THE ROLE OF GLOBAL BANKS. FINANCIAL ASSET MANAGEMENT BY "PRIVATE BANKING". Contribution for the Think 20.

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ABSTRACT

There is a growing market of offshore services that promote capital flows from "onshore" economies towards financial secrecy jurisdictions, supplying services to wealthy and millionaire households who want to keep their financial assets abroad. Global banks are key players in the development and provision of services which create, maintain and protect global wealth chains (Seabrooke and Wigan, 2014). They capture "clients", transfer abroad their undeclared holdings, safeguard them outside of the jurisdiction where they were generated, multiply them offshore and conceal their ownership.

The biggest case of international tax evasion linked to HSBC lately revealed as a result of information provided by whistleblower Hervé Falciani, a former computer engineer with HSBC, has brought to light a widespread practice developed by this financial group with 130,000 clients worldwide related to 203 countries.

The existence of many other global banks involved in tax evasion, capital flight and money laundering, and the multiplication of whistleblowers who warn about common patterns of action, seem to be based on systematic and widespread behaviour of much of these financial institutions, aimed at concealing the private financial wealth of their clients worldwide at a "wholesale" level.

I. The role of global banks in global wealth chains

The substantial "deregulation" and the consequent lack of control of the global financial activity have large and deep impacts on:

i) the greater instability and the lower growth rate of the global economy;

ii) the continuous deterioration of fiscal variables during the worst period of the recent financial crisis, included massive public investment in banks rescues which resulted in a heavily increase of the public debt;

iii) the worsening of the distribution of wealth and income.

In addition to these deterrent forces, the global banks not only do not cooperate with tax authorities in order to assure an effective administration of income taxation (including in the European Union countries) but have also developed -through the “private banking” sector- a global platform with the aim of facilitate tax evasion, capital flight[1] and money laundering worldwide.

Financial institutions play a key role in the market of offshore services. On the one hand, they transfer financial assets belonging to wealthy individuals and large companies not reported to tax authorities to tax havens or offshore financial centres and, on the other, they keep their origin, amounts, circulation and ownership strictly confidential. An essential tool is bank secrecy, and, along with it, the promotion and use of tax havens.

Global banks manage this business through the “private banking” sector (private in the sense of secret), which provides a service known as “wealth management”. Wealth management involves providing advisory and management services for investments made by wealthy individuals - with the assets in question being in excess of USD 250,000 in general - and by the companies related to them. The services offered include opening offshore bank accounts for individuals and legal entities, setting up shell companies, foundations or trusts - which are established in tax havens for the purpose of keeping the name of the beneficial owner strictly anonymous -, providing advice on mergers and acquisitions, and on capital market transactions, planning successions and providing advice on investments in mutual funds, hedge funds and private equity.

[1]The question of capital flight is the focus of a large-scale working program that CEFID-AR is conducting (launched in 2006 and scheduled to run until 2015), which is coordinated by Jorge Gaggero, and to which CEFID-AR has devoted a part of its research and outreach efforts.

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See RUA, M., B. (2014) Fuga de capitales V. Argentina, 2014. Los "facilitadores" y sus modos de acción. Supervised by Jorge Gaggero. CEFID-AR. Working Paper No. 60. Buenos Aires, August 2014; and RUA, M., B. (2015) The “enablers” of capital flight and their ways of working. Argentina, 2014. Norwegian Institute of International Affairs (NUPI). Buenos Aires, January 2015.

The private banking sector operates through offices located in almost all the countries of the world (or through independent agents), which are connected to branches located in tax havens and in the most important global financial hubs. In many cases, global banks do not have a private banking division operating in the source country - due to the existence of a series of local regulations or relatively effective control mechanisms, for example - but this is not a major obstacle to the business. In these cases, they tend to rely on “financial intermediaries” who provide the same service to a client, without the financial institution having to provide the service directly. In other words, the client does not maintain regular direct engagement with the bank (whether with its local branch or headquarters), but rather, such engagement is managed by an intermediary, for the administration of assets that are managed by the foreign institution providing private banking services. Also, global banks send specialists from abroad to sites where they wish to attract new clients, as confirmed by Stephanie Gibaud - former employee of the UBS bank - and other whistleblowers.[2]

International banks tend to classify their clients into different segments according to the total value of liquid assets to be invested by each of them. Depending on the segment to which clients are assigned, they receive more or less complex and customized services. UHNW (Ultra High Net Worth) clients, who have a net worth in excess of USD 25 million in liquid financial assets, and HNW (High Net Worth) clients, who have between USD 10 million and 25 million in liquid financial assets, generally require highly sophisticated services straddling different jurisdictions with complex tax and legal structures (such as networks of foundations, trusts, holding companies and international investment funds and hedge funds, among others). To design these schemes, private banks rely on specialized advice and close connections with the large professional accountancy firms (especially, the so-called Big Four), who work in conjunction with bankers in order to devise the mechanisms to be used (Seabrooke and Wigan, 2014). UHNW families usually have multiple private banking advisors, as well as accounting, tax and legal advisors. These clients are often served by so-called family offices, who are usually former private bankers with extensive professional experience who work independently in order to provide a comprehensive customized service with a wide range of portfolio options.

[2]See Buenos Aires Herald. Tuesday, April 21, 2015. ‘Banks moved their evasion experts to LatAm’ Available at: http://www.buenosairesherald.com/article/187291/%E2%80%98banks-moved-their-evasion-experts-to-latam%E2%80%99

There is a close link between the success of this business and that of tax havens, because most of the private banking activities "formally" concentrate in these jurisdictions. According to a report by the Swiss Bankers Association of 2013, Switzerland accounted for 26% of the global private banking business, and topped the Financial Secrecy Index compiled by the Tax Justice Network (TJN) for the year 2013. It was followed by Hong Kong and Singapore at 14%, the Channel Islands (Jersey and Guernsey) and Dublin (Ireland) at 13%, the Caribbean and Panama at 13%, the UK at 11%, the US at 8%, and Luxembourg at 7%. All of these jurisdictions rank high in the index mentioned above. Furthermore, Hong Kong, Singapore and Ireland maintain close ties with the City of London; and the Channel Islands are dependencies of the British Crown, and thus the UK, along with the network of jurisdictions that are under its aegis, indeed accounts for 38% of the market (Rua, 2014). Likewise, Oxfam has estimated that 67% of offshore wealth is located in tax havens related to the EU, and 33% is located in tax havens related to the UK.[3]

Table No. 1

FSI Ranking No. (2013)	Market share in cross-border private banking in 2012	
1	Switzerland	25.90%
3 5	Hong Kong and Singapore	14.10%
 11	Caribbean and Panama	12.90%
9 15 47	Jersey Guernsey and Dublin (Ireland)	12.90%
21	United Kingdom	10.60%
6	United States	8.20%
2	Luxembourg	7.10%
	Others	8.20%

[3] See https://www.oxfam.org/en/pressroom/pressreleases/2013-05-22/tax-private-billions-now-stashed-away-havens-enough-end-extreme

Source: Developed by authors based on data from Swiss Bankers Association (2013) and TJN, Financial Secrecy Index (2013).

Jurisdictions with high secrecy levels and/or low tax rates have a disproportionate number of banks relative the size of their population. The existence of banks in these jurisdictions must therefore be justified by the management of international financial flows (Harari et al., 2012). The link between banks and tax havens can be seen more clearly in jurisdictions considered to be "traditional" tax havens, i.e., with slow development (Rua, 2014). A clear example is that of the Cayman Islands, which, with a population of around 53,000, has 234 banks, which means that there is one bank for every 226 inhabitants.

The banks held by Swiss capital UBS and Credit Suisse manage 50% of the private banking sector in Switzerland (Swiss Bankers Association, 2013). It should be noted that bank secrecy originated in Switzerland under a law that was passed in 1934. This confidentiality pledge could never be violated for any reason until very recently, except under very limited circumstances: for instance, if the existence of money laundering was demonstrated (in the case of tax evasion, banks are generally not required to provide information to a foreign State).

II. Estimations of offshore wealth in the world and in Latin America

The Boston Consulting Group (2014) estimates that offshore private wealth[4] amounted to 8.9 trillion in 2013 (see Chart No. 2). The total amount of offshore wealth seems to be largely underestimated by BCG, since other estimations, such as the ones made by the International Monetary Fund, put global informal money parked in small international financial centers at USD 18 trillion[5], excluding Switzerland (which indicates that the figure should be even higher). Other estimations of unreported global private financial wealth put such figure at between USD 21 trillion and 32 trillion for the year 2010 (Henry, 2012).

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4 Here, the term offshore refers to assets held in a country where the investor has no tax domicile or legal residence.

5 This estimation takes into account international financial centers, including Andorra, Antigua and Barbuda, Aruba, Bahamas, Bahrein, Barbados, Belize, Bermuda, Cayman Islands, Gibraltar, Granada, Guernsey, Jersey, Isle of Man, Lebanon, Liechtenstein, Macau, China, Mauritius, Monaco, Montserrat, Nauru, the Netherlands, Antilles, Palau, Panama, Samoa, San Cristóbal Island, Saint Lucia, Saint Vincent and the Grenadines, Turks and Caicos Islands, Vanuatu, British Virgin Islands, and, excludes Switzerland, among other important centres. See http://bharatkalyan97.blogspot.com.ar/2015/04/black-money-and-tax-havens-1-r.html

The Boston Consulting Group (see Chart No. 2) estimates an average growth of 5.6% for the entire world between 2008 and 2013, while the average increase for Latin America would be higher, 6.7% for the same period. Furthermore, the share of offshore wealth of Latin America compared to global wealth was 10.8% in 2009, and reportedly rose to 12.4% in 2013.

Table No. 2

Evolution of offshore private financial wealth in the world and in Latin America. 2008-2013

In current USD trillion

Year	Global Offshore Wealth	Variation of Global Offshore Wealth	Latin America Offshore Wealth	Variation of Latin America Offshore Wealth	Share of Latin America Offshore Wealth in Global Offshore Wealth
2008	6.8		0.8		11.8%
2009	7.4	8.82%	0.8	0.0%	10.8%
2010	7.8	5.41%	0.9	12.5%	11.5%
2011	7.8	0.00%	0.9	0.0%	11.5%
2012	8.5	8.97%	1	11.1%	11.8%
2013	8.9	4.71%	1.1	10.0%	12.4%

Source: Prepared by authors based on data from The Boston Consulting Group.

Note: In this chart, Latin America includes only Mexico, Brazil, Venezuela, Colombia, Argentina, Chile, Peru and Uruguay.

III. Global extent of the HSBC case

So far, it is the largest tax evasion case to be revealed in the history of global banking. The case is unprecedented not only because of its sheer extent, but also because it reveals the existence of an extensive - in terms of time and territory - systematic practice on the part of the bank both in developed countries and in developing and emerging nations. The information discovered shows that there are more than 130,000 offshore bank accounts, most of which were not declared between 2005 and 2006, with funds whose total topped USD 102 billion, and it relates to 106,000 individuals that reside in 203 countries, who managed to flout tax regulations in almost the entire world thanks to the services of the bank. The information was pulled from the company's own computer system by Hervé Falciani, a former systems engineer in HSBC Private Bank Geneva (Switzerland). He travelled to France to submit such information and have it validated by the French judiciary[6]. The top 10 countries affected, sorted by the extent of damage suffered according to the number of citizens holding "secret" accounts in HSBC Geneva, are: Switzerland, France, UK, Brazil, Italy, Israel, Argentina, US, Turkey and Belgium.[7] According to the total amount of funds involved by country of origin, the top 10 countries are: Switzerland, UK, Venezuela, US, France, Israel, Italy, Bahamas, Brazil and Belgium.

IV. The old adage, "*Dura lex, sed lex*", turned into "*Too big to jail*"?

This final section will enumerate briefly and partially the initial reactions - at the administrative, parliamentary and judicial levels - shown by the governments affected by the global private banking transactions described above - especially those carried out by HSBC.

These reactions are only preliminary, as the events in question go back to less than a decade at the most.

Firstly, it should be noted that the Anglo-Saxon countries that house the largest global financial hubs (London and New York) and are also centre of largest tax havens networks, seem to be the ones that, in turn, suffer significant economic and financial impacts from the manoeuvres under analysis and that have the most lenient legal systems towards them.

In contrast, in the case of the US, the actions of the administration and of Congress are often quick and effective, at least - in the last case - when it comes to their investigation efforts (which have been amply highlighted in this paper) if not in their legislative activity. Judicially, it should be noted that sanctions have been limited to fines that seem hefty as

[6]The criminal division of the Cassation Court has validated the information declaring that it was obtained as a result of a regular investigation. Accessed at: http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJudi&idTexte=JURITEXT000028255498&fastReqId=785879806&fastPos=7

[7]See ICIJ data base. Available at: http://www.icij.org/project/swiss-leaks/explore-swiss-leaks-data

long as they are not compared to the benefits that the sanctioned banks have derived from violating the law. When such comparison is made, these fines turn out to be "a bargain", especially if we take into account that they are often imposed in the context of agreements by which the executives directly involved and liable to actual imprisonment are not prosecuted in any of the cases addressed. A new legal principle, "too big to jail" now seems to tie in with the better-known and long-standing economic/financial policy principle known as "too big to fail", which benefits the major global banks and their owners and executives.[8]

In the case of the UK, so far, the anomy that tax authorities display seems to be consistent with the virtually total passive attitude of its judiciary with regard to the challenges posed. A notable exception is the interrogation of top executives of the global headquarters of HSBC (based in London) made by the head of a Committee for Public Accounts of the House of Commons (a member of an opposition party).[9]

Almost all the significant fines imposed on the large global banks were thus paid by them in the US. *"The financial centre in the City of London, whose international financial centre is of a similar size to the U.S.' financial sector, is significantly more corrupted and dangerous even than its counterpart in the U.S., and the 'capture'* (of political and regulatory authorities) *is more complete."*[10] The British journal "The Economist" and US expert James S. Henry also point out that "*criminal behaviour in America was once a guarantee of bankruptcy (...) Yet the Department of Justice and other regulators seem to have magicked this consequence away".*[11] It should not be forgotten, they claim, that the proceedings are still underway. The capture is not being combative; it seems - quite on the

[8]The last event of bank collusion to operate (more) advantageously in the trafficking of foreign exchange in the US has involved several of the institutions that are often embroiled in serious violations of the law: UBS, Barclays, Royal Bank of Scotland, JP Morgan Chase and Citigroup. It is a market where USD 5 trillion are traded per day. Once the defendants pleaded guilty, the US Department of Justice imposed a fine of USD 5 billion, which is negligible versus the illegal gains that they made. The banks involved were also allowed to continue doing business as usual, as if nohthing had happened. (Banks fined over foreign exchange rigging; Greek default fears grow - as it happened. *The Guardian*, 20 May 2015. Available at:http://www.theguardian.com/business/live/2015/may/20/greece-june-repayment-ecb-support-live-updates).

[9] The Committee for Public Accounts of the House of Commons launched an investigation into the practices of HSBC, and summoned the CEO of HSBC Holding, Stuart Guillver, to testify, among others.

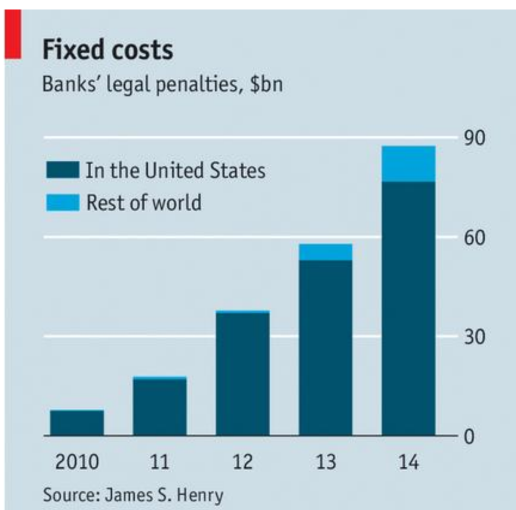
[10] Justice, interrupted: will bankers get off the hook ever more lightly? *Tax Justice Network.*22 May 2015. Available at: http://www.taxjustice.net/2015/05/22/justice-interrupted-will-bankers-get-off-the-hook-ever-more-lightly/

[11] Justice, interrupted. More wrongdoing at banks, more swingeing fines, no prosecutions.*The Economist*. 23 May 2015. Available at:http://www.economist.com/news/finance-and-economics/21651811-more-wrongdoing-banks-more-swingeing-fines-no-prosecutions-justice

contrary - to be taking an even stronger hold now, as the peak of the financial crisis seems to have been left behind.

The administration and the judiciary seem to be acting more swiftly and with more determination in France, Spain and other European countries. It is still impossible to conduct a thorough analysis of this matter, because, as has been stated above, the events in questions were discovered shortly ago, but the two countries mentioned have already managed to get their taxpayers to regularize their situation in the context of administrative proceedings (and to pay the large amounts they owed) as a result of the analysis made by the tax authorities of the information received from Falciani. The legal actions against HSBC are also making progress, although they are still at a very early stage, making it difficult to venture a solid forecast about their probable outcomes.

Chart No. 1



Source: Economist.com (op.cit.)

As for the case of Argentina, the precedents do not make us - in principle - optimistic about any effective outcomes of administrative, parliamentary and judicial efforts to tackle the challenges posed by the "HSBC affair". A timely evaluation of these cases will be very significant for developing or emerging countries as a whole because of the far-reaching effects and the financial and economic impacts of capital flight and tax evasion on the country (Gaggero, Rua and Gaggero, 2014). It should be recalled that "freedom of foreign exchange transactions" prevailed in Argentina during most of the 35-year period between 1976 and 2001, during which foreign debt built up enormously to unsustainable levels (leading to the largest sovereign default in recent history at the end of 2001, with the collapse of the currency board system). Also, during the same period, the outflows of domestic capital rose so substantially that the amount of offshore assets held by Argentine residents was, on average, approximately the same as the amount of sovereign debt. Another thing to be noted is that during that time a neoliberal law was (and continues to be) in force - enacted in 1977 - which freely enable transnational banks to do business locally and, in particularly, it enabled "private banking".

Although foreign exchange control was resumed in 2002, there have been no substantial actions - until very recently - aimed at preventing and actually penalizing such transactions, and, more generally, at effectively attacking the tax evasion/capital flight combo. All of this is happening despite: (a) the circumstance of the acute 2001-2002 crisis, dominated by the substantial outflows of foreign exchange; (b) the smart findings of a Parliamentary Committee that investigated capital flight in early 2002, which were finalized and submitted to the Argentine government in October 2003 (see summary of such findings in Annex I); (c) the warnings of academic papers that anticipated a potential future re-emergence of a severe foreign exchange crisis as a result of the ongoing capital flight (as a "core problem", which continues to occur despite the fact that specific macroeconomic crises have been overcome; the authors of which include Gaggero, Casparrino and Libman, 2007); and (d) the complaints filed by Hernán Arbizu on tax evasion and capital flight encouraged in the country by JP Morgan in 2008.

The vigorous return (October 2011) of "foreign exchange restrictions" in Argentina and an in-depth knowledge of the circumstances and extent of the "HSBC case" (September 2014) were useful in late 2014 for the administrative and judicial actions filed by AFIP; for coordination - which had been thus far unprecedented -to take place between agencies of the Argentine Executive responsible for the matters involved (Central Bank, Argentine SEC, AFIP, UIF, PROCELAC - Prosecutor's Office for Economic Offences and Money Laundering - and others); and for the creation of a new Two-Chamber Investigative Committee within the context of the Argentine Congress (discussed above in this paper) which seeks to pick up on the issues addressed by the preceding committee, which so far have been mostly ignored.

The global extent and characteristics of “private banking” activity - with HSBC’s involvement in this regard being the most notorious, because whistleblower Hervé Falciani worked in the bank’s IT department and decided to act for the sake of common public interests - have been addressed in this paper in some detail, as well as the impact of its activities in Latin America and the Caribbean, and, in particular, in Argentina. In this paper we have also looked, although in a preliminary manner, at the political and institutional restrictions that are clearly reflected in the limited (or non-existent, in some relevant cases) reactions that the countries of the north and the south have demonstrated towards the challenge faced by their economies (especially, in terms of their tax revenue). Finally, it is clear that these transactions by global banks and the widespread use of the facilities provided to them by tax havens (and, in some cases, by external tax and legal advisory firms) should force scholars and policymakers to focus on the “structural determinants” of the phenomenon, in the so-called offshore world, seeking effective ways of addressing the matter of “contradictions between the world market and the Nation-State system” (Seabrooke and Wigan, 2014; Palan, 2003). Also, “analyses of global wealth chains are essential for understanding not only how (global) finance is changing but core changes in finance and production in modern capitalism” (Seabrooke and Wigan, 2014).

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