

Are tax authorities acting outside the law?

by Francis Bennion

In your leading article on 29 February 2012 you rightly said: ‘Tax avoidance, or trying to minimise tax liability, is usually carefully distinguished from tax evasion . . . which usually involves dishonestly concealing taxable income [and] is illegal’. Her Majesty’s Revenue and Customs (HMRC) is muddling this useful distinction by treating what it calls ‘tax avoidance’ as objectionable.

Your leading article says, ‘Under the Banking Code of Practice, Barclays and the other big banks undertake not to engage in tax avoidance’. While pretending that it is voluntary, HMRC has bullied the banks into agreeing to this code it has devised itself. The code has the same effect as law but, as HMRC admits, is not law. HMRC has failed to procure fully effective means in law of coping with tax evasion, so has fallen back on this extra-legal device. It is contrary to the rule of law for Government authorities to coerce subjects in this way, and ought not to be allowed. A law is a law; and what is not a law is not to be passed off by the executive as equivalent to a law.

As your leader indicates, HMRC has further transgressed the rule of law by threatening Barclays with retrospective penal legislation if it does not pay the tax it thought it had avoided (and probably had avoided under the law then in force). As Mr Justice Willes said in a famous judgment, ‘retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law’.¹

The only response published in *The Times* was from Peter Crawford of Culworth, Northants: ‘Three cheers for Francis Bennion for castigating HMRC’s abuse of power in applying extra-legal pressure on taxpayers. And thumbs down for you in endorsing such abuse (leading article, 29 March). The place for making law is Parliament, not the office of the tax collector. The conduct of Revenue & Customs is as plain an abuse of power as that of Charles I in the seventeenth century – does anyone remember Ship Money? - and should be met with as vigorous a response.’

© 2011 F A R Bennion
Doc. No. 2012.005

Website: www.francisbennion.com
The Times, 2 Mar 2012

Any footnotes are shown at the bottom of each page
For full version of abbreviations click ‘Abbreviations’ on FB’s website

References:

None

¹ Published in *The Times* 2 March 2012.