated that \$160bn a-year is lost to the developing world as a result of tax evasion/avoidance by multinational companies.⁵ Thus, tax justice forms an essential part of the Church’s strong commitment to international justice.
- 3.7.** In “Of Equal Value”, the Methodist Church recognised the importance integrity has in its own financial affairs when responding to government cuts. “Many of the new difficulties facing the poorest and most vulnerable are due to decreases in government expenditure. In order to speak about these cuts with integrity we must ensure that we corporately and individually contribute to government funds by paying all the taxes owed. These contributions are both a moral and legal duty; therefore it is not sufficient to obey merely the letter of the law, but also the spirit.” This point can be seen to apply more broadly to questions of social justice and inequality. If the Church fails to fulfil its moral and legal duty to pay tax then its ability to speak out in support of the poorest in society will be compromised.
- 3.8.** The 2015 Conference received a further Memorial (M30)⁶ from the Birmingham District which has led directly to the preparation of further work by JACEI and the CFB. This Memorial welcomed the “progress that has been made on communicating the issue of tax justice throughout the Methodist Church by the Methodist Tax Justice Network (MTJN) especially in association with the Joint Public Issues Team (JPIT). The Memorial then asked Conference (inter alia) to call upon:

- JACEI in conjunction with the Central Finance Board urgently to develop a Position Paper leading towards a Policy Statement on tax justice in order to address companies in which the Church invests on this issue...and to keep the Church informed on progress.

The Memorial response also stated that

- Conference directs the Methodist Council to ensure that the Connexional team work with JACEI and the Central Finance Board to identify when further work on these [tax justice] issues can be completed and further directs Council to review progress by January 2017.

- 3.9.** At a fringe event at the 2016 Conference, the then Chief Executive of the CFB, Bill Seddon, contributed to an event on tax, the transcript of which has been published on the CFB website⁷.

4. Summary of Methodist Church position on tax

- 4.1.** The Methodist Church’s position on tax might thus be summarised as follows:

- The state has a legitimate expectation that people will pay the taxes they owe;
- Such tax, fairly paid, can contribute to a more just and relational society;
- The payment of tax is therefore legitimate and bears both a legal and a moral duty;
- It is correct to abide not only by the letter of the law, but also within its spirit;
- As such, the Church expects people to pay the taxes they legitimately owe;
- There is an expectation that companies should be transparent about their corporate tax affairs and pay what they owe.

5. Current issues around taxation

- 5.1.** One of the primary difficulties arising from any discussion around tax is definitions.

- 5.2.** According to the OECD glossary of tax terms:⁸

- Tax avoidance is “a term generally used to describe the arrangement that is intended to reduce...tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow” (emphasis added). Thus avoidance is understood in terms of intention as opposed to legal structures.
- Tax evasion is “is generally used to mean illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayer pays less tax than...is legally obligated...by hiding income or information from the tax authorities.”

- 5.3.** For the purposes of this Position Paper the term “tax avoidance” will mean actions which reduce tax liability using tax planning mechanisms that are legal but outside the spirit or intent of the law.

- 5.4.** The emergence of technology and e-commerce has undoubtedly added complexity and allowed the flow of capital for tax planning purposes to be pursued with increased aggression. In 2012, a series of scandals emerged involving major multinational companies avoiding tax from the UK Government. Amazon, Starbucks and Google came in for particular criticism from the House of Commons Public Accounts Committee.⁹ More recently, data leaks (such as the Paradise and Panama Papers exposé’s) have thrown light on the methods used for tax avoidance and the identities of individuals and companies involved in such practices.

- 5.5.** Concerns have been raised about the implication such practices have, both for the tax revenues of the exchequer, and the reputation of businesses that benefit from their license to operate under the Rule of Law, but where they contribute very little to that society. One obvious example is Amazon booking UK revenues and profits in Luxembourg so as to benefit from a much lower rate of marginal tax.

- 5.6. The Institute of Business Ethics (IBE) argues that the behaviour of a business in tax planning ‘falls into the realm of ethics because businesses have a choice about their approach to interpreting the law and hence paying taxes. Whilst remaining legal in all it does, where a business draws its ethical line regarding how to interpret the tax laws and arrange its affairs is subject to a good deal of discretion.’¹⁰ This can extend to where it pays its taxes.
- 5.7. Public opinion has become increasingly intolerant of tax avoidance on the part of companies and has generally been ahead of national and international authorities, such as the OECD, in wanting it addressed.
- 5.8. One issue that raises concern is the use of ‘tax havens’. A haven may typically be a jurisdiction which exerts a small, nominal or nil tax rates as part of its regime. Historically, tax havens have been associated with secrecy. Tax has become something of a ‘competitive sport’ for some companies, moving domicile to benefit from a lower overall tax rate (Shire’s move to Ireland, and Ferguson’s move to Switzerland are just two examples). Other companies may have subsidiary ‘shell’ or holding’ companies through which monies may be channelled, and whose purpose is, at least in part, obscure (e.g. subsidiaries registered in Grand Cayman, Luxembourg or other well-known havens such as Gibraltar and the Channel Islands). In both cases these arrangements may be legitimate, but transparency remains key in order to retain confidence that corporate policies are fair, appropriate and just. In recent times, there have been international efforts to bring greater transparency to the use of havens and by jurisdictions themselves. The OECD has identified three factors as part of any assessment in identifying whether a jurisdiction is a ‘tax haven’¹¹:
- **Nil or only nominal taxes** – Tax havens impose nil or only nominal taxes (generally or in special circumstances) and offer themselves, or are perceived to offer themselves, as a place to be used by non-residents to escape high taxes in their country of residence.
 - **Protection of personal financial information** – Tax havens typically have laws or administrative practices under which businesses and individuals can benefit from strict rules and other protections against scrutiny by foreign tax authorities. This prevents the transmittance of information about taxpayers who are benefiting from the low tax jurisdiction.
 - **Lack of transparency** – A lack of transparency in the operation of the legislative, legal or administrative provisions is another factor used to identify tax havens.

6. CFB and JACEI activity

- 6.1. The CFB and JACEI have been engaged with the subject of tax justice for sometime and have received frequent notes and updates. This activity has included:
- JACEI receiving a briefing on tax and ethical investment from the CFB in 2013
 - JACEI receiving a tax justice paper in March 2013 prepared by JPIT, and in turn responding to correspondence the CFB had had with the Methodist Tax Justice Network
 - CFB participating in the ‘Tax Dialogue: on responsible tax for sustainable development’ in 2015
 - CFB participating in and delivered a speech at a fringe event at 2016 Conference entitled ‘The Joy of Tax’
 - CFB noting the adoption of the fair tax mark by SSE and engaging with the company on tax
 - CFB participating in the roundtable on tax convened by JPIT in the autumn of 2017

7. Other Church, charity and NGO positions on tax

- 7.1. It is in the context of increased reputational risk and a greater understanding of the issues around tax justice, that a number of organisations, including the Church of England, the Quakers and the Church Investors Group have begun to scope how they might engage with companies on tax. Other organisations such as charities and non-governmental organisations, including Christian Aid, ActionAid and Oxfam have well-established public campaigns on tax. They have been engaging with companies that have suffered significant reputational damage as a result of their tax affairs and are helpfully constructing frameworks for what a ‘good tax policy’ might look like.
- 7.2. Tax remains a novel and under-reported issue for faith investors.
- 7.3. The Church of England Ethical Investment Advisory Group (EIAG) outlined some thinking on tax and investment in July 2013 in which the EIAG recommended ‘that tax ethics should be a subject for investor engagement where it appears that a company’s approach is blatantly aggressive or abusive’¹². The note set out some background, the business and ethical dimensions (‘the way in which a company approaches tax is part of its relationship with the societies in which it operates’), and rejected the view that corporate tax planning is only a matter of legal compliance.
- 7.4. The Church of England’s policy recommendations included:
- Noting that significantly lower levels of tax than peers may indicate that a company is an outlier and should be the subject of engagement;
 - The EIAG outlined specific concerns around tax justice in developing economies;
 - The propensity for promoting tax avoidance and transparency

- The objective of engagement should be to encourage the development of and alignment with good documented tax policy and voluntary public disclosure of tax paid
- 7.5.** The Church Investors Group has also been engaged in the subject of tax justice and tax transparency with presentations at its 2015 Conference by Christian Aid ('Corporate Tax and Morality: Lessons for Responsible Investors' and the Tax Justice Network ('Responsible Investment and Corporate tax').
- 7.6.** The CIG commissioned collaborative investor engagement on tax in 2017, led by the Church of England, will be focused on the global IT and pharmaceutical sectors.
- 7.7.** Both Christian Aid and ActionAid have been vocal in the debate on corporate tax avoidance and have published briefings and primers for investors on how to engage with companies.¹³
- 7.8.** The Joseph Rowntree Charitable Trust¹⁴ has produced 'a Statement of Expectations' in respect of its Fund Managers. The Statement acknowledges that 'most companies face a competitive and uneven tax playing field, and calculating what the 'right' amount of tax they should be paying is not always clear cut'. Whilst JCRT recognises the importance of inter-governmental agency in reforming the tax regime, it notes that 'we as investors...should not remain passive about this issue'. To that end, its Statement provides a series of actions expected of Fund Managers including:
- Monitoring the level of corporate tax payments as an indicator of 'good' behaviour
 - Divesting from those companies that are clearly exploiting the tax regime and where engagement is likely to be ineffectual
 - Engaging with companies that are clearly exploiting the tax regime and where investor pressure may effect change, and
 - Supporting collaborative effort on tax reform at a policy and corporate level and encourage use of the Fair Tax Mark.

8. Fair Tax Mark

- 8.1.** The Fair Tax Mark¹⁵ was launched in 2014 and is an independent not-for-profit community benefit society (an industrial and provident society supported by the Joseph Rowntree Charitable Trust). Its rationale is to accredit companies with a kite-mark by seeking "to encourage and recognise organisation that pay the right amount of corporation tax at the right time and in the right place".
- 8.2.** Take up has been predominately among smaller, co-operative or private businesses. Just one FTSE100 company (energy utility SSE) and two FTSE250 companies (Go Ahead Group and Marshalls) have become 'fair tax compliant'.

9. Engagement strategy

- 9.1.** Informed and meaningful engagement on tax policy with different companies requires a high level of technical expertise owing to the complexity of tax law and the multi- jurisdictional nature in which it is paid.
- 9.2.** It would generally be neither feasible nor desirable for investor engagement to make technical determinations around the intentions (or otherwise) of individual financial structures by companies. Fruitful engagement should be centred on encouraging tax transparency and on how companies manage and disclose their tax arrangements.
- 9.3.** Transparency and disclosure is viewed as the most beneficial avenue for engagement as many of the financial structures that often determine tax liabilities are occluded. Secrecy and complexity obfuscate understanding. While such structures may have legitimate use (including entirely appropriate tax planning and some use of havens), secrecy raises concerns about the appetite and desire ultimately to avoid tax.
- 9.4.** A transparent tax policy leads to greater confidence that financial engineering has a legitimate purpose and is acceptable from a societal standpoint.
- 9.5.** JACEI contends that a Policy Statement on tax would enable CFB to engage effectively with companies on tax, and that such a Policy would primarily be used in routine discussions with companies where clarity or greater understanding of approaches to tax planning is required.
- 9.6.** Primers published and developed by Christian Aid and ActionAid, and in turn built around tax policy and transparency are helpful guides in developing a tax engagement policy for the CFB. Extracts from key guidance is provided at Appendix I.
- 9.7.** Hallmarks of best practice in this area might therefore include:
- A meaningful published tax policy;
 - A statement that tax compliance is understood as more than legal compliance;
 - A statement on how tax planning is arranged and managed;
 - How much tax is paid and in which jurisdictions, and;
 - A view of the progress the company is making towards adoption of the Fair Tax Mark.
- 9.8.** JACEI also supports CFB efforts to work collaboratively with others, such as the CIG on tax by engaging with companies of concern: Tax represents a challenging issue for engagement and lends itself well to more active collaboration.

10. Appendix I

10.1. Towards a Responsible Investment Policy on Tax

1. The basis of guidance in this Appendix is sourced from Responsible Tax Practices by Companies published by ActionAid in 2013¹⁶.
2. Both Christian Aid and ActionAid have published significant literature on tax over time, and have become the leading developmental advocates for reform and change. Significant literature referenced for this paper includes:
 - Responsible Tax Policy by Companies: A Mapping and Review of Current Proposals (2015)¹⁷
 - Getting to Good: Towards Responsible Corporate tax Behaviour (2015)¹⁸
 - Tax Responsibility: The Business Case for Making Tax a Corporate Responsibility Issue (2013)¹⁹
 - Tax Responsibility: An Investor Guide (2013)²⁰
 - Tax Responsibility (2011)²¹
 - The Pocket Guide to Tax Justice (2013)²²
3. A responsible investment policy on tax and focused on engagement recognises that:
 - Aggressive tax practices are a reputational, regulatory and financial risk
 - Tax responsibility is about transparency and disclosure, principally:
 - Disclosing a responsible tax policy
 - Managing compliance with the policy
 - Reporting on tax responsibly
4. A responsible approach to tax justice will incorporate disclosure of policy, how tax planning is measured and reporting to stakeholders.

11. Notes

1. http://www.methodist.org.uk/downloads/pi_ethicsofwealthcreation_90.pdf
2. <https://www.ifs.org.uk/comms/comm118.pdf>
3. <http://www.methodist.org.uk/about-us/the-methodist-conference/conference-reports/conference-reports-2012/>
4. www.christianaaid.org.uk; www.church-poverty.org.uk
5. <http://www.christianaaid.org.uk/pressoffice/pressreleases/comment/the-price-of-tax-dodging-in-the-developing-world.aspx>
6. <http://www.methodist.org.uk/about-us/the-methodist-conference/conference-reports/conference-reports-2015/>
7. <http://www.cfbmethodistchurch.org.uk/ethics/the-joy-of-tax.html>
8. <http://www.oecd.org/ctp/glossaryoftaxterms.html>
9. <http://www.bbc.co.uk/news/business-20288077>
10. https://www.ibe.org.uk/userassets/briefings/ibe_briefing_31_tax_avoidance_as_an_ethical_issue_for_business.pdf
11. www.oecd.org – originally published in 2008
12. <https://www.churchofengland.org/sites/default/files/2018-01/Corporate%20tax%20ethics%202013.pdf>
13. See Christian Aid and ActionAid for resources on tax www.christianaaid.org.uk; www.actionaid.org.uk
14. <https://www.jrct.org.uk/userfiles/documents/Statement%20of%20expectations%20on%20corporate%20tax.pdf>
15. <https://fairtaxmark.net/>
16. https://www.actionaid.org.uk/sites/default/files/publications/responsible_tax_practice.pdf
17. https://www.actionaid.org.uk/sites/default/files/publications/responsible_tax_practice.pdf

18. https://www.actionaid.org.uk/sites/default/files/publications/getting_to_good_towards_responsible_corporate_tax_behaviour.pdf
19. https://www.actionaid.org.uk/sites/default/files/doc_lib/tax_responsibility.pdf
20. https://www.actionaid.org.uk/sites/default/files/publications/tax_guide_for_investors_final.pdf
21. https://www.actionaid.org.uk/sites/default/files/doc_lib/tax_responsibility.pdf
22. <https://www.christianaid.org.uk/sites/default/files/2017-02/Tax-pocket-guide-September-2013.pdf>