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WHISTLEBLOWING IN THE PRIVATE BANKING SECTOR



Stéphanie Gibaud

Whistleblowing by finance professionals has begun to make significant inroads into the sector's culture of secrecy and collusion. Here Stéphanie Gibaud describes the costs to the individual of doing the right thing.

Photograph of Stéphanie Gibaud by Maradin Maurice

From a distance private banking looks like a fairy tale. It is a world of luxury, where one meets one's social and intellectual peers, where the sheltered atmosphere of the bank offices somehow protects every client, banker and top managers from the outside world.

Inside a private bank, as an executive devoted to satisfying the clients' needs, it can take a while to understand what it is all about. Everyone's mission is to make sure that their jobs are done properly. People work hard, they spend countless hours at their desks,

in meetings to brief and debrief projects. They are dedicated to their superiors in the organization and their clients.

The banks claim that they are in business to manage the wealth of entrepreneurs, top managers, CEOs, old money and new money families. But this is at best a half-truth. At its heart, private banking is about making offshore facilities available to those who wish to avoid paying tax and to hide their wealth. As well as senior managers in the private sector and the already wealthy, this includes a

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surprising number of politicians and influential figures in the media. This has created a kind of higher lawlessness. Public understanding and hence democratic oversight are systematically frustrated by a class that includes those among the rich who will stop at nothing to increase their wealth, politicians determined to convert elected office into private gains, and an enabling apparatus of bankers and tame intellectuals.

However, when one understands that there is something wrong with private banking – in effect, offshore banking – blowing the whistle internally or externally can feel like committing suicide: a quick death or a long and painful one, but the end of a certain kind of life, nonetheless.

Let's remember that private banking is dedicated to wealthy clients. The clients are the ones who have the financial, business, administrative, legal powers. They can pick up the phone and call in favours from powerful people. Their privilege is about more than a very comfortable lifestyle. It is about the support of a network of professional friends in the public and private sector. We can all imagine what luxury is, we might even have had a taste of it. But most of us do not know what it is to belong to this world, where politicians and journalists as well as accountants and lawyers are eager to be of assistance.

Because this is all what it is about: the so-called privileged elite is extremely well organized and is united when it comes to defending their own interests. Private banking is one part, an important part, of this organization in defence of privilege.

Once you have blown the whistle in the private banking sector, well-trained managers will do all they can to crush you like an insect. Their techniques will vary in intensity from demotion and social isolation all the way through to discrimination and harassment. Your reputation will suddenly be ruined throughout the financial sector. Insurance companies and business partners but also the clients of the private banks will all hear about your supposed failings. One must keep in mind that this is a small world. The core business focuses on the top managers of large companies, owners of small and middle-size companies and the very rich. This group includes influential people in show business and professional sport, many senior politicians and the heads of supervisory authorities.

Blowing the whistle in the private banking sector means never being hired again. It means being blacklisted. And if one has no income, one cannot live long. Those who work in the sector are fully aware of this. The fate of whistleblowers is about more than punishing the individual. It is about sending a message to others.

Private banks like to file complaints against whistleblowers wherever possible. They object to their targets' writing books, giving interviews, attending conferences, and participating in debates. Being jobless, the whistleblowers will struggle to pay their lawyer's fees.

Everything is stacked against the whistleblowers and their reputation. When they are executives of a bank, it is easy for managers to isolate them from their

“Blowing the whistle can feel like committing suicide: a quick death or a long and painful one, but the end of a certain kind of life, nonetheless.”

colleagues through the use of bonuses and promotions and a carefully crafted communications strategy. If the case is public, it is easy for the bank to play the card of discrediting the whistleblower: the message delivered by the whistleblower is not attacked at all, but the messenger is. Easy for the industry to do so as they advertise in all the media on a global scale.

Most of the whistleblowers in the private banking sector also face the terrible challenge of prison sentences, namely in countries where banking secrecy is a big business and thus where the law is structured to make it hazardous to speak out.

Several huge private banking cases have hit the media headlines these past years. They have helped people outside the gilded world of offshore privilege to appreciate the significance of the sector for both the developed and the developing world. Yet though their actions have helped bring the pathologies of offshore into the daylight, they are just ordinary, middle class executives. They do not claim to be heroes, nor do they want to be. They just did what they had to do. All of their cases are different but they are all being punished in democratic societies because they refused to support illegal and illicit operations.

Most of our democracies have not passed laws that adequately protect finance

sector whistleblowers. In France, the legislature passed a law permitting “mass surveillance” in the Spring of 2001. But these same politicians are dragging their feet on measures to establish whistleblower protections. How come there are only five Deputies and Senators in France interested in this subject even though we know that the country is missing a trillion euros? How come there aren't prison sentences for top managers who are responsible for developing strategies that are clearly illegal?

When whistleblowers from the private banking sector decide to stand up, they are standing up against corruption and politico-financial scandals. Fighting the most criminal industry in the world means they have to reckon on joblessness, disruption to their personal life and threats to their physical and mental health. They are fighting an ultra-organized and high-powered enemy who uses any tools and whatever it takes to win because with them, it's all about money.

*Stéphanie Gibaud began working for UBS France in 1999. In 2008 she refused to destroy documents and files in the Paris offices of the bank and began to cooperate with the French authorities. She was finally sacked in January 2012. In March 2015 a French labour tribunal ruled that she had been bullied by the bank. She is the author of *La femme qui en savait vraiment trop* (2014).*

REPORTING A CRIME IS NOT A CRIME

Finance in general and offshore centres in particular thrive by maintaining a tight control of information. In recent years they have been rocked by a series of large-scale data breaches made possible by employees in the sector. But those who speak out still face significant risks. If the interests of the general population are to prevail over those of a small minority of banking insiders we will have to change our attitudes towards whistleblowers.

Offshore jurisdictions are in the business of making life difficult for whistleblowers through formal legislation and through the informal enforcement of social codes; the unwritten rules of conduct and the herd mentality that affect those who work in the financial sector. To borrow from hackers' slang, hostility to whistleblowers is a feature, not a bug; it is an attractive part of the financial secrecy package which offshore jurisdictions peddle to clients. Cases such as Rudolf Elmer's, one of Swiss banking's earliest whistleblowers, illustrate how offshore financial centres create hostile environments for whistleblowers through the availability of financial secrecy laws.

Financial secrecy laws matter when it comes to those who commit financial crimes and frauds. In 2004, Jerome Schneider, arguably the United States' most prolific facilitator of tax evasion schemes, was sentenced to six months in prison by a federal judge in San Francisco for peddling tax evasion schemes during the 1970s and 1980s; an operation which was only possible because of the strict financial secrecy offered by offshore banks. At the beginning of February 2015, an international collaboration of news outlets and investigative journalists exposed the Hong Kong and Shanghai Banking Corporation as a bank which assists transnational organised criminals in hiding their money and helps the wealthy elite

evade taxes; again an operation aided by the existence of strict financial secrecy laws in offshore financial centres.

Laws that assist criminals in tax dodging and money laundering also deter employees and others from reporting such activity. For example, under the terms of the 2009 revision of Section 5 of the Cayman Islands' Confidential Relationships (Preservation) Law an individual found to be breaching secrecy laws faces an eight year prison sentence.

If secrecy laws act as a deterrent against whistleblowing they are in effect operating as a universal gagging order that prevents employees from reporting unlawful or immoral activity to the relevant regulatory authority. These laws also lend official sanction to the idea that whistleblowers are enemies of both state and society. They amplify a natural tendency to react angrily or fearfully when presented with challenges to the narratives preferred by dominant groups. Indeed, a quick glance at the thesaurus unearths a huge array of degrading and negative nouns associated with what is actually a noble act, including: traitor, turncoat, weasel, snitch and sneak. Anything other than a servile desire to please the employer is treated as double-crossing and defecting.

“Laws that assist criminals in tax dodging and money laundering also deter employees and others from reporting such activity.”



editorial

Mary Alice Young

According to the Tax Justice Network, financial secrecy legislation is a driver and enabler of financial crime; meaning that financial secrecy laws create criminogenic environments. From this edition of the Focus, we can see that not only are financial secrecy laws conducive to crime, but they are hostile to those people who believe in a fair, just and equitable system of democratic banking in the twenty-first century. There are certain protections afforded for whistleblowers under UK law. The UK Government states that, “[a]s a whistleblower you’re protected by law – you shouldn’t be treated unfairly or lose your job because you ‘blow the whistle.’” This sits uneasily with the existence of draconian laws protecting financial secrecy in territories over which the UK government claims sovereignty.

This edition of *Focus* gives a platform to those people who believe it is possible to exist in a world with just, fair and reasonable banking practices – and not all of them have

“A quick glance at the thesaurus unearths a huge array of degrading and negative nouns associated with what is actually a noble act .”

received the guarantees put forth by the UK Government. John Christensen reflects on his experiences when he decided to speak out about malpractice in the highly secretive jurisdiction of Jersey. He does not try to gloss over the stresses that whistleblowing placed on him and his family. But his sincerity and clarity of mind show that doing the right thing can be part of a more fulfilled life.

In the same vein, Stephanie Gibaud reflects on her experience in private banking and explores the reality of what happens once someone decides to speak out about unethical or illegal activity. Whistleblowing means social exile and career suicide and Gibaud stresses the lengths to which the banking industry will go to ensure that the whistleblower is isolated, degraded and denounced. She goes on to ask a number of searching questions about the silence that surrounds elite criminality. They are questions that demand answers.

Kenneth Rijock is now a financial crime consultant and in his previous life he laundered drug money. As both a lawyer and convicted criminal he knows a thing or two about legal jeopardy. Here he gives would-be whistleblowers a brief introduction to information security – the techniques that we can use to avoid detection by crooked employers and, ultimately, jail. Like all good

lawyers he begins by recommending first finding a lawyer you can trust.

Professor William Byrnes introduces us to three of the most important whistleblowers from the financial sector. He goes on to explore the relationship between whistleblowing and tax compliance and highlights the much anticipated legislation of several offshore jurisdictions who are looking to introduce statutory laws to protect whistleblowers who report tax crimes.

Life isn't easy for whistleblowers anywhere. In the offshore world tailored legislation can make things even more hazardous. People who speak out risk their careers, their place in society, their health, and sometimes their lives. This is the price people currently pay for acting honestly and honourably. But the world needs many more whistleblowers if we are to combat the corruption that is endemic in the financial sector. It is time to alter the balance of risk and reward so those who dare to break social convention and speak out are better protected. In part this is about changes in legislation. But in part it is a matter of learning to distrust our natural inclinations. A whistleblower is not a stool pigeon or a traitor. A whistleblower is someone who speaks up for the public interest. We are fools if we do not honour them.

Mary Alice Young is a Senior Lecturer in Law and Researcher of Transnational Organised Crime and Financial Crime in Offshore Financial Centres at the Faculty of Business and Law (FBL) at the University of the West of England. She is a leading expert in the criminal misuse of offshore financial centres.

REFLECTIONS ON WHISTLEBLOWING

John Christensen was working as advisor to the government of Jersey when a reporter for the Wall Street Journal contacted him about a suspected fraud. His inquiries unearthed “serious procedural irregularities” at the heart of the government and he had to make a decision: keep quiet and stay safe or speak frankly and face the consequences.

Late one evening in January 1996 I took a call from a Wall Street Journal reporter called Michael Sedit. This call changed my life. He was enquiring into the failure of my then employer, the government of Jersey, a small British-linked tax haven, to investigate accusations by US based investors that the Jersey-based subsidiary of Swiss banking giant UBS had violated US federal racketeering laws by conspiring with a British currency trader in a variety of crimes including fraud, executing fictitious currency trades, churning accounts, theft and deceit. My office was not directly implicated in the story, but I was in a position to confirm whether or not proper procedures had been followed by relevant government departments in licensing the trader at the heart of this multi-million dollar scandal. When I discovered a web of procedural irregularities that reached the very top of the government, I knew that I had to decide between keeping my secure, well-salaried job or acting on principle and blowing the

whistle. I called the reporter 24 hours later, and agreed to cooperate.

Many thoughts crowded into my head during the 24 hours between those fateful phone calls. First, a degree of disbelief (surely senior government officials and politicians wouldn't conspire to block investigations into corruption?), followed

“I knew beyond any shadow of doubt that by cooperating with Sedit I was effectively resigning my post.”

by anger (yes, they had). Second, I knew beyond any shadow of doubt that by cooperating with Sedit I was effectively resigning my post; the States of Jersey is not an organisation that tolerates any form of whistleblower, especially involving a senior economic adviser. But resigning my



job would have knock on effects. Small island tax havens don't tolerate dissent; my wife and I would have to sell our home, say goodbye to friends and family on the island, re-settle elsewhere (London, as it happens) and start over. I was forty then, with a son aged three and another son soon to be born. This was not a decision taken on

impulse, but I knew that I wouldn't be able to live with myself if I chose to do nothing.

Sedit's report, published on the front page of the WSJ Europe edition on 17th September 1996 under the title 'Offshore Hazard: Isle of Jersey Proves Less than a Haven to Currency Investors' stirred up a storm in Saint Helier. But the Jersey media somehow managed to spin the story into one about a single rogue currency trader, without disclosing that top politicians and senior officials were also implicated in a succession of regulatory failures.

In practice it took over 18 months to move from Jersey to London, during which time I stayed in post as economic adviser (I had tenure, and was almost unsackable.) It was a period of poisonous relations with senior politicians and civil service colleagues, who were enraged that I had broken Jersey's offshore omertà. On one occasion, a sympathetic colleague stopped me on my



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John Christensen

walk to work to tip me off that the Attorney General's office was preparing a warrant to search my home. I sent a discreet message to the AG advising him that all the relevant documentation was held by the WSJ in London. (The raid, in the end, didn't happen.)

We left Jersey in July 1998 and found new jobs in London. The UBS investigations ground on (UBS eventually pleaded 'criminal recklessness') and a few journalists began to pay attention to my critical analysis of Jersey's tax haven activity, which in addition to being weakly regulated and policed was also rapidly crowding out other sectors of the island's economy as Jersey succumbed to the Finance Curse.¹ Jersey's politicians and senior bankers reacted in time honoured fashion, by attacking me personally rather than addressing the issues I had raised.

I first heard of Jersey's counter-attack from a BBC radio journalist, who had been contacted by a public relations agency, retained by the Jersey finance industry, claiming I wasn't a reliable interviewee since – in their words – I was “personally motivated.”

¹ John Christensen and Nicholas Shaxson, *The Finance Curse: How Oversized Financial Sectors Attack Democracy and Corrupt Economics* (Margate: Commonwealth, 2014).

The allegation was that I criticised Jersey simply because I hadn't been appointed Chief Adviser. Other journalists who cited me got similar visits from the same PR agency. As recently as Spring 2015, seventeen years after leaving Jersey, a journalist was told by several senior island officials that I was not to be trusted because I have "baggage", the implication being that I still bear a grudge about not being appointed Chief Adviser. To be clear, I blew the whistle in 1996 and the Chief Adviser announced his retirement in 1997. Why a senior civil servant seeking promotion would preface his job application by whistleblowing to the WSJ, they don't explain. Though the grudge argument never stacked up, it is still wheeled out. The strategy of continuously slinging muck inevitably creates doubts in some minds.

Almost two decades after that phone call, what were the outcomes of my decision to cooperate with Sesit's investigation? Leaving my job was relatively easy, though few of the skills I learned in Jersey have been useful outside the world of offshore finance. Selling our family home and leaving Jersey was far harder since we had strong emotional and social ties to the island, which have inevitably worn thin with the passing of time. There's also no doubt that whistleblowing cost us a huge amount of lost income, and we've had to learn to live with financial insecurity. I've also learned how to live with the personal attacks, though privately I feel contempt for people who play the man rather than the ball. Sadly, some friends and family in Jersey have

"The rich and powerful are at their most thuggish when their backs are up against the wall."

suffered from these attacks, and personal relations have inevitably been strained. One close relative who works in a Jersey trust company has refused to speak with me for fifteen years, which makes family reunions unbearably awkward.

Like many small island communities Jersey has various mechanisms for repressing dissent – best captured in the expression "if you don't like it here, there's a boat in the morning". Most islanders know that the best way of adapting to these social pressures is to keep their heads low and internalise their opinions. The small minority who dare put their heads above the parapet can expect a torrent of personal abuse. If looks could kill, I'd be dead many times over from the distilled hatred I've seen on the faces of some bankers, lawyers and senior politicians, and more than once I've been called a "fucking traitor" to my face.

But that's not the full story. In 2009 I visited Jersey with a BBC television documentary crew. Within minutes of starting to film in Saint Helier, a man approached front of camera to say that Jersey was ruled by bankers and captured politicians and only one senior official had ever had the courage to confront them. Speaking to camera, he said that without my (and by extension TJN's) efforts, nothing would ever be done to tackle the corruption inflicted on Jersey since it became a tax haven. I can't say

that that rare moment of public support justified the many years of exile from my island, but I do take some comfort from the fact that TJN has won so many of the crucial arguments and public opinion outside of Jersey has swung firmly behind us. Jersey is a state captured by offshore finance: public opinion there will take a long time to shift.

Judging from my experience, any would-be tax haven whistleblower should expect the following:

- Little or no support from colleagues and senior management, they might well sympathise with your principles but they won't put their jobs on the line;
- Savage retribution from employers whose business models are based on secrecy; they will do whatever it takes to punish you as a deterrent to others. The rich and powerful are at their most thuggish when their backs are up against the wall;
- Little or no support from police or judicial authorities in most tax havens, they largely toe the line;
- Harassment from local media, most of which is captive and depends on advertising revenue from banks and other tax haven players;
- A widening gap between you and the vast majority of your former friends and

acquaintances: most will keep their heads low, and few will understand why anyone would put civic duty and matters of principle ahead of personal advancement and a secure income.

My experiences, painful though they were at the time, have been relatively benign compared to the treatment meted out to other whistleblowers such as Ruedi Elmer² and Antoine Deltour.³ Ruedi was imprisoned and has faced constant harassment; Antoine faces criminal proceedings with the threat of a custodial sentence. The HSBC whistleblower Hervé Falciani has faced legal threats, extradition proceedings and death threats.⁴ Whistleblowers need strong support networks to resist the repressive tactics of the tax haven world. All three deserve recognition as potential prisoners of conscience.

John Christensen is the former economic adviser to the British Crown Dependency of Jersey, a pre-eminent British tax haven. Having originally trained as a forensic fraud investigator, and as an economist, he is now the director of the Tax Justice Network.

² <http://www.taxjustice.net/2015/07/01/guest-blog-how-switzerland-corrupted-its-courts-to-nail-rudolf-elmer/>

³ <http://www.taxjustice.net/2015/01/16/will-antoine-deltour-become-prisoner-conscience/>

⁴ <http://www.bloomberg.com/bw/articles/2013-08-09/hero-or-villain-the-strange-case-of-hsbc-whistleblower-herve-falciani>

WHAT IS WHISTLEBLOWING?

Whistleblowing is becoming an increasingly important element in efforts to make both state and private power accountable to the public. But confusion surrounds the concept. William Byrnes helps with some definitions.

According to a study by the OECD on behalf of the G-20, there is no common legal definition of what constitutes whistleblowing. The OECD thus turned to the International Labour Organization (ILO) definition which provides “the reporting by employees or former employees of illegal, irregular, dangerous or unethical practices by employers.”¹ The OECD then concluded that the key characteristics common to whistleblowing include:

- the disclosure of wrongdoings connected to the workplace;
- a public interest dimension, e.g. the reporting of criminal offences and unethical practices.

In its 2012 Report, the OECD stated that the “protection of both public and private sector whistleblowers from retaliation for reporting in good faith suspected acts of corruption and other wrongdoing is therefore integral

to efforts to combat corruption, safeguard integrity, enhance accountability, and support a clean business environment.”² Regarding a reward system for whistleblowers, Transparency International, in its 2012 Recommended Draft Principles for Whistleblowers states that, “depending on the local context, it shall be considered whether to include further mechanisms to encourage disclosure, such as a rewards system or a system based on *qui tam* which empowers the whistleblower to follow up their allegations.”³

In 2014, an OECD Project Manager of the International Whistleblower Project found that a majority of whistleblower laws for government and corporate employees lacked:⁴

- adequate internal and external disclosure channels
- opportunities for anonymous reporting
- agency to investigate disclosures and complaints
- transparent / accountable enforcement of laws

Moreover, the 2014 OECD study found that most whistleblower laws for corporate employees lacked:

- confidentiality guarantee
- penalties for retaliators

Whistleblowing and Tax Crimes

The primary objective of a whistleblower law, according to the G20, is to protect from discriminatory and retaliatory actions whistleblowers who report in good faith suspected acts of corruption.⁵ Although tax crimes are in most countries, and from



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January 1, 2016 in Switzerland, a predicate offense for money laundering and thus, a reportable suspicious activity, tax crimes are not specifically included in the definition of what whistleblower laws seek to prevent.⁶

Yet, even as predicate offenses, whistleblowing of tax crimes should be protected by what is hopefully forthcoming legislation in several offshore financial

⁶ See Swiss Federal Act on the Implementation of the 2012 Revised Recommendations of the Financial Action Task Force (FATF), passed by Federal Parliament December 12, 2014. Available at [http://www.vsv-asg.ch/uploads/file/interessenvertretung/vernehmlassungen/2015/erlaeuterungsbericht\(1\).pdf](http://www.vsv-asg.ch/uploads/file/interessenvertretung/vernehmlassungen/2015/erlaeuterungsbericht(1).pdf) (last accessed September 21, 2015).

“The primary objective of a whistleblower law, according to the G20, is to protect from discriminatory and retaliatory actions whistleblowers who report in good faith suspected acts of corruption.”

¹ G20 Anti-Corruption Action Plan: Protection Of Whistleblowers, Study On Whistleblower Protection Frameworks, Compendium Of Best Practices (2011) at 7.

² *Whistleblower Protection: Encouraging Reporting*, OECD (July 2012) at 3.

³ A *qui tam* writ is one in which the person bringing the case does for the state’s sake as well as for their own.

⁴ Mark Worth, *Keeping Pace: Whistleblowing and the Response of Government, International Whistleblower Project: Re-visiting Whistleblower Protection*, OECD (June 17, 2014) at 7.

⁵ G20 Anti-Corruption Action Plan: Protection Of Whistleblowers, Study On Whistleblower Protection Frameworks, Compendium Of Best Practices (2011) at 2.

“Voluntary Disclosure Programs... provide, and even require, clients an opportunity to become whistleblowers on the enabling advisors of their tax evasion in exchange for mitigation of criminal prosecution or potentially of penalties.”

centre jurisdictions, such as The Cayman Islands and Bahamas. The Cayman Islands Protected Disclosures Bill of 2014, which is floundering without a legislative vote, defines “improper conduct” similar to the United Kingdom equivalent legislation, with eight types of conduct. The first type of conduct is most relevant from a tax non-compliance perspective: “... that a criminal offense has been committed, is being committed or is likely to be committed...”⁷ The Bahamas’ Freedom of Information Act, most recently proposed May 18, 2015 but not yet acted upon, provides examples of “wrong doing” as “the commission of a criminal offence” and “failure to comply with a legal obligation”⁸.

Switzerland on the other hand was set to take a giant leap backwards in 2015 in protection of whistleblowers, with legislation making it more difficult for an employee to make a disclosure beyond the employer. But after a number of multinationals spoke

out against the restrictive nature of the legislation, it was referred back by the National Council for a re-visit by the Federal Council.

In its September 18, 2015 report *Improving Co-Operation Between Tax and Anti-Money Laundering Authorities: Access By Tax Administrations To Information Held By Financial Intelligence Units For Criminal And Civil Purposes*, the OECD recommended:⁹

Given the role of tax administrations in identifying and reporting serious crimes, such as tax evasion, bribery, corruption, money laundering and terrorism financing under the whole of government approach, in order to maximise the effective use of Suspicious Transaction Reports (STRs):

- *subject to the necessary safeguards, tax administrations should have the fullest possible access to the STRs received by the Financial Intelligence Unit (FIU) in their jurisdiction; and*
- *to achieve this, jurisdictions should look to not only provide the legislative framework to allow tax administration access to STRs but also look to ensure*

the operational structure and procedures to facilitate the maximum effectiveness in the use of STRs.

The OECD found that the tax administrations that have access to STRs reported significant benefits from that access. The main overarching benefits are an increase in their ability to identify a range of serious crimes as well as being able to access an additional source of information that can be used to ensure tax compliance. Conceptually, STRs can be viewed as a whistleblowing device for financial institutions, without being prosecuted, to inform on their clients. Here are two examples of the impact STRs can have, according to the OECD. The Republic of Korea reported in the first half of 2014 a record KRW 943 billion in tax assessed (the equivalent to approximately USD 865 million), as a result of extending STR and Cash Transaction Reports (CTRs) use to civil assessments. In 2012 STRs in Austria facilitated 61 criminal tax prosecutions and 4,483 civil action referrals.

Voluntary Disclosure Programs (VDPs), in vogue among OECD members and many other countries since the 2008 Financial Crisis, provide, and even require, clients an opportunity to become whistleblowers on the enabling advisors of their tax evasion in exchange for mitigation of criminal prosecution or potentially of penalties.¹⁰

For example, Australia requires non-compliant taxpayers to expose information about the advisers or other intermediaries in order to mitigate personal criminal prosecution. The United States offshore voluntary disclosure program that has netted approximately 60,000 non-compliant taxpayers to date since 2009, requires each to agree to cooperate and provide, if requested, information about financial institutions, service providers and other facilitators, to avoid criminal prosecution.

William Byrnes is a Professor and Associate Dean (Special Projects) at Texas A&M University Law School. He previously worked at Coopers and Lybrand and he advises a number of countries on both tax policy and distance education.

⁷ Available at <http://www.lawreformcommission.gov.ky/pls/portal/docs/PAGE/LRCHOME/PROJECTS/PROTECTED-DISCLOSURES-BILL/WHISTLEBLOWER-DISCUSSION-PAPER-APPENDIX-A-DRAFT-BILL.PDF> (last accessed at September 21, 2015).

⁸ Available at <http://www.bahamaseducation.com/PDF/Downloads/Bill/FREEDOM-OF-INFORMATION-BILL,2015.PDF> (last accessed September 21, 2015).

⁹ <http://www.oecd.org/tax/crime/improving-cooperation-between-tax-and-anti-money-laundering-authorities.htm> (last accessed September 21, 2015).

¹⁰ Update on Voluntary Disclosure Programmes: A pathway to tax compliance, OECD, (August 2015). Available at <http://www.oecd.org/ctp/exchange-of-tax-information/update-on-voluntary-disclosure-programmes-a-pathway-to-tax-compliance.htm> (last accessed September 22, 2015).

SEE OVER FOR THE TOP THREE TAX WHISTLEBLOWERS THAT CHANGED THE GAME



THE TOP THREE TAX WHISTLEBLOWERS THAT CHANGED THE GAME

3

A lawsuit filed by **Daniel Schlicksup**, a lesser acclaimed whistleblower, may end up costing Caterpillar billions of dollars and a criminal investigation because of its alleged non tax compliant transfer pricing policy.

Mr. Schlicksup served as a global tax strategy manager for Caterpillar from 2005 to 2008. During his time at Caterpillar, Daniel Schlicksup helped Caterpillar establish its European tax department, managed the corporate human resources division, and in March 2005, began working as a Global Tax Strategy Manager.

Mr. Schlicksup grew concerned that the substance of Caterpillar's operating structure did not coincide with Caterpillar's reported structure for tax purposes. Mr. Schlicksup informed several Caterpillar executives of his concern, including its Director of Global Tax and Trade, and thereafter its Chief Financial Officer and Caterpillar's General Counsel. Mr. Schlicksup even filed a complaint with Caterpillar's Ethics Office, which closed the matter. Mr. Schlicksup's received employee assessments that he considered prejudiced by his attempts to call attention to the potential tax risk.

Eventually, in July of 2010 Mr. Schlicksup filed a whistleblower retaliation suit under Illinois law against Caterpillar, which Caterpillar settled in 2012 for an undisclosed amount. The Illinois Whistleblower Act prohibits an employer from retaliating against an employee "for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation. . . ." 740 ILCS 174/20. Under the Illinois Whistleblower Act, an action can be retaliatory "if the act or omission would be materially adverse to a reasonable employee and is because of the employee disclosing or attempting to disclose public corruption or wrongdoing." 740 ILCS 174/20.1.

¹ Schlicksup v. Caterpillar, Inc. Case No. 09-CV-1208. (U.S. C.D. Illinois, July 13, 2010). See the Illinois Whistleblower Act available at <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2495&ChapterID=57> (last accessed September 19, 2015).

Mr. Schlicksup's whistleblower lawsuit led to the April 1, 2014 hearing of the Senate Permanent Subcommittee on Investigations "Caterpillar's Offshore Tax Strategy".² In its February 17, 2015 10-K Annual Report, Caterpillar revealed that it is now the subject of a subpoena of a grand jury criminally investigating its transfer pricing practices, and an SEC investigation:³

On January 8, 2015, the Company received a grand jury subpoena from the U.S. District Court for the Central District of Illinois. The subpoena requests documents and information from the Company relating to, among other things, financial information concerning U.S. and non-U.S. Caterpillar subsidiaries (including undistributed profits of non-U.S. subsidiaries and the movement of cash among U.S. and non-U.S. subsidiaries).

On September 12, 2014, the SEC notified the Company that it was conducting an informal investigation relating to Caterpillar SARL and related structures.

2

Hervé Falciani obtained super whistleblower status in 2008 while working at HSBC Switzerland's Geneva branch. He downloaded substantial account details of 106,000 high net worth individuals with over \$100 billion in assets from 203 countries, and then approached tax departments with an email that the Wall Street Journal states included the subject line: "Tax evasion: client list available".⁴ The theft of the bank data, reported at over 100 Gigabytes, has led to Mr. Falciani's arrest in several countries, including Switzerland, France and Spain. But he has been spared extradition to Switzerland because of the French and Spanish courts found a

² Available at <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/caterpillars-offshore-tax-strategy> (last accessed September 19, 2015).

³ Caterpillar 10-K (Feb 17, 2015) at 22. Available at <http://www.caterpillar.com/en/investors/sec-filings.html> (last accessed on September 19, 2015).

⁴ 'Mass Leak of Client Data Rattles Swiss Banking', *Wall Street Journal* (July 8, 2010).

public benefit from exposing HSBC's widespread conspiracy to commit or at least enable tax fraud.⁵ Mr. Falciani has stated that he did not become a whistle blower for reasons of potential compensation. He has established a foundation to promote the protection of whistleblowers.

1

The most famous tax whistleblower is ultimately UBS' **Bradley Birkenfeld** because he blew the lid off of UBS' policy to assist U.S. taxpayers to evade tax in order to take advantage of the 2006 U.S. Whistleblower Law that allows compensation of:

*"at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action."*⁶

Mr. Birkenfeld for a number of years willingly participated in the conspiracy of tax evasion with his clients, including most famously the California real estate billionaire Igor Olenicoff whom he brought into UBS from his previous employer. Regardless, because his cooperation indisputably led to the prosecution of UBS for conspiring to hide \$20 billion of assets of 20,000 US taxable persons, in 2012 upon his release from prison (for his guilty plea to one count of tax evasion), the IRS awarded \$104 million in whistleblower compensation to Mr. Birkenfeld.

⁵ Martha Hamilton, Whistleblower? Thief? Hero? Introducing the Source of the Data that Shook HSBC, *International Consortium of Investigative Journalists* (February 8, 2015). The HSBC client data is available for search at <http://www.icij.org/project/swiss-leaks/explore-swiss-leaks-data> (last accessed September 19, 2015).

⁶ U.S. IRC § 7623

SOME TIPS FOR WHISTLEBLOWERS

Kenneth Rijock was a successful money launderer before testimony from some of his clients landed him in jail. Here he offers some suggestions for those who want to stay out of trouble once they decide to investigate wrongdoing.

My primary field is the identification and detection of financial crime in general, with an emphasis on money laundering. But I often find myself working with whistleblowers, when reporting on white-collar crime in progress, where the information is received from a confidential source. I also have had considerable experience in conducting operations under the radar, when I was involved in activities that I wanted to remain confidential. I offer these suggestions for whistleblowers who also wish to quietly collect material without attracting unwanted attention from the target of their inquiries. They are what we refer to as operational security.

Given the propensity of many whistleblowers' targets, especially when they are large entities, to maintain agents to investigate unhappy employees, as potential whistle-blowers, it is prudent to take a number of measures that will: (1) prevent you from being a civil, or even criminal, defendant

as the result of your actions, (2) keep your information secure, and (3) protect the identities of your sub-sources.

Before you do anything at all, you must protect yourself from civil suits, and also from possible criminal prosecution. The information contained in this article is not intended to be legal advice, and you are strongly advised to consult with a competent attorney, who is familiar with not just libel and slander issues, but also with trade secrets, classified information laws, and the corporate culture of the type of entity that you plan to publicly expose, or report to government or law enforcement.

You may not be aware of all the legal ramifications of your activities, and you should fully understand the potential legal risks, both now, and in the future, so be sure to consult a good lawyer before engaging in your whistle-blowing campaign,

for some of what you are planning could cross the line into either an illegal act, or be grounds for a civil suit. Understand the risks before you jump into your project.

Secondly, you must assume that all your means of electronic communication are under surveillance. This includes telephone calls from your landline or mobile telephones, and your known email addresses. You need to adopt what is in essence the tradecraft of espionage if you want to avoid interception of your communications with media, or your sub-sources.

This means never using your present email addresses; some whistleblowers utilize obscure email providers, from faraway jurisdictions, and use them only for short periods. Any sources you have must do the same. Both parties should use Internet cafes, libraries, public wifi resources and avoid any pattern. Some people use Hushmail (www.hushmail.com) a free, encrypted email service, changing their address & password frequently, to avoid detection.

Both sender and recipient have the address AND password, for there is only a need for one account. Here's why:



feature
Kenneth Rijock

Since all emails, even when deleted by the sender or recipient, remain available to prying eyes, prepare drafts only; the recipient himself or herself deletes the draft when read. Both parties regularly monitor the single account, looking for messages from the other. Drafts are not saved anywhere, because they technically are never sent or received. This technique ensures that your messages cannot be read by others, unless they know what you are doing, and look for drafts, but they need to have your address and password, and know what to look for.

The third measure I recommend is to never identify your sources by name in writing; designate an alias, or code word, so that their identity is always protected in your notes and documents, and under no circumstances put their telephone number down anywhere near that code name.; keep the telephone number and the email address in a totally different file, hard copy only, so

“Before you do anything at all, you must protect yourself from civil suits, and also from possible criminal prosecution.”

“You must assume that all your means of electronic communication are under surveillance.”

that it appears to be that of another contact, client, vendor, or other innocent party.

You will obviously need to compose memoranda, type up your handwritten notes, and the progress of your investigation. Do not use any of the computers or devices that are connected to the Internet, for this purpose. Obtain an inexpensive laptop, new, and use it exclusively for your whistleblower project. It is to have its wifi capability completely and permanently disabled, and no USB or hard-wired connection to the World Wide Web. This is known as a stand-alone computer; it is never to be networked with any other system. This ensures that it cannot be accessed remotely, and that it will never be the target of an intrusion, worm, or hack.

If you must install programs, such as MS Word, or Excel, do so from a CD, never install anything from the Internet, not even from one of your other computers, for that may already been compromised. Do not ever leave this computer out where it can be seen; store it in a very unlikely place, so that anyone who breaks in will not find it. If you follow these suggestions, then it is highly unlikely that any company investigator will learn the identity of your sources

All this can seem quite daunting. But if you take steps to protect yourself then I encourage you to dig, probe and poke around any issue, where you believe that there are facts that must be extracted, and to take any damaging information that you find to the appropriate regulator, or agency, or media, where it will get the attention it deserves.

Good luck.

Kenneth Rijock now works as a Financial Crime Consultant. He graduated from the University of Miami School of Law. He served two years in prison for money laundering offences. He recounts his criminal career in The Laundry Man (2012).

SPEAKING OF TAX JUSTICE

feature
Naomi Fowler



Since 2012 Naomi Fowler has produced and presented a monthly podcast for the Tax Justice Network which has listeners in 130 countries. She also coordinates the new Spanish language TJN podcast, *Justicia Impositiva*. Here she describes some of the highlights of the Taxcast so far.

Before 2012 tax avoidance wasn't something you tended to hear much about in the mainstream media. The Vodafone tax scandal where the UK's revenue authority agreed to 'reduce' its tax bill substantially had broken in 2010 but the wider story of the "corruption services" industry at the heart of the global North was largely absent from radio and television. Having supplied broadcasters with stories and features for a decade, I never once persuaded a commissioning editor that this would be of interest to their audiences.

I read tax justice research paper after research paper, and scoured Richard Murphy and the Tax Justice Network's blogs in frustration. There was, and there still is an urgent need to raise awareness about the principles of transparency in finance, tax havens, offshore subsidiaries, anonymous shell companies and trade mis-pricing. As a journalist and citizen I thought these issues were dynamite, something to be shouted from the rooftops, that everyone should know about. But radio stations wanted mafia stories from Sicily or bribery stories from Latin America, where I was sometimes based.

To no avail I tried to explain I had much bigger corruption stories from the City of London, of staggering global significance. In the summer of 2011 Occupy protests were in full swing across the world. That was when I contacted the Tax Justice Network and asked them if they'd see the benefits of a monthly podcast. Suddenly, I'd moved from journalism to advocacy journalism.

When the first Taxcast came out in January 2012 the big tax avoidance scandal that captured the attention of the world's media was still months from breaking: Starbucks was happily going about its business buying coffee beans for the UK through a Swiss subsidiary and roasting them in Amsterdam, unaware of the storm about to be unleashed over its tax affairs. Amazon, Apple, Facebook's Irish and Bermudan shenanigans and other scandals were soon to follow. Questions began to rage about why multi-national companies were able to display such blatant contempt towards the countries in which they were operating.

The very first Taxcast visited Occupy protesters in their camp on the doorstep of London's financial sector outside St Paul's Cathedral. At last, there was a real, eyeball to eyeball confrontation. Occupy's tent city was splashed across the world's media for weeks. They were often misrepresented of course. But they were talked about. The media default description was 'the anti-capitalist protesters'. Some of them certainly were. But the Occupy Economics Working Group members I met were reformists with clear demands. They were the cause of much concern in the British cabinet. The Bank of England's Andrew Haldane later admitted the Occupy movement's analysis of the causes of the financial crisis was right and that

“Radio stations wanted mafia stories from Sicily or bribery stories from Latin America, where I was sometimes based. To no avail I tried to explain I had much bigger corruption stories from the City of London, of staggering global significance.”

they'd been “persuasive” in their reform agenda.

Many great and powerful movers and shakers have been interviewed on the Taxcast, including the authors of *The Spirit Level*, Kate Pickett and Richard Wilkinson, the Director of Ukraine's Anti-Corruption Action Centre, film maker and director of *The Emperor's New Clothes*, Michael Winterbottom, tax justice campaigners and politicians from Africa, the Philippines, Pakistan, India, the Bahamas, Jersey, Switzerland, the US, Ukraine, Canada, asset recovery specialists, whistleblowers, accountants, tax inspectors and human rights activists.

Here are three excerpts from the Taxcast, starting with an interview with journalist Ben Judah from the March 2014 Taxcast on Russia, Ukraine, Londongrad and the offshore threat to global security. This is a good example of how the Taxcast explores

unfolding events from a perspective that the mainstream media often misses:

I'm speaking to you right now from Kiev and Kiev has been the site of a dramatic revolution that's taken place over the past few months and has now turned into a Russian invasion of Crimea and when I've been speaking over the past few days to opposition activists and speaking to bloggers and Ukrainian opposition liberal democratic politicians whose greatest aspiration is for the Ukraine to join the European Union, what do you think they say? In fact what they say is that over the past few years it's become clear to them – and they've been shocked by it – that the money being sent from their countries is going into European tax havens and this is increasingly making them think that Western European elites that are profiting from these tax havens and Western European bankers and lawyers and management consultants that are helping these Ukrainian elites make the transfers of wealth into these tax havens – that's led them to be disappointed with the West, feel the West is hypocritical and become somewhat anti-western. In the long run if this continues, we face the risk of the Ukrainian and the Russian opposition coming to see Britain in particular as responsible for the plunder of their countries.

In October 2014 the Taxcast asked how much corporate welfare is costing us and looked at groundbreaking research and campaigning in this area in the US and in the UK. Part of the background of the programme was the allegation that Amazon

“We face the risk of the Ukrainian and the Russian opposition coming to see Britain in particular as responsible for the plunder of their countries.”

had paid less in corporation tax in the UK than it had received in government grants. Here's an excerpt from Dr Kevin Farnsworth of York University whose study estimates that 'direct corporate welfare' is costing British taxpayers £85 billion a year. On the Taxcast he talked about the implications of his research for public policy:

There's the question of the particular decision-making processes that go into deciding how much help and assistance to provide to a corporation and why some corporations get it and some wouldn't, and then more transparency would enable us to engage in a discussion about whether it makes sense to provide assistance to a company like Amazon that then may well undermine the interest of booksellers on the high street and then assiduously avoids paying tax, it's those issues we need to look at in more detail in order to understand the complexities of corporate welfare. We constantly have this debate - social welfare claimants shouldn't be given benefits unless they have responsibilities. Well, may be we need to look at the other side of the coin, may be we need to say the same thing about corporate welfare that corporate welfare claimants shouldn't be given assistance unless they behave responsibly.

And finally, in February 2015 the Taxcast asked just what a bank has to do to actually

lose its licence as we looked at the fall out from HSBC Leaks, or the lack of it. Economist, attorney, asset recovery specialist and investigative journalist Jim Henry discussed his database of financial crimes from 1998 to 2014 and the settlements and fines paid in 35 countries. His conclusions raise serious questions for those who insist that post-crisis regulation has placed undue burdens on business:

Our regulatory system is basically not preventive, it isn't effective, partly because we're not sending people to jail, so the worst thing that can happen to you as a CEO of HSBC is to retire and move on and have to face the press 5 years down the road if you're caught. You just don't have any incidents you can point to when any of these people running these criminal enterprises have had to go to jail, or experience any fines themselves personally or even claw back some of their executive compensation. I think what they learned from this experience is not only that at any given year the penalties are small as a fraction of the cash flow or book earnings or any measure of profitability, but that even more important it takes such a long time under the current regulatory system to catch these kinds of crimes and prosecute them effectively. You know, the fines are going to come at some distant point in the future, your exec might not be around, your stock options will

already have appreciated, you know, you can go on to become Minister of Trade in the Cameron government! Under the first Bush Administration from 1988-1992 we had the savings and loans crisis. It was about one 70th the size of the global financial crisis in 2008 but during that period the first Bush administration actually had a tough Department of Justice and they went after the bank fraud with a vengeance, they sent 880 bankers to jail during that period. What's changed is the political influence of the banking lobby and the enormous role of money in our political system that has escalated dramatically. And also with the big banks whereas in the 1990s the top four institutions had a 15% market share they now have a 50% market share, they are playing in virtually every financial market, investment banking as well as commercial banking so I think there's a political case to be made for reducing their influence and breaking them up, they're too big to regulate. I don't see any substitute for having an organised tax justice bank reform movement.

Naomi Fowler is a radio journalist and podcaster who has produced for ABC, the BBC, Deutsche Welle, Radio Netherlands Worldwide, Pacifica Radio, National Public Radio and many others. You can listen to all of the Taxcasts – the Tax Justice Network monthly podcasts – on www.tackletaxhavens.com/taxcast or www.taxjustice.net/taxcast or via our Tax Justice TV youtube channel <https://www.youtube.com/user/TackleTaxHavens>. The Taxcast is also available on iTunes.

book review



The Joy of Tax

By Richard Murphy
London, Bantam Press, 2015
059307517X / 978-0593075173

When the financial crisis hit in 2007–8 the moderate left in the UK was faced with a choice. Option A: develop and share an account of political economy that did not take its bearings from the British Bankers' Association. Option B: stick to the assumptions and taboos of polite opinion, however deranged, and hope for the best. In the 2010 and 2015 elections they chose Option B. Little good it did them. Their grudging acceptance of the pre-crisis common sense proved no match for the right's enthusiastic insistence that the state had spent too much and sacrifices would now have to be made.

Murphy's latest book, *The Joy of Tax*, is a frontal assault on this orthodoxy and the dangerous policies it legitimises. It is nothing less than an attempt to refund social democracy in light of what we now know about banking. Not

surprisingly, given his tireless work as a campaigner for tax justice, Murphy begins the book with a lively defence of taxation as an instrument for securing collectively agreed objectives. But he is careful to frame his discussion of tax in a wider account of the state and its relationship with the economy broadly defined.

To do this Murphy sets out an explanation of the origins and nature of money. Money, whether created by government or by banks is debt. It is lent into existence and destroyed through repayment. And, as quantitative easing showed, the state can, if it wishes, lend money to itself without any of the dire inflationary consequences that the conventional wisdom predicts.

All this is both incontrovertibly true – Murphy quotes the Bank of England's own slightly exasperated efforts to explain where money come

from – and somehow unspeakable in mainstream media and politics.

Once the fact that money is debt is established, the right-wing insistence on austerity starts to look like a kind of artful incompetence. Conservatives stagger about like stage drunkards and whenever they trip on their never-ending journey to a balanced budget they pull another lever that enriches the rich and strips everyone else of long-established social protections. Every pratfall gives them more of what they want.

We can either have state-created money or bank-created money. Either way we are going to have debt. If we won't or can't borrow enough to keep ourselves employed then the state will have to step in and borrow on our behalf – from bondholders or from itself. Far from shrinking, the state must extend the range of its activities to make up for the shortcomings of the private sector. With disarming cheerfulness *The Joy of Tax* dismisses fiscal austerity as a nonsense we can happily be without.

Having dismantled the case for austerity Murphy goes on to

explain the role tax plays in the really existing economy and cheerfully butchers the arguments of his long-time adversaries in the right-wing think tanks along the way. Once he has cleared away the fallacies and special pleading he sets out a comprehensive programme of reform.

The proposals come thick and fast – he is, in the best possible sense, a very creative accountant – but they add up to an integrated project for tying both state power and the private sector to the pursuit of a democratically established agenda.

Tax Justice Focus readers won't be surprised to hear that he wants to dismantle the offshore system once and for all. But he also proposes major changes to the onshore regime by replacing national insurance with a land value tax and a financial transactions tax. These would encourage a more efficient use of land and discourage speculation. And he is also keen to change the constitutional status of tax by replacing Her Majesty's Revenue and Customs with an agency directly accountable to Parliament.

As a tax campaigner Murphy has seen his ideas make steady progress from his home office to the agendas of the global institutions. Country-by-country reporting by transnational companies, a proposal he first made in 2003, has now been accepted by the G8 and G20 governments as a key element in efforts to reduce tax avoidance world-wide. Some of the best minds in the financial sector are hard at work trying to frustrate the reforming potential of his ideas as they play out in the OECD and elsewhere. This time he is aiming squarely at national politics in Britain. The initial response will be all too familiar to him. Well-insulated critics from the Prime Minister down cannot ignore him so they make feeble jokes instead.

Through his writing and campaigning Murphy has done terrible damage to the cosy consensus that once protected the offshore sector. In *The Joy of Tax* he sets out to do the same to the onshore conventional wisdom. It is one hell of a fight to pick. But he's used to apparently impossible odds. I wouldn't want to bet against his having the last laugh.

Dan Hind

RARELY ASKED QUESTIONS

interview

Gavin McFadyean of the Centre for Investigative Reporting talks to the Focus

1.) *From your time working with whistle-blowers, what advice would you want to give anyone who is contemplating a move “outside of normal channels”?*

First to get advice from an experienced whistleblower, like Eileen Chubb, or The Whistler or Compassion in Care organisations.

Almost all the others are management oriented. (In a large number of cases, those who stick their head above the parapet, get it shot off) The whistleblower is exposed, unprotected against any number of fraudulent accusations and disciplinary procedures including labour tribunals where the complainant has virtually no rights.

2.) *If, having thought through the implications, a whistle-blower decides to reach out to the media, how should they go about finding the right journalist to work with?*

Again, I would check with the organisations mentioned above or check with the CIJ. There are not many journalists sadly who have real experience protecting sources, particularly in serious cases where the journalist is threatened with jail. There are only a handful of journalists at the *Guardian*, *Private Eye*, *Mail on Sunday*, who one

could dependably recommend. The Bureau of Investigative Journalism have a history of using effective security methods to protect sources.

3.) *Recent years have seen a huge amount of digital data find its way into the media via whistleblowers like Manning and Snowden. Is this part of the reason why governments are looking to secure new surveillance powers online?*

The thinking is largely to create a reality based fear of disclosure; fearsome jail sentences, a uniformly hostile press in the main countries (US, UK Canada, Australia, NZ) and a wilful refusal to publish the disclosures. Further that with the vast storage powers, it is safer from their point of view to collect everything now, than wait or collect the material in a more relaxed schedule.

4.) *If you could have a searchable archive of digital files from one institution - public or private – which would you choose?*

Either the CIA or the FBI where most of the largest military, security and corporate crimes are stored, organised and analyzed. There are many uncertainties in the data as much of it was excluded from the Snowden or Assange revelations.

5.) *Whistleblower protection has risen in importance as an issue in recent years. Can you outline what you would ideally want to propose, in terms of legal protections and incentives for whistleblowers? Is there more that citizens can do right now?*

What is needed to reduce fear and bring more truth tellers to the attention of the public is a two point approach:

- 1) serious penalties for those who would victimise, and cause retribution against a complainant or whistleblower;
- 2) a serious commitment in law that the cause of the public interest complaint be openly dealt with by the authorities.

At present the cause of the whistleblowers' grievance is often and even usually ignored. The act of standing up is what is often punished, not the cause of the dispute.

In circumstances where major public safety issues are involved, those who do not report them should be liable for contempt of public interest. If for example there are issues with the safety of transport infrastructure but personnel do not report them, those individuals need to be held accountable.

Individual citizens will sadly have little effect on the changing of the law as that change requires a political force.

6.) *What do you think has been the effect of the big data breaches of the last few years – Manning and Snowden, but also Luxleaks and other financial scandals – how much have they shifted the terms of political debate?*

There are now over 35 wikileaks variants and spin-offs that have had a significant and growing effect on truth-telling, whistleblowing and conscientious objection. A very large number of the main leaks were prompted by the example of WikiLeaks (including Snowden) and the use of Tails. As a result of effective submission systems, like Tails, many more leaks are now occurring. This has prompted new and some traditional outlets to pursue investigations they would not have previously initiated. Buzzfeed, Vice as well some NGOs are now using these methods and declaring they are open for stories, tips and evidence of wrongdoing. Those news outlets that are fundamentally hostile to whistleblowing, like the *New York Times*, the BBC and the great majority of the UK and US press have almost no provision in their reporting structure to protect their sources.

Gavin MacFadyen has worked as a senior director on more than 50 investigative television programmes for PBS's Frontline, Granada Television's World in Action, the BBC's Fine Cut, Panorama, Channel 4's Dispatches, among others. He is the director of the Centre for Investigative Journalism in London. The Centre provides resources and advice for whistleblowers at <http://www.tcij.org/whistleblowers>

news in brief...



the Netherlands in the 'Code of Conduct Group on Business Taxation' to resist efforts to reform the EU tax system. Sven Giegold remarks that "with unanimity required for any tax decisions in Council, they have essentially vetoed all progress to enable them to maintain the loopholes in EU law under which large corporations (like IKEA, Google, Amazon, Starbucks, Fiat and many others) were able to avoid their tax responsibility and deprive national exchequers of billions of Euro in tax revenue."

China State Visit to the UK

The Chinese President Xi Jinping visited the UK from October 20th to October 23rd. During his visit he signed a deal to build nuclear power stations and heard the City of London's Lord Mayor say that "we are delighted to offer Chinese investors long-term, stable returns" from that deal and others. In the climax of his speech the Lord Mayor celebrated the "many golden threads which connect our communities and commerce."

Meanwhile, London is positioning itself as the main centre for offshore trading in the Chinese currency and debt. The guaranteed profits from infrastructure projects, paid for by UK consumers, constitute one of those

"golden threads" that connect the two ends of the new Silk Road. But while everyone will pay higher electricity bills it is the City of London that will enjoy the fees and commissions from China's export of licit and illicit capital.

The Financial Secrecy Index

November 2nd marked publication of the latest incarnation of the Tax Justice Network's *Financial Secrecy Index*. Once again Switzerland comes out on top. Hong Kong is second and the USA third. But if the UK and its dependencies and overseas territories are counted together Britannia still rules the waves of untaxed and ill-gotten capital.

The Index received widespread coverage in the international press. The Tax Justice Network notes that coverage tended to follow three themes: "first, there has been an improvement in the direction of greater transparency in many secrecy jurisdictions, though some like Germany and the US stick out as laggards. Second, secrecy jurisdictions in the Middle East and Far East Asia are on the rise, partly because dirty business is being dislodged by the emerging standards in Europe, but also because of the rise of the mega-wealthy class in those regions. And, third, Switzerland, despite some

improvements since 2013, well deserves its number one ranking for the third time in succession."

Falciani Trial Begins

On November 3rd, a day after the publication of the *Financial Secrecy Index*, the International Consortium of Investigative Journalists reported that the Swiss authorities had begun the trial of Hervé Falciani, the former HSBC Geneva employee accused of stealing thousands of client files. The information has since provided the basis for official investigations into tax evasion in France, Belgium and the United Kingdom.



Hervé Falciani, 2012, by eldiario.es. Licensed under CC BY-SA 3.0 via Wikimedia Commons.

Fifty Shades of Grey Areas

Early October saw publication of a major report coordinated by EURODAD, *Fifty Shades of Tax Dodging: The EU's Role in an Unjust Global Tax System*. The report finds that the EU remains a space where national and transnational interests can work effectively to frustrate attempts to establish tax justice globally.

One example of sectional lobbying emerged on November 6th when *Der Spiegel* reported the efforts of Luxembourg and

news in brief...

In June HSBC agreed to pay a \$41.7 million fine for “past organizational deficiencies”.

Falciani himself has declined to leave France to attend the trial in person.

Greens in Europe Call for Whistleblower Protection

The Green group in the European Parliament has unveiled a 10-point plan to promote tax justice in the EU. As the British MEP and Focus contributor Molly Scott Cato notes, “top of this list is the protection of whistleblowers. Those who expose illegal or dodgy practices should be offered European protection; a guarantee that they cannot be prosecuted and a European fund, financed by the money recovered thanks to their leaks, to support them when they reveal scandals in the public interest. Beyond that they should be elevated to the status of hero.”

Another Own Goal

Britain’s professional footballers are once again making headlines for their off-pitch antics. On November 8th the *Sunday Times* reported that star players face a “£100 million meltdown” after investment schemes

intended to reduce tax bills were rejected by the British authorities.

The Village That Went Offshore

Independent traders in the Welsh village of Crickhowell have adopted the tactics of large transnational companies like Google and Starbucks to reduce their tax bills. Filmed as part of a BBC documentary series, “Britain’s Black Economy”, the shopkeepers and small businesses have devised an approach to tax avoidance that they say could be rolled out nationwide if the loopholes enjoyed by big business aren’t closed.

Romanian Prime Minister in Court

Victor Ponta, the outgoing Prime Minister of Romania appeared in court on Friday November 6th, according to the *Associated Press*. He is charged with tax evasion, money-laundering, conflict of interest and making false statements. He denies the charges.

Earlier in the same week Ponta and his cabinet resigned after a nightclub fire in which more than thirty people died prompted popular demonstrations against the government.

Activists and Journalists Unite to Support Whistleblowers

A coalition of public-interest advocates and investigative journalists met in Belgrade on 9–10 November to form the Southeast Europe Coalition on Whistleblower Protection. According to a statement issued by the Coalition, the aim is “to ensure that whistleblowers are treated fairly and that their disclosures result in positive change. It will also promote the benefits of whistleblowing toward improving government and corporate accountability, and strive to enhance the public perceptions of whistleblowers.”

This emphasis on the need to address public perceptions of whistleblowers chimes with the Network’s own research and is particularly welcome given the urgent need for individuals in the tax avoidance industry to break ranks and report criminal wrongdoing.