Looking for the joke in logic of James Hardie moving to Ireland ELIZABETH KNIGHT
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IT BEGGARS BELIEF that after 20 or more years of attempting to skirt its obligations to various tax authorities and asbestos victims, James Hardie Industries would even consider moving its corporate domicile to another country to minimise its tax obligations.

The bulk of its shareholders live in Australia and the overwhelming majority of its assets lie in the US but reports this week (which the company has not denied) suggest that it is looking to move its domicile from the Netherlands to Ireland, which has a 12.5 per cent corporate tax rate.

This is the pin-up poster company for ethical investment. Its attempts to avoid its corporate responsibility have cost it money and reputation.

In April the NSW Supreme Court found that 10 former directors and executives approved and issued misleading statements about the funding of compensation payments to asbestos sufferers.

James Hardie has also recently had to pay $153 million to the Australian Tax Office to settle a dispute around income declared over its restructure of the company and its move to the Netherlands.

At the time the chief executive, Peter Macdonald, said that over the long term the company's tax rate would fall to 25 to 30 per cent and savings would amount to $30 million a year.

The move to the Netherlands was also viewed as a means to escape its obligations to compensate asbestos victims.

The trouble is that the relocation ultimately satisfied neither of these ambitions.

Tax laws in the Netherlands were changed and the loophole was closed. The Tax Office sought to recover what it had lost and the NSW Government forced the company to compensate asbestos victims.

Most companies that resort to these extreme measures in an attempt to maximise returns to shareholders do so because they have a poor underlying business.

This is not the case with James Hardie. Sure, it's doing it tough right now in the US building materials market, but it's in a cyclical downturn. In a general sense James Hardie has performed exceptionally well in this market. It has developed new product and taken market share from its larger competitors.

The only thing it is bad at is being bad.

But there is something in the DNA of this company. The past 20 years have seen several changes in management and boards. But still it looks for shortcuts to making money.

The current governors have had nothing to do with the ethically challenged behaviour of their predecessors. They have been cleaning up the mess and working with one hand tied behind their backs thanks to these legacy issues.

Part of this process is its move to change the Netherlands domicile, which now offers the company no financial benefit. (Indeed, in the most recent filing it was being taxed at 50 per cent).

The current management has flagged for some time its desire to relocate again, out of the Netherlands. There was an assumption that the US was the logical home for James Hardie given it is the epicentre of its operations. The runner-up location would be Australia.

These would appear to be the two least complicated jurisdictions for James Hardie. It has already stated openly that its tax situation is much more complicated than it should be.

It's hard to imagine how moving it Ireland would uncomplicate the company's tax position. James Hardie has been on the Tax Office's radar for years, and moving to Ireland is sure to set off a new set of alarm bells.

And one must ask the question of why is it all right for James Hardie to move to a lower tax jurisdiction when other companies with big offshore operations don't do the same thing?

The taxation mess in which it finds itself is all of its own making.

Surely the best way to maximise shareholder returns is to focus management resources on making more money.

A former James Hardie director, Martin Koffel, who sat around the table when the company moved to the Netherlands in 2000, said in evidence that he was sceptical about the touted benefits.

His words should resonate today.

"While I appreciated the unfairness caused to Australian stockholders who had risked their capital in expanding in the American business and were subject to double taxation, my view, which I conveyed to Mr McGregor (the then chairman), was that the best defence against taxation was to earn more income and that we had a good business and should continue to develop it as the first priority."

Quite.