

# TAX COMPETITION AND TAX AVOIDANCE: IMPLICATIONS FOR GLOBAL DEVELOPMENT

Association for Accountancy & Business Affairs  
Tax Justice Network

UNIVERSITY OF ESSEX, 1-2 JULY 2004

Provisional Programme

Thursday 1<sup>st</sup> July

Arrival & Registration: 12.00-12.45

Welcome and Introduction: 12.45 Prem Sikka (Essex University)

Session 1: 13.00-14.30: Chair: Mark Hampton

Anti-Haven Initiatives – Where Now and Where To?

Chairman's Introductory Statement – Mark Hampton

David Spencer – Tax Attorney

OECD Proposals on Harmful Tax Practices – An Update.

*Recent developments seem to indicate an uncertain future for increased international tax cooperation and exchange of tax information, whether on request as in the OECD proposals, or automatically, as in the EU directive on the taxation of savings. This paper suggests this might however be unduly pessimistic a view as the process should be viewed as naturally lengthy and evolving. The "injustice" of the OECD and the EU proposals is that they continue to permit the capital flight from third countries into OECD and EU financial centres.*

Break

Session 2: 15.00-16.30

Effects on and Reactions of the Havens: Chair: John Christensen

Jason Sharman (University of Sydney)

International Organisations, Blacklisting and Tax Haven Regulation

*This paper argues that public blacklisting by international organisations is an effective means of bringing about regulatory compliance by otherwise recalcitrant states. This contention is examined in light of overlapping campaigns by the OECD, Financial Action Task Force and Financial Stability Forum to pressure non-member tax haven states into introducing costly new financial regulations. Blacklisting is a form of speech act, rather than being cheap talk or signalling, that has damaged tax havens' reputations among investors, and thus led to capital flight and material economic damage. International organisations are able to draw on their technocratic, 'apolitical' identity to invest blacklists with their epistemic authority, but this role simultaneously constrains international organisations to eschew confrontation, and thus has paradoxically led to increasing limits on the use of this tactic.*

**Greg Rawlings (Australian National University)**

## **Offshore Finance Centres, Multilateral Initiatives and Increasing Tax Competition**

*This paper examines the self-reported effects on business performance, sustainability and confidence following international initiatives to regulate Offshore Finance Centres. Since the late 1990s small countries and territories have been encouraged and pressured by multilateral organisations (OECD) and supranational institutions (the EU and its Savings Tax Directive) to exchange information on civil and criminal tax matters. Interview based research in Australia, Andorra, Guernsey, Samoa and Singapore has been carried out to determine how OFC clients have reacted to these initiatives along with their impacts on the offshore sector, including local economies and societies. This paper shows that while these international programs have caused contraction and reorganisation in leading OFCs, their diverse clientele and access to established markets for global financial services continues to make them attractive locales for fund management, trusts, captive insurance and private banking. This suggests that international efforts to regulate offshore finance in selected jurisdictions (while omitting others), may actually increase tax competition rather than reduce it, at least in the short term. For multilateral policies to be effective it may well be necessary for wealthy and poor nations, including OFCs (which include some of the world's poorest and wealthiest jurisdictions) to determine if tax competition contributes to or ameliorates the inconsistencies and contradictions of globalisation and the uneven development that it produces on a global scale.*

**Tea**

**Session 3: 17.00-18.30: Chair: Paul Sweeney**  
**Tax Advisers and their Clients**

**Sandra Besson**

## **The OECD initiative -a Caribbean response and the role of the professional accountant .**

*Offshore Financial Centres (OFCs), many of them small island jurisdictions, have become significant locations within the international financial system. In recent years they have been subjected to reviews and initiatives from multilateral institutions. This paper examines the responses of a number of Caribbean OFCs to one such institution, the Organisation for Economic Cooperation and Development (OECD)'s harmful tax initiatives and reflects on the implications of such initiatives and responses for the role of accountants operating in these OFCs. The paper opens the way for further research into the involvement of accountants in Caribbean OFCs and the obligations of a profession with explicit public interest commitments working in areas very much concerned with matters of self and private interest.*

**Jim Stewart (Trinity College, Dublin)**

## **Tax Havens and Corporate Structure**

*Fiscal incentives play a key role in Irish industrial policy. There is some debate about how fiscal incentives and tax policy affects real investment. There is less ambiguity that tax policy affects corporate structure and intra-group financial flows. How MNC's corporate structure and financial flows react to tax policy is complex. This paper is an empirical study on the use of tax havens by parent companies of Irish registered firms. The paper examines certain financial characteristics of financial subsidiaries (those managing group treasury functions) in Ireland whose immediate parent is located in a tax haven and whose ultimate parent is a non-financial firm. These characteristics are high ratios of revenues to pre-tax profits (in some cases greater than 100%), high intra-group borrowing or lending, large gross assets (in excess of Euro 500 million) and low or zero employment. While these firms pay corporation tax in Ireland (at reduced rates), there is considerable loss to other*

exchequers. The paper concludes that such tax haven type activities are unlikely to remain a viable part of future industrial policy in Ireland.

### **Panel Discussion**

**Drinks in the Bar: 19.00**

**Buffet Dinner: 19.30**

**After-Dinner Discussion: 20.30**

**Dave Wetzel (Transport for London)**

*The case for land value taxation*

### **Friday 2nd July**

**Session 4: 09.00-10.30: Chair: ?**

**Towards Effective Taxation of Companies**

**Richard Murphy (Tax Justice Network)**

**“The Tax Gap Index”**

*One of the suggested outcomes of the 2003 seminar was that an index should be developed to show trends in the corporation tax actually paid by UK companies. This is necessary because headline tax rates in the UK rarely accord with the actual rates of tax paid due to the plethora of incentives and allowances available to such companies. It is also necessary because the UK government has persistently refused to publish such data. Richard Murphy has begun work on this project in association with Prem Sikka and John Christensen and initial data suggests that there is substantial underpayment by major UK corporate concerns. This fact has however been disguised by changes in UK accounting standards which have for the last three years required full provision for deferred taxation even when the probability of payment is remote. The presentation will look at the consequences of the underpayment and the impact it is having on the quality of corporate reporting and on the funding of UK corporate activity. Possible directions for the work will be explored based on the conclusions reached to date.*

**Jeff Gramlich (University of Southern Maine)**

**A review of tax avoidance and evasion in Indonesia by Chevron and Texaco**

*This paper explains the transactions, agreements and accounting that Chevron, Texaco, and the Government of Indonesia used to structure transactions that avoided billions in U.S. income taxes. Although ChevronTexaco became a merged entity on October 9, 2001, for many years Chevron and Texaco operated as separate corporations, with each owning 50 percent of a group of primarily non-U.S. companies collectively known as Caltex. Transactions were structured such that Chevron and Texaco subsidiaries paid Caltex excessive prices for Indonesian crude oil, leading to excessive dividend income (with foreign tax credits) and cost of sales deductions on U.S. income tax returns. When one of the equal shareholders purchased more overpriced oil than the other, Caltex paid monthly “Special Dividends” to the “overlifter” that could be construed as cost rebates, not dividends. To compensate for the extra taxes it received, the Government of Indonesia provided Caltex with oil in excess of the amount called for under the formal production-sharing contract (PSC) with the Government of Indonesia. We estimate that this arrangement allowed Chevron and Texaco together to annually avoid paying some \$220 million in federal income taxes and \$11.1 million in state income taxes from 1964 to 2002. These estimates produce total federal and state taxes avoided of \$8.6 billion and \$433 million, respectively, for the combined company, ChevronTexaco.*

**Mark Alderson (University of Bournemouth)**

## **Tax impact on FDI in Eastern European Transition economies**

*The objective of the research is to look at the effect of tax competition on the transitional states in central and Eastern Europe by considering whether there is absolute economic and social loss as a result of reductions in the level of corporation tax reducing the amount of revenue available to the state without resulting in any increase in the level of foreign direct investment (FDI). This involves examining 1) the extent to which tax competition has led to the lowering of the rate of corporation tax and the shifting of the tax burden from the enterprise to the individual 2) the effect which tax competition has on the transitional states as determined by the extent to which reductions in the rate of corporation tax leads to increases in the level of FDI inflows into the country 3) whether entry into the European Union will lead to greater opportunities for the accession states to attract FDI by offering lower rates of corporation tax or whether the rules imposed by the EU would limit the ability of such states to engage in tax competition.*

**Session 5: 11.00-12.30: Chair: ?**

## **The Cost of Tax Competition and the problems of Coordination**

**Simon J. Pak (Penn State University)**

### **Estimating the Magnitude of Capital Flight Due to Abnormal Pricing in International Trade: The Russia-USA Case (Paper by Simon Pak and Maria E. de Boyrie at New Mexico State University and John S. Zdanowicz at Florida International University)**

*Governmental and international lending agencies, as well as private sector firms who engage in international trade, have long been concerned with detecting and determining the magnitude of abnormal pricing in international trade. To detect such abnormal pricings, we present a framework analyzing millions of import/export transactions between the U.S. and Russia. The objectives of this study are to estimate the amount of capital flight from Russia to the U.S. through abnormally high import prices and abnormally low export prices in Russia – US trade and to determine if capital movement/capital flight through trade is due to money laundering, tax evasion or some sort of portfolio consideration. The amount of capital flight from Russia to the U.S. through abnormally priced trade during the five year period from 1995 to 1999 is estimated to be between \$1.86 billion and \$8.92 billion. Our analysis leads us to conclude that capital movement through trade in this case can be attributed to either money laundering and/or tax evasion.*

**Sol Picciotto (Lancaster University Law School)**

## **Tax Jurisdiction and Global Apportionment**

*The time is now ripe to move towards income or profits taxation of Transnational Corporations (TNCs) as unitary firms on the basis of global apportionment. This could be done either by the OECD countries (which are the home states of most TNCs) or at least within the EU. The existing system of allocation of tax jurisdiction, mainly through a network of bilateral tax treaties, creates a tension between source and residence taxation. TNCs initially reacted to the overlapping claims to tax which this created, and which they complained resulted in double taxation, by devising tax avoidance techniques, including the use of intermediary legal entities formed in tax 'havens'. Since the 1960s tax authorities in the OECD states have attempted to combat this through various anti-avoidance provisions: e.g. taxation of 'Controlled Foreign Corporations' on 'passive' investment income, thin capitalisation & other source attribution rules, and Denial of Benefit provisions in tax treaties. They have also tried to deal with intra-firm Transfer Pricing by elaborating rules based on the Arm's Length principle, which also entail allocating the tax base of the affiliates of a TNC as if they were independent entities. The result has been highly complex tax provisions in OECD countries, which provide further opportunities for avoidance ('tax planning') schemes devised by experts, often in the*

*big global accounting firms. This involves not so much tax competition as competition between rules, as each state may be persuaded to adopt more favourable tax rules to attract investment by TNCs. The alternative is unitary taxation, which operates e.g. within the USA. It would require international agreement to define the firms to be treated as unitary, as well as an apportionment formula (perhaps based as in the US on the proportion of assets, turnover and payroll within the jurisdiction). National tax policy, and even tax competition, could be preserved by allowing each state to maintain its own definition of the tax base and its own rates of tax. However, a good case could be made for a single EU tax on TNCs within the EU, since they after all are the main beneficiaries of the single market. Unitary taxation would not require the agreement of non-cooperating jurisdictions, and would deal with both the problem of tax havens and transfer pricing. It would also provide a much better basis for taxation of TNCs in developing countries, which do not generally have the expertise to attempt sophisticated anti-avoidance techniques, and have largely been excluded from the cooperation arrangements among OECD countries.*

## **Lunch (not provided)**

### **Session 6: 14.00-15.30: Facilitator: John Christensen Round Table: Ways and means of updating the Oxfam 2000 Report on Tax Competition**

*John Christensen and Sol Picciotto are both organisers of this seminar. They were also two of the four principle contributors to the report published by Oxfam in 2000 entitled "Tax Havens: Releasing The Hidden Billions for Poverty Eradication". The Tax Justice Network has set itself the task of updating and extending the scope of this report for publication in 2005. The Oxfam report had a significant impact on the Tax Haven debate, it is hoped the update will be even more influential.*

*Amongst the contributors to the debate will be **Catherine Hoskyns (University of Coventry)** who will make a contribution entitled "Extending the debate – gender and tax".*

*Other contributions are welcome whether notified in advance or upon arrival at the seminar, or simply in open discussion, it being expected that much of this session will be in "brain storming" format to explore the scope, content, range of contributors and possible style of the planned report. Please do come and make a contribution.*

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## **Biographical details:**

### **Mark Alderson**

*Mark Alderson has a BA Hons degree from Reading University. He spent two years teaching banking and finance in the Polish banks and two and a half years in Hungary teaching in a number of educational institutions and businesses. He qualified as a Certified Accountant in 2003 and is currently working as an Educational Access Assistant at Bournemouth University in addition to working on his PhD.*

### **Sandra Besson**

*Sandra Besson is a doctoral student at the University of Manchester. She is a Fellow of the Chartered Association of Certified Accountants who has worked in the British Virgin Islands (BVI) and Trinidad & Tobago. Her current research interest is the role of accountants in the BVI offshore financial sector.*

### **John Christensen**

*John Christensen is an economist who was born in Jersey and was for several years senior economics adviser to the States of Jersey. He has written widely on the economics of small island states and tax haven abuse. He is a member of the International Secretariat of the Tax Justice Network*

### **Jeff Gramlich**

*Professor Gramlich joined the University of Southern Maine in the summer of 2003 specializing in financial and tax accounting. Gramlich delivers decision-oriented courses in financial and managerial accounting, and individual and corporate US taxation. Gramlich's current research focuses on earnings and balance sheet management. Professor Gramlich currently heads a task force for the American Taxation Association to respond to a request from the Chairman of the U.S. Senate Finance Committee to investigate whether certain aspects of the tax returns of publicly-held corporations should be released to the public.*

### **Mark Hampton**

*Dr Mark Hampton is a lecturer at the University of Surrey and Director of The Centre for Research in Islands and Small States (CRISS) based there.*

### **Richard Murphy**

*Is a UK based chartered accountant. He trained in tax with Peat Marwick (now KPMG) before setting up his own firm in 1985. After he and his partners sold his original firm in 2000 he re-established himself as a specialist sole practitioner accountant which still allows him time to be a journalist, campaigner and occasional broadcaster specialising in taxation, pension and predatory lending issues.*

### **Simon Pak**

*Simon J. Pak is an associate professor of finance at the Penn State University, Great Valley School of Graduate Professional Studies. His current research interest areas include*



*international trade price analysis, transfer pricing and capital movements through over- and under-invoicing in international trade. He and John S. Zdanowicz, his former colleague at FIU, were awarded \$2 million research grant in 2003 by the U.S. Congress to expand their research on transfer pricing. With the research grant, he and Zdanowicz are currently conducting a large research project on transfer pricing analyzing in detail the U.S. export and import data.*

### **Sol Picciotto**

*Sol Picciotto is Professor of Law at Lancaster University. He has a special interest in regulating international business.*

### **Greg Rawlings**

*Greg Rawlings is a post-doctoral fellow carrying out research on multilateral (OECD, FATF, IMF) initiatives to improve the regulation of Offshore Finance Centres (OFC) and tax havens at the Centre for Tax System Integrity, The Australian National University. His current research focuses on whether or not the negotiations between the OECD and 35 OFCs to commit to making their tax systems more transparent and open to information exchange will effect the use of these tax havens, and at a macro level, the relationship between small-state compliance and sovereignty within the international system.*

### **Jason Sharman**

*Jason Sharman is a lecturer in Government at the University of Sydney undertaking a three-year study of the design of recent OECD, FATF and IMF regulatory initiatives and their impact on tax havens.*

### **Prem Sikka**

*Prem Sikka is Professor of Accounting at the University of Essex, founder of the Association for Accountancy and Business Affairs and is a well known public critic of the ethics of the accountancy profession*

### **David Spencer**

*David Spencer is a graduate of Harvard College and Harvard Law School and has a Masters of Law Degree in Taxation. Before opening his own law firm he practiced tax and banking law at a major Wall Street law firm and at Citigroup/Citibank. He has authored many articles on the OECD proposals on harmful tax practices and the EU Directive on the Taxation of Savings.*

### **Jim Stewart**

*Senior Lecturer in Finance in Trinity College, Dublin. Teaches undergraduate and MBA courses in Finance. Current research interests are corporate financial behaviour and taxation, financial regulation, and aspects of pension systems.*

### **Dave Wetzel**

*Dave Wetzel is vice chair of Transport for London and a campaigner for land value taxation.*