

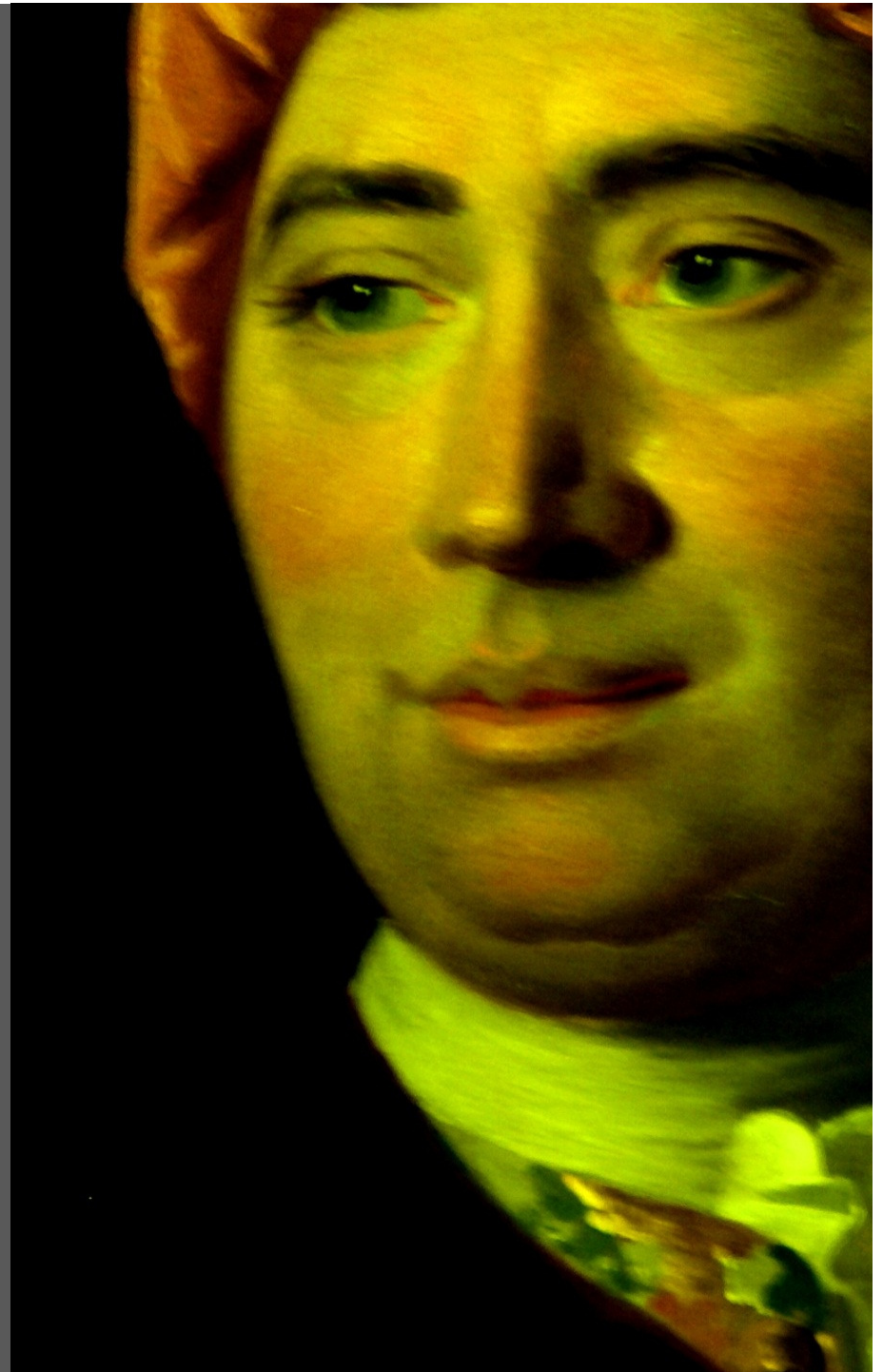
15<sup>th</sup> June 2012, The Future of Taxing Multinational Corporations  
**Outcomes of Two Days Dialogue on Transfer  
Pricing**

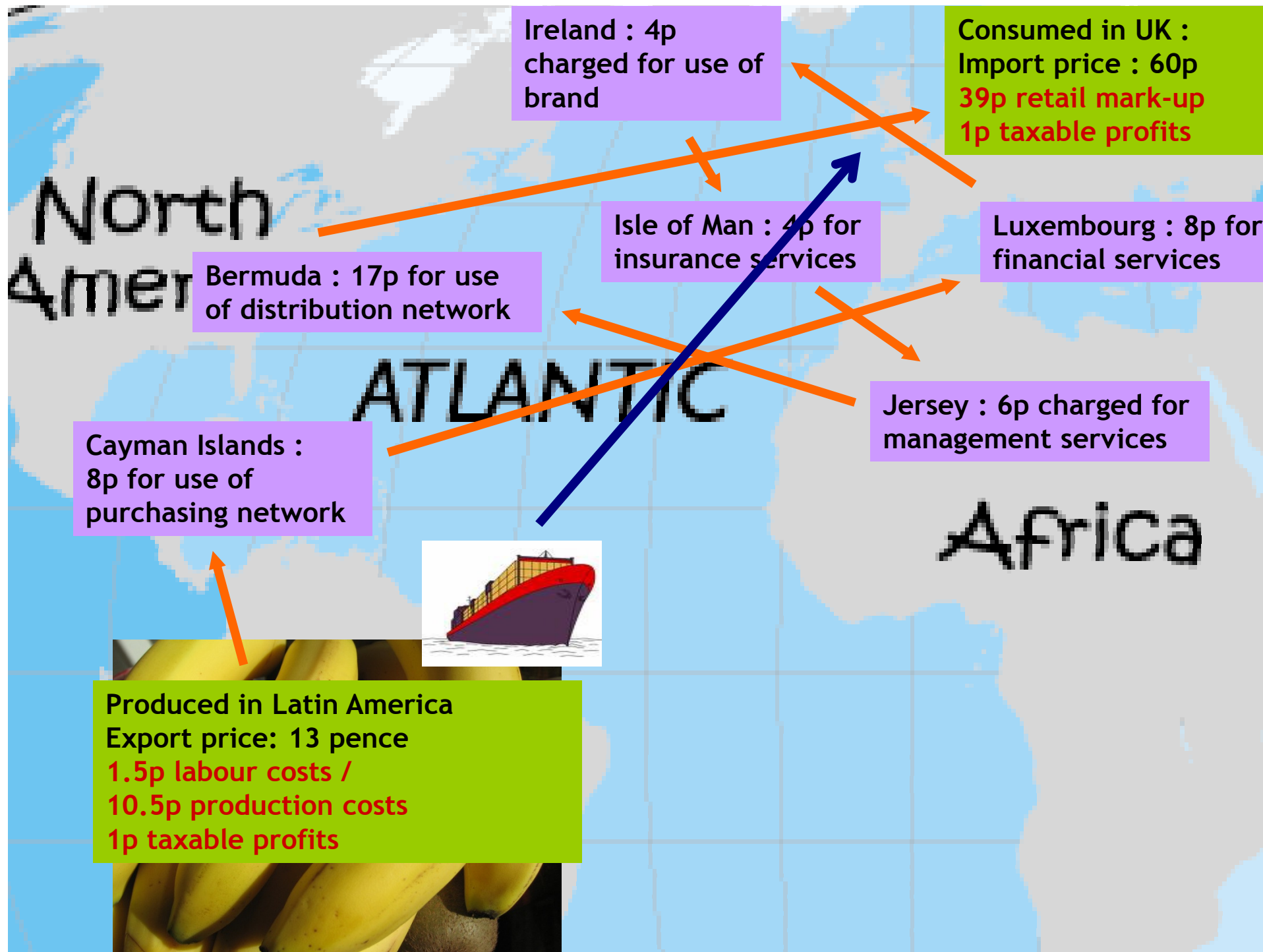


**John Christensen**  
**Director, International Secretariat**  
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“ *It is easy for the rich, in an arbitrary government, to conspire against them (the poor), and throw the whole burthen of the taxes on their shoulders* ”

*David Hume, 1752*





*“Tax havens serve no socially useful function. They exist only to circumvent norms. They undermine good governance.”*

**Joseph Stiglitz**

## **Arms Length Principle – Past its Use by Date**

“The world has moved a long way since the basis for the current arms length principle rules were established” Joseph Guttentag, former Chair, OECD

“(The Indian Government) officially takes the view that the OECD Guidelines reflect an agreement among OECD countries and do not address the concerns of developing countries . . . They do not represent the international consensus.” Letter to the UN Financing for Development Office 12 March 2012



*“Action by the international community is required to ensure that the potential tax base of developing countries is not undermined through tax evasion”*

African Tax Administrator's Forum, Pretoria, South Africa, 2008

## Transfer Pricing

“73 per cent of outbound capital (from China) flowed through tax havens (in 2010)” Zhang Ying, State Administration of China

“Transfer pricing is not art, its not science . . . Its magic! There are too many variables to factor in (which makes it as complex as weather modelling” Vikram Vijayraghavan, Tax Consultant, India

## ALP – flawed in theory

“The basic tenet of arm’s length transfer pricing – the availability of ‘uncontrolled comparables’ for transactions between commonly controlled parties – is based on a fundamental misunderstanding of practical economics. MNCs form because in some industries and markets, it is economically infeasible to operate non-integrated business”

Michael Durst, former Director, US Internal Revenue Service

## ALP – flawed in practice

“Comparables – whither art thou?”

Vikam Vijayraghavan

Bullying and delaying tactics of taxpayers – the imbalance of power relations between tax officials and MNCs which have access to huge teams of lawyers and accountants. Large taxpayers bypass tax officials to secure tax deals.

Gertrude Van Der Westhuysen, South African Revenue Service

## Moving On – Unitary Taxation

All members of a common enterprise are required to provide a combined report.

Total taxable income is apportioned to countries according to a formula based on economic substance (sales, labour and capital employed)

All income is apportioned to states able to tax the income (which eliminates the issue of income having no source)



## Legal fictions vs Economic Substance

Under the ALP, income is allocated to legal entities. Mechanisms to attribute income to source countries can be applied, but disputes arise.

The unitary approach, using combined reporting, allocates the aggregate income of an MNC by formula to different jurisdictions on the basis of economic substance. Different formulae can be applied on a sectoral basis

## If its broke – fix it

“If the critics of the ALP are right,  
why does the OECD persist?”

Joseph Guttentag

- Path dependency
- Vested interests
- Inertia
- Protectionism

## **Avoiding Tax**

**Havens Above**

**October 7<sup>th</sup> 2011**

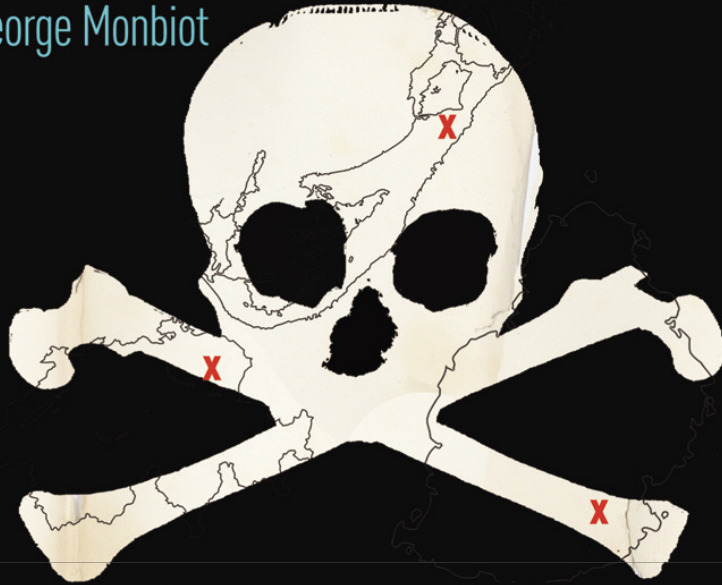
One criticism made of the Occupy Wall Street movement . . . is that has not made its grievances clear. Something the great unwashed might chant more about is the damage done by offshore finance.

## **Moving On**

- Empirical research and more case studies.
- Country-by- country reporting, strengthened information exchange – enhanced disclosure
- the CCCTB – exploring how unitary taxation might benefit countries in other regions
- a sectoral approach – applying unitary taxation to banks and other

**'PERHAPS THE MOST IMPORTANT BOOK  
PUBLISHED IN THE UK SO FAR THIS YEAR'**

George Monbiot



# TREASURE ISLANDS

**TAX HAVENS AND THE MEN  
WHO STOLE THE WORLD**

**NICHOLAS SHAXSON**

VINTAGE

<< They say that the *ancien regime* in France fell in the 18<sup>th</sup> century because the richest country in Europe, which had exempted its nobles from taxation, could not pay its debts. France had become . . . a failed state. In the modern world the nobles don't have to change the laws to escape their responsibilities: they go offshore. >>