Appleby

Key questions and answers

There have been media reports that the offshore law firm Appleby has been the victim of a hack and that the ICIJ have been handed the company's data. We are therefore expecting a significant media event to take place soon. These are some questions and answers that may come up when the story breaks.

Who is Appleby?

Appleby is an offshore law firm. It provides a very wide range of offshore legal services for companies and high net worth individuals. This kind of work includes maintaining offshore trusts, setting up offshore companies and advising clients on structuring their businesses in tax havens. It has offices in a number of tax havens and secrecy jurisdictions around the world.

It is in a similar line of business to Mossack Fonseca, but it is a much larger firm than Mossack Fonseca. Unlike Mossack Fonseca, Appleby is part of the offshore magic circle of law firms.

What is the offshore magic circle?

The offshore magic circle is an informal grouping of the leading offshore law firms in terms of size. The term mirrors the magic circle, the leading firms of London solicitors. As it is not an official grouping, there is no official membership, however offshore magic circle firms are widely considered to be Appleby, Bedell Cristin, Carey Olsen, Conyers, Harneys, Maples, Mourant Ozannes, Ogier and Walkers.

What are the role of lawyers in offshore tax avoidance?

Lawyers are the operators of the tax avoidance trade. Lawyers implement tax avoidance schemes, setting up companies, making sure that accounts and company documents are filed with the right people and on time. Making sure that companies meet the minimum requirements to exist in an offshore jurisdiction. Drawing up contracts and trust documents. Acting as trustees. Some law firms also develop complex tax avoidance schemes, alone or jointly with accountancy firms.

What about the role of accountants?

The accountancy firms, and in particular the big four, E&Y, PwC, KPMG and Deloitte, are the brains behind the industrial tax avoidance system. They design and market tax avoidance schemes to their clients, and generate huge fees doing so. An analysis of the accounts of the big four by TJN showed that they generated GBP 2.2bn a year in fees from providing tax advice.

George Rozvany was previously a director of Transfer Pricing at E&Y in Australia and then group tax manager at a major multinational firm. He told Australian journalist Michael White:

> *"The Big Four have, under a Rasputin-like cloak of illusion, strayed from their original and critical role of verifying the accuracy of financial accounts for all stakeholders, to be "accountants of fortune" merely representing the accounting position for multinationals and developing aggressive international tax avoidance practices,"*

How big is the problem of offshore tax avoidance and tax evasion?

TJN estimates that the global loss to governments from profit shifting by multinational companies is upwards of $500bn per year. As a percentage of their gross domestic product, developing countries are hit hardest.

We also estimate that between $21-32 trillion dollars of private wealth is held offshore. Assuming that the profits on this wealth is undeclared, and a very conservative return on capital of 3%, then we estimate that governments are losing upwards of $189 billion a year via hidden offshore wealth.

Is what firms like Appleby are doing illegal?

Only a judge can say definitively whether an activity is illegal or legal, and it is difficult to say without knowing in greater detail what Appleby were up to. However, if Appleby were handling the proceeds of tax evasion, or money from other crimes such as sanctions breaking, then at the very least an investigation should be started to determine whether they are involved in money laundering.

Tax havens, secrecy jurisdictions and the law firms that inhabit them would not exist it were not to help people do things that would be unlawful in their home countries.

What Appleby are doing offshore may well have been legal offshore, but that is a pretty low bar.

What is the difference between evasion and avoidance?

It was once said that the difference between evasion and avoidance is the thickness of a prison wall. In other words, tax evasion is illegal, whereas tax avoidance is legal.

We think that is too simplistic.

Both avoidance and evasion have the same genesis - a taxpayer is seeking not to pay a tax which the government has placed on an economic activity. Both deny revenue to public services that should be paid. Both are wrong and both need to be confronted by government.

Tax evasion is where someone deliberately and knowingly does not pay their taxes, perhaps by making a fraudulent tax return. Offshore companies, trusts and bank accounts are often key to evasion as they assist clients to hide their money from tax, and other law enforcement authorities.

Tax avoidance happens when a tax payer will seek not to pay a tax by taking a course of action designed to defeat the intention of law makers. Avoidance is often the creation of an accounting fiction in order to convince a tax authority to accept less in taxes by giving something the appearance it is not.

Governments can challenge avoidance schemes by taking them to court, and frequently do. If successful, the result is often the readjustment of a tax bill rather than a criminal sanction.

The use of tax avoidance schemes is extremely prevalent. In 2013 the UK's Public Accounts Committee, a government watchdog, heard testimony from a senior official at a big four accountancy firm that they would sell tax schemes to clients even if they thought there was only a 25 percent chance they would survive a court challenge.

How does offshore avoidance work?

The way companies and wealthy individuals avoid tax using offshore structures is quite simple. A company will be set up in a tax haven. Economic transactions will be created which have the effect of moving money from a higher tax jurisdiction to the tax haven company.

For example a multinational company could set up a tax haven entity which charges a management fee to other parts of the company. Or charges other parts of the company for use of the company brand. These fees move money from one part of the multinational company to the tax haven.

However, often, nothing is going on in the tax haven company. It is just a piece of paper sitting in a lawyers office, with a bank account, collecting money.

Again, this is the fiction of tax avoidance. Two companies trading with each other, without any real economic exchange of goods or services taking place with the sole purpose of creating a tax benefit.

What impact does offshore tax avoidance and tax evasion have on the people in society that are most discriminated against?

Tax avoidance and evasion eat away or 'undevelop' domestic revenue systems and undercut gender equality commitments. These revenues are needed for nutrition, health, education, training, and transportation.

Personal wealth and corporate profits which are hidden in secrecy jurisdictions and which are not taxed where individuals are domiciled, or by governments in host countries, may not be taxed anywhere. Financial secrecy jurisdictions therefore infringe not only on the possibility of equality but upon fundamental rights, the promise of the UN SDGs (Sustainable Development Goals), of survival rights (right to life, freedom from poverty, to sanitation) but also upon rights such as health, education, political participation, economic empowerment and access to justice.

Isn't the OECD fixing the problem?

The OECD launched the BEPS process in 2013 to formulate new rules to tighten up the international tax system. The BEPS process only deals with tax avoidance by multinational companies. It was not designed to deal with individuals. The BEPS programme has led to some progress in the fight against tax avoidance, and as a result of the process some of the more outrageous practices will be curtailed.

However, the whole process was undermined by corporate lobbying and there is now a general acceptance that the BEPS process has failed to take adequate action to curtail corporate tax avoidance.

What should be done to fix the problem?

The tax justice network believes in the **ABC** of tax transparency as the first set of major reforms.

A stands for Automatic Exchange of Information. When a client opens up an offshore bank account, the bank should automatically inform the county's tax authority where that person is resident. This process is starting for many developed countries this year, but it is far from comprehensive, with large holes in the system, excluding many developing countries. TJN advocates for a global, comprehensive system of exchange.

B stands for beneficial ownership public registers. Companies, trusts and foundations should have to register on a public database who their real beneficiaries are. Not just the legal owner, which could be for example another offshore company, but the real, warm blooded human being who stands to benefit from the legal entity-+. In the case of trusts, all parties to the trust should be registered, including the settlor, and trustee.

C stands for Country by Country Reporting. Multinational companies should have to report their key economic data, for example, the number of employees they have, the number of sales they make and the profits they declare in each country where they have a presence. This would make it immediately transparent if the company was shifting profits into tax havens.

For all of these things to work however, we also need effective enforcement. In many developed countries around the world austerity has decimated tax authorities. Many tax authorities have seen large scale job losses which has led to less effective enforcement action being taken. In developing countries tax authorities are often poorly resourced. If we are to end the scourge of tax dodging, governments must commit to properly funding their tax authorities.

Anything else?

For further information please don't hesitate to visit the TJN website

www.taxjustice.net

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