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# FOLLOW THE MONEY

## HOW TAX HAVENS FACILITATE DIRTY MONEY

## FLOWS AND DISTORT GLOBAL MARKETS

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### The offshore interface

The elephant in the living room of the corruption debate is the role played by the global infrastructure of banks, legal and accounting businesses, tax havens and related financial intermediaries in providing an offshore interface<sup>2</sup> between the illicit and the licit economies. This interface facilitates capital flight and tax evasion, distorts global markets to the disadvantage of innovation and entrepreneurship, slows economic growth by rewarding free-riding and mis-directing investment, and increases global inequality. The offshore interface functions through collusion between private sector financial intermediaries and the governments of states which host offshore tax haven activities.

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<sup>1</sup> [www.taxjustice.net](http://www.taxjustice.net)

<sup>2</sup> For a detailed analysis of the origins of tax havens and their linkages with the global economy see: Hampton, M, (1996) *The Offshore Interface: Tax Havens in the Global Economy*, MacMillan, Basingstoke.

Despite the evocative images conjured up by the term 'offshore', it would be wrong to think of offshore as disconnected and remote from mainstream nation states. Geographically, many of the offshore tax havens are located on small island economies dispersed across the spectrum of time zones, but politically and economically the majority of tax havens are inextricably linked to major OECD states, and the term 'offshore' is strictly a political statement about the relationship between the state and parts of its related territories.<sup>3</sup> In the British economy, for example, the bulk of offshore transactions are controlled by the City of London, albeit that many City financial intermediaries operate out of centres located on UK Overseas Territories and Crown Dependencies. These centres have a tangible form, with functional banks, trust companies and law offices, but in practice they do not function autonomously from the mainstream economies. They are primarily of use to the City because they offer zero or minimal tax rates combined with secrecy arrangements (including non-disclosure of beneficial ownership of companies and trusts) and regulatory regimes which are more permissive than those prevailing in onshore economies.

Most reasonable observers might expect that governments of onshore states would act collectively to prevent tax and regulatory degradation, but in practice key actors, notably Switzerland, the UK and the USA, act to restrain efforts at achieving global cooperation. The UK, for example, allows its Crown Dependencies to persist with facilitating tax evasion, despite the fact that it is ultimately responsible for ensuring the good governance of those islands. Notwithstanding the 'smoke and mirrors' appearance of quasi independence, all domestic laws enacted by the governments of the Bailiwicks of Guernsey and Jersey need prior approval from the Privy Council. It is therefore safe to conclude that the UK Department for Constitutional Affairs, which is responsible for government relations with the Crown Dependencies, would resist any laws it considered contrary to UK interests.

A major feature of offshore is the existence of conditions of secrecy, either created through banking secrecy laws or through *de facto* judicial arrangements and banking practices. This 'secrecy space' creates an effective barrier to investigation of activities in the OFC by external authorities,<sup>4</sup> and facilitates the laundering of proceeds from a wide range of criminal and unethical activities, including fraud, embezzlement and theft, bribery, narco trafficking, illegal arms trafficking, counterfeiting, insider trading, false trade invoicing, transfer mispricing, and tax dodging. According to one estimate, US\$1 trillion of dirty money<sup>5</sup> flows annually into offshore accounts, approximately half of which originates from developing

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<sup>3</sup> Palan, R., (1999) *Offshore and the Structural Enablement of Sovereignty*, in Hampton, M.P., & Abbott, J.P., . (eds) *Offshore Finance Centres and Tax Havens: The Rise of Global Capital*, MacMillan, Basingstoke.

<sup>4</sup> Christensen, J. and Hampton, M.P. (1999) *A Legislature for Hire: The Capture of the State in Jersey's Offshore Finance Centre*, in Hampton, M.P. & Abbott, J.P, op cit

<sup>5</sup> Dirty money is defined as money that is obtained, transferred or used illegally.

countries.<sup>6</sup> Despite the plethora of anti- money-laundering initiatives the failure rate for detecting dirty money flows is astonishingly high. According to a Swiss banker, only 0.01 per cent of dirty money flowing through Switzerland is detected.<sup>7</sup> It is unlikely that other offshore finance centres are any better. Crucially the techniques used for tax dodging and laundering dirty money involve identical mechanisms and financial subterfuges: tax havens, offshore companies and trusts, foundations, correspondent banks, nominee directors, dummy wire transfers, etc. Legal institutions granted special status and privilege by society have been subverted to purposes for which they were never intended. For example, the original purpose of trusts was to promote the protection of spouses and other family members who are unable to look after their own affairs, and to promote charitable causes. Incredible as it must appear to those not familiar with the offshore economy, charitable trusts are regularly set up in offshore tax havens for the purposes of owning 'special purpose vehicles' used for international tax planning and for hiding both assets and liabilities offshore, as happened with Enron and Parmalat.<sup>8</sup>

Offshore facilities are actively marketed by financial intermediaries to potential clients throughout the world. Most of us have seen advertisements promoting offshore structures and tax efficient wealth-managements schemes in newspapers and glossy travel magazines. For some inexplicable reason, *The Economist* newspaper seems to specialise in such advertisement for offshore tax planning and second passports. These advertisements are an open invitation to capital flight and tax evasion. They reveal a major fault line in the financial liberalisation process. Whilst capital has become almost totally mobile, the ability to police cross-border dirty money flows remains largely nationally based. The unsurprising outcome has been a massive increase in cross-border dirty money flows, conservatively estimated by Raymond Baker at US\$1 trillion annually.<sup>9</sup> The vast majority of these funds have been laundered via complex offshore ladders operating through the global banking system. Baker estimates the scale of the flows out of developing countries at around US\$ 500 billion annually, which totally overwhelms the value of annual aid budgets flowing from North to South. One study of 30 countries in sub-Saharan Africa (SSA) has estimated total capital flight from that region between 1970 and 1996 at about US\$187 billion.<sup>10</sup> The same study concludes that SSA is a net creditor to the rest of the world in the sense that external assets, i.e. the stock of flight capital, exceed external liabilities (i.e. external debt). The problem is that the assets are largely held in private hands, whilst the liabilities belong to the African public. These figures should be sufficient to give Bono, a leading advocate for western taxpayers to donate more to Africa, cause for further reflection on his project. Bono, of course, is

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<sup>6</sup> Baker, R. (2005) *Capitalism's Achilles Heel*, John Wiley & Sons, Hoboken, New Jersey

<sup>7</sup> Baker, R. (2005) op cit, p174

<sup>8</sup> Brittain-Catlin, W., (2005) *Offshore: The Dark Side of the Global Economy*, Farrar, Strauss and Giroux, New York, pp55-76

<sup>9</sup> Baker, R., (2005) op cit, p172

<sup>10</sup> Boyce, J.K. and Ndikumana, L. (2005) *Africa's Debt: Who Owes Whom?* In Epstein, G.A. *Capital Flight and Capital Controls in Developing Countries*, Edward Elgar, Cheltenham

a prominent supporter of further integration of African economies with the global financial and trade systems,<sup>11</sup> but judging from his own financial arrangements<sup>12</sup> he appears to see tax avoidance as an acceptable facet of commercial entrepreneurialism.

It is time to turn the current focus on corruption and development on its head. I have tremendous sympathy for my colleagues in Africa who, whilst deploring domestic corruption involving bribe-taking, fraud and embezzlement, are puzzled by the way in which the corruption debate has focused on the demand side of the equation whilst largely ignoring the supply side. As I commented in a recent essay in the London Review of Books: *“the looting of (Nigeria’s) resources, which reached its peak during Sani Abacha’s presidency in the 1990s, happened with the active connivance of an extensive infrastructure of banks, lawyers and accountants who provided the means for tens of billions to be shifted offshore. Some of these aiders and abettors came from Jersey. They would have been aware of the source of the funds and must have profited magnificently from handling this stolen property.”*<sup>13</sup>

It is disturbing, to put it mildly, that the prevailing corruption discourse remains largely focused on pointing fingers at petty officials and ruling kleptomaniacs. In terms of orders of magnitude, the proceeds from bribery, drugs money laundering, trafficking in humans, counterfeit goods and currency, smuggling, racketeering, and illegal arms trading account in aggregate for 35 per cent of cross-border dirty money flows originating from developing and transitional economies. In contrast, the proceeds from illicit commercial activity, incorporating mispricing, abusive transfer pricing and fake and fraudulent transactions account for 65 per cent of such flows.<sup>14</sup> The very least one might expect in such circumstances, is that equal emphasis be given to corruption in both private and public spheres; that greater prominence be given to how corruption can reduce tax revenues by as much as 50 per cent;<sup>15</sup> and that the activities of the offshore system should be more carefully scrutinised to ascertain the harmful impacts of tax havens on the functioning of global markets and on the integrity of the rule of law. As Baker notes in the concluding chapter of *Capitalism’s Achilles Heel*:

*“Illicit, disguised and hidden financial flows create a high-risk environment for capitalists and a low-risk environment for criminals and thugs. When we pervert the proper functioning of our chosen system, we lose the soft power it has to project values across the globe. Capitalism itself then runs a*

<sup>11</sup> See *Bono on Bono*, 2005

<sup>12</sup> Bowcott, O. (2006) *Found what you're looking for? U2 inspire Irish ire by avoiding tax* The Guardian, 9 August

<sup>13</sup> Christensen, J. (2005) ‘Hooray Hen-Wees’ *London Review of Books*, vol.27, no.19, 6<sup>th</sup> October

<sup>14</sup> Baker (2005) op cit, p369

<sup>15</sup> *The Other Side of the Coin: The UK and Corruption in Africa*, report by the Africa All Party Parliamentary Group, March 2006, p12

Around 40 per cent of the countries identified as least corrupt are offshore tax havens; including Singapore, Switzerland, UK, Luxembourg, Hong Kong, Germany, USA, Belgium and Ireland.

*reputational risk. As it is now, many millions of people in developing and transitional economies scoff at free markets, regarding the concept as a license to steal in the same way as they see other others illicitly enriching themselves.”*

Regrettably, Transparency International, despite its commendable role in putting corruption onto the political agenda, has undermined the efforts of reformers through its publication of the Corruption Perception Index (CPI) which reinforces stereotypical perceptions about the geography of corruption. Africa, in particular, is consistently identified by the CPI as a nexus of corruption, accounting for almost half of the bottom quintile of countries in the 2005 index. Only one African country, Botswana, features amongst the least corrupt quintile. But closer examination reveals that about 40 per cent of the countries identified by the CPI as least corrupt are offshore tax havens, including major centres such as Singapore (ranked 5<sup>th</sup> overall), Switzerland (7<sup>th</sup>), United Kingdom (11<sup>th</sup>), Luxembourg (13<sup>th</sup>), Hong Kong (15<sup>th</sup>), Germany (16<sup>th</sup>), USA (17<sup>th</sup>), and Belgium and Ireland (jointly 19<sup>th</sup>). For good measure Barbados and Malta, both offshore tax havens, rank 24<sup>th</sup> and 25<sup>th</sup> respectively. What do these rankings tell us about the current politics of corruption? I find it hard to disagree with the prominent Nigerian who, during protracted negotiations to secure the repatriation of assets stolen by former Nigerian President Sani Abacha, commented that: *“It is rather ironical that the European based Transparency International does not think it proper to list Switzerland as the first or second most corrupt nation in the world for harbouring, encouraging and enticing all robbers of public treasuries around the world to bring their loot for safe-keeping in their dirty vaults.”*<sup>16</sup>

The perversity of the CPI’s rankings reflects the general confusion and inadequacy of the current corruption discourse. In focusing on the activities of players employed in the public sector, and in largely basing its index on the perceptions of actors with conflicting interests, TI has highlighted only part of the corruption issue and has evaded the wider issue of how the ‘supply side’ incentivises and protects high level corruption. The proclivity to point fingers at petty officials and ruling kleptomaniacs has resulted in insufficient attention being paid to the western companies and their agents who pay bribes (typically through offshore structures) to secure contracts and favourable treatments. Furthermore, until very recently little or no attention was paid to the (largely) Western financial intermediaries who facilitate the laundering of the proceeds of corruption through offshore companies, trusts and similar subterfuges. Ditto the role of governments which actively collude in the process of encouraging illicit capital flight and tax evasion by offering secretive offshore facilities. My native island of Jersey, for example, introduced a new trust law in May 2006 which allows the creation and operation of ‘sham’ trusts which can only serve the purposes of tax evaders.<sup>17</sup> The law appears to serve no other purpose. Jersey is,

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<sup>16</sup> Former Education Minister Professor Aliya Babs Fafunwa quoted in *This Day*, 6<sup>th</sup> June 2005

<sup>17</sup> For further detail and analysis see: [www.taxresearch.org.uk/Blog/2006/06/15/jersey-passes-law-allowing-%e2%80%98sham%e2%80%99-trusts-for-use-by-tax-evaders/](http://www.taxresearch.org.uk/Blog/2006/06/15/jersey-passes-law-allowing-%e2%80%98sham%e2%80%99-trusts-for-use-by-tax-evaders/)

of course, a dependency of the British Crown, and this law will have been presented to the Privy Council for approval prior to its enactment. Since these 'sham' trusts will largely be created on behalf of tax evaders from outside the island, it is clear that the UK government is not serious about tackling the tax dodging industry.

I would place the United Kingdom high on the list of most corrupt countries. This nomination is based on three aspects of British economic policy which undermine public confidence in the integrity of government policy and are ultimately harmful to national and international interests. These are:

- § Britain's role as a tax haven, and as a defender of the tax haven activities of its overseas territories and Crown dependencies, including the continued abuse of European VAT rules by the Channel Island based fulfilment industry;
- § Britain's extensive use of tax competition to gain international advantage;
- § Britain's dismal role in undermining the effectiveness of the European Union's Savings Tax Directive by failing to advise the European Commission that the directive as agreed would allow interest paid to trusts to fall outside the tax deduction provisions. This omission appears to have been deliberate and has left a massive loophole in the Savings Tax Directive.<sup>18</sup>

Furthermore many of the legal subterfuges that play a part in the offshore interface have their origins in British law. This includes offshore trusts and shell companies, and the long standing concept of the separation of the place of incorporation of a company and the obligation to pay tax. The latter concept remains a key element of offshore tax planning. Britain, therefore, could play a major role in tackling the supply side of corruption, but successive governments have baulked at the task. We must ask ourselves why this been the case and, more generally, why: *"The whole culture of Anglo-American finance is increasingly subversive of regulation, taxation and democratic values, even when it remains within the law."*<sup>19</sup> The root of this problem might partly lie with the unhealthy proximity between major financial intermediary businesses and key Whitehall departments, including and especially the Treasury, and the extent to which the main political parties have become dependent on donations - including staff secondments - from major corporations.

The secrecy space offered by the offshore interface, which currently comprises approximately 72 tax havens clustered near the major onshore economies,<sup>20</sup> represents a glaring flaw in the global financial architecture. This flaw is routinely exploited by financial intermediaries for the simple reason that this is the most profitable fee-earning activity. Senator Joe Lieberman summed up these degraded values when he commented to the UN Senate Committee that: *"ranks of lawyers and*

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<sup>18</sup> Christensen, J., and Murphy, R., (2006) *The Tax Avoider's Chancellor, Red Pepper*, August, pp24-26

<sup>19</sup> Plender, J. (2003) *INSIDE TRACK: Going off the rails, Financial Times*, 28<sup>th</sup> January

<sup>20</sup> TJN's map of tax havens is at:  
<http://www.taxjustice.net/cms/upload/pdf/mapamundi.pdf>

*financial accountants have abused the law and their professional ethics simply for the sake of huge sums of money to be made helping their clients evade taxes.*<sup>21</sup>

### ***“Only the little people pay taxes”***

The Tax Justice Network is primarily concerned with the impact of capital flight, tax evasion, tax avoidance and harmful tax incentivisation on global poverty and inequity. Capital flight contributes to financial crises and carries economic costs in the form of reduced investment, slower economic growth and higher unemployment. Neo-liberal economists typically overlook the role of the offshore economy in their analysis, which might explain why they are wholly unable to explain the ‘uphill’ movement of capital from poor to rich nations - above all to the USA and Europe - despite the predictions of their economic theories.<sup>22</sup> The prospect of financial crises might be a primary cause of capital flight, but tax free status creates a strong incentive for wealthy domestic asset holders in developing countries to retain their assets offshore. By doing this on an anonymous basis, they are able to protect their wealth from potential currency devaluation and from taxes. Many also engage in ‘round-tripping’ exercises, using money held offshore to buy domestic assets under the guise of foreign direct investment, which is typically granted special fiscal status. The Western banks encourage and facilitate these processes through their extensive retail banking networks in the developing countries.

In March 2005 the TJN published a briefing paper— *The Price of Offshore*<sup>23</sup> - which estimated the stock of private wealth held ‘offshore’ by rich individuals, and largely undeclared in the country of residence, at about US\$11.5 trillion. We reckon the annual worldwide income on these undeclared assets at about US\$860 billion, and that the annual worldwide tax revenue lost on such undeclared income is about US\$255 billion.

That figure significantly exceeds the annual funds needed to finance the UN’s Millennium Development Goals.

Whilst the majority of this \$11.5 trillion of undeclared assets originates from developed countries, a significant proportion comes from developing countries. For example, over 50 per cent of the cash and listed securities of rich individuals in Latin America is reckoned to be held offshore<sup>24</sup>. Data for Africa are scarce, but most analysts assume the ratio to be comparable to Latin America or higher. The most

<sup>21</sup>

[http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=R&PressRelease\\_id=580&Month=11&Year=2003](http://hsgac.senate.gov/index.cfm?FuseAction=PressReleases.Detail&Affiliation=R&PressRelease_id=580&Month=11&Year=2003) accessed 14 August 2006

<sup>22</sup> Guha, K. (2006) *GLOBALISATION - A share of the spoils: why policymakers fear ‘lumpy’ growth may not benefit all*, *Financial Times*, 28 August, p11

<sup>23</sup> [http://www.taxjustice.net/cms/upload/pdf/Price\\_of\\_Offshore.pdf](http://www.taxjustice.net/cms/upload/pdf/Price_of_Offshore.pdf)

<sup>24</sup> Boston Consulting Group (2003) *Global Wealth Report*

Developing countries are losing public revenues amounting to around \$385 billion annually because of tax evasion, tax avoidance and tax competition

recent edition of *Africa Report* (March 2006) quotes banking estimates of capital flight from Africa at \$30 billion annually<sup>25</sup>. This loss easily eclipses the value of aid and debt relief promised to African leaders at last year's G-8 summit at Gleneagles.

But the figure of \$255 billion in tax revenue lost to tax evasion on assets held offshore is only one part of the equation. Developing countries also lose out to tax evasion in the domestic context (often from activities in the informal economy), from tax avoidance on cross-border trade, and from the pressures to compete for investment capital through offering unnecessary tax incentives. In combination these issues are estimated to cost developing countries approximately \$385 billion annually in tax revenues foregone.<sup>26</sup> This clearly represents a massive haemorrhaging of the domestic financial resource of many developing countries, which undermines sustainability in a number of ways:

- § Declining tax revenue income from the wealthy and high income earners forces governments to substitute other taxes (typically indirect) with a consequent regressive impact on wealth and income distribution;
- § Falling tax revenues force cutbacks in public investment in education, transport and other infrastructure;
- § Tax dodging corrupts the integrity of tax regimes and creates harmful economic distortions which penalise those who follow ethical practice and benefits those who bend the rules;
- § Tax dodging undermines public respect for the rule of law and the integrity of democratic government.

Declining tax revenues in developing countries have stimulated a vicious circle of decline in investment in the human capital necessary to create an attractive environment for both domestic and foreign investors. In its latest report on Latin America, the World Bank argues that governments must give higher priority to spending on infrastructure likely to benefit the poor and increase expenditure on education and healthcare. In practice a large proportion of government spending in Latin America is skewed in favour of the well off, and governments are collecting far too little tax, especially from the wealthy. The World Bank report concludes that: "*on the tax front, first items in the agenda would be strengthening anti-tax evasion programs and addressing the high levels of exemptions.*"<sup>27</sup>

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<sup>25</sup> Smith, P. (2006) *On the Wing: How capital flight is cheating Africa*, The Africa Report, March, p22

<sup>26</sup> Cobham, A. (2005) *Tax Evasion, Tax Avoidance and Development Finance* Queen Elizabeth House Working Paper Series No. 129, Oxford

<sup>27</sup> Lopez, J.H. et al (2006) *Poverty Reduction and Growth: Virtuous and Vicious Circles*, The World Bank, p101



## The invisible worm

Tax dodging corrupts the revenue systems of the modern state and undermines the ability of the state to provide the services required by its citizens. It therefore represents the highest form of corruption because it directly deprives society of its legitimate public resource. Tax dodgers include institutions and individuals who enjoy privileged social positions but see themselves as an elite detached from normal society and reject *“any of the obligations that citizenship in a normal polity implies”*.<sup>28</sup> This group comprises the rich and high income earners, plus a pinstripe infrastructure of professional bankers, lawyers, and accountants, with an accompanying offshore infrastructure of tax havens with quasi-independent polities, judiciaries and regulatory authorities. This type of corruption therefore involves collusion between private and public sector actors, who purposefully exploit their privileged status to undermine national tax regimes by facilitating activities which straddle the border line between the legal and the illegal, the ethical and the unethical.

Despite the fact that many of its practitioners hold professional status, the culture of the tax dodging industry is wholly subversive of democratic norms. The attitudes I encountered whilst working in the offshore finance industry in the 1980s and 90s were perfectly captured in the following quote given to a national newspaper in response to the 2004 financial statement by the UK Chancellor of the Exchequer: *“No matter what legislation is in place, the accountants and lawyers will find a way around it. Rules are rules, but rules are meant to be broken.”*<sup>29</sup> No matter how you attempt to spin this statement, it is clearly intended to convey the message that some classes of society are beyond compliance with social norms. Incredibly, none of the professional institutions of lawyers or accountants promote ethical codes of conduct on the marketing of non-compliant taxation behaviour or the use of tax havens by their members. Accountants enjoy a privileged status in most societies, but they, along with lawyers and bankers, have played a lead role in shaping and promoting offshore facilities for their clients. They typically justify their tax avoidance activities on the basis that it promotes economic efficiency. Some practitioners argue that directors have a duty to avoid tax:

*“Tax is a cost of doing business so, naturally, a good manager will try to manage this cost and the risks associated with it. This is an essential part of good corporate governance.”*<sup>30</sup>

This statement needs careful unbundling to understand its underlying politics. Firstly, a tax on profits is not a business cost but a distribution to society. This much

<sup>28</sup> Reich, R., (1992) *The Work of Nations*, New York

<sup>29</sup> Guy Smith, tax adviser, Moore Stephens, quoted in *The Guardian*, 18<sup>th</sup> March 2004

<sup>30</sup> P.J. Henahan, senior tax partner of Ernst & Young, in an article published in the *Irish Times* on 7<sup>th</sup> May 2004

O Rose, thou art  
sick!  
The invisible  
worm  
That flies in the  
night,  
In the howling  
storm,

Has found out  
thy bed  
Of crimson joy,  
And his dark  
secret love  
Does thy life  
destroy.

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**William Blake**

is clear from how tax is reported on the profit and loss account alongside distribution to shareholders. Secondly, the use of the word risk is revealing. What risks arise from tax other than those involving a legal challenge to an avoidance or evasion strategy? Thirdly, directors wanting to pursue ethical corporate practices would generally not regard tax avoidance as acceptable practice, and are therefore likely to resent pressures from competitors who abandon ethics in favour of higher short term profits. Finally, there is no requirement under company law - anywhere in the world - for company directors to minimize their tax payments, especially when this involves actions that might infringe national laws and hiding these actions from the scrutiny of shareholders and national authorities.

Another frequently heard justification for tax avoidance is that tax policies are overly complex and therefore impose unnecessary burdens on business. The reality is that tax rules have become complex partly in response to the increasingly elaborate tax planning strategies used to avoid paying taxes. This is a chicken and egg situation which has added unnecessary costs to both tax planning and tax collection. A blanket anti-avoidance principle enshrined in law and accompanied by purposive statements in tax laws would cut through this Gordian knot.

In practice, much offshore tax planning involves practices which many would not regard as good corporate governance. Hence the secrecy in which these practices are conducted. In the words of the report on tax havens published by the U.S. Senate in August 2006:

*“Utilizing tax haven secrecy laws and practices that limit corporate, bank and financial disclosures, financial professionals often use offshore tax haven jurisdictions as a ‘black box’ to hide assets and transactions from the Inland Revenue Service, other U.S. regulators and law enforcement.”<sup>31</sup>*

Another recent U.S. Senate report on the accountancy industry revealed internal communications from accounting multinational KPMG which contained a warning from one senior tax adviser that, were the company to comply with the legal requirements of the Inland Revenue Service relating to the registration of tax shelters, the company would place itself at a competitive disadvantage and would *“not be able to compete in the tax advantaged products market.”* KPMG was undeterred and went ahead with: *“knowingly, purposefully and wilfully violating the federal tax shelter law.”<sup>32</sup>* During its enquiries the US Senate Committee discovered that KPMG had devised over 500 ‘active tax products’, some of which may have been illegal. Just four of those 500 products cost the US Treasury US\$85 billion annually in lost tax revenues, whilst KPMG booked US\$180 million in fees. Speaking after the

<sup>31</sup> US Senate Permanent Subcommittee on Investigations (2006) *Tax Haven Abuses: The Enablers, the Tools, the Secrecy*, August, p2

<sup>32</sup> US Senate Permanent Committee on Investigations (2003) *The Tax Shelter Industry: the role of accountants, lawyers and financial professionals*, Washington DC, US Senate, p13

Offshore secrecy corrupts the capitalist system more generally by enabling company directors to engage in aggressive tax planning

conclusion of the Senate Committee's enquiries, senior ranking Democrat Senator Carl Levin said that: *"our investigations revealed a culture of deception inside KPMG's tax practice."*

The US is ahead of the game in investigating and condemning the activities of offshore tax havens. This is not just because of the systemic problems revealed by the Enron and WorldCom debacles. There seems to be a wider recognition in the US that tax havens are fundamentally anti-democratic and anti-market. Significantly the Senate report mentioned above was produced by a Subcommittee chaired by a prominent Republican and supported by a prominent Democrat. Nothing similar has been produced by either the European Commission or Parliament. The Commission's attempt at combating tax evasion through the Savings Tax Directive, which came into force in July 2005, was rendered virtually impotent by extensive lobbying and political shenanigans (not least on the part of the UK government - see below). Both the World Bank and the International Monetary Fund have developed their own anti-corruption agendas, but significantly neither have greatly concerned themselves with offshore banking secrecy other than where it impacts on their rigidly restricted anti-money laundering programmes. The Financial Action Task Force formed by G-7 heads of state in 1989 to spearhead global anti-money laundering programmes, has resolutely turned a blind eye to capital flight and tax evasion, and has probably worsened the situation by appearing to legitimise tax havens which have cooperated with its efforts to track the proceeds of narco trafficking and terrorist funding.

In addition to corrupting financial systems by encouraging and facilitating illicit activities, offshore secrecy corrupts the capitalist system more generally by enabling company directors to engage in aggressive tax planning to raise short term profitability (thereby enhancing share option values), and gain a significant advantage over their nationally based competitors. In practice, as I have argued elsewhere, this bias favours the large business over the small, the long established over the start-up, and the globalised business over the local.<sup>33</sup> In every respect this bias works against the operations of fair trade, fair competition and ethical enterprise, but until now tax justice has scarcely registered on the Corporate Social Responsibility debate.<sup>34</sup> Indeed, a recent business symposium hosted by transnational accounting firm KPMG concluded that: *"tax avoidance does not damage corporate reputations and may even enhance them"*.<sup>35</sup>

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<sup>33</sup> See *'tax us if you can - the true story of a global failure'*, Tax Justice Network, 2005

<sup>34</sup> See for example Christensen, J. & Murphy, R. (2004) *The Social Irresponsibility of Corporate Tax Avoidance: Taking CSR to the bottom line*, *Development*, volume 47, number 3, (37-44)

<sup>35</sup> <http://www.taxresearch.org.uk/Blog/category/kpmg/> accessed 28 August 2006

## The revolt of the elites

The failure to tackle these major flaws in the globalised financial system has generated a spirit of lawlessness and unethical behaviour which acts as a cancer on our trust in the integrity of the market system and democracy. Tax dodging by rich individuals forces governments to switch the tax burden to the less well-off, increasing inequality and undermining public confidence in the rule of law. Company directors committed to good governance and ethical policies find themselves competing on an unfair basis against corporate delinquents prepared to push tax planning to the limits. Governments committed to equitable tax practices and fair trade find themselves drawn into a wholly bogus process known as tax competition which undermines their revenue base and increases inequality.

The idea of tax competition, which conflates the micro economic theory of the firm with political economics of the state, is a fallacious notion used to justify tax cuts for powerful companies and the rich. The fact that governments do not compete with one another to provide defence, health, education and other public services to their citizens has not inhibited prominent economists from supporting the concept. Milton Friedman, a leading member of the Chicago Boys who advised Augusto Pinochet during his dictatorship, has said:

*“Competition among national governments in the public services they provide and in the taxes they impose, is every bit as productive as competition among individuals or enterprises in the goods and services they offer for sale and the prices which they offer.”*<sup>36</sup>

Such thinking is manna from heaven for the rich, but according to FT columnist Martin Wolf: *“The notion of the competitiveness of countries, on the model of the competitiveness of companies, is nonsense.”*<sup>37</sup> It seems not to have occurred to Mr Friedman that when businesses fail they are replaced by more efficient businesses, whereas when governments fail the international community is called in to rescue the situation. Unfortunately, the fallacy of tax competition has proved enormously influential amongst politicians and has initiated a race to the bottom, particularly in the UK. Speaking at the Mansion House earlier this summer the UK Chancellor said: *“We will succeed if, like London, we think globally . . . (and) invest in . . . a competitive tax environment.”*

Through a process of stealth the global economy has been reconfigured to match the interests of a class of super rich who hold their wealth in offshore tax havens like Jersey, Monaco, Switzerland or the Cayman Islands.<sup>38</sup> They live more or less where

<sup>36</sup> <http://www.freedomandprosperity.org/> accessed 1 February 2006

<sup>37</sup> Wolf, M., (2005), *Why Globalization Works* Yale Nota Bene, p258

<sup>38</sup> Lansley, S. (2006) *Rich Britain*, Politico's, London

Throughout the developing world, tax evasion and the looting of resources to secret bank accounts has nurtured entrenched resentment, widespread unemployment, low levels of public service, and a general lack of opportunity.

they choose, and their main preoccupation lies with staying rich. Detached from the concept and practice of citizenship they have *“managed to relieve themselves, to a remarkable extent, of the obligation to contribute to the national treasury.”*<sup>39</sup> They justify this anti-social behaviour by claiming a preference to use private service providers, but ignore the fact that in almost all cases their wealth is dependent on massive public investment in the social and physical infrastructures of the modern economy. Taxes, as property millionairess Leona Helmsley said, are for *“the little people.”* When she said this in the 1980s her remarks had the capacity to shock. By now things have deteriorated to such an extent that most people expect the rich to avoid paying tax. U.S. President George W Bush confirmed as much in August 2004 when he said that trying to tax the wealthy doesn't work because *“real rich people figure out how to dodge taxes.”*<sup>40</sup>

Throughout the developing world, tax evasion and the looting of resources to secret bank accounts has nurtured entrenched resentment, widespread unemployment, low levels of public service, and a general lack of opportunity. But this need not be the case. Most of these problems can be remedied by strengthening international cooperation. Effective information exchange between national authorities would go a long way towards overcoming the problems of capital flight and tax evasion. The barriers posed by banking secrecy could be overcome by over-ride clauses built into international treaties. The secrecy of offshore trusts would be reduced by requiring registration of key details relating to the identity of the settlor and beneficiaries. There is no reason why those who benefit from the privileges conferred by using companies and trusts should not accept the obligation of providing basic information about their identity. Global frameworks could be agreed for taxing multinationals on the basis of where they actually generate their profits. Policies such as these could be implemented in a relatively short time frame. The principle barrier standing in the way of progress towards achieving these goals is the lack of political will on the parts of the governments of the leading OECD nations, most notably the USA and the UK, both of which are leading tax haven nations. The reality of their commitment to 'globalisation' is that they want liberalised trade on their own terms but continue to use fiscal incentives to distort the trade system in favour of their domestic businesses and to attract capital from developing and emerging countries. This explains why tax justice has become the big issue on the global development agenda.

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<sup>39</sup> Lasch, C. (1995) *The Revolt of the Elites*, W.W. Norton & Company, New York, p47

<sup>40</sup> Rich Dodge Taxes Says Bush - A Flash of Honesty or Another Slip of the Tongue? *Pacific News Service*, 9 September 2004. President Bush made this comment when speaking at the Northern Virginia Community College in Anandale on 9 August 2004. The full quote goes: *“On the subject of taxes, just remember when you talk about it, we're just going to run up the taxes on a certain number of people, first of all, real rich people figure out how to dodge taxes, and the small business owners end up paying a lot of the burden of this taxation.”*