Peter Drahos, ed., Regulatory Theory:
Foundations and Applications (2017)

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Shifting profits and hidden accounts: Regulating tax havens

Gregory Rawlings

1. Introduction

In 1998, a UK Home Office investigation into financial services regulation in the Channel Islands and the Isle of Man found that there were some 15,000 nominee company directors on Sark, the world's smallest semi-sovereign self-governing jurisdiction. These directors, also known as 'signers', sat on the boards of companies incorporated in the United Kingdom, Ireland, Panama and the Isle of Man, but seemed to have very little idea of what 'their' companies actually did. One islander alone was the director of 3,000 such companies. Yet while Sark had 15,000 company directors, the island's population stood at just 575 (Edwards 1998: 88). Following a 1999 UK court decision that condemned sham nominee directorships and subsequent regulatory reforms in the financial services sector in the Channel Islands, the 'Sark Lark', as it was known, appeared to come to an end. However, while the island lost some of its appeal as a centre for nominee directorships, its directors were keen to continue their careers as professional signers elsewhere.

More than 14 years later, the UK newspaper *The Guardian* revealed that a group of 28 nominee directors had been able to continue offering services to tens of thousands of secret offshore companies by relocating

themselves across the world. These offshore corporate directors, whose services were for hire to companies incorporated in major markets and specialist finance centres, were discovered in Cyprus, Dubai, Mauritius, St Kitts and Nevis (particularly Nevis) and Vanuatu. As *The Guardian* reported, 'many still keep in touch on Facebook' (Leigh et al. 2012). Collectively, they sat on the boards of 21,554 companies incorporated in the British Virgin Islands (BVI), the United Kingdom, Ireland and New Zealand. One woman, with 12 addresses listed with the British Companies Register, 'controlled' 1,200 companies from the Caribbean island of Nevis. She continued to list a cottage on Sark, which provided a physical location for these companies' numerous addresses. The corporations 'controlled' from Nevis were involved in Russian property development, pornography and online gambling (Ball 2012a). Despite UK officials declaring that they would not tolerate the abuse of company directorships from Sark as far back as 1999, the island continues to provide a favourable location for 'signers' to provide their services. In 2012, two island residents on Sark sat on the boards of 8,239 companies (Ball 2012b).

The ability of company directors to bypass national regulations governing transparency, disclosure and due diligence, not to mention the sheer number of corporations involved, is emblematic of the continuing importance of tax havens, or offshore finance centres (OFCs) or international finance centres (IFCs), in contemporary global economic processes. These nominee company directors provide services for the ultimate owners of corporations whose identities remain obscured by layers of confidentiality, anonymity and privacy that are shielded by special purpose entities (SPEs), trusts and foundations incorporated in multiple jurisdictions with diverse approaches to fiscal norms and commercial regulations.

Despite decades attempting to regulate tax havens and, in some cases, close them down, countries continue to prosper by offering regulatory flexibility in tax, finance and corporate management. Just when one area of offshore financial activity (such as banking) appears to be making major advances in regulatory reform, another new area of previously unforeseen commercial value suddenly finds tax haven markets to be particularly useful. Improvements in sharing information, transparency and data matching between tax havens and major economies have been offset by developments in e-commerce, whereby apps, software and search engines can register their intellectual property (IP) in one

jurisdiction, gain advertising revenues in another and pay taxes in a third country (invariably, a tax haven) and, if not strictly meeting its definitions, reaching an agreement with competing governments to make it as such. Tax havens continue to offer products and services for trusts, banking, private charities and foundations, transfer pricing, mutual funds, SPEs, international business companies/corporations (IBCs), payrolls, superannuation (pension) funds, shipping registration, offshore equity income and asset stripping. Moreover, archetypical tax havens (tropical islands, crown dependencies and alpine principalities) have increasingly been joined by countries that were never designed for this purpose. These include major members of the Organisation for Economic Co-operation and Development (OECD) that continue to compete among each other for highly mobile capital by offering tax concessions, regulatory reforms and attractive IP protections. Just as tax havens provide multiple spaces for financial and fiscal 'freedom' and 'innovation', ways of managing them have been characterised by networks of competing regulatory projects, from setting international standards of best practice through to bilateral agreements designed to share information. Yet the release of information has not stopped regulatory arbitrage for taxable profits. If anything, it has just made it more transparent. The regulation of tax havens and aggressive tax planning remains a deep problem because globally networked markets have become more and more dynamically efficient in providing these services, or, as John Braithwaite (2005) puts it, they have become efficient 'markets in vice'. The importance to democracy of maintaining the integrity of the tax institution was a major theme of the Regulatory Institutions Network (RegNet) Centre for Tax System Integrity, with research on tax havens being a major strand of its work.

This chapter examines tax havens, offshore finance centres and the challenges of multiple, competing and contradictory regulatory initiatives. It provides an overview of the rise, consolidation, resilience and adaptation of tax havens and offshore finance centres. This is followed by an exploration of the transactions OFCs facilitate and resulting regulatory risks and responses, both in the havens themselves and in taxing states. Many of the latter have become, paradoxically, tax havens themselves and this transformation, or dualistic character of low tax costs and financial liberalisation, is one of the major challenges that regulators face today.

2. Tax havens: Rise, resilience and consolidation

A tax haven, or OFC/IFC, is a jurisdiction (country, self-governing territory and/or a federal state or province with fiscal autonomy) with low or no direct taxation, strong confidentiality, anonymity and privacy provisions governing transactions, costs and capitalisation and a suite of wideranging, but flexible and permissive company incorporation laws and policies characterised by comprehensive regulation in some areas (for example, criminal penalties against unauthorised disclosure), and relaxed regulation in others (for example, laws governing directorships may be minimal or non-existent). There are also a number of states that 'ring fence' domestic taxable economic activity covering residential income, profits and losses from international non-resident investment, which is either exempt from taxation or is liable at low or concessional rates. This includes jurisdictions with active 'onshore offshores' such as the Netherlands, Singapore, Luxembourg, Switzerland, Ireland, the United Kingdom and the American states of Delaware, Wyoming, Montana and Nevada. The ability of these 'non-tax havens' to operate akin to 'tax havens' in specific circumstances presents one of the most serious regulatory challenges for orthodox taxing states in the contemporary fiscal world.

Tax havens are particularly attractive to the wealthy, or high net worth individuals (HNWIs), also known as high wealth individuals (HWIs). There is evidence that the wealthy have sought safe and secure refuges for their assets for centuries. Chinese merchants found safe havens from imperial taxes and tributes outside the empire some 3,000 years ago (Seagrave 1995). In the late eighteenth century, French aristocrats fleeing the revolution started depositing money in Switzerland, with secret numbered accounts available by the end of the nineteenth century (Palan 2003: 103). In the decades leading up to World War II, wealthy individuals, families and some companies started to secretly move funds to low-tax regimes abroad, including Nova Scotia, the Bahamas and Jersey, while glamorous destinations such as Monaco and Tangier combined private banking, luxurious homes abroad and gambling in high-end casinos for mobile millionaires.

Tax havens started to proliferate exponentially after World War II (see Table 37.1 for a listing). The 1944 Bretton Woods agreement carefully regulated domestic and international financial markets

through government control over foreign exchange rates and cross-border capital flows. While most major economies signed the Bretton Woods agreement, there were still lacunae within the post–World War II international financial architecture that allowed money to be moved offshore. Due to Cold War rivalry, interest rate differentials and regulatory arbitrage between major markets, companies, governments, banks and individuals started to open US dollar accounts outside America in the 1950s (Hampton 1996; Palan 1999; Picciotto 1999; Schenk 1998). This protected US dollar holdings from confiscation in the event of hostilities between rival powers and also allowed account holders to earn higher interest rates abroad. These US dollar accounts kept internationally were referred to as eurocurrencies or eurodollars, which were defined as any currency banked or traded outside of its country of origin. This coincided with technological advances enabling money to be booked by telegraph from one jurisdiction to another; it did not have to physically move but could be transferred by debiting and crediting cross-border ledger entities. This provided new opportunities for smaller countries and territories, which enjoyed fiscal autonomy and were not bound by the regulatory order of the Bretton Woods system. Eurodollar funds started to flow into fiscally autonomous European territories such as British-governed Hong Kong, Bermuda and the Bahamas, together with the crown dependencies of Jersey, the Isle of Man and Guernsey. Independent states that historically had reputations for bank secrecy (or quickly introduced it), such as Andorra, Monaco, Liechtenstein and Switzerland, continued to develop, expand and promote their financial centres as safe havens where money could be securely deposited, managed and anonymously reinvested into the world's major onshore money markets (Hampton 1996; Palan 1999; Picciotto 1999).

In the 1960s and 1970s, tax havens and OFCs expanded both in number and by value of deposit. Enjoying English common law, other UK overseas territories that had never historically had income tax were able to introduce offshore legislation by statute allowing for OFCs (Picciotto 1999). In these ways, territories such as Cayman Islands and the New Hebrides (Vanuatu) became OFCs. Tax haven deposits increased rapidly. In 1968, the total funds kept offshore were valued at US$10.6 billion (AU$13.9 billion) (Picciotto 1999: 58). By 1978 this had increased to close to US$500 billion (AU$657 billion). This continued to grow through the 1980s and into the 1990s. Between 1985 and 1995, the volume of funds remitted from G7 countries into the Caribbean and Pacific increased to US$200 billion (AU$263 billion) per annum, which was far in excess of foreign direct investment

(FDI) in these areas (OECD 1998: 17). This coincided with a rise in the number of jurisdictions offering offshore financial services. Countries that chose to remain British territories augmented their offshore legislation, such as the BVI, which in 1984 pioneered the IBC (Maurer 1995), while others that became independent kept their centres and introduced new products and services. By the mid-1990s, almost every independent and self-governing territory (with the exception of the French overseas departments) in the Eastern Caribbean's Lesser Antilles had become a tax haven. Moreover, rapidly growing economies such as Singapore, Dubai and Hong Kong were actively competing with established market leaders such as Switzerland as centres for wealth management. Offshore assets continued to grow. In 1994, the International Monetary Fund (IMF) calculated that US$2.1 trillion (AU$2.8 trillion) was kept offshore, or 20 per cent of total private worldwide stocks of wealth (IMF, cited in Palan 1999: 23). In 1998 the UK Home Office estimated that this had increased to more than US$6 trillion (AU$7.9 trillion) (Edwards 1998). The OECD suggested it had reached between US$5 and US$6 trillion (AU$6.6–7.9 trillion) in 2007 (Owens 2007: 17). In 2012, the UK-based think tank the Tax Justice Network (TJN) commissioned research by the economist James Henry, which found that between US$21 and US$32 trillion (AU$27.6–42 trillion) was kept offshore (TJN 2012).

Thus, between the 1970s and the turn of the twenty-first century, the amount of money kept offshore has increased massively. The number of jurisdictions offering offshore financial services has similarly expanded considerably and now includes countries that were not historically considered tax havens (such as the United Kingdom, the Netherlands and individual US states). The market has become segmented into areas of offshore specialisation with jurisdictions focusing on particular niches. The BVI provides IBCs, the Cayman Islands hosts major American mutual funds, Bermuda offers captive insurance facilities, Switzerland, Singapore and Dubai have emerged as major centres of wealth management, while Luxembourg, Ireland and the Netherlands provide convenient locations for profit shifting, corporate domicile and bespoke tax deals between multinational corporations and accommodating governments. Major financial centres such as London and New York continue to process, manage and reinvest funds that flow in and out of tax havens by way of stocks, shares and pension funds. The entire global financial system has become interlinked with the onshore/offshore marketplace, in ways that mutually entangle and enmesh tax havens with their taxing state counterparts.

Table 37.1 Jurisdictions with tax havens, offshore/international finance centres and/or specialist financial products, services and/or incentives

Jurisdiction	Listed by OECD, 2000	Advance commitment to the OECD, 2000	Primarily benefits non-residents only	Primarily benefits residents only	Defunct/closed down/ no longer active
Andorra	✓				
Anguilla	✓				
Antigua & Barbuda	✓				
Aruba	✓				
Austria			✓		
Bahamas	✓				
Bahrain	✓				
Barbados	✓				
Belize	✓				
Bermuda		✓			
British Virgin Islands	✓				
Brunei					
Cayman Islands		✓			
Campione d'Italia				✓	
Cook Islands	✓		✓		
Cyprus		✓	✓		
Delaware					

Jurisdiction	Listed by OECD, 2000	Advance commitment to the OECD, 2000	Primarily benefits non-residents only	Primarily benefits residents only	Defunct/closed down/ no longer active
Djibouti					
Dominica	✓				
Dubai					
Gibraltar	✓				
Grenada	✓				
Guernsey/Sark/Alderney	✓				
Hong Kong					
Ireland (Eire)			✓		
Isle of Man	✓				
Jersey	✓				
Labuan					
Liberia	✓				
Lichtenstein	✓				
Luxembourg			✓		
Maldives	✓				
Malta		✓			
Marshall Islands	✓				
Mauritius		✓	✓		
Monaco	✓				

Jurisdiction	Listed by OECD, 2000	Advance commitment to the OECD, 2000	Primarily benefits non-residents only	Primarily benefits residents only	Defunct/closed down/ no longer active
Montana					
Montserrat	✓				
Nauru	✓				
Netherlands			✓		
Netherlands Antilles[1]	✓				
Nevada					
New York			✓		
New Zealand			✓		
Niue	✓				✓
Norfolk Island					✓
Panama	✓				
Puerto Rico			✓		
Samoa	✓		✓		
San Marino		✓			
Seychelles	✓				
Singapore					
St Christopher (Kitts) & Nevis	✓				
St Lucia	✓				
St Vincent & the Grenadines	✓				

Jurisdiction	Listed by OECD, 2000	Advance commitment to the OECD, 2000	Primarily benefits non-residents only	Primarily benefits residents only	Defunct/closed down/ no longer active
Switzerland					
Tangier					
Tonga	✓				✓
Turks & Caicos Islands	✓				
United Kingdom[2]			✓		
US Virgin Islands	✓				
Vanuatu	✓				
Wyoming					

[1] The former Netherlands Antilles was dissolved in 2010, with its member states/islands becoming either integral parts of or self-governing countries within the wider Dutch kingdom. However, this jurisdiction existed at the time of the OECD's 2000 listing.

[2] In addition to non-resident activities, the low-tax regime in the United Kingdom is also available to HNWIs classified as British Non-Domiciliaries ('UK non-doms'). Such persons are resident, but not domiciled, in the United Kingdom. These are usually people who have immigrated to the United Kingdom as investors, but maintain their domicile elsewhere. This status can be transmitted across generations. However, it only extends to a very small, but wealthy, minority of the UK population. Most UK residents do not directly benefit from its low/no-tax OFC/IFC facilities. The United Kingdom is a 'tax haven' only for non-residents and UK non-doms.

Sources: OECD (2000: 17) (for jurisdictions listed by the OECD). See also Rawlings (2005, 2007) for a discussion of jurisdictions operating as tax havens and OFCs/IFCs that were not listed by the OECD. For more extensive and comprehensive listings and discussions of low-tax jurisdictions, see: lowtax.net.

3. Risks, markets and practices: Tax havens and regulatory challenges

Low or no-tax jurisdictions combined with a lack of transparency and access to information about beneficial account holders present specific fiscal risks to OECD members and emerging markets alike. Significant revenues are forgone because of the use of OFCs. In 2008, the US Senate found that up to US$100 billion (AU$132 billion) a year was being lost in tax revenues as a result of offshore activities (Gravelle 2013: 1). In 2013, the UK-based overseas development charity Oxfam estimated that US$156 billion (AU$205 billion) per annum in tax revenue disappeared as a result of OFC use—enough to end global poverty (Oxfam International 2013a). Oxfam also concluded that US$38.4 billion (AU$50.5 billion) in tax revenues was being moved out of Africa each year as a result of trade mispricing—a form of profit shifting, whereby companies undervalue prices of exports that can then be sold at market rates abroad with the difference recouped offshore (Oxfam International 2013b).

Offshore finance centres are involved in a far wider range of activities than just accepting deposits in their banks. Money is actively managed, lent, reinvested, borrowed, used as collateral, pooled in collective investment vehicles and channelled through secondary markets back into onshore stock exchanges, property developments and industrial enterprises. All of these pose specific tax risks. Tax havens are host to a range of financial activities facilitating the active investment of funds. Even where money is deposited in an offshore bank, clients will expect a reasonable rate of return and, in an era of historically low interest rates, this will mean that it is reinvested and traded in shares, bonds, property, hedge funds, foreign exchange markets and venture capital enterprises. Corporations will use OFCs to finance joint ventures, mergers and acquisitions and attract new sources of capital.

Table 37.2 Risks to revenue collection due to tax havens and OFCs/IFCs

Low tax risk	Medium tax risk	High tax risk	Invariably illegal/illicit tax risks
Offshore recruitment/human resourcing for non-residents	Offshore banking	Profit shifting	Not declaring reportable offshore income
Offshore payrolls for non-residents	Private charities and foundations	Transfer pricing	Fraud
Shipping registration	Credit finance	Back-to-back loans	False invoicing
Aircraft registration	Special purposes entities/vehicles	Asset stripping	Concealing reportable financial activity
	International business companies/ corporations	Offshore trusts	Money laundering
	Corporate restructuring	Thin capitalisation	
	Offshore invoicing	Round tripping/round robin finance	
	Offshore stock markets	Double book-keeping	
	Offshore mutual funds	IP & patent registration	
	Offshore superannuation and pension funds	E-commerce	
	Shifting residence/domicile	‘Intangibles’	
		Trade mispricing	

Source: Author's work.

Transfer pricing or profit shifting makes extensive use of tax havens and OFCs. Corporations establish subsidiaries in low-tax jurisdictions and then sell goods and services to them at low prices, reducing overall income for headquarters but realising it offshore. In this way, profits can be shifted to low or no-tax jurisdictions. While rules, policies and laws have been introduced to prevent the abuse of transfer pricing, it has become a particular regulatory challenge with IP licensing and online e-commerce developments. As Drahos (2013: 91) observes: 'The sale or licensing of intellectual property rights is used to shift income from high tax jurisdictions to low tax jurisdictions.' As a result, a number of e-commerce companies such as Google, Apple, Amazon and Facebook have been able to use offshore centres to reduce tax liabilities in their US domicile and the countries where they operate. In Australia in 2013, Google paid virtually no tax. The company claimed it had paid AU$7 million on a AU$46 million profit; however, the company's profits from its Australian operations were actually somewhere in the vicinity of AU$2 billion, which had been shifted offshore, and its tax bill was in fact just AU$466,802 (West 2014).

One of the ways companies are able to shift profits and thus lower their tax liabilities is through what is referred to as the 'double Irish–Dutch sandwich' (Gravelle 2013: 11). Using this strategy, for example, Google registered IP rights in Ireland. This then established a subsidiary, which sold advertising into the rest of Europe. 'Sandwiched' between the Irish parent company and its affiliated European sales firm was a subsidiary incorporated in the Netherlands, which channelled royalty payments from the sales firm back to Ireland. The Irish parent company, however, then claimed that it was not in fact managed in Ireland, but in Bermuda, whose zero per cent tax rate was applied rather than Ireland's 12.5 per cent. The American rate of 35 per cent was nowhere to be seen (Gravelle 2013: 11; Wood 2014). Since the discovery of the double Irish–Dutch sandwich in 2010, it was revealed that a number of information technology companies had been using this or similar methods of profit shifting to reduce taxes, including Apple, Twitter and Facebook (Wood 2014). Facebook alone transferred 'USD $700 million [AU$920 million] to the Cayman Islands in a Double Irish' (Wood 2014). Like Bermuda, the Cayman Islands also has no tax on company profits. Combined with transfer pricing, IP registration and patent mobility, multinational corporations are provided with opportunities for enormous global flexibility in shifting profits and relocating proprietary rights, lowering (and even cancelling out) taxes in the process. As Drahos (2013: 91) has

demonstrated in his account of the regulatory challenges presented by parent offices and their globalisation, 'the scale of the problem has grown in magnitude'.

Even though the double Irish–Dutch sandwich has been closed in its current form under US pressure, whenever regulatory authorities discover and end one arrangement, others are quick to emerge and take their place. As *Forbes* tax columnist Robert W Wood (2014) wrote: 'Tax people will be scrambling to create new structures, but there's some breathing room. And when new structures are developed, I'll bet Ireland will have a role.'

Individual OFCs are seldom used in isolation, especially archetypical island state tax havens with low populations and small domestic markets where large transactions raise red flags of tax risk for revenue authorities. Instead, they form parts of wider structures involving multiple jurisdictions. Tax planners working for HNWIs and multinational corporations find countries with economies of substance (Netherlands, Singapore, Ireland and the United Kingdom) to be particularly attractive in arranging legal structures because of the network of double taxation agreements they are party to (which means that taxes are not paid twice and deductions can be claimed, sometimes to cancel them out altogether). These jurisdictions do have tax systems that can be quite high, but they 'ring fence' international operations (which are taxed at low or zero rates) off from domestic activities, which continue to be charged at regular rates. Companies and their lawyers and accountants can also conclude specific deals with particular governments to exempt them from local taxes even where they might ordinarily be payable. The European Grand Duchy of Luxembourg, which straddles the boundary between a medium-sized economy and an archetypical tax haven, has given hundreds of multinational companies special concessions and private agreements allowing them to avoid not only its 29 per cent company tax rate, but also taxes elsewhere, including in the corporations' home countries. In November 2014, 28,000 pages of tax agreements between Luxembourg's government and 340 multinational companies were leaked to the media, illustrating how these firms incorporated, organised and 'managed' subsidiaries and local parents out of Luxembourg to reduce and avoid their overall total tax bills, using variations of the double Irish–Dutch sandwich, together with other forms profit shifting,

IP flexibility, research and development deductions, back-to-back loans, interest rebates and transfer pricing (Bowers 2014). The Luxembourg authorities approved these tax agreements as perfectly legal.

There are active and synergistic relationships between OFCs and major financial markets and emerging economies. Money is invariably parked only temporarily in tax havens, before it is reinvested onshore, often sheltering under the tax-free domicile with which foreign incorporation provides it. Common law OFCs, such as those found in countries that are current or former UK territories, are able to draw on the precedents of trust and equity to manage HNWI and multinational corporate assets, income, profits and, from time to time, even losses (which can then be claimed as tax deductions back home). Through establishing trusts in OFCs, wealthy individuals can deny a beneficial connection with their property (which technically ceases to be 'theirs') and thus any income earned from it is accrued tax-free (or incurs minimal taxes) (see Rawlings 2011).

Companies, as opposed to individuals (although often the two are the same and this distinction is not mutually exclusive), find SPEs or special purpose vehicles (SPVs) that can provide corporate structures for subsidiaries that are particularly convenient for tax minimisation purposes. The BVI specialises in these as IBCs. Despite having a population of fewer than 30,000 people, the BVI has 459,000 globally active trading IBCs (TJN 2013). They are particularly attractive for investments into China. In 2009, the BVI, one of the smallest countries in the world, ranked as the second-highest source of FDI into China—the largest nation on Earth (Maurer and Martin 2012: 532; Vlcek 2014: 538).

Since OFCs proliferated in the 1970s, new ways to tax offshore profits and income have been developed. These include implementing controlled foreign company (CFC) rules whereby offshore income is treated as locally earned for tax purposes unless it can be proved otherwise, targeted listings of specific jurisdictions and applying direct measures to transactions involving them (for example, imposing withholding taxes or disallowing deductions) (Sharman and Rawlings 2006) and treating trust distributions as taxable dividends. However, the complexity of these arrangements can make taxing offshore structures challenging at the least, and impossible at the most. Moreover, these regulatory measures

are based on the disclosure of offshore investments and arrangements. They become particularly difficult to enforce where taxpayers secretly hide assets, income and profits offshore.

Until the turn of the twenty-first century, tax havens focused on providing financial regimes based on secrecy, privacy and confidentiality, to the extent that clients could be completely anonymous and virtually 'unknown'. This is still a feature of many OFCs. For example, the auditor who leaked the 28,000 pages of tax agreements with the Luxembourg Government has been charged with criminal offences relating to the 'theft' of information and its 'illegal' release to the media. The legal action against this whistleblower has been condemned internationally and reflects the increasing intolerance for tax evasion that is facilitated by excessive layers of confidentiality, anonymity and secrecy. As a result, multilateral organisations such as the OECD have been at the forefront of advancing efforts designed to reduce tax evasion by improving transparency, accountability and access to information about clients, monies and entities based in, and organised out of, tax havens and OFCs. These efforts are beginning to show signs of success.

4. Closing the gaps: Between bilateral bundles and multilateral advances

The regulation of tax havens has bilateral, unilateral and multilateral characteristics. The main multilateral organisations involved in pursuing new policy initiatives to improve the regulation of tax havens and offshore finance include the OECD, IMF, World Bank and the G20. In 2000, the OECD identified 35 tax havens, in addition to advance letters of commitment to the principles of transparency and exchange of information from six other OFCs/IFCs (OECD 2000; see also Table 37.1). Despite initial hostility from the tax havens—a term that was soon dropped in favour of more neutral classifications such as 'participating partners'—the OECD reached out to these jurisdictions and, in 2001, formed the Global Forum on Transparency and Exchange of Information for Tax Purposes. Members of the forum, which included OECD states and the participating partners, concentrated on establishing peer-reviewed benchmarks for international best practice in improving financial transparency in banking, accounting and funds management processes and exchanging this information between countries. A number of bilateral tax information exchange agreements

(TIEAs) were concluded between OECD states, an increasing number of interested non-OECD countries and the participating partners (the 'former' tax havens) (Rawlings 2007). Until the Global Financial Crisis (GFC) erupted in 2008, these TIEAs were negotiated bilaterally, contained caveats preventing 'fishing expeditions' and usually included provisions requiring a local court order before information about beneficial account holders in contracting states could be supplied. They necessitated expensive and time-consuming investigations with no automatic rights of access. The TIEA framework established by the OECD before 2008 was 'not a "multilateral" agreement in the traditional sense. Instead, it provide[s] the basis for an integrated bundle of bilateral treaties' (OECD 2002: 5).

The OECD's efforts in establishing best practice global regulatory norms, guidelines and policies were advanced as a result of the GFC. Although tax havens and OFCs did not cause the GFC, they were involved in some of the more dubious, opaque and troubling corporate structures and debt-saturated arrangements that were at its core. For example, many subprime mortgage funds, collective investment vehicles and huge stockpiles of debt were domiciled offshore in tax havens, benefiting from regimes of secrecy, to the extent that in some cases even parent headquarter companies had no idea of their liabilities together with the retail banking sector whose credit systems almost came to a halt as a result.

In the wake of the GFC, which brought to light even more scandals involving tax evasion, the OECD, with a mandate provided by the G20, has moved towards establishing truly multilateral regulatory measures to reduce risks associated with OFCs. In 2009, the Global Forum on Transparency and Exchange of Information was restructured. Originally emerging out of the 2001 listing of tax havens, by 2014, the Global Forum had 124 members, including most tax havens, OECD member states, related multilateral organisations and representatives from emerging markets. In 2014, the forum established the Common Standard for the Automatic Exchange of Information. This complements, but also moves far beyond, the extensive range of TIEAs that now exist between states, and allows information to be obtained directly from banks and other financial institutions (including trust companies) without specific court orders, warrants or expensive investigations. Some 65 countries and territories, including major OFCs/IFCs, have committed to the standard. In related developments, the 1988 Convention on Mutual

Administrative Assistance in Tax Matters was amended in 2010 and became available for states to sign in 2011. By 2014, 84 jurisdictions, including financial centres previously classified by the OECD as tax havens, had signed. The convention strengthens international cooperation between states to collect and assess taxes and recover monies owing and enshrines the Automatic Exchange of Information Standard between signatories.

5. Conclusion

These initiatives pioneered by the OECD (in conjunction with other multilateral organisations such as the IMF, World Bank and European Union, together with leading state actors such as the United States) have invoked principles of responsive regulation, cooperation and consensus rather than sanction, penalty and threat against tax havens. Indeed, the OFC states have been brought on board to such an extent that they are considered partners readily committed to ending global tax evasion. So successful have these strategies been that the OECD has consigned its 2000 tax havens listing 'to history'. As it observed in its assessment of the work of the Global Forum:

> There have been many positive changes in jurisdictions' transparency and exchange of information practices since that time … no jurisdiction is currently listed as an uncooperative tax haven by the OECD. While these lists are not replaced by the progress report, they should be seen in their historical context. (OECD 2013: 23)

However, this does not necessarily mean that tax havens have ceased to exist. If anything, they are stronger than ever. Yet tax havens are not confined just to distant islands and high alpine sovereign valleys. Major onshore markets, in conjunction with their niche offshore auxiliaries, continue to provide highly attractive features that allow for the extensive minimisation of taxation through taking advantage of regulatory lacunae, diversity and exceptions in legal regimes, policies and principles. Transfer pricing, profit shifting and the ability to register IP in low or no-tax jurisdictions have become fundamental in maintaining offshore markets, affording multinational companies, especially those dealing with technologies and patents, enormous flexibility in driving down costs, including their fiscal obligations (see, for example, Drahos 2013). Even with advancements in transparency and access to financial account information kept offshore, this will not necessarily prevent

the rapid and widespread movement of assets, property and income from one jurisdiction to another in search of lowered tax costs, which is increasingly and openly occurring as a continued risk to the fiscal foundations of contemporary economies and an increasingly sceptical taxpaying citizenry who do not have the same opportunities for global mobility.

Further reading

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