

RICHARD MURPHY

DIRTY

SECRETS

**HOW TAX HAVENS
DESTROY THE ECONOMY**

By the author of *The Joy of Tax*

Dirty Secrets

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*How Tax Havens
Destroy the Economy*

RICHARD MURPHY


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To my friend John Christensen, to whom
the tax justice community owes so much.

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Introduction

This book was written as a response to the Panama Papers. It is not, however, a direct commentary upon those disclosures; nor does it draw upon them in any great detail. Instead, it offers an explanation as to why, almost twenty years after the world's major nation-states began to take action against tax havens, and after a decade or more of civil-society campaigning on this issue, tax havens appear still to be prospering.

In my view, tax havens have three fundamental purposes: to undermine the rule of law for the benefit of an elite in society; to prevent democratically elected governments from delivering policies that their electorates might expect of them; and to increase the concentration of both income and wealth around the world. In all cases, these processes are undertaken behind a veil of secrecy that has been deliberately designed to prevent what is happening becoming apparent, while denying to those who need it – whether within governments or markets – the data required to make informed decisions.

In light of this, the reasons why we still have tax havens are fairly obvious. Firstly, governments and campaigners have been too focused on the issue of taxation, when the challenges that tax havens pose range over a much broader range of issues than that. Secondly, many politicians in major states have been unwilling to close down the abusive activities undertaken in tax havens when so many of those activities seem to be favoured by their sponsors, and can often be found, in varying degrees, within their own jurisdictions. Finally, politicians have not understood the scale of the threat tax havens represent to the way in which we live.

The consequences of that lack of political nous on their part are telling: the wave of political populism aimed at economic and political elites that is now sweeping through many countries is at least partly based on an awareness that tax havens threaten the well-being of most 'ordinary' people, and that not enough is being done to stop the abuses they permit. It seems timely to ask why so many understand this fact, while politicians have remained neither willing nor

able to do so.

Some of the abuse that tax havens permit is reflected in vast amounts of uncollected tax. Precisely how much it amounts to remains unknown, because far too many countries refuse to calculate their tax gaps, which are a measure of how much tax they do not collect, and why. Even if it is not the whole story of tax havens, the issue of uncollected tax is important: tax abuse has left too many developing countries dependent upon aid when they should have the right to set their own priorities, which they would be able to do if they collected the tax that is rightfully theirs.

In developed countries, that shortage of revenue has been used as an excuse to impose austerity that has blighted the lives of millions of people, leaving them in poverty while elites have seen their wealth soar, partly because they hold at least some of it offshore, and thus free of taxation. When even the International Monetary Fund (IMF), the World Bank, and the Organisation for Economic Cooperation and Development (OECD), none of which is considered a hotbed of socialism, recognise the threat to economic growth, popular well-being and political stability represented by this growing inequality, the pressing need for major reform of tax practices to collect the missing billions is clear.

The issue is bigger than this, though. In a world where almost every economy can be described as mixed – the state and private sectors combining in various ways to meet the needs of a domestic population – it is important for everyone that markets should work as well as they can. As every economist should know, there are some important conditions that must be met if this is to happen. These include the provision of as much data as possible to market participants, so that decision-makers – whether they be businesses, investors, employees, regulators, governments or others – can make the best possible decisions on how resources are used. They also include a requirement that there be a level playing field on which people have equal access to capital, so that those with good ideas can bring them to market. By deliberately creating opacity and concentrating the ownership of wealth, tax havens undermine these two conditions, thus inhibiting fair competition and growth. It is not by chance, then, that the world's economy is stagnating: the growth of tax havens in the last three decades has made this outcome almost inevitable. If markets are to contribute to our well-being as they should, then they must be saved from the curse of tax havens.

Democracy, too, stands in need of salvation. A close examination of tax havens reveals their role in the deliberate promotion of regulations that are of little or no benefit to their own populations. Instead, such measures are designed

to undermine the ability of other governments to impose the regulations they have created in response to the mandate conferred on them by their electorates. Tax law is one type of such regulation, but others are also undermined. These include competition law, environmental regulation, accounting rules, employment law, gambling regulation, laws on inheritance and property ownership, and a great deal more.

Those who use tax havens – and the professionals who help them – want to live in a world where the law does not apply to them, but constrains the actions of everyone else. The clear success they have had in achieving this aim has damaged confidence in the ability of governments to deliver on their promises, leading to a decline in voter participation and increasing calls for alternative, extra-parliamentary solutions to political problems. This process is massively destabilising for what most consider the normal way of life across large parts of the world. But such instability is far from accidental: tax havens and their clients intend this outcome, and far too little is being done to address it.

As I suggest in this book, the measures taken to tackle tax haven abuse – mainly through coordinated action by the OECD, but also by the European Union, the IMF and individual governments – have so far been inadequate. In too many cases, it appears as if the option of failure was from the outset built in to the measures supposedly intended to tackle abuse. The result has been a combination of great political heat with relatively little real change in how tax havens have operated. This might represent an argument for pessimism, and even a belief that reform is not possible. I do not share that view. One of my primary purposes in writing this book is to outline viable reforms that could shake tax havens to their foundations.

This book is thus optimistic in tone. I do not underestimate the threat tax havens still pose to our tax revenues, our markets, and therefore our economy and well-being – and ultimately to our democracies. In each case, the threat is enormous. But it is my belief that politicians who want to reconnect effectively with their electorates, while simultaneously proving that they are both responsible managers of public finances and supporters of competitive marketplaces, can do so by tackling tax havens. If they enact measures that will shatter the secrecy created by lawyers, accountants, bankers and wealth managers operating from tax havens on behalf of their wealthy clients, whose sole aim is to deny opportunity to the rest of the world, then those politicians may really claim to be moving the world to a safer, fairer, and more prosperous place.

Others have offered comprehensive histories and case studies of the activities

of particular tax havens, but that was never my goal. I did not, for example, set out to compete with Nicholas Shaxson's stunning *Treasure Islands: Tax Havens and the Men Who Stole the World* (2011); or Brooke Harrington's new study of wealth managers, *Capital Without Borders: Wealth Managers and the One Percent* (2016), which I recommend highly; or even to update my own book on the history of tax havens, written with Ronen Palan and Christian Chavagneux: *Tax Havens: How Globalization Really Works* (2011). Similarly, there are several books already available on the Panama Papers. My distinctive aim here is to explain why there is still a need for urgent action on the issue of tax havens, to suggest what such action might consist of, and to outline the benefits that might arise as a result.

Tackling tax havens will not solve all of the taxation-related problems in the world's economies, with their increasingly failing markets and threatened democracies. Nonetheless, putting them out of action is a necessary step towards a system in which states and markets operate for the benefit of all. This book sets out a plan to achieve that goal.

CHAPTER 1

The Story of Tax Havens

The existence of tax havens does not add to overall global wealth or well-being; they serve no useful economic purpose. Whilst these jurisdictions undoubtedly benefit some rich individuals and multinational corporations, this benefit is at the expense of others, and they therefore serve to increase inequality.

Three hundred economists including Jeffrey Sachs, Thomas Piketty, Angus Deaton and the author of this book, May 2016

In April 2016 the Panama Papers burst into the news media. The leak of 11.5 million documents bearing the news of the creation of a vast number of offshore companies, more than 100,000 of them in the British Virgin Islands alone, proved a claim that tax justice activists had been making for some time, which was that tax abuse via tax havens was being undertaken on an industrial scale.¹

The Panama Papers rightly garnered a lot of media attention. A few weeks later, the Anti-Corruption Summit held in London, and chaired by the British prime minister, received much less publicity. Firstly, this was because many people believe that nothing can really be done to stop such abuse. Secondly, despite the appearance given by that summit, there is a deep-seated belief that there is no real political will to tackle the issue: there was a palpable sense among the media and others at the summit that this was an event whose outcome amounted to less than the sum of its parts.²

These issues, in combination, form the backbone of this book, in which I will suggest that something really can be done to stop tax haven abuse, and that the political will to drive the necessary changes can indeed be generated.

Just as important, though, is my third argument, which is that, because many politicians have only a faint understanding of what financial offshoring is all about, they are currently proposing solutions to what is, at best, a small part of the problem that it poses for the world. This opinion is based on my experience as a chartered accountant, tax campaigner, and professor of political economy. What I offer here is an explanation of what tax havens really are, and what we should do about them.

Of these three issues the last matters to me the most, because I think it is the real obstacle to progress. It is not as if the tax haven problem is new, after all. There is good reason to argue that the first place to undertake what looks like modern tax haven practice was the US state of Delaware, which in 1898 created a statute deliberately intended to undermine the regulations of its neighbours New Jersey and New York. The trouble is that the Monte Carlo casino in tax-free Monaco, which had abolished all forms of tax by 1869, is the much simpler model of tax haven behaviour that most politicians use as a point of reference.³

The Panama Papers scandal fits the model of Monaco, not Delaware. This is because they are quite explicitly about tax. In some ways this is unfortunate, because it reinforces the political stereotype that the tax haven problem is about straightforward tax abuse undertaken in what appear to be exotic locations. My argument here is that, until we realise that tax abuse is just one of a range of activities undertaken in the space called 'offshore' that are recorded in, but do not actually take place in, locations that have been called tax havens, there are three important advances we cannot make – namely, understanding the risk that these activities pose to the world's governments, to capitalism as our default way of organising an economy, and to democracy – and therefore to our whole way of life.

What is surprising is that a more general awareness of these three issues has not yet emerged, despite the fact that tax havens have been under almost unremitting attack for some time. The first official report to note the potential harm that tax havens represented was produced in the United States in 1981, but crackdowns on tax haven activity only really began with the issue of the European Union's Code of Conduct on Business Taxation in 1997, and the OECD's publication of its report on Harmful Tax Competition in 1998.⁴ The European Union Savings Tax Directive, introduced in 2005, was the next big milestone: it was the first attempt to secure information from tax havens on a systematic and comprehensive basis. But the most important development occurred in 2008.

The global financial crisis that erupted in that year made tax revenue the commodity in shortest supply to the governments of most of the western world, with the consequence that many plunged deeply into financial deficit. The immediate reaction of many of those governments was to seek someone to blame for what had happened. Moreover, they urgently needed to be seen to be taking action on the crisis, and they wanted that action to be swift. Taking on tax havens met politicians' need on all three counts.

As banks in the UK, the United States and continental Europe failed in quick

succession, the option of blaming the darker, tax-haven side of the financial services sector for everything that had gone wrong had the merit of being both popular and at least partly justifiable.⁵ That sentiment underpinned the April 2009 G20 summit in London, which I attended. The closing communiqué read: ‘We have today ... issued a Declaration, “Strengthening the Financial System”. In particular we agree ... to take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over.’⁶

This was a bold claim, suggesting that tax havens stood outside the mainstream of the financial system and did not cooperate with other nation-states in the areas of regulation and the management of financial risk; it made clear that, in the view of the governments issuing the statement, secrecy was at the heart of the problem, and it suggested that targeted sanctions could address the issues arising.

Each idea was interesting, but the proposed solution that emerged from that summit was fundamentally wrong. In fact, it can almost be claimed as one of the successes of tax haven secrecy that the way in which tax havens work has been so misunderstood that when the world turned its attention to the abuses they permitted it had no idea how to specify the problems they created – or, therefore, how to address them.

This book will argue that, while secretive banking is a feature of some tax havens, it is not a universal characteristic and does not need to be, since there are many other ways in which tax haven secrecy has been, and continues to be, delivered.

What is more, as I argued in *Tax Havens* along with my coauthors Ronen Palan and Christian Chavagneux in 2010, tax havens are not distinct, or separate part of the global financial system, but are integral to it. The supposed separateness of tax havens from the rest of the world’s financial community, implied by the 2009 G20 communiqué, was therefore a fiction. The reality was, and remains, that tax havens are totally integrated into our current global financial architecture. It is just that, for their own reasons, those who designed that system wanted to make sure that parts of it were well and truly hidden from view. Thus, to imagine that direct bilateral sanctions against a particular tax haven would create a state of compliance that would signal the end of the tax haven era seriously misunderstands how the tax haven world operated in 2009 – and continues to operate today.

Unfortunately, these misunderstandings continue to be widely circulated as if they were fact. So, for example, the Anti-Corruption Summit held in London in

May 2016 focused its attention on the role of tax havens in facilitating a very narrowly defined form of corruption, largely relating to personal tax evasion and the theft of public property by public officials, whether in developed or developing countries. Meanwhile, it ignored the fact that the impacts of tax havens go way beyond those areas, incurring much larger societal costs.

Since this misunderstanding is a recurring theme of this book, it is vital from the outset to understand the exact activities and nature of tax havens – which is probably best achieved by tracing the development of current thinking on this issue.

What Regulators Think Tax Havens Do

Nearly twenty years ago, in the view of the OECD, the problem created by tax havens was what it called ‘harmful tax competition’.⁷ This was associated with what the OECD called ‘preferential tax regimes’. The motive for this judgement was clear from its 1998 report on the subject:

Countries face public spending obligations and constraints because they have to finance outlays on, for example, national defence, education, social security, and other public services. Investors in tax havens, imposing zero or nominal taxation, who are residents of non-haven countries may be able to utilise in various ways those tax haven jurisdictions to reduce their domestic tax liability. Such taxpayers are in effect ‘free riders’ who benefit from public spending in their home country and yet avoid contributing to its financing.⁸

In other words, it tax havens facilitated cheating, and the states who were losing out as a result were not happy about that. Those states made it clear where they placed the blame: ‘In a still broader sense, governments and residents of tax havens can be “free riders” of general public goods created by the non-haven country.’⁹ The focus of attention was therefore not the investor in the tax haven: the blame was to be chiefly attached to the government and population of tax havens. The OECD was equally unambitious about what the key issue was:

Tax havens or harmful preferential tax regimes that drive the effective tax rate levied on income from the mobile activities significantly below rates in other countries have the potential to cause harm by:

- distorting financial and, indirectly, real investment flows;
- undermining the integrity and fairness of tax structures;
- discouraging compliance by all taxpayers;
- re-shaping the desired level and mix of taxes and public spending;
- causing undesired shifts of part of the tax burden to less mobile tax bases, such as labour, property and consumption; and
- increasing the administrative costs and compliance burdens on tax authorities and taxpayers.¹⁰

The OECD identified those states purveying such pernicious practices by reference to the presence of:

- a) No or only nominal taxes.
- b) Lack of effective exchange of information [because] businesses and individuals can benefit from strict secrecy rules and other protections against scrutiny by tax authorities
- c) A lack of transparency in the operation of ... legislative, legal or administrative provisions
- d) No substantial activities [in the tax haven that] would suggest that a jurisdiction may be attempting to attract investment or transactions that are purely tax driven.

This approach can be compared with that of the European Commission, whose Code of Conduct on Business Taxation, issued the previous year (1997), was a 'package to tackle harmful tax competition in the European Union'.¹¹ The similarity in language, both texts making reference to harmful tax competition, is obvious. But the EU's suggestion of what identified this behaviour differed slightly from the OECD's view, partly because the focus of the former was solely on business taxation. The characteristics of harmful tax practices, in the EU's opinion, included:

- an effective level of taxation for the abusive practice which is significantly lower than the general level of taxation in the country concerned;
- tax benefits reserved for non-residents;
- tax incentives for activities which are isolated from the domestic economy and therefore have no impact on the national tax base;
- granting of tax advantages even in the absence of any real economic activity;
- the basis of profit determination for companies in a multinational group depart[ing] from internationally accepted rules, in particular those approved by the OECD;
- lack of transparency.

Picking solely on these two, near-simultaneous reports, does not, of course, provide a comprehensive review of official opinion on tax haven behaviour at the time. Nevertheless, their publication established a benchmark on the understanding of the harmful consequences of tax haven practices where none had existed before.

The 1990s consensus view was then that a tax haven could be identified by four characteristics: low tax rates available to those unlikely to be resident in the jurisdiction that offered them; those same low rates concerning an activity that had little or no relationship to the place where it was recorded; the existence of arrangements enabling such taxation structures that were very unlikely to accord with international standards of accounting or administrative conduct; and the concealment from view of such arrangements by local secrecy laws intended to throw off the scent any tax authority investigating clients' use of such facilities. The benchmark represented by this analysis was potentially powerful, but largely failed soon after its creation, as it continues to fail today.

The first failure arose with the close of the Clinton era in the United States. In May 2001, President George W. Bush's new finance minister, Paul O'Neil, deemed the OECD approach to harmful tax competition 'too broad and ... not in line with this Administration's tax and economic priorities', adding: 'The United States does not support efforts to dictate to any country what its own tax rates or tax system should be, and will not participate in any initiative to harmonise world tax systems.'¹² For all practical purposes, this statement killed off the 1998 OECD initiative and signalled a US withdrawal from the effort to tackle all but one aspect of tax haven abuse for the next eight years. The exception was with regard to terrorist financing.

This had an impact, in turn, on the EU Code of Conduct on Business Taxation, where progress was also slow, and often ambiguous in its outcomes (harmful regimes were brought to an end, but usually replaced with something that looked remarkably similar). But there were two notable exceptions in the case of this EU initiative. The first related to the UK's tax havens. As a result of the UK's admission to the EU in 1973, each of its Crown Dependencies (Guernsey, Jersey and the Isle of Man) and Overseas Territories¹³ (such as Cayman and the British Virgin Islands) had entered into agreements with the EU, and the UK was now expected to impose the requirements of the EU's Code of Conduct upon them. For the Overseas Territories this had little impact: most had no corporation tax, to which the Code largely applied. But the Crown Dependencies did have such taxes, and they were riddled with the very loopholes that the EU was seeking to close. Over years of negotiation, these places were required to transform their tax systems to meet EU demands – a process in which I played a role.

The second exception to a generally slow rate of progress was the introduction of the European Union Savings Tax Directive in 2005. As the first really effective attempt to enforce information exchange between tax havens and

the governments of the countries where their users resided, this was an agreement that applied right across the EU, including the UK's tax havens. Nothing like it had existed before. That said, the scheme, as introduced, was deeply flawed. For example, it only applied to interest paid to individuals, which meant that dividends paid by companies were outside its scope. So too were bank accounts owned by companies and trusts. All an individual had to do to circumvent the Directive, therefore, was to move their bank account into the name of a company, and the whole disclosure regime no longer applied to them: it was really that easy. It was as if those designing the arrangement had deliberately designed some barn doors into it, so that any tax evader with the slightest intent of staying beyond the reach of the law could successfully do so.

In addition, because of opposition from many of the EU's tax havens, such as Luxembourg, Austria and Belgium, they were given an opt-out from exchanging information on the interest paid by banks resident in their territories to the tax authorities of those EU countries where the beneficiaries of those payments resided. Instead they were permitted, if the recipient of the interest requested it, to withhold tax from the payment of the interest as an alternative to information exchange, with 75 per cent of the tax deducted being remitted to the country to whom it was likely to be due and 25 per cent being kept by the tax haven jurisdiction for having to make the deduction. This option was also made available to the UK's tax havens.

This tax withholding was at 15 per cent in 2005, but reached 35 per cent in 2011. In the face of this increasing tax-withholding rate, the states that offered this scheme gradually withdrew from it, starting with Belgium. Austria would have been the last to concede, in 2017. It took the fall of Jean-Claude Juncker in Luxembourg to provoke that country's change of heart in 2013.

In the UK's tax havens, pragmatism dictated the pace of change. In the aftermath of the 2008 crash, cash poured out of these islands, despite the option of a withholding tax being available to depositors. In Jersey, cash on deposit fell from £212 billion in 2007 to £126 billion in 2015. Over the same period, the number of banks in the island fell by a third. As the realisation dawned that complying with the EU's full requirements on information exchange would become inevitable at some point, each of the UK havens gave up the tax-withholding scheme before being forced to do so.

The European Union Savings Tax Directive did have a significant impact in that case, but again it skirted around the real problem in tax havens. It implied that tax was the only issue of concern, and that if only a direct relationship was created by information exchange between the tax authorities of the tax haven and

the tax authority of the state where the account holder lived, then all tax haven problems would be solved. This was not true, but even achieving this limited outcome required the deployment of enormous political effort. And when the United States finally returned to the tax haven issue, as it inevitably did when Barack Obama came to power, its response was to replicate the demand for automatic information exchange.

This was the goal of the US Foreign Accounts Tax Compliance Act (FATCA) of 2010: it sought to procure data on the sums held by, and interest and other income paid on, the overseas accounts of US residents. Washington adopted a draconian approach (which it alone could do) to secure this information. FATCA decreed that any bank wanting to undertake any business with US residents had to deliver data on the accounts they maintained for all US tax residents, wherever those accounts might be, or else all of that bank's income earned in the United States (which, almost by definition, just about every bank has) would be subject to a tax withholding before being paid to that bank – which would represent a massive commercial penalty.

FATCA has worked. Banks around the world have had no choice but to comply with its demands. But, just like the EU Savings Tax Directive, FATCA is massively flawed. In this case, by far the biggest problem is that FATCA agreements with the United States are not reciprocal. Data is required by the United States, but none is supplied in return. This is hardly surprising because, in practice, the United States has almost none of the necessary arrangements in place to collect the data they demand from other countries. The consequence is that, as will be explored later in this book, the United States is now becoming one of the two most important tax havens in the world, rivalling the UK for this title.

At least FATCA achieved its goal – which is more than can be said of the OECD initiatives developed in the wake of the 2009 London G20 summit. There were two of them. The first was the creation of a tax haven blacklisting scheme that was meant to identify non-cooperative regimes (embracing in the process the flaw of blacklisting that was inherited from the earlier initiatives of the 1990s, noted above). A non-cooperative regime was identified as one that had signed twelve or fewer OECD-approved Tax Information Exchange Agreements (TIEAs). These were bilateral agreements of somewhat more limited scope than OECD Double Tax Agreements, intended to permit one party to the agreement to make request of the other for information on the activity of one of its tax residents in that second location, if (and this point is critical) they could prove that the person in question had an activity in the second location (which was

invariably a tax haven) and they had no other way of obtaining the information they needed.

If ever a sanction was designed to be ineffective from the outset, then this was it. Firstly, no one could explain why only twelve TIEAs were required to meet a state of international compliance when there were, for example, more than twenty countries in the G20 group of nations, twenty-eight in the European Union, thirty-four in the OECD and well over a hundred worldwide, that would likely seek the information in question.

Secondly, it was also impossible to explain why TIEAs with places like Greenland and the Faroe Islands ranked equally with those with France, Spain, India and other populous nations. Given that the Nordic countries, including the Faroe Islands and Greenland, tended to sign these agreements as a group, and were keen to do so, these tiny countries featured, quite bizarrely, in the qualifying total for many tax havens. I understand from reliable sources that Greenland never used the agreements it signed, which is hardly surprising.

Thirdly, there was again no explanation as to why a TIEA between two tax havens also qualified a nation as cooperative. The chance that the San Marino–Andorra TIEA, signed in September 2009, would ever be used was remote in the extreme.

But even if these issues had not provided such an obviously farcical element, there would have remained the problem that those TIEAs signed between countries that wished for information, such as the UK, and places that had it to supply, such as Jersey, were almost entirely inoperable. It was a prerequisite of making a request for information that the tax authority in the country making it could prove that one of their tax residents did in fact have an identifiable account in the tax haven jurisdiction; but the whole point of tax haven secrecy was to ensure that this information was not available to that tax authority. The entire TIEA process was thus doomed from the outset, because an information exchange request was only possible if, in practice, the requesting country had the information it required in its own possession before asking the tax haven to confirm that it existed. It would be hard to conceive of an arrangement so doomed to failure as this one, but for the fact that it was not only suggested but actually promoted as a solution to the tax haven problem, as major countries understood it in 2009.

TIEAs were thus a complete waste of time at the time they were introduced. After a flurry of activity in 2008, 2009 and 2010, as tax havens tried to prove themselves compliant, the futility of the process became readily apparent, and the last TIEA was signed in 2012.

At first, the other OECD scheme resulting from the 2009 G20 Summit fared little better. This was the so-called Global Forum on Transparency and Exchange of Information for Tax Purposes. According to the OECD, this ‘is the multilateral framework within which work on transparency and exchange of information for tax purposes has been carried out by both OECD and non-OECD economies since 2000. Since its restructuring in 2009, the Global Forum has become the key international body working on the implementation of the international standards on tax transparency.’¹⁴

The 2009 restructuring was important, and necessary: the imposed lethargy of the George W. Bush era had to be swept away. But this body at first proved toothless, contenting itself for a long time with so-called peer reviews of each country’s legislation and capacity to supply information to other countries on request (subject to the constraints within TIEA agreements, noted above), without actually asking until long after the process had begun whether much (or any) useful information had in fact been exchanged. The reality was that very little such data changed hands as a result – which suited the tax havens perfectly.

Indeed, tax havens found this whole OECD based process enormously beneficial for a while, because it provided them with the most extraordinary political cover for their continued support for near-total secrecy. They took part more than willingly in peer reviews, Jersey even supplying a vice-chair of the process overseeing the whole scheme. The reviews showed they had put in place all the required legislation to meet the OECD’s demands, and could supposedly secure the information that was necessary for exchange purposes if they so wished – all on the condition that a requesting nation could prove it had the right to ask for it, knowing full well that, in practice, this was a nearly insurmountable hurdle. As a result, many tax havens claimed for several years that they were among the best-regulated regimes in the world. What on earth was anybody now complaining about, they then asked, far from innocently?¹⁵

The Civil Society Argument – and Awareness of Secrecy Jurisdictions

The complaint – that all of this activity had missed the point – came from an improbable but, in relation to tax havens, powerful source: civil society. When the OECD tax haven initiative of the late 1990s was halted by George W. Bush, there was good reason to think that his administration’s view on tax havens was dogmatic and heavily influenced by right-wing think tanks such as the Heritage Foundation and the Center for Freedom and Prosperity, which heavily defended tax haven activity, as they continue to do. They were assisted by the fact that there were then no equivalent civil society organisations taking issue with their

view. This changed with the creation of the Tax Justice Network, launched at a meeting in the UK's House of Commons in 2003, which I chaired.

The Tax Justice Network arose out of the concerns of a number of academic and activist thinkers. Sol Picciotto had written a seminal work on international business taxation that had criticised tax haven practices in 1992.¹⁶ Prem Sikka of Essex University, with John Christensen, who, between 1987 and 1998, had been the senior economic adviser to the States of Jersey, had been working through an organisation called the Association for Accountancy and Business Affairs.¹⁷ They had set it up to highlight the abuses they felt Jersey, in particular, had been permitting. In another part of academia, Ronen Palan, then at the University of Sussex and now at City University, London, had written a book entitled *The Offshore World: Sovereign Markets, Virtual Places, and Nomad Millionaires*.

The Tax Justice Network owed its origins to more than these four people, but, given that its role was to bring together experts to create new thinking on issues around tax, and tax havens in particular, their role was vital. Palan's thinking had particular impact. He argued that a literal interpretation of 'offshore', implicit in both the OECD and European Union harmful tax competition initiatives, made no sense. He said it could not be, for example, that Cayman was the fifth-largest centre in the world,¹⁸ or that Liberia was at the time the biggest shipping nation in the world. This, he argued was all a fiction – or, as he put it, 'side by side with the state system, there [had] emerge[d] a virtual world of make-believe, driven by a modified form of sovereignty'.¹⁹

The idea of a 'virtual world' gained ground over the years that followed, fuelled partly by the continued frustration that those working in this field had with defining just what a tax haven was. But it was not until 2009, with the launch by the Tax Justice Network of its first Financial Secrecy Index (which I directed that year), that a significant focus on secrecy came to the fore in the identification of those places commonly called tax havens.

A number of new features were included in this work, which can fairly be said to have changed the approach to tax havens since it was first published. Firstly, a deliberate effort was made to expand understanding of the tax haven phenomenon. This was achieved through submission from the Tax Justice Network to the UK's House of Commons Treasury Select Committee in June 2008, in which it was argued:

What it is important to stress is that secrecy is key to most tax haven operations. Without it many of those using tax haven structures would not do so. This is either because, in the case of those using them for criminal purpose, including tax evasion, they fear they would be too easily identified and

so pay for the consequences of their crime, or in the case of those using them for regulatory avoidance (which may be legitimate, but is often ethically questionable) because of the damage that discovery would do to their reputations.²⁰

This theme was expanded in 2009, in another paper issued in anticipation of the launch of the Financial Secrecy Index, which deliberately defined a new term in the language of offshore. This was the rebranding of many tax havens as ‘secrecy jurisdictions’ – a term that has since come into common usage.²¹

The phrase had been used before – for example, by US Senator Carl Levin – but had remained as ill-defined as the term ‘tax haven’ itself, and thus of little more use. The term as defined in 2009 suggested there were two characteristics that identified a place as a secrecy jurisdiction. Firstly, it was argued that secrecy jurisdictions created regulation that they knew to be of primary benefit and use to those not resident in their geographical domain. Secondly, it was suggested that secrecy jurisdictions also created a deliberate, and legally backed, veil of secrecy that ensured that those from outside the secrecy jurisdiction making use of its regulations could not be identified as doing so. The presence of these two characteristics, it was suggested at the time, identified a secrecy jurisdiction.

In 2009 the use of this terminology permitted three things. Firstly, it enabled campaigners to change the focus of attention from tax to secrecy. Although the OECD and European Union had both recognised the importance of secrecy in the 1990s, they had in fact focused the vast majority of their attention on particular tax regimes offered by specific jurisdictions since that time, and the bigger-picture issue of secrecy had as a result fallen by the wayside.

Secondly, the change made it clear that the use of secrecy jurisdictions was about much more than tax abuse. Ronen Palan had suggested that what tax havens really offered was something much more pernicious: an escape from a much broader range of regulation, permitting the user to escape their obligations not just to tax authorities but to other regulators, as well as to their competitors, creditors and shareholders, and (not least) their spouses and children, none of whom could hope to know what was going on in a secrecy jurisdiction. It so happened that the secrecy that permitted all these other potential abuses also permitted tax evasion and avoidance; but it was fundamentally to misunderstand the role of tax havens to think that tax was the only reason someone might choose to record an activity in such a place.

Thirdly, in 2009 I made it clear that secrecy jurisdictions did not operate in isolation from each other. Instead, they are used in combination to create what has been termed a ‘secrecy space’: the result of the common practice of secrecy jurisdiction practitioners who, to put it mildly, spread their clients’ activities

around. What this means is that they might incorporate a company for a client in one secrecy jurisdiction, and then put the directors of that company in one (or more) other secrecy jurisdiction(s), while its banking may well be provided from a third. The ownership of the company will be recorded in a trust, but that will not be in the same place as the company, while having the trustees of that trust in more than one country spreads the risk. Being willing to change the mix of trustees over time only adds to the difficulty of locating anything. Of course, the real activity of the company that has been created will, almost certainly, be in none of these places – it will be ‘elsewhere’ (a term that will occur frequently throughout this book). Quite possibly, none of the people involved in managing the trusts, or maybe even the company, will know where that ‘elsewhere’ really is: the British Virgin Islands, for example, has created a special form of trust (the VISTA trust), in which the trustees have no right to ask the directors of the companies they own about the trades they undertake.

This way of working does, however, mean that the OECD and EU initiatives’ assumption that there is a direct relationship between a tax payer and a tax haven activity is only true of the simplest of offshore arrangements. This is not to deny that such structures have existed, and may still do so. While banking secrecy existed, it was possible for a resident of a country like the United States, France, Australia or the UK – all of which require that their tax-resident population pay tax on their worldwide income – to hold their money in a bank account in a location like Jersey, Cayman or Singapore, and leave their tax authority with no chance of finding out about it. But it is now the case that only the most naive of tax haven users will bank in this way, because the introduction of various automatic information-exchange regimes, some of which have already been discussed, has made it increasingly likely that such accounts will now be discovered.

As a result, the layering of tier upon tier of secrecy in the way I have described has become ever more commonplace in the tax haven (or secrecy jurisdiction) world, which is precisely what the Panama Papers revealed: the vast majority of those introducing work to Mossack Fonseca (the firm whose files were leaked) were themselves located in other tax havens or secrecy jurisdictions.

The focus on secrecy changed the official, if not the political, attitude to tax havens. After 2012, tackling secrecy became the key issue, and pure tax initiatives such as the TIEA scheme faded. Other events also influenced this change. In particular, from 2010 onwards, the Occupy movement in the United States and the UK Uncut movement in Britain attracted attention, using

remarkably limited resources, to the role of multinational corporations in international tax abuse. This phenomenon was particularly notable in the UK, where the campaign used data produced by the Tax Justice Network, the UK's Trade Union Congress, the Public and Commercial Services Union, and *Private Eye* magazine.²²

What these public protests did was make clear that concern about the use of tax havens was not limited to tax evaders, or to banking, but also embraced their use by large multinational corporations. This concern was driven partly by data published from 2008 onwards. In one particularly powerful 2011 report, ActionAid showed that ninety-eight of the FTSE 100 companies in the UK had tax haven subsidiaries.²³ I have since been told that very few of those companies enjoyed the publicity that this revelation secured them.

Work I published in 2010 also showed that the big four accountancy firms – PWC, Deloitte, EY and KPMG – which between them act as auditors to all the FTSE 100 companies, were present in most of the world's major tax havens – often, all of them simultaneously.²⁴ Other research, which I undertook for the UK's TUC in 2008, estimated that the UK's largest companies might, between them, have been avoiding £12 billion of tax per year at that time – a loss that sets Vodafone's claimed tax avoidance of maybe £6 billion in context.

The Role of the Media

Crucially, these reports changed the focus of the media. Without ignoring tax evasion, the attention of much of the press shifted to the tax-avoiding activities of multinational companies. Companies like Google, whose tax affairs had been put in the public domain as early as 2009, though it had attracted little attention at the time, were now subject to renewed scrutiny from 2010, placing them at the centre of a global furore.²⁵ Stories about Amazon and Starbucks soon followed. These three companies became the face of corporate tax avoidance when summoned before the UK House of Commons Public Accounts Committee in November 2012.²⁶

Two direct consequences flowed from this. The first was the attention that David Cameron, as UK prime minister, then gave to the issue, making it the priority for his presidency of the G8 summit in Lough Erne, Northern Ireland, in June 2013. Second, the OECD took the issue on, desperate to find its own way forward, as its post-2008 initiatives were by then so obviously failing. Consequently, the issue of corporate tax abuse was put very firmly on the G20 agenda in November 2012. The first OECD report on what was to become well

known as Base Erosion and Profits Shifting (BEPS) was issued in February 2013.²⁷ David Cameron then massively increased the attention given to this issue. He also widened the basis of political interest in it by deliberately citing the concerns of developing countries – and, for the first time, building in an explicit commitment to the introduction of what is called country-by-country reporting as one way of addressing this issue.²⁸

This was a significant change: country-by-country reporting, which was a concept I created in 2003, had become the totemic demand of many tax campaigners, including the UK development NGOs that had undoubtedly captured David Cameron’s attention prior to the 2013 summit.²⁹ Country-by-country reporting demands that every large multinational company should put on public record a profit-and-loss account for each country in which it operates during a given period, without exception, showing not only its trade with genuine third-party customers, but also those activities that took place with other companies within the same group. This data, together with some additional information noted later in this book, is designed to show exactly where the substance of a group of companies’ real trading is located (this being where its customers are located, its people employed, and its assets engaged) – as opposed to the locations in which it declares its profits and pays – or fails to pay – its taxes. This disclosure includes any activity in tax havens, which would be revealed by this process. For the first time, secrecy had become the real battleground in this debate. The opacity of tax havens, combined with the opacity that existing accounting rules for multinational corporations permitted, had been highlighted as the point of civil society concern about secrecy jurisdictions.

This was, for the time being, a tax haven campaigning high point. Every action by every authority that has been engaged with the tax haven issue since then has stepped back from the issue of transparency in every possible way. For example, when the OECD finally came to deliver its recommendations on country-by-country reporting, as requested by the G8 in June 2013, the suggestion was that the information be kept absolutely secret, and be made available only to the tax administration of the parent company of a multinational group. The effect was to exclude very many developing countries from receiving the information David Cameron had committed to supply to them.

Likewise, the Anti-Corruption Summit of May 2016 dealt with the issue of tax haven abuse according to a very narrow definition of corruption that presumed that it related solely to the theft of public funds by public officials. The possibility of tax avoidance, potentially costing developing countries

hundreds of billions of dollars a year,³⁰ was almost ignored, the issue of country-by-country reporting being sidelined into a new, non-binding consultation process, to which only a very few countries committed.

In the summer of 2016, then, it is as if all the powers that might tackle tax haven abuse have signed up to a collective denial of the issue of secrecy. This means that, as yet, the battle against tax havens is nowhere near won. Important as tackling tax evasion might be – as the Panama Papers proved – tax abuse is not the major product the tax havens supply; opacity is. The danger of that opacity has to be understood before any further progress can be made in discussing the nature and conduct of tax havens, and the measures needed to tackle them.

CHAPTER 2

The Problems of Secrecy

The real problem of tax havens is not tax abuse itself, important though that is, but the secrecy that permits that abuse and many others. It is this opacity that suggests tax havens might be better understood as secrecy jurisdictions.

Economics Says It Shouldn't Be like This

The world was not meant to be like this. According to almost every introductory economics course, a number of conditions must be met for markets to work to best effect. That list is not long, but one of the key points is that all buyers and sellers must have complete information about the products in a marketplace. This, of course, includes information on who is supplying the goods. A second point is that all firms must sell a clearly identifiable product to ensure a level playing field. Next, no firm should be so big that it can control prices in the market. And, finally, there must be freedom of market entry, which requires that anyone with the right ideas can access the capital they need to compete.

Economists teach these things knowing they will not hold true in reality. But, that said, in the vast majority of economic research, it is implicitly assumed that such market conditions do at least approximately prevail, and that markets therefore deliver optimal outcomes for everyone in a society.

This has led major economies, like the United States and the UK, to put in place regulations intended to support the existence of markets that approximate to the conventional economists' ideal. As the US Federal Trade Commission says on its website:

Free and open markets are the foundation of a vibrant economy. Aggressive competition among sellers in an open marketplace gives consumers – both individuals and businesses – the benefits of lower prices, higher quality products and services, more choices, and greater innovation. The FTC's competition mission is to enforce the rules of the competitive marketplace – the antitrust laws. These laws promote vigorous competition and protect consumers from anticompetitive mergers and business practices. The FTC's Bureau of Competition, working in tandem with the Bureau of Economics, enforces the antitrust laws for the benefit of consumers.¹

This is a fantasy. What is astonishing is that the Federal Trading Commission,

among others, do not acknowledge that fact. But it represents a powerful belief: one that forms the foundation for the whole doctrine of faith in markets that has underpinned the programmes of most political parties for the last forty years. But what this means politically is that anyone who suggests that markets work better than any other form of economic organisation has at least to aspire to create the conditions outlined above.

Perhaps it is unsurprising, therefore, that one finds few references to tax havens in any introductory economics textbook aimed at undergraduates. Economists and politicians alike know that tax havens shatter all these myths that underpin their supposed faith in free markets. Sadly, they would rather ignore this obvious fact than face the truth. In short, in a world where tax havens are allowed to persist, most economists and politicians are openly peddling the myth of market efficiency knowing that there is no chance that it can hold true in practice.

This is a serious allegation to make, but here is the charge sheet.

The Charge Sheet

Firstly, as noted above, neoclassical (or mainstream) economists' description of efficient markets requires that there be transparency for everyone in the marketplace: everyone has, in effect, to know everything about everyone else, what they have to offer, and at what price. And yet the whole point of tax havens is to supply opacity. That opacity comes in a number of forms. For example, in many cases we do not know who owns companies. As a result, we cannot tell how many players there are in a market: a number of apparent competitors could, quite feasibly, be under common control, and no one would know. Indeed, they may be acting together to erect barriers to entry for newcomers: behind tax haven secrecy, markets can be rigged.

Secondly, we cannot see the accounts of tax haven companies. This stops us knowing whether one product offered in the market is the same as another: an item bought from one company may not be the equivalent of a superficially similar item bought from another company whose accounts are on the public record. This is because the person buying from the latter company can find out whether or not the supplier can be trusted to deliver, can support a guarantee, and will be there to meet its consumer obligations. There is no way that this can be known of a tax haven competitor that has no accounts. This necessarily creates a playing field that is unlevel, biased in favour of the company protected by a tax haven.

This bias continues when it comes to the issue of access to capital. A very

large proportion of the capital now used by businesses of all sizes comes from retained profits. But, clearly, those companies that operate in tax havens can maintain and grow their retained profits faster than those located in countries where profits are taxed. As a result, such tax haven companies have greater access to capital, at a lower overall cost, skewing competitive advantage in their favour. The result is that, over time, market participants not making use of tax havens are more likely to fail. And that may mean that a reduced number of market participants may, in fact, be able to control the price that is offered to consumers. The free market might even cease to exist under such conditions.

The key point on this charge sheet, however, is that none of this happens by chance. It is not an accident that tax havens supply the services that they do. They are very deliberately made available by bankers, accountants and lawyers, many of whom will be intimately familiar with the teaching of those economists who talk of 'free markets' because they were their tutors when they were at university or on MBA programmes. What these professions have done is to go out of their way to provide the exact opposite of the conditions they were taught should prevail if markets were to work to best effect. They have done this because they know that markets can be manipulated if veils of secrecy exist. And they also know that such manoeuvres allow the number of companies in any market to be reduced, meaning that profits and share prices can go up while consumers are left to suffer.

Many in tax havens and elsewhere claim that they do not understand the basis of these objections. They argue that anyone is entitled to their privacy, even if economic theory quite clearly disputes that. This state of affairs raises a vital debate on the difference between secrecy and privacy.

With the notable exception of Sweden, there is no country on earth that places the tax returns of its resident population on public record. Sweden appears to have suffered no adverse economic impact from being the sole exception to this rule. The nation is widely recognised as having a very high standard of living, and fares well on all resident satisfaction indices. Nonetheless, it remains an aberration, and it is fair to assume that, for the time being, it will remain so. Clearly, the rest of the world attaches a higher value to a person's privacy. The question is how far this should go.

In practice, there are already some limits being established. The move towards the automatic exchange of data on the accounts a person holds in tax havens has already put paid to an individual's right to offshore privacy – at least in relation to their domestic tax authority. This is a most welcome initiative, but it only removes privacy as far as tax authorities are concerned. For everyone

else, the move leaves tax haven secrecy completely intact: the abuse of markets can therefore continue, despite this tax initiative and this means that the distinction between privacy and secrecy has to be explored.

Privacy and Secrecy

Privacy is not the same thing as secrecy. The difference is important, and requires explanation. Perhaps the most important distinction is that privacy is personal. There is no one who has no issues that they would rather were not shared. Usually, the resulting silence only saves us from embarrassment. But there are very obvious occasions when, however much we might wish to avoid such embarrassment, disclosure of what we would wish to be private is very definitely necessary for the protection of others. Sometimes that protection is, quite literally, a matter of security: there are good reasons why some offenders must be identified. However, much more often the reason for publicity has nothing to do with shame, but is rather a means of holding an individual to account. That is why we need to be able to identify who owns a property, while it is also important that people know that the owner of a vehicle can be traced. In addition, banks very obviously need to know who is making use of their services if the risk of financial crime is to be reduced.

The extent of the privacy that we might enjoy, and the degree to which that is managed by intermediate agencies on our behalf, might vary; but the point is always the same: we are entitled to maintain our affairs in private but that privacy must not be considered more sacrosanct than the imperative that we are all accountable for the consequences of our actions.

One of the most important issues of accountability relates to our obligation to pay tax. Tax is collectively imposed by society, and as a result we must forgo our right to privacy in the face of the demands that our tax authority imposes upon us. To the extent that they need information to ensure that we settle the liability that we owe, they are entitled to receive it. And we are obliged to supply it precisely because others would be prejudiced if we did not do so. It is this risk of prejudice to others that defines the boundaries of acceptable privacy.

Secrecy, on the other hand, differs from privacy, because it deliberately withholds the right to information even when others are likely to be prejudiced as a result. Most of the time it is now secrecy, and not privacy, that tax havens supply, which is precisely why I think they are best termed secrecy jurisdictions. This is not a pejorative definition, but a description of the deliberate action of most of the actors in this scenario. Tax haven secrecy contravenes the ethics of privacy: it denies data to others who have a right to see it.

This is not to deny that there can be a right to privacy in a tax haven. If a person has a bank account in a tax haven, and its existence and the income arising on it are fully disclosed to their domestic tax authority, there is no more reason why its details should be on public record than a similar account in a person's home country should be. But this right to privacy changes as soon as the account holder ceases to transact in their own name, and instead uses an artificial construct created under statute law to undertake their transactions. Precisely because these artificial constructs provide privileges not available to an individual, whether it be limited liability for debts or a different tax regime than that which would otherwise apply, they can be abused. In that case, anyone can be prejudiced by their existence, and as a consequence there is an obligation to be accountable for their use. This means that the right to privacy does not extend to the affairs of such arrangements as companies and trusts. Providing secrecy for them is thus always a potential abuse of society at large.

The Building Blocks of the Offshore World

These artificial constructs come in a number of forms. The most obvious, and most common, is the limited company, which can now be incorporated with relative ease in the vast majority of countries in the world. The other obvious artificial construct is the trust, or its equivalent in non-common law countries, which are usually called foundations. Trusts and foundations come in various forms, including charitable and non-charitable varieties; some have limited liability, while others do not.

It is important to note that these structures can be combined so that, for example, a trust with unlimited liability could control a foundation with limited liability which, in turn, could own and control a limited-liability company that actually undertook the transactions that should be recorded in a tax haven. What is more, as has already been noted, there is no reason at all why each of these structures should be in the same country – there being many reasons (almost all related to secrecy) why they may be resident in different jurisdictions. This process of creating tiers of entities in different jurisdictions is appropriately called layering, because one layer of secrecy is laid upon another, and then another, until it is hoped that opacity has been achieved – which is indeed what happened, until the Panama Papers came along to prove that nothing was as secure as many people had believed.

The use of these structures to undertake any form of business should, in my opinion and that of many others, result in the forfeit of any right to privacy. There are a number of reasons for saying this. Most particularly, if the

ownership of any such entities is not known, then any third party who engages with them might be left vulnerable, for the very good reason that they may not know with which real, warmblooded person they are in fact dealing.

It is of course true that, when a person transacts with a large (and potentially well-known) company, they have little or no knowledge of who they are really dealing with. But the world has compensated for this by requiring governance and disclosure regimes around such large organisations. This means that, even if we cannot readily identify the owners or managers with whom we are transacting, in these cases this does not matter. We know we could either find this data out if we wanted to or consumer and other legal protections means that our rights are likely to be adequately protected in other ways.

This, however, is simply not true when we deal with the vast majority of small companies, especially if they are in a different jurisdiction from the one where we usually reside. We may not be able to secure information in this case, and are left at risk of having no idea whom we are really dealing with – but can equally be quite sure that, if something goes wrong, limited liability will be available to the other party to the transaction, to protect them from any claim we might wish to make.

This means that such structures create a situation that is entirely different from that which might exist if trading were instead to take place with the individual who owns or controls the tax haven entities. That is because an individual remains fully and personally liable for the consequences of their transactions, come what may, so long as we know who we are dealing with. This is not the case with a limited-liability entity. When dealing with them we have no clue, without the enforced disclosure of both accounts and ownership, whom we are really dealing with, or whether the company is solvent and thus able to complete any transaction into which we might enter with them.

This means that, in the absence of such data, which is still denied by the secrecy laws of many jurisdictions, we cannot know what risk we might face when trading with a company, trust or foundation located in a tax haven. This is the real reason why secrecy for such institutions is unacceptable: there is inbuilt moral hazard in any system when secrecy is granted to such entities, because that secrecy basically provides a licence to defraud that the unscrupulous can use with almost guaranteed impunity.

The Reasons for Transparency

Full disclosure of the accounts and beneficial ownership of these entities overcomes some of this risk. Such disclosure does, in effect, recognise three

things. The first is that society has granted a privilege to those using these structures. Accountability for the use of that privilege is the first price expected from those who benefit from it.

Second, because that privilege does sometimes impose a cost on society (some limited companies fail, while others disappear without trace), an economic exchange (call it a payment if you like) is expected as a consequence of the granting of the privilege of using a limited-liability entity. Some would argue that this is the annual fee for keeping an entity registered with its relevant national agency – but this is an arbitrary and very often quite small sum that is clearly not intended to cover anything other than the administrative costs involved in most cases, and so is an inadequate return to society. The additional payment that is usually expected is tax (odd exceptions, such as charities in most countries, aside). And that is why the disclosure of tax paid is also an essential part of this equation.

Third, business is based upon relationships of trust, and those involve real people, not legal entities. That is why it is essential that the real managers and owners of a company be known: How else can we be sure who we are dealing with in a fair and competitive marketplace?

In short, limited liability and the use of other structures, such as trusts and foundations, are privileges granted by law that carry with them an implicit, but real, obligation to account for the risks that arise to the rest of society. In fairness, this has long been recognised in the case of limited companies; many countries, including the UK, have required that documentation on companies be on public record since the nineteenth century. This precedent was established for good reason: the concern of almost all early company law in the UK (which trail-blazed on this issue to fund its industrial revolution, and most particularly its zeal for railway building at home and overseas) was to protect shareholders, in the first instance, from the directors of a company. The intention was also to protect the interests of creditors, whose rights were seen as being more important, in the event of an insolvency, than those of its shareholders.

We would be wise to take heed today of this nineteenth-century thinking. It was always intended to protect those who trade with a company from the harm that the abuse of limited liability might cause. This is especially true in the current era: when the owners of most limited companies provide them with very little capital, which is the only sum that protects creditors from a potential insolvency, it is only the availability of data on who owns and really manages a company and the publication of its accounts that can offer any protection from abuse to creditors and stakeholders such as employees, customers, tax authorities

and society at large.

I am not alone in taking this view. Adam Smith was massively concerned about the abuse of limited liability:

The directors of such companies, however, being the managers rather of other people's money than of their own, it cannot well be expected that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master's honour, and very easily give themselves a dispensation from having it. Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.²

Smith was eventually proved wrong with regard to limited liability. Its ability to permit the accumulation of private capital from a variety of sources proved to be a catalyst in the evolution of society, its economies, and the release of human potential for the common good. But he was also right that all this was accompanied by risks that still remain today. In fact, the secrecy that so many tax havens provide on the ownership, identity of management, and trading of companies delivers the precise scenario in which Adam Smith's worst fears about the abuses that limited liability could give rise to might be realised. Only transparency and accountability can counterbalance these risks and ensure that limited-liability companies can operate without significant cost to society.

The Cost of Tax Havens

What are these costs? And who bears them? The answers to both of these questions change from case to case – but such costs are always significant. Some are very specific. For example, in the case of insolvency, the suppliers, employees and pensioners of a company are at risk of not being paid what they are owed. History is littered with cases of failed and disappearing companies. Perhaps the most spectacular offshore failure ever was that of Enron, which failed in 2001. Its failure involved a fraud that simultaneously brought down its auditors, Arthur Andersen. The collapse of Italy's milk-processing giant Parmalat, dubbed 'Europe's Enron', was another major corporate failure with an obvious offshore link. More recently, questions have been asked about the offshore connections of the UK retailer BHS, which failed in 2016, creating risk for 11,000 employees, a considerable number of pensioners and, of course, trade creditors, some of whom will no doubt fail as a result. The failure of limited-liability companies is thus not without cost to society, in addition to any loss to tax authorities.

The scale of the financial costs involved is addressed in [Chapter 5](#), where it will become apparent that the sums involved are subject to some dispute. The

consequences of offshore secrecy mean that no one can be quite sure how much money is being illicitly held. James Henry, for the Tax Justice Network has suggested that the sum in question is not less than \$21 trillion (\$21,000,000,000,000), and may be as much as \$35 trillion. His estimate is based on multiple sources, including wealth managers themselves, and multiple methodologies, but may still be wildly off-target. In contrast, Gabriel Zucman has suggested a somewhat lower figure of about \$7.6 trillion – but there are real problems with his work, including the fact that he does not define what a tax haven is, and only includes a very narrow group of assets in his estimates.³

Henry has estimated annual losses at today's very low rates of return on capital at between \$190 billion and \$280 billion; Zucman offers a figure only a little lower, at \$200 billion. By any standard, such losses are substantial.

* * *

Whatever the sums in question might be, the consequential losses are likely to be considerably larger – and not by chance. The exponents of tax havens make clear that one reason for the enthusiasm for such places is that they can be used as launch pads for an assault on the tax systems and regulation of the world's major democracies.

For example, Philip Booth of the UK's Adam Smith Institute has said, in reaction to debate on the Panama Papers, that 'one of the advantages of tax havens is that they help hold governments to account. They make it possible for businesses to avoid the worst excesses of government largesse and crazy tax systems – including the 39 per cent US corporation tax rate.'⁴ In the United States, Dan Mitchell, a well-known exponent of tax havens based at the Center for Freedom and Prosperity, argues, 'My main argument [i]s that we need tax havens to help control the greed of the political elite. Simply stated, politicians rarely think past the next election, so they'll tax and spend until we suffer a catastrophic Greek-style fiscal collapse unless there's some sort of external check and balance.'⁵ Comments such as these, which almost invariably come from a right-wing, libertarian, and supposedly free-market background, are surprising. Advocates of free markets should know the basic conditions I have already explained that must hold true if such markets are to deliver optimal outcomes for society. Milton Friedman himself made it clear that market participants had to comply with the law, including the payment of tax: 'There is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without

deception or fraud.’⁶

Proponents of tax havens seem to have forgotten this basic fact. Indeed, they go further. They make quite clear that, firstly, it is the job of the tax haven to assist users of its services to avoid or evade the obligations of the state in which they reside. What they make clear is that, in doing so, they know that the laws of this latter state are thereby undermined. But they applaud that fact: it is their contention that this prevents democratically elected governments from using the law to penalise those with wealth by imposing taxes and other regulatory burdens. As the UK-based Institute of Economic Affairs argues,

Simple majority rule results in a tyranny of the majority. Politicians auction taxes in order to buy votes, oppressing the productive and producing economic instability. But simple majority rule is inferior to the historic right to just government. Since taxpayers cannot be said to have consented to taxation under simple majority rule, it represents unjust government. Therefore, the power to tax must be separated from the legislature since it is elected by universal suffrage. Consent to taxation can only be obtained from the taxpayers casting one vote for every pound of tax they pay; you have more say, the more you pay.⁷

This defence of tax havens is anti-democratic to its core. The same arrangements that can be used to undermine taxation can, of course, also be used to defeat the best efforts of market regulators whose job it is to prevent consumer, environmental, competition and other abuse. More generally, this makes clear that tax havens are deliberately used to abuse the law of many countries from behind a deliberate veil of secrecy.

The Cost to Democracy

The significance of this cannot be ignored: the very same think tanks that promote tax havens also subscribe to the view that Milton Friedman had to offer about the role of government when he said that it

has three primary functions. It should provide for military defense of the nation. It should enforce contracts between individuals. It should protect citizens from crimes against themselves or their property. When government – in pursuit of good intentions – tries to rearrange the economy, legislate morality, or help special interests, the cost come[s] in inefficiency, lack of motivation, and loss of freedom. Government should be a referee, not an active player.⁸

Many will not agree with Friedman here; but, yet again, nor very obviously do those who claim to walk in his path. Tax havens deny governments the resources they need to defend a country, prevent information being available to citizens to enforce contracts, and permit crimes to be undertaken, precisely because the secrecy that tax havens supply enables perpetrators to walk away from their actions. Those who support tax havens clearly do not understand the meaning of

hypocrisy.

Tax Competition

Tax competition is ‘the process by which governments attempt to attract capital and labour to their country by offering low tax rates or other tax incentives’.⁹ The reality is that it is no such thing. It should instead be called a tax war. Tax competition is actually the deliberate attempt by one state to deny to another state the resources that are its rightful property. Wars have been fought over lesser issues: but for the fact that so many governments are ultimately complicit in a conspiracy of silence, it is likely that war would have been ignited on this issue in recent years.

That conspiracy of silence is real. In the last thirty-five years, neoliberalism achieved near-hegemonic status in economics faculties and government departments alike. The ideas implicit in it are treated as a revealed truth, rather than a construct of a particular group with an ideological agenda. These ideas can be summarised as the components of what is known as the Washington Consensus:¹⁰

1. Fiscal discipline, requiring strict criteria for limiting budget deficits;
2. Setting public expenditure priorities that spend away from subsidies and administration towards previously neglected fields with high economic returns;
3. Tax reform, embracing broadening of the tax base and cutting marginal tax rates;
4. Financial liberalisation, particularly with regard to interest rates that should be market-determined;
5. Exchange rates that promote exports;
6. Trade liberalisation;
7. Reduced barriers to foreign direct investment;
8. Privatisation;
9. Deregulation;
10. The protection of intellectual property rights.

The whole agenda might be described as the promotion of a reduced role for the state in every sphere of life. And this philosophy has provided cover for the promotion of tax haven activity. Emerging from this, secrecy jurisdictions have come to be seen as places from which an assault on the established hierarchies of power within states might be launched.

This explains why economists have so far turned a blind eye to tax haven activity. While it is obvious that tax havens must, by definition, undermine the conditions in which so-called free markets can exist, most economists have been willing to compromise on this issue because they have viewed an assault on the state as a higher priority. And it is this inappropriate setting of priorities that has led to tax havens being ignored in most current economic theory.

But the pervasiveness of this philosophy has had enormous spill-over effects. The world's major economic institutions, such as the World Bank and IMF, have proved remarkably comfortable with the Washington Consensus. Their endorsement has resulted in its ten-point policy prescription being forcibly imposed on a great many countries, including a number of developing nations that have consequently suffered enormous losses of revenue and resources, as well as corruption.

In addition, the Washington Consensus policy prescriptions have become the basis for the thinking of the vast majority of mainstream political parties in many of the world's democracies. This started with the Thatcher and Reagan administrations in the UK and United States. From there, the spread of such policies was not limited to parties of the right; it is fair to suggest, for example, that the Clinton administration of 1992–2000 endorsed many of the same ideas. Indeed, its abolition of the Glass–Steagall Act, which deregulated much of the US banking sector, was influenced by the philosophy of the Washington Consensus. Tony Blair's New Labour governments in the UK were equally neoliberal in their outlook.

The results have been unsurprising. Over the recent period, social democracy has very largely ceased to be either social or democratic, under the influence of such economic thinking. Over time, it has become increasingly difficult for parties branded as something they are not to be elected, especially in Europe. Oppositional politics has begun to fail. If there are no longer opposing sides to a debate on how to run a country, there can be no democratic choice. The electorate has come to realise this, with surprising results.

In every quarter of the West there has been a rise in political expression further removed from the political centre-ground. Donald Trump for the Republicans and Bernie Sanders for the Democrats offer evidence of this trend in the United States and it is notable that both came from outside their current parties to challenge the prevailing thinking of each of them. The Austrian presidential election run-off of 2016, which included no representative of either of the parties that had ruled that country, without interruption, since 1945, provides similar evidence for that country. Marine Le Pen's Front Nationale,

Nigel Farage's UK Independence Party, and the Netherlands' far-right Party for Freedom are all examples of the same trend.

A common theme among all these movements is a popular rejection of the notion of an unaccountable elite. That elite is widely believed to populate all the mainstream parties of the countries where these movements have arisen. There is good reason for people to think that: the only difference between the once opposing parties is in many cases one of emphasis. At their core, many of the so-called left-of-centre parties in many countries look like the centre-right parties of three or four decades ago.

This explains why so many of those parties, like the UK's Labour Party, when it held power between 1997 and 2010, took so little action on tax havens. They bought into the same doctrine as the economists who promoted the notion that tolerating tax havens was useful so long as they provided the excuse for shrinking the role of the state, as demanded by the Washington Consensus.

It is hardly surprising that candidates like Donald Trump have sought to establish popular appeal by promoting assaults on tax haven activities as part of their political agenda, however unlikely it might appear that they hold such positions sincerely. They can do so because, while the number of direct political casualties of the Panama Papers was perhaps surprisingly limited (one prime minister, in Iceland, and a few ministers elsewhere), there is clear complicity between mainstream parties in many countries and the tax haven world.

Nowhere is this better demonstrated than in the UK. Here, before the Brexit vote, Prime Minister David Cameron had, to the surprise of many, been keen to appear to be challenging tax haven secrecy. This began in 2012, when the issue of the tax affairs of Google, Amazon and Starbucks exploded on the UK political scene. The following year, at the Lough Erne G8 Summit in Northern Ireland, Cameron made much of the suggestion that he backed the use of country-by-country accounting for tax reporting purposes, articulating an intention that developing countries should benefit from this. I was at the summit, having been the first economist to develop these ideas, in 2003. As political economist Andrew Baker put it at the time,

Ultimately, G8 meetings are about setting agendas, priorities, creating political pressure and a political climate. Lough Erne has done this on Country By Country reporting and Automatic Information Exchange. It has signaled a new direction of travel on international tax policy. That is historic. It does not provide us with a detailed route map to get there and that is what remains up for grabs, but as I have told Richard Murphy, this is as good as it gets from a G8 meeting.¹¹

But David Cameron and the G8 did not deliver on their promise. The OECD has announced that it expects multinational corporations to undertake country-by-

country reporting, but only for the benefit of their tax inspectors: extraordinary steps are being taken to ensure that the data does not become available to the public. In the process, the OECD also made clear that the data in question only has to go to the tax authority of the country in which the parent company of a multinational corporation is located. In that case, those developing countries are now dependent, in far too many cases, upon the good will of the tax authority of parent-company tax jurisdictions to ensure they get the data on the tax abuses likely to be undertaken within and from their own jurisdictions. This is quite contrary to the spirit of the Lough Erne announcement in 2013. It is also completely contrary to the intention of country-by-country reporting, one of the main purposes of which has always been to put the use of tax havens by multinational corporations on public record, precisely so that the many tax authorities (particularly in developing countries) that have had no other way of accessing this data quickly, cheaply, consistently and reliably should have the means to do so. The OECD's inability to deliver this represents a major failure.

This is typical, however. In 2013 David Cameron promised that the UK would create a register of the beneficial ownership of companies registered in the UK. This was meant to be an exemplar of good practice for others, and most especially for the UK's own tax havens in its Crown Dependencies and Overseas Territories. In June 2013 Cameron claimed he had secured the agreement of those tax havens to participate in that process.

In the run-up to the 2016 London Anti-Corruption Summit, a popular demand was repeated that Cameron ensure that these tax havens would deliver on the promise, despite their clear desire to renege.¹² Evidence made clear not only that the UK had the power to legislate for these places, but that they had already done so.¹³ This meant that Cameron was completely entitled to take action to end a significant amount of tax haven secrecy, but he decided not to.

Instead, the havens offered what amounted to transparency in secret, by suggesting they collect the required data on beneficial ownership of companies registered in their domains (no reference to accounts, however, was made) and supply it to the select few governments with which they might agree to share it. But, crucially, all this would take place out of public view. We would just have to take their word that, at least for the UK (and a very few other places), they were now transparent.

Unsurprisingly, few were impressed by this offer: the fact that opacity remained an absolute reality was readily apparent. The ensuing claim from some of the jurisdictions involved that they were no longer tax havens was risible. We will have no clue as to whether they ever supply meaningful data to those who

need it. And the very fact that further agreements are continually required on such issues is the clearest possible signal that all previous, behind-closed-doors attempts to solve this problem, including the OECD's 1998 and 2009 initiatives and the EU's Savings Tax Directive, have failed to deliver. All such agreements have had loopholes built into them from the outset.¹⁴

This, then, is the crisis at the heart of this book. Despite all efforts, tax haven secrecy is still very largely intact. Most countries have not seem many, if any, benefits from the measures taken against tax havens to date, and no one yet knows whether the data now promised will be exchanged under the new OECD Mutual Assistance Agreement. Candidly, I doubt it.

Meantime, tax remains unpaid, while the assault on democracy, the rule of law, free markets, fair competition, creditors, cheated spouses, employees and others continues. And the people of the world's democracies are beginning to realise that the political will to challenge these arrangements does not really exist. The vast majority of the world's so-called mainstream politicians cling to the corrupted philosophy that supports the world's tax havens. This is now so deeply embedded in their political DNA that they cannot even imagine how they could challenge the economic architecture of the world in which tax havens have become an implicitly accepted part of the economy.

I argue here that mounting such a challenge is not only possible, but urgent – though mounting it will involve rocking the world's democratic polities to their core.

What Is a Tax Haven?

‘Tax haven’, ‘secrecy jurisdiction’ and ‘offshore’ (the last of which has deliberately been little used so far in this book) are terms that can often be used interchangeably, but do have distinct meanings.

Offshore

‘Offshore’ is in many ways the most important term used in this book. Its literal meanings in the context in which it is used here are ‘not here’ or ‘elsewhere’. But this is not a description of physical geography. Instead, what it means is that all the contractual parties to a transaction recorded in one place are located in other jurisdictions.

For example, suppose that a Norwegian bank does a deal with a Spanish bank that is recorded in a third bank in London. Because the Norwegian and Spanish banks are ‘not here’ as far as the UK is concerned – because they are located in other countries – that transaction is considered to be ‘elsewhere’ ‘offshore’ from the UK’s point of view.

My colleague at City University, Ronen Palan, explains the origin of offshore in his book, *The Offshore World*.¹ He suggests that the idea originated in London following the Suez Canal debacle of 1956, which fundamentally challenged the UK’s self-perception as a world power. At the time, the pound sterling was under pressure in a system of fixed exchange rates. This was partly the result of the Marshall Plan, which had flooded Europe with US-originated currency, creating a so-called eurodollar market. This, in turn, encouraged the circulation of hot money in search of an unregulated safe haven.

In September 1957, in the aftermath of the Suez Crisis, the Bank of England decided that it would provide such a location. In effect, it said that, if a UK bank recorded a transaction between two parties, neither of whom were in the UK, then that transaction was considered to have taken place ‘offshore’, and thus lay beyond the scope of UK regulation. At the stroke of a pen, a whole new world had been conjured.

This world was not, of course, real; but its virtual existence must still be understood. These ‘offshore’ transactions were arranged and recorded by banks in the UK, and it was pure artifice to say that they took place ‘elsewhere’, in places whose location need not be noted for the purposes of regulation. A blind eye was turned, in a deliberate act of make-believe that was in truth based on nothing short of a blatant lie.

But the arrangement did work for the City of London, and for the UK government too. This is not the place to explore the complex relationship between these two distinct jurisdictions, each existing within the UK – not least because Nick Shaxson did that so well in his book *Treasure Islands*. Suffice to say that so difficult and complex is the relationship, which predates the creation of what might be called modern English history, that the British monarch has to seek permission to enter the Square Mile of the City of London, while the Lord Mayor of London (whose role is completely distinct from that of the Mayor of London) is afforded the diplomatic status of a senior cabinet minister when travelling abroad, despite holding no position in the UK government. The City of London is a state within a state, and because this separate authority is itself bound up within a history of ritual, folklore, and even legend, those who populated it in 1957 found it all too easy to believe that they could create a spurious location that was ‘elsewhere’, and for which they thus had no responsibility.

This powerful idea, once created, was unlikely to go away. After Suez, as the UK entered the 1960s, its imperial era was already in rapid decline, and the remnants of its former empire were divided into a number of different types of territory. One of these groups was the Crown Dependencies, which comprise the islands of Jersey, Guernsey (and its smaller off-islands) and the Isle of Man. These have a complex relationship with the rest of the UK. For example, the Isle of Man was at one time Norwegian territory, although for obvious reasons it had a strong tradition of self-government. It then bounced between Scottish and English control, before ending up with an allegiance to the British Crown.

This concept of allegiance to the Crown already existed in Jersey and Guernsey, both of which appear to have been self-governing since the thirteenth century, when the English crown ruled as much as half of France. The reality was that these offshore islands were almost certainly self-governing solely because they had proved difficult to govern. It was therefore convenient for the UK simultaneously to claim title to these territories and wash their hands – by permitting a veneer of self-government – of the illegal economy of the islands, much of which seemed to be based on piracy against French shipping. Pretence,

it might be noted, is at the core of the history of all these places.

But self-government has been a convenient fiction that, for some, has been open to exploitation. While these places have legal systems that are undoubtedly not English (and not the same between islands – even within Guernsey’s archipelago), Jersey, in particular, found favour with some wealthy English families quite early in the twentieth century, when they began to encounter problems with the total lack of integration in international taxation that existed at that time. This became an issue as the era of the multinational company developed, and was a peculiarly British problem at the time, as UK investors looked for an ever-expanding range of economic opportunities for their capital beyond the boundaries of the empire. As a result, Jersey, with its legal peculiarities and yet closeness to home, became known as a buffer in which funds earned in the empire could be recorded without having to pay the second round of taxes that would undoubtedly have been due under UK tax law as it then was, if the overseas earnings of British people that had already been taxed in their place of origin had been remitted to the UK at that time. The idea that places like Jersey might prevent double-taxation was thus born, and with it the notion of the tax ‘haven’.

Tax Havens

Tax havens are not the same as offshore. Tax havens are real places that we can identify, whereas ‘offshore’ is a vague description of ‘elsewhere’. The term tax haven has always been problematic but generally describes a place whose tax system provides an advantage to a person who is not resident in that place. For example, as I have noted, Jersey provided an advantage to early UK investors who did not want to pay tax twice on their overseas earnings. Jersey permitted this by, firstly, letting them record their income there while, secondly, considering them not to be resident in the Island and, thirdly, having a tax regime that only sought to tax income arising within its jurisdiction. It is not at all clear whether Jersey intended this situation to arise or whether it was an accidental outcome, but the latter is more likely, since it is improbable that Jersey could have realistically taxed income arising outside the island at the time, even if it had wanted to do so.

There can be no doubt that some other arrangements that resulted in similar tax haven-style activities are just as accidental. The UK’s domicile rule, often referred to as ‘non-dom rule’, has for two centuries, and largely for reasons related to its imperial past, meant that those tax resident in the UK but whose permanent home (their ‘place of origin’) is somewhere else in the world have

had the tax advantage of only having to pay tax on their income earned in the UK or brought into the country from elsewhere. What this has meant is that this particular group is not taxed on its worldwide income, unlike all other UK tax resident people. The consequence is that any income they can record elsewhere in the world falls outside the scope of UK tax. This was not designed as a lure for Russian oligarchs and other similarly wealthy people, but it has definitely worked as such. And it does as a result make the UK a tax haven for these people.

But some tax havens are anything but accidental. In fact, what most experts consider to be the very first tax havens were not accidental at all. In the 1880s the US state of New Jersey passed laws deliberately intended to undermine those of its neighbour, New York, with the sole intention of inducing corporate relocation between the states. It worked, and was noticed. In 1898 Delaware copied what New Jersey had done, passing even more aggressive incorporation laws intended to offer limited-liability protection at low cost.² The growth in the trade was slow, but today more than half of all US corporations have their legal home in Delaware.

This pattern of behaviour has been replicated time and again. So, for example, while it can correctly be argued that the Swiss practice of banking secrecy had its origins in 1713, it was formalised only in 1934. Popular myth has it that the draconian measures protecting the anonymity of Swiss bank clients was created to protect Jewish depositors, but this is another of those convenient tax haven stories that has absolutely no foundation in truth. The reality was that, in 1932, the Basler Handelsbank was shown to be facilitating tax evasion by members of French high society, among them two bishops, several generals, and the owners of *Le Figaro* and *Le Matin* newspapers. Switzerland could have reacted to French demands to stop this practice and provide it with the names of those who had partaken in it. Instead it chose to adopt banking secrecy laws to facilitate the trade.³

Deliberate intent can also be found in the design of the modern Irish corporate tax system which, until recently, combined low tax rates, lax residence rules and an equally relaxed approach to tax enforcement on issues such as transfer pricing. All this was done with the intention of making the country a popular location for companies looking to locate sales operations and inward investment activities in the European Union. By legislating in a way that undermined the tax laws of other countries, Ireland found a competitive advantage of which its location on the periphery of Europe had otherwise deprived it.

The spread of tax haven activity throughout the UK's Overseas Territories also did not happen by chance. Cayman is, perhaps, the perfect example.⁴ Until 1959, Cayman was a mosquito-ridden dependency of Jamaica. What it had noticed, however, was that other locations, such as the Bahamas and Bermuda, were building a future on financial services. And so, in 1959, when the island gained independence, it started to move in two directions. First, it started a massive, British-funded infrastructure programme to get rid of the mosquitoes and build an airport. And second, in 1966, it initiated a rash of new laws, most written by professional services firms, that provided the framework of the company, trust, and banking regulations required to become a fully fledged tax haven. The island embraced a zero tax rate, and surrounded it with extreme secrecy. All these innovations had to be – and were – approved by the UK.

Some tax havens thus emerged accidentally, while others were intentional. Some offer advantages to only a few people; others, quite deliberately, have widespread appeal. The precise nature of the offering they provide varies enormously. Malta, for example, has deliberately created a corporate tax structure that is intended to charge profits flowing through it into the European Union, most especially from developing countries, at very low effective rates of tax. In contrast, Mauritius has exploited provisions in its double tax treaties that few could have imagined would prove so pernicious at the time they were first negotiated. These have been exploited to undermine, in particular, the corporate tax system in India, especially in relation to capital gains.

Another deliberate tax haven is the Netherlands. It has secured international notoriety by exploiting double tax agreements to let royalties on copyrights and patents, dividends, and capital gains flow through it in a way that ensures tax charges are minimised. So successful has this been that the head offices of many US-owned European entities are located there, and tax abuse has been widely reported: Google, with its so called 'Dutch Sandwich', is the most obvious example. Luxembourg competes with the Netherlands for this business.

Secrecy Jurisdictions

The very diversity of tax havens, however, has caused all sorts of problems for those trying to tackle the issues to which they give rise. This is why some tax havens have in recent years been re-categorised as secrecy jurisdictions (see [Chapter 2](#)). This trend started in civil society but has now become widespread, and makes specific reference to those places that not only provide deliberately favourable tax regimes to those not usually resident in a place (such as Ireland and the Netherlands), but also, in various ways, provide a veil of secrecy to those

making use of these tax arrangements. The tax havens that might be thought of in these terms are specifically identified in the Tax Justice Network's *Financial Secrecy Index*, and include locations such as Switzerland, Cayman and Jersey (see [appendices](#) for more details).

What Do Tax Havens Do?

Only two things happen in tax havens. Firstly, transactions are recorded that have their real economic substance (or impact) in other places. Second, as much secrecy as possible is provided to those who record these transactions. That's it: nothing is made when undertaking tax haven activity, and no identifiable value is added – and, therefore, they do not contribute to the real wealth of the world. In fact, because their activities tend to redistribute wealth to those who already enjoy a great deal of it, it can be argued that they reduce well-being, because there is overwhelming evidence that the resulting increase in inequality causes harm.⁵

Despite this, tax haven activity appears to remain significant. For example, in March 2016 Jersey claimed to have £128.4 billion of cash deposits and £228.4 billion of other investments under management in the island.⁶ But it must be understood that these claims are not really true. If they were, then there would be £1.28 million on deposit for each person on the island, including all its children – but this is not the case. To suggest that this money is in Jersey is complete nonsense: it is not in a vault in St Helier, the island's capital; nor are there bank managers in Jersey busily lending such amounts out to local people to fund their businesses or mortgages. There is no way that amount of cash could possibly be used in Jersey: there is simply not enough demand for it. The cash is, like its owners, 'elsewhere'.

Where is that 'elsewhere' in this case? It will depend on the bank with which the cash is supposedly deposited and, possibly, on the currency in which it is denominated. However, by far the greatest likelihood is that the cash in question is really in London. Transfer of money between the two locations has always been easy: Jersey is so integrated into UK banking that it is actually part of the UK bank clearing system. In the era of digital money, funds deposited in Jersey one minute can be in London the next, and that is exactly what will happen by the close of evening each day.

The destination may be different in the case of other tax havens, but the principle will be the same. In each case, the offshore bank account is just a conduit. It offers a record of money in the tax haven that is not there. That money will have come from outside the tax haven in the first place, and will

have departed for a major banking centre within hours of its arrival. The claim that the cash is in the tax haven is simply a sham: it is no more there than the owner of the account is. All the account does is provide what has been, at least to date, a secretive mechanism to obscure the ownership of money whose economic impact is most definitely felt elsewhere.

The situation is little different with other so-called tax haven investments. So, for example, shares registered in tax haven companies or funds are almost never those of local companies, but will be the shares of companies registered in New York, Hong Kong, Frankfurt or London. In that case these ‘investments’ are no more in the tax haven than is the cash referred to above. All the tax haven does is record the ownership of assets that are located in one place (which is not the tax haven) by a person who is themselves resident anywhere but the tax haven (which is, of course, what makes the transaction ‘offshore’). Nor are these investments usually managed from the tax haven in which their ownership is recorded. The decisions on where, and in what, the funds are ‘invested’ will, in all likelihood, be made by fund managers or share owners who are themselves almost certainly located ‘elsewhere’. The tax haven is thus, once again, only a conduit – or, as Ronen Palan calls it, a ‘booking location’.

Other than cash and shares, the most common assets recorded as held in tax havens are property, in the form of the title to land and buildings; shares in private companies; and other tangible assets, such as art, yachts and the like as well as intangible assets such as patents and copyrights. In each case, it is very unlikely that the assets recorded as being owned in the tax haven will have ever had anything to do with it, or will ever (even in the case of some yachts) have been near it. All that the tax haven does is provide an opportunity to record the legal ownership of these assets. Yet again, the tax haven is a mere conduit at best – or, at worst, a front or sham.

Having noted this rather limited range of transactions that individuals undertake through tax havens, it is important to note their motives for doing so. Some are blatantly criminal. Terrorists, and criminals of all sorts – including money launderers, drug and people traffickers, and tax evaders – will need to find ways of hiding the proceeds of their crime from view. All too often, tax havens have provided such mechanisms.

In this area of tackling crime, there has been a concerted and consistent effort to tackle such abuse. For example, the United States did not object to measures tackling tax havens after the events of 9/11. These actions are co-ordinated through an organisation called the Financial Action Task Force (FATF), based alongside the Organisation for Economic Cooperation and Development in Paris.

Its recommendations have been widely adopted. The laborious procedures involved in opening bank accounts all over the world are the result of the FATF's work in ensuring that banks and other financial services institutions must positively identify those to whom they provide their services. The FATF also monitors money-laundering risk, which has been prevalent in tax havens, even among major banks. So, for example, in July 2016 it was reported that only the intervention of UK Chancellor George Osborne had prevented the United States from prosecuting the UK-based bank HSBC on money-laundering charges.⁷ The bank instead paid a civil fine of \$1.92 billion, such was the seriousness of the allegations made against it.

Tax Avoidance

It is important, at this point, to note the difference between tax evasion and tax avoidance. Tax evasion is the process of deliberately deceiving a tax authority to reduce the amount of tax that a person owes. Tax avoidance involves the deliberate exploitation of the tax law of a place, or the exploitation of the differences in the tax laws between places, to produce a tax outcome that tax legislation in the place where the tax is due never intended to arise. To put it another way, it exploits the loopholes in tax law.

Tax avoidance is thus quite emphatically not the process of claiming allowances and reliefs that the law intended that a person should enjoy. To make that point clear, it cannot be tax avoidance to claim legitimate business expenses on a tax return: the law says they are permitted. Similarly, if tax relief is available on a contribution to a pension fund, then reducing a tax bill by making that contribution cannot be tax avoidance: it is instead what is called tax compliance. This is defined as seeking to pay the right amount of tax (but no more) in the right place at the right time, where the word 'right' means that the economic substance of the transactions undertaken coincides with the place and form in which they are reported for taxation purposes.

This definition of tax compliance is important in the context of tax havens. Tax havens are, of course, used to pay the wrong amount of tax, either by declaring income in the wrong place or deferring its recognition in the right place. And because no economic activity ever really happens in a tax haven, it can never be the case that the economic substance of the transactions recorded there accords with the way in which they are declared to tax authorities. To put it another way, it is very hard for anyone using a tax haven to be tax compliant.

That said, the dividing line between tax avoidance and tax evasion is very often unclear in the case of tax havens. That is because deception is a key

component of all tax evasion, and the secrecy that tax havens supply means that their use always leads to the not unreasonable suspicion that tax evasion might be going on even when what is actually occurring is the ethically unacceptable but legal alternative of tax avoidance.

What, then, is tax avoidance involving a tax haven? Such an arrangement might look like that exploited by the UK-based comedian Jimmy Carr, when he handed over his income to a Jersey-based company.⁸ The benefit of doing so was based on the fact that the company in question would not pay tax on that income because it arose outside that island, which only charges tax on income arising within it. In exchange for Jimmy Carr transferring his income to the company, it then paid him a small salary as a reward, and passed the remainder of the income on to the trust that was legally recorded as owning the company. That trust then in turn loaned the money it had received back to Jimmy Carr. It was then claimed that Carr had received a loan, and not income, and that the loan was not taxable upon receipt in the UK. The net outcome, if the scheme had worked, would have been Carr would have enjoyed the benefit of most of his income free of tax.

The scheme that Carr used was heavily marketed: it is thought that more than one thousand people partook in similar arrangements. The devil was, of course, in the detail. Those who designed it were well aware that H. M. Revenue and Customs had tried to block similar schemes in the past, but they hoped that, by careful wording, they could keep their clients out of tax and beyond the reach of the authorities on this occasion. They failed: when the scheme was uncovered, it was ruled that tax was due and the entire offshore arrangement was ignored in calculating the sum owed.

Three points stand out. First, the whole arrangement was entirely artificial: it is impossible to believe that anyone would enter into such a deal other than to seek a tax advantage. Second, the person partaking in the scheme, in this case Jimmy Carr, could not have created it. He may be a very successful comedian, and is undoubtedly very clever, but he is not a tax lawyer. The entire structure was created and sold by tax advisers seeking to profit from the arrangement by taking part of the tax savings that they hoped to create on behalf of their clients. Third, the scheme did not exploit the opacity of Jersey in the way a tax-evasion arrangement would have done. What it did seek to do, however, was to arbitrage tax arrangements across international boundaries. By doing so, it tried to re-categorise income as a loan, and in seeking to do so exploited the fact that Jersey provided readily available companies and trusts while not seeking to tax them. In tax compliance terms, tax was going to be paid by the wrong person, at the

wrong rate, in the wrong place, at the wrong time – and the economic substance of what was being declared was nothing like what was happening in reality.

In addition to income tax avoidance, quite a number of offshore schemes try to avoid tax charges on capital gains, which are the profits arising when a person sells an asset they have owned. This could, of course, be land or buildings, but might also be investments, or even personal property such as artwork. The trick, in all these cases, is to pretend that the asset is not located in the country in which the beneficial owner is resident, and then claim that the gain is not their property, but that of a company they either happen to own or from which they could potentially benefit through a trust, which owns it in turn. In the process, the person who benefits from the use of the asset might also try to attribute the gain that has arisen to somebody other than themselves. This could be other members of their family, for example. And in that case the aim might not be to avoid tax altogether, but only to pay tax at a lower rate than would otherwise be due.

A variation on this theme includes schemes designed to avoid taxes arising on death or inheritance. Many jurisdictions have such taxes, and they are often deeply unpopular among the wealthy. Some, as a result, try to hide some part of their wealth in a tax haven, which they then claim falls outside their estate when it comes to calculating the tax due.

In all these cases, a threefold trick is being played. First, before any tax might be due, the arrangement is put in place in a way that disguises, but does not completely obscure, the relationship between the asset and the owner. Second, the potential benefit that the beneficial owner might enjoy as a result of the offshore arrangement having legal ownership of the asset might be disguised. For example, where the asset involved is land and buildings, rent might be paid for the use of that property by the person who is already its real beneficial owner. They will not mind doing so if, as is likely, that rent can be received tax-free offshore. In that case there is no real cost to this pretence. A variation on this could arise if the asset in question is, for example, a yacht, where it might be suggested that the offshore arrangement is a commercial venture in yacht-chartering, with the owner paying an apparent fee for the time that they use the vessel. Once again, though, their payment will end up in an entity they really own, and again tax-free, but with a commercial defence to the structure being used then being presented to a tax authority.

Third, and perhaps as importantly, the beneficial owner stays as far away from their assets as possible, for as long as possible, to prevent any claim being made that they are associated with them. This is not usually very hard: by

definition, those who take part in these schemes are already wealthy, and can therefore usually live without accessing the relevant assets for a considerable time.

Whether such schemes work depends upon the legislation of the countries involved, the willingness of tax authorities to chase down information, the amount of disclosure that is really made, and the willingness of the beneficial owners to comply with the legal details of the scheme of arrangement that have been put in place by their tax advisers. Given that many of these details will, in practice, be quite onerous, to make sure that the law is not broken, this last point usually produces the biggest weakness in any arrangement: over time, the owners forget what they were meant to do, and frequently leave a trail that lets a tax authority find out what is going on, and then unwind the arrangement and impose the real tax owed. It was reported in 2016 that tax investigators had secured an invaluable but unwitting new ally in this task: the social media accounts of the children of the superrich. These now provide a steady source of information on where their parents are hiding their assets. The one group who will not object are the tax advisers who set up such schemes: they will have enjoyed their fees long before any arrangement comes to grief.

Avoiding inheritance taxes may be one reason for using an offshore arrangement, but so too can avoiding inheritance laws altogether. Very many countries dictate by law the way in which a person's estate must be divided upon their death. So, for example, it might be provided that the firstborn gets more than anyone else, or that all children take a certain part of the estate and more distant relatives a smaller proportion. In some instances only males are allowed to inherit. Whatever the reason why these laws were put in place, there will be those who prefer another arrangement for family, social, ethical, religious or other reasons. This can be one reason why some people hide assets offshore: doing so lets them write a will in the offshore jurisdiction that ensures assets reach the people they really want to benefit.

These are not the only reasons why a family's assets might be held in a tax haven. Many reports on divorce proceedings reveal that spouses who might be responsible for maintenance payments do, on occasion, try to hide their assets in tax havens to reduce the sum that they will have to pay.⁹ Some of the clients of Mossack Fonseca, the law firm that was the source of the Panama Papers, are reported to have sought out their services for just this reason.¹⁰

Spouses are not the only people that some will try to hide their assets from. Creditors are another group from whom some might seek protection, particularly if they think they are at risk of bankruptcy.¹¹

Others follow this path because they do not want their fans to know where they live: this was the reason actress Emma Watson gave for owning her home through a company organised for her by Mossack Fonseca.¹² As some noted in the UK, however, given the rules that now exist on such arrangements, there were many cheaper ways in which she could have achieved this objective – though she may simply have been badly advised. If so, she would not have been the first: singer Katy Meluah offered this defence when caught in a tax scheme in 2014 (although it was not an offshore scheme).¹³

The argument that tax havens protect privacy is one much beloved of their defenders. The US-based Center for Freedom and Prosperity, whose primary purpose appears to be the defence of tax havens, has long argued along the following lines: ‘Whether they are business owners from Venezuela, ethnic Chinese in Indonesia, Jews in France, or homosexuals in Saudi Arabia, there are people all around the world who are victimised by corrupt and/or despotic governments. Without the ability to protect their assets in so-called tax havens, these people would be at even greater danger.’¹⁴ Unfortunately for the Center, it has never actually been able to show quite how tax havens prevent these people from suffering persecution. No legal case where this set of circumstances has happened has ever been presented as evidence to support their claim. But they persist with it nonetheless, as they also do with the claim that tax havens protect the children of the wealthy from the risk of kidnap. Again, it is hard to see how this is the case unless the wealthy person in question is also willing to forgo all the trappings of the lifestyle that might also indicate that they have wealth. I suspect that few do, and that all such convenient claims lack even a shred of evidence to support them.

Tax Havens for Corporations

While it is undoubtedly true that the principal reason for a multinational company to use a tax haven is to save tax, there are occasions when they have other motives for doing so.

The most common of these reasons is a desire for commercial confidentiality. A tax haven company does not have to file its accounts on public record. As a result, its commercial competitors do not know the scale of its activity, how profitable it is, or what risk there might be in dealing with it; thus, they are unable to compete with it on a level playing field. This is, of course, to the commercial advantage of the company that is using the tax haven, and to the disadvantage of its competitors. That advantage is sought for one reason: the user of the tax haven is trying to obtain an unfair competitive advantage over

their competitors, and so make a profit that cannot be justified in normal commercial circumstances. It is that excess profit that pays for the additional costs that the tax haven structure creates.

It is important to understand that this situation can also exist because of the way in which multinational companies present their accounts. No large company is a single entity: it will be made up of maybe hundreds, or even thousands, of separate companies. In 2011 the UK-based charity ActionAid undertook a survey of the 100 largest companies in the UK.¹⁵ The aim was to work out how many subsidiaries those organisations had in tax havens, but in the course of its investigations ActionAid found that these 100 companies had a total of 34,216 subsidiaries and joint ventures between them, with an average of over 300 each. Of this total, 8,492 were in tax havens, and just two of the 100 companies surveyed had no tax haven subsidiaries.

Nevertheless, it should be noted that large corporations create subsidiary companies for all sorts of reasons, many of which will be entirely commercially valid. Some such subsidiaries might undertake significantly different types of commercial activity, and so require completely different management structures. Others will be locally incorporated to protect the group from legal claims in each country where it operates. Others are formed to undertake common activities for the group as a whole: they might provide some form of management service, or perform a particular function such as management of the group's insurance arrangements. Thus, having a lot of subsidiary companies does not necessarily indicate that a group is undertaking artificial tax planning.

Nor is it true that being located in a tax haven is necessarily artificial. When the world's largest tax havens include places like the United States, Switzerland, Japan, Germany, the UK, and many other places where it is very obvious that a substantial amount of commercial activity is undertaken, then it cannot be assumed that being located in such places is obviously wrong. Only the provision of information on the activities of the subsidiary company can help determine whether or not it is motivated by a desire to circumvent regulation.

Is not even possible, in all cases, to determine that presence in some of the more well-known and commonly discussed tax havens is necessarily wrong. It is, after all, quite possible that a multinational company will actually trade in a tax haven: the people who live in those places do need retailers, banks, oil companies, and so on. There is nothing to stop a multinational company genuinely undertaking activity in these locations to pursue its commercial goals by supplying services in this way. But it is still very hard to see why the UK's 100 largest companies – according to ActionAid – needed 600 subsidiary

companies between them in Jersey for this purpose in 2011, when that figure exceeded the total number of subsidiaries they had between them in China at the time. But unless relevant information is provided on what individual subsidiaries are doing, deciding which of them – and even which groups – are exploiting a tax haven for tax avoidance and other nefarious purposes is always going to be hard.

The fact that I have to refer to a 2011 report when presenting evidence on this situation is an indication of the fact that data is quite hard to obtain. While some countries, like the United States and Germany, have been quite good at enforcing requirements that their multinational groups of companies must disclose where they have subsidiaries, other states, such as the UK, have passed laws that were intended to provide this information, but were, until recently, very badly enforced. Indeed, one point of the ActionAid report was to embarrass large companies into compliance with that law when work I had undertaken in previous years showed how few of them supplied the data required by law on which companies they owned. But even having such a list is only a first step: knowing where companies are does not tell you what they actually get up to.

The second reason why this problem exists is that the accounts of multinational companies are extremely opaque on this issue. That is because their accounts represents a very particular, and highly selective view of the trading of a multinational company, that combines the accounts of the subsidiary companies within the group into one set of accounts. However, what that means is that the glossy, published accounts for the multinational group do not in fact represent the real trading of any one entity at all. In a sense, they can quite appropriately be described as a work of fiction because, in the process of creating this new, ‘consolidated’ set of accounts, the impacts of all the transactions that take place between group companies are cancelled out. What is left are just the transactions that take place between group companies and the rest of the world – or third parties, as accountants call them.

It cannot be denied that there is some merit to this approach. It is impossible to make profit by trading with yourself so what the consolidated accounts do show are those transactions that add value for the shareholders of the company that controls the group as a whole. No one can say that this is not useful: this is, undoubtedly, the information that the world’s stock exchanges and the investors who use those places want from the companies in question.

At the same time, however, it cannot be also denied that this particular process of accounting, which is not necessarily the only way in which those accounts might be prepared, does have some extraordinary benefits for the

multinational company that wants to hide any aspect of its activities from view. This is particularly the case when this method of accounting is combined with the secrecy that tax havens supply, including the fact that they do not require the accounts of multinational company subsidiaries to be put on public record. Given that much of the activity undertaken in the tax haven subsidiaries of a multinational company is solely for the benefit of other group companies, the result of the way in which published accounts of groups of companies are prepared is that none of that activity is reflected within them. And since information on tax haven activity is also unavailable from the tax havens where these groups operate, because the accounts in such places are secret the result is that the real extent and effects of such activity is, in many cases, utterly unknown.

This has enormous potential tax significance. This secrecy allows a multinational company to shift its profits from those places where tax would be due at higher rates to those where little or no tax is due. At the time of writing, notional corporation tax rates in the OECD – the club of the world's wealthiest nations – vary from a potential 38.92 per cent in the United States to 12.5 per cent in Ireland¹⁶ – but none offer the zero per cent rate due on most such profits in places like Cayman, Jersey and even Singapore, if it can be shown that the profits did not arise in those places.

The ways in which profit shifting takes place are numerous, and can only be explained here in outline. Perhaps the most common is what is called transfer mispricing. Transfer pricing necessarily takes place in all groups of companies. A transfer price is what is charged when one company that is a member of a group sells goods or services to another company within the same group. It is called a transfer price simply to differentiate it from a market price, which is that which would be set between independent people trading in a marketplace. Transfer prices can be charged on anything, from manufactured components to internal accounting services, interest charges, and the sums due for the use of intellectual property in the form of royalty and copyright fees.

Much of the world's trade is subject to transfer pricing. It was estimated by the OECD in 2002 that around 60 per cent of world trade was undertaken on an intragroup basis, where transfer prices were charged.¹⁷ It is very likely, and openly speculated, that the proportion has risen since then. As globalisation has advanced and companies have diversified their activities over a large range of countries, the internal supply chains of many organisations have become very long. For example, in the case of the car, it is commonplace for the engines, interiors, electrical wiring looms and many other components all to be

manufactured in different countries by different companies – all of which are owned by the same group – before they are then assembled into the final car, which is then itself sold within the group of companies before it reaches its final destination, and a real customer.

What is surprising in this case is that the way in which the world's multinational companies present their accounts ensures that none of this trade is reflected within their own financial statements. Every single pound, euro, yen or dollar of that trade disappears from view in the published accounts of groups of companies, and if a significant part of that trade flows through tax havens, as seems likely given the number of tax haven subsidiaries that the largest companies in the UK have, then preparing any estimate of its scale is very difficult unless you have the resources that the OECD is able to command as an intergovernmental agency.

It is important to say that there are rules designed to prevent tax abuse governing how transfer prices can be set. Currently, multinational companies are meant to find what is called a 'comparable' open market price for the goods or services they are supplying. So, for example, if the item being traded is an electric motor, the company should go out and find what, in the marketplace, they would have to pay for that product, and charge that same price when transferring an equivalent electric motor within their group. But there is an assumption implicit in this requirement, which is that comparable prices can be found for every single thing that might be traded, and that is very obviously not true: when most of the world's trade is undertaken between companies in the same groups, establishing market prices is now very difficult in many cases.

The logic of transfer pricing assumes that each company within a group is entirely separate from all others within it, even though they are commonly owned – and that it trades with those others as if they are all participants in an open marketplace, when very obviously that is not true. This logic, which was established by the League of Nations in the 1920s, completely denies the reality of what is going on. A group of companies is, almost invariably, managed by a central board reporting to one group of shareholders, with the object of making profit for the group as a whole. The subsidiaries only exist as matters of management or legal convenience, and in most cases the pretence that they are separate entities is simply a fiction. This is just another aspect of the extraordinary series of circumstances (which includes tax haven secrecy) that provide massive opportunity for multinational groups of companies to exploit transfer pricing as a means of shifting profits to low-tax jurisdictions, in a process best described as transfer mispricing.

The attraction of this activity is increased by the fact that the odds of being found to have participated in it are low. As the UK's House of Commons Public Accounts Committee said of the big four accounting firms (PricewaterhouseCoopers, Deloitte, EY and KPMG) operating in the country in 2013: 'They employ nearly 9,000 people just to provide tax advice to companies and wealthy individuals, much of which is aimed at minimising the tax paid. Between them they boast 250 transfer pricing specialists whereas HMRC has only 65 people working in this area.'¹⁸ It has been reported that the number of transfer-pricing specialists employed by HMRC has increased since then, but the odds remain stacked in favour of the companies undertaking such trades.

The whole of the OECD's Base Erosion and Profits Shifting programme, developed between 2012 and 2015, was aimed at tackling the various forms in which this abuse arises; but whether it succeeds or not is open to question, for two reasons. The first is whether or not nation-states are really willing to act on the OECD's recommendations. There are already worrying signs that organisations as large as the European Union are watering them down.¹⁹ The second is that, as soon as one abuse is tackled, another seems to open up.²⁰ This is because of a process that is commonly termed 'tax competition'. As has already been noted, like so much in taxation, tax competition is misnamed. It is not in fact a competitive process; it is more like 'tax war'. It involves nation-states competing to provide tax incentives to encourage the world's 'hot money' to locate within their jurisdictions. Some of this hot money is criminal, but it is fair to assume very few companies are involved in that. But the world's largest corporations are even so major owners of hot money. In 2015 Bloomberg estimated that the largest US corporations, between them, held at least \$2.1 trillion of funds outside the country.²¹

There is a particular reason for them to do so: the US tax system is unique, and even perverse, in charging US corporations tax upon their worldwide income, but only when they bring their funds earned overseas back into the country. The obvious consequence is that there is every incentive for them to minimise their tax bills wherever they can in the world, and then to accumulate the resulting earnings in tax havens, but never relocate them to the United States. Bermuda appears to be the favourite place for such accumulation.

According to Bloomberg, the giant US corporation GE tops the list of companies holding funds outside the country, with \$119 billion in such expatriated hot money. Other very familiar names were also on the list. Microsoft came second, with \$92.9 billion. Apple reportedly held overall sums broadly similar to GE, but reckoned that only \$69.7 billion of this was

permanently outside the United States, while drugs giant Pfizer held \$74 billion outside the country.

Because of differences between tax systems, no large companies in any other country hold anything like the sums that US corporations do outside their country of permanent residence. But since the global financial crisis of 2008, the practice has become common among almost all large multinational corporations of investing less and less in their business activities, and holding increasingly large piles of cash. In 2015 the *Financial Times* reported that it was estimated that UK non-financial corporations (in other words, those that are not banks, insurance companies and the like) were sitting on at least £139.5 billion in spare cash.²²

Just as US corporations' hot money is located in tax havens, the same is true of the UK, where – quite perversely – in 2012 the UK government introduced a special low rate of tax on profits made by the internal treasury functions of UK multinational companies if those treasury functions were located in tax havens. This produced a tax rate of 5.5 per cent on those profits at the time: by 2020, if changes to UK corporation tax proceed as planned, the tax charged on these hot-money operations will be just 4.25 per cent.

These rates are so low because of tax haven pressure: governments have felt compelled to reduce tax rates. As a result, there has been a steady and substantial decline in the rates of corporation tax in almost all countries. Looking solely at headline rates of tax, international accountants KPMG estimate that the average rate of corporation tax in the OECD fell from 27.67 per cent in 2006 to 24.85 per cent in 2016.²³ Similar figures in the EU show a decline from 24.83 per cent to 22.09 per cent. This will continue in the future: in the UK, the headline rate of tax for large companies of 28 per cent in 2009 is scheduled to fall to 17 per cent in 2020 – 3 percentage points lower than the basic rate of income tax charged paid by those earning well below average amounts.

In addition, headline tax rates have become deeply misleading, because so many incentives, allowances and reliefs have been made available to large companies. In 2015 the Irish government reported that, although its headline rate of corporation tax was 12.5 per cent, the effective rate for US-owned companies located in that country could be as low as 2.2 per cent.²⁴ In the United States, headline rates, including state-level taxation, can be as high as almost 40 per cent, but a report by the think tank Citizens for Tax Justice found that, between 2008 and 2012, the 288 Fortune 500 companies that had been consistently profitable in that period paid an effective federal income tax rate of just 19.4 per cent, while twenty-six of the corporations, including Boeing, General Electric

and Verizon, paid no federal income tax at all, and a third of the corporations paid an effective tax rate of less than 10 per cent over that period.²⁵

To exacerbate this trend, a plethora of new tax schemes have been promoted by governments. The most common over the last few years are the so-called 'patent box' schemes, which offer lower rates of tax to companies on income earned from exploiting patents they have developed. It has by no means been true that all of these were related to any real economic activity, and the OECD has already had to tackle the issue of the abuse they have given rise to.

There is thus a twofold battle going on. Corporations have used tax havens in the way that many right-wing think tanks have suggested they should, which is to bring pressure on governments to reduce tax rates, shrink the size of the state, shift the burden of taxation from capital onto labour, and as a result pay a lower overall rate of tax. At the same time, governments, sensing the threat that hot money has created, have reacted with a rash of investment incentives, not limited to cutting the corporation tax rates they offer. This leaves us in the unfortunate position of having no clear sign yet that anti-tax abuse initiatives, like the OECD's, are going to deliver when the same governments that promoted them are also major participants in the corporation tax race to the bottom. The benefits that tax havens have supplied to the world's major corporations seem set to continue for the time being, unless some radical changes in the design of tax systems take place (see [Chapter 6](#)).

Other regulatory relaxations also exist. For example, a significant part of what is called the captive insurance market is located in tax havens. Captive insurance companies are owned by the same companies that they insure: if you are big enough you can, after all, insure your own risks. This means that some of the premiums paid to that captive insurance company might fall out of tax on receipt, but be subject to tax relief in the company that makes payment. Some countries have taken steps to attack this arrangement, but where this has not happened this is a classic group company tax abuse: if an insurance premium of, say, \$1 million is paid from a country with an effective tax rate of 25 per cent to a captive insurance company located in the territory where there is no tax (Bermuda and Guernsey are popular for this purpose), then \$250,000 of tax has been saved in the paying company, while no tax is due in the tax haven. The attraction of the arrangement to the multinational corporation is obvious.

But this is not the only regulation that is available for abuse. Most of the world's shipping, and an increasing number of aircraft, are registered in tax havens, whose regulatory requirements tend to be lighter, and where the conditions attached to the operation of ships, in particular, is open to significant

abuse. Staff may not be subject to the same conditions that would apply if the ships were registered in major economies, while environmental regulations may also be enforced very laxly. The Liberian shipping register, which is actually operated from the United States, is well known, but plays second fiddle to the largest of all, Panama, which is reported to have more registered vessels than the whole of the United States and China combined. The Marshall Islands come third, followed by Hong Kong, Singapore, the Bahamas and Malta, in that order – all of them tax havens.

Gambling is another area in which tax havens provide light-touch regulation. Gibraltar is a particularly big player in this market, and is the home, according to the *Financial Times*, of the online gambling operations of most major UK betting companies, and of thirty-four gambling companies in all.²⁶ The attractions are low tax and light-touch regulation, which mainstream states have not been able to match when trying to secure internet gambling revenues, in which players have little concern where the company they are dealing with is located.

This issue of location has led to international tensions. The whole Google story, for example, derives from much the same issue. Google has claimed, with varying degrees of tax success, that it makes almost all its sales of advertising services to countries outside the United States, from its base in Ireland.²⁷ Investigations by the UK's House of Commons Public Accounts Committee and others have shown that Google usually has fewer staff in Ireland servicing each international market than it has in each sales destination, and that, in a country like the UK, the locally based staff are paid more than their equivalent team members in Ireland – and yet it is still claimed by Google that it is the Irish staff who conclude contracts, not the locally based negotiators.²⁸ This claim is supported by the suggestion that the contract between the customer and Google is finally concluded on its fileservers in Ireland: the ambiguity as to location, which is a recurring feature of the tax haven story, has been exploited in this case to massively reduce the overall rate of tax paid by Google outside the United States.²⁹

The Tax Haven World

Tax Haven Products

Putting aside the legislation that imposes light-touch regulation behind a veil of secrecy, tax havens really only offer three products. They are, in essence, companies, trusts and foundations (which are a variation on trusts).

The important thing to note about offshore companies, trusts and foundations is that they are not much like the onshore varieties of the same thing. This is important. Whereas society has found companies, trusts and foundations – when subject to proper regulation, governance, taxation and accountability – can play a useful role in promoting a healthy economy, it is very hard to say the same of their offshore cousins.

Taking the actual role they play as a starting point, and companies in the first instance, most onshore companies will be created for a commercial purpose. Usually, they either own an asset that they lease or hire, or they engage in a trade. In some instances, though they represent a small minority, they will own shares in other companies. Also, it is fair to say that because they are so cheap to create in many locations (most especially the UK) some companies are formed ‘just in case’, or to protect a name that someone thinks they may want to use one day. What is rare onshore is the use of a company to manage assets, whether it be savings, shares or the family home; there are usually quite strong tax reasons for not doing that. There is also the matter of publicity. Onshore companies attract attention, and people do not always want to publicise their wealth.

Offshore the story is quite different. It is uncommon for an offshore company to trade. In fact, the most common use for an offshore company is to manage a bank account. Such accounts are usually treated as the personal property of the companies’ real owners. They will access them using a debit or credit card. Everything will be done online. No statements will ever be sent. And the nominee directors, shareholders and registered office administrators technically responsible for company operations in law will in all likelihood know nothing about the transactions. Nor do such companies prepare accounts.

After all, no one in any tax authority or company registry will ever ask for them, so why bother? And in the event someone does ask for that data, the company in question will either disappear from view and never respond to the request or it will be redomiciled, which means it will up-sticks and move its country of incorporation to another jurisdiction that does not have the impertinence to ask what it might be doing.

With more sophisticated operations, the range of assets held by the offshore company may be more complex. It may own land and buildings or perhaps a portfolio of shares, but you can be sure the management is undertaken elsewhere and not by the directors. If legality is a more important issue, such companies may prepare accounts, but no one bar the real owners will be in any way interested in them. If the nominee directors sign them, the signature might well be supplied electronically.

In the case of those tax haven companies owned by multinational corporations, most of them fall into the category of 'special purpose vehicle'. As the name implies, these are often set up for a single specific purpose. This may be to own shares in other companies in a way that means no tax will be paid on their sale, or supposedly to manage a loan that provides the interest paid on it with favourable tax treatment in more than one country. To prevent too many questions being asked of any one company every time such a transaction is made a new company may be set up. The aim of such entities is usually to throw dust in the eyes of the tax authorities.

Offshore companies do not frequently engage in trade. Of course, it is true that some in the British Virgin Islands run local shops, takeaways and other businesses, but they are the exception. The vast majority of such companies hold and manage investments but do not add value to the world economy in any way. That holds true even for those entities owned by multinational corporations; at most they will repackage intra-group management, marketing, insurance and financial services, the impact of which is unlikely to be in the tax haven where the activity is recorded. Not, of course, that we will know because the accounts and details of any tax the company pays will be hidden from view, in contrast to many onshore companies.

Onshore and offshore companies are, then, fundamentally different. Onshore companies make business happen. Offshore companies hide wealth from view.

This stark distinction between categories holds true with trusts as well. In fact, it is fair to say that if England set the benchmark for trust law, as the originator of the arrangement, then most offshore trusts are not really trusts at all. A little explanation is required.

In the modern onshore trust, a settlor is required, whose role is, in effect, to formulate the arrangement. This settlor (or donor, if you like) passes what is called the trust property (which can be just about anything from a \$10 bill onwards) to a trustee (or more likely, trustees), who agrees to have legal ownership of those assets while ensuring that the benefits of ownership go to other people. There is invariably more than one beneficiary (or else the trust property would be that of the sole beneficiary, albeit held by nominees), and those multiple beneficiaries may well have very different interests in the trust property. So, for example, a spouse might enjoy the income from the trust property, while the assets will pass to the children of the settlor on the event of their parents' death, but just about any arrangement is possible. The key points are that a person (the settlor) has to give something (the trust property) away to be looked after by people (the trustees) who have an absolute duty to pass it on to others one day. The trust cannot last forever, and the one person who must not benefit is the settlor who, once property has been given away, has no say in the matter anymore (unless the trust is charitable, in which case they can't benefit from the trust).

Offshore, however, such rules are felt to be somewhat onerous. Here, settlors do not want to give their property away as onshore trust laws require, but to continue to profit from those assets. And they want to lock up the assets so that no future generation can control them as they have done. Ironically, mistrust is at the very heart of the trust industry. In essence then, the offshore trust user wants to claim they have put their assets in a trust for tax and legal purposes but suffer none of the consequences of doing so.

Over a period of about a decade, starting with the Caymans Islands' STAR trust legislation of 1997 and spreading through the British Virgin Islands with its VISTA trusts and to Jersey, which rewrote its trust laws in 2006, the law of trusts for the offshore world changed radically. With slight variations from place to place, settlors could now retain control of their assets and appoint and sack trustees at will, meaning that their independence disappeared. Settlors could also enjoy benefits from the trusts they had created. Most important, the rule that trust property had eventually to pass back to the ownership of a real-life, warm-blooded human being was swept aside; these trusts were deliberately designed to last forever. What is more, the beneficiaries of the trusts were given no right to challenge this. And if any challenge to a trust did arise for any reason, these trusts had built-in 'flee clauses', meaning they could head to a new location at a moment's notice should the laws of their current residence become burdensome.

In effect a person creating such a trust (and their equivalent forms of

foundation) wants not just to have their cake and eat it, but do so unaccountably, even to their trustees, while at the same time exercising control over their assets long after their death. When Jersey introduced an arrangement of this sort I argued they were little better than a sham, and I have never found a reason to change my mind.

These trusts, then, most of which seem to have been written under laws that members of the Society of Trusts and Estate Practitioners helped promote, are designed with three purposes in mind: to undermine the proper rule of trust law; to promote secrecy; and to concentrate the ownership of wealth in the hands of a few in perpetuity. It's hard to envisage anything more harmful to democracy, tax justice or the future of capital, the last of which has always been dependent upon risk-taking by new entrepreneurs rather than the continuation of structures that have outlived their usefulness, structures these trusts help preserve. And a whole offshore industry exists to assist in achieving these contemptible goals.

The Offshore Service Industry

So who supplies tax haven products, and the services that go with them?

There are three answers to this question. The first group is the politicians in tax havens. The second is the lawyers, accountants, bankers and so-called wealth-management professionals who populate them. And finally, there are those who refer services to these locations. Together, they form an integrated web that facilitates the offshore world where tax abuse takes place, as a result of the operations of the world's secrecy jurisdictions.

It would be wholly inappropriate to ignore the role of politics and politicians in tax havens. They operate on two levels: within the tax havens themselves, and in the places that tolerate their existence. Since the overlap between tax havens and major states is now so strong, it is hard to distinguish between them.

The politics that permit tax haven activity have always been those of greed. The modern face of such greed can be found in the economic doctrine of neoliberalism, which promotes globalisation, the free movement of capital, the supremacy of markets, the power of the individual, and the need to remove obstacles to trade, including taxation. But most tax havens had their origins in the pre-neoliberal era. Many, such as the UK's network of havens, were created after the Second World War as pragmatic means of funding postcolonial dependencies, but really found their role only as neoliberalism began its ascent in the 1970s. Tax havens appeared to offer a political solution to the perceived problems of that age, partly through their use as places from which an assault on those problems could be conveniently launched.

Take, for example, the opinion of the UK-based Adam Smith Institute, expressed in April 2015:

Governments must be competitive with their tax rates, otherwise more and more money will be stored in places with lower tax rates. Tax competition is a key driver of economic growth in the world, as this incentivises politicians to keep taxes on savings and investments low. When tax rates are excessive, there is less economic growth. Tax havens provide the necessary competition to militate against this happening.¹

These claims have been widely repeated for decades now. They suggest that democratic governments are not to be trusted to set tax rates: they need to be disciplined by markets, and tax havens are the market mechanism to do that. But, in advancing this claim, the Adam Smith Institute suggests that the only taxes that need to be reduced in this way are those on savings and investment. It would seem that the argument that tax havens make people better off only applies to those who are in the fortunate position of owning such assets – which the vast majority of people in most countries do not in any significant amount. What is more, they even get the economics wrong, because, as is now widely recognised, not least by the Bank of England, savings (which investments in the sense intended here are properly described as) are not the engine of economic growth: credit is what is necessary to create economic growth, and the availability of credit is entirely independent of the existence of savings.²

To put it another way, tax havens do not fuel growth; rather, they increase inequality, shift the burden of taxation from capital onto labour, and challenge democratic choice. In the process, they act as a vehicle undermining the credibility of the nation-state as the representative of its citizens. Despite these harsh realities, the beliefs espoused by the Adam Smith Institute and others appear to command widespread political support.

This is certainly true within tax havens themselves. For example, in November 2015 Alden McLaughlin, the premier of the Cayman Islands, told its legislative assembly that he had turned down requests from the UK for access to corporate beneficial ownership data because ‘to do otherwise would place the Cayman Islands at a competitive disadvantage with other jurisdictions that do not permit unfettered access to beneficial ownership’.³ This only reinforces the impression that Cayman, rather than being a government with law-enforcement responsibilities, is instead a commercial entity engaged in regulatory competition.

The crossover between tax haven and mainstream thinking was also apparent in a report from Jersey Finance in 2010, which referred to an event it had staged at the UK’s Conservative Party conference in which its chief executive, Geoff

Cook, was reported as saying: ‘Jersey competes for business on exactly the same basis as seventy other countries which offer some kind of benign tax-neutral regime – through a mix of business expertise, political and social stability, modern infrastructure, good communications and sound regulation.’⁴ The language used here is interesting. ‘Tax-neutral’, of course, in fact means ‘tax-free’. And competition is the key word. The claim to be well-regulated is also misleading, because it only refers to the regulation of Jersey-registered companies, trusts and funds solely within the island, rather than within a larger international framework. Jersey quite deliberately accepts no responsibility whatsoever for what these entities do ‘elsewhere’. And, since Jersey well knows that almost all these entities are created solely to operate ‘elsewhere’, the creation of a well-regulated environment within Jersey for these entities is extremely easy, and largely meaningless.

Unfortunately, the deception implicit in language of this sort is still too readily accepted by politicians. As a consequence, for example, in 2016 the UK failed to enforce the demand that its tax havens create publicly accessible registers of beneficial ownership in advance of the anti-corruption summit, held in London in May of that year.⁵ The political will to control tax haven activity does not yet exist.

But what, then, of the business expertise to which Geoff Cook of Jersey Finance refers? Who supplies it? The answer in this case is very easy to supply: it is delivered by accountants, lawyers, bankers and wealth managers. Professor Prem Sikka of Essex University has described these people as the ‘Pinstripe Mafia’.⁶

The major participants within the financial services sector are also not hard to identify. When it comes to accountants, the pack is led by the big four firms of accountants that have dominated this sector worldwide for the last fifteen years: PricewaterhouseCoopers, Deloitte, Ernst & Young (now EY) and KPMG, in approximate descending order of size. In 2010 I undertook research on the location of these firms, and there is no reason to think anything has changed much since then.⁷ What my research showed was that each of the big four firms were present in thirty-three of the sixty secrecy jurisdictions studied as the basis of the first Tax Justice Network’s Financial Secrecy Index; three were present in six more, four were present in two locations (meaning that forty-three locations had two or more of these firms present), and they were absent from just eight, which included some of the most remote and little-used, locations such as Vanuatu, Montserrat and Liberia.

It is exceptionally difficult to see why these firms need to be in places as

small as Cayman and the British Virgin Islands to service local need. Both have smaller populations than the Isle of Wight, located off the south coast of the UK, where no such firms are located. Nor do any of them seem to think it necessary to have an office in rich America's favourite playground, Martha's Vineyard, off Cape Cod in Massachusetts. The obvious conclusion to draw is that these firms are not in tax havens to service local people, but to assist in the recording of transactions that have all their economic impact 'elsewhere'.

Why is that necessary? Because the firms, which between them audit almost all the largest companies in the world, and consequently provide tax advice to many of the world's wealthiest people, are the principle support mechanism on which tax havens are built. Without their presence, the local subsidiaries of all the major companies that locate their activities in these tax havens, including branches of the multinational banks that have operations in them, could not be audited – and without those audits tax havens could not function within the global international financial architecture. It is thus quite reasonable to argue that the presence of these big four firms of accountants in all the world's major tax havens is the foundation upon which is built the secrecy that undermines the regulation that should make efficient markets and nation-states function.

In their defence, the partners of these firms often argue that, although they appear to be unified multinational corporations, this is not the reality. For legal purposes these firms are loose associations of regional firms that do not have common ownership but, which, for commercial advantage, operate under common identities. When it suits them to be a single firm, as on their websites, they claim to offer a single approach available in well over a hundred countries in the world. If at the same time they wish to ring-fence themselves from some liability, then a partner from, say, London might argue that they have no connection in a legal sense with the similarly named firm that happens to operate in a place like Bermuda – and technically they are right.

This, however, is simply a game, and they all know it. There is no shadow of a doubt that these firms exist in the way that they do primarily for the purpose of making more profit than would otherwise be possible, and secondarily to refer work to each other in pursuit of this goal. The tax haven operations are critical to this, and as many tax partners in these firms will confirm, they make good fees from advising clients on which locations best suit their needs at a particular time. Precisely because they monitor this situation so accurately, these firms are also far from independent participants in the process. They all lobby to promote their clients' needs, and in the process are active participants in the regulatory and economic race to the bottom that tax havens facilitate. As a result, it is almost

impossible to see tax havens and these large accountancy firms as independent of one another.

Some lawyers have a roughly similar status – though it is unusual to find a major onshore firm of lawyers operating offshore. Instead, most of this business is operated by what is called the ‘magic circle’ of offshore law firms. There is some dispute as to which firms constitute this magic circle, and all have much more limited reach than the big four firms of accountants, although all of them tend to operate in a number of tax havens simultaneously. Many of these firms will secure their business by referral from lawyers onshore. The networks are more discreet, but the referral process is ultimately much the same as that which goes on inside the big accountancy firms.

It is questionable, for example, whether Mossack Fonseca, the firm at the heart of the Panama Papers, was a member this elite group. What few would doubt is that Maples and Calder, the law firm whose offices in Cayman were referred to by Barak Obama during his 2008 presidential campaign, is one of them.⁸ Based in Cayman originally, but now operating in Dublin, London, Hong Kong, Singapore and Dubai, Maples and Calder is typical in acting in many major financial centres to manage the flows of the world’s fastest-moving money.

Then there are the banks. Nothing can happen in a tax haven without a bank, but there are very few banks based in tax havens. There is good reason for that: as the 2008 global financial crisis proved, banks are heavily dependent on the existence of very large governments to bail them out if something goes wrong. Tax haven governments do not have the capacity to do this. Many tax havens do not, for example, have truly independent currencies, and as a result could not have created the new funds needed to support banks in the way that the UK, the United States and other governments did in 2008.

Consequently, tax haven banks are remarkably familiar. A glance at the list of banks in Guernsey, for example, does reveal some names that will not be readily familiar to those outside the financial services sector, but also discloses the Bank of Cyprus (from another tax haven), Barclays, BNP Paribas, Credit Suisse, Deutsche Bank, HSBC, Lloyds, RBS, Rothschild’s, SG Hambros, and Skipton International, which is a branch of a UK building society. The same pattern can be found in almost any tax haven. There is little point in thinking of these offshore banks as different operations: the reality is that they are, to a very great extent, one and the same thing as their onshore operations.

The final component that makes up the offshore world is wealth managers. These are a much harder group to nail down than the others, because they are a

more recent development – albeit one with a decidedly offshore flavour. An outgrowth of the old professional trustee class that once existed in London, New York and their satellites, wealth managers might be accountants or lawyers, and even bankers on occasion, but always have a particular focus on the preservation of their clients’ wealth. As Brooke Harrington, a Copenhagen Business School academic, argues, perhaps the most consistent identifying feature of wealth managers is their membership of an organisation called the Society of Trust and Estate Practitioners (STEP).⁹ This innocuous-sounding UK-based organisation says of itself,

STEP is the worldwide professional association for those advising families across generations. We promote best practice, professional integrity and education to our members. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

Today we have over 20,000 members across 95 countries. They include lawyers, accountants and other trust and estate specialists.¹⁰

Like so much that is said about offshore, this is undoubtedly true, but does not refer to everything we need to know. The list of STEP chapters in Latin America and the Caribbean provides a further indication of what the organisation does. It has branches in Anguilla, the Bahamas, Barbados, Belize, Bermuda, Brazil, the British Virgin Islands, Colombia, the Cayman Islands, Curaçao, Mexico, Nevis, Uruguay, St Lucia, Panama and the Turks and Caicos Islands. Thirteen of these sixteen locations might, quite reasonably, be considered tax havens. It is a pattern repeated elsewhere: its continental European branches include offices in Austria, Luxembourg, Cyprus, Gibraltar, Malta, Israel, Monaco and no less than four locations in Switzerland, which means that its tax haven locations significantly outnumber its operations in France, Germany, Hungary, Italy and Spain.

A heavy tax haven orientation does not, of course, prove that this is an organisation dedicated to the promotion of tax haven activity – but STEP’s own publicity materials do make this case. A May 2015 publicity brochure produced for its Cayman branch heavily promoted the attractions of the STAR trust available at that location and which conform to almost none of the normally accepted legal principles of onshore trusts.¹¹

It is also widely thought that the rapid dissemination of such structures from one tax haven location to another has been greatly assisted by the presence of STEP members in so many tax haven locations. That they happen to compete with each other for business does not help: the promotion of tax competition could, quite fairly, be seen as one of the main business activities of the world’s

wealth-management industry.

This tax competition has wider consequences, however. What we see here is the fight between the professional representatives of the world's wealth against the combined forces of the world's democratic governments. Moreover, the effective capture of many tax havens by the financial services industry, to suit its own purposes, means that tax haven jurisdictions, rather than being independent states, have become beholden to the industry that so dominates their economies. In Jersey, for example, it is estimated that 44.1 per cent of all local income relates to the financial services industry.¹²

So large is this proportion of income related to this single industry that it has led to what the Tax Justice Network has called the 'finance curse'.¹³ The sheer size of this sector means that the economy of the country is extremely dependent upon that industry for its well-being. Any degree of unpredictability in the event of downturns (as occurs, for example, in the event of a major financial crisis) makes the provision of planned services for the benefit of the local population very hard. Furthermore, so influential is the sector, and so great its demands upon local services, that for the local government to consider any other activity is now almost impossible. For example, all local training and education has to be focused upon the needs of this one sector, and everything else is squeezed out of consideration.

Perhaps most worryingly, because the sector is so powerful within the economy, the risk to good local governance is very high indeed: saying *no* to an industry on whose fortunes you are dependent is very difficult for any local politician – and the risk of the capture of the state by its interests, if not of outright corruption, is very high. This was demonstrated in the case of the Turks and Caicos Islands, where the UK had to take direct control in 2009 as a result of the failure of the local government in the face of such pressure.

The paradox is that tax havens are, in many ways, a creation of tax competition. But that idea of tax competition has encouraged them to operate as if they were market players, not sovereign governments. The outcome has been the capture of their states by those dominant market players that they first set out to host. What happens in tax havens is maybe the truest indicator of the extent of global corruption today.

The Geography of Secrecy

A question that many have failed to answer is which places should be considered to be tax havens. As we have seen, there is good reason for that. In 2007 the Tax Justice Network received funding from the Ford Foundation to answer this

question. I directed the resulting project, which led to the first ever Financial Secrecy Index, which has now been published four times.¹⁴

Any process for assessing secrecy needed a starting point, and so I resorted to the classic academic approach of undertaking a literature review to see what others had already concluded. The result was, in effect, a list of lists of those places that authoritative sources had described as tax havens at one time or another. This list is to be found in [Appendix 1](#). What this showed was remarkable agreement over a long period as to the tax haven status of some locations. Indeed, the Bahamas, Bermuda, Cayman, Guernsey, Jersey, Malta and Panama appeared on every list over the period reviewed, and twenty-two locations appear on at least eight lists.

The first Financial Secrecy Index was based on this list, with very minor changes. Every country appearing on at least two lists was considered worth investigating except for three: Tonga, South Africa and Niue, where it was thought any risk that had once existed had disappeared by 2007. Two countries were added to the list: Austria and Belgium, in each case because of their aggressive stance towards the European Union Savings Tax Directive, which was then the most effective weapon against tax haven abuse in existence. As a result, sixty countries were ranked.

The Financial Secrecy Index has always focused on secrecy, and not on a jurisdiction's tax rate, as the most important factor in its deliberations. There is very good reason for this. Many tax havens, such as Luxembourg, have significant apparent tax rates. In Luxembourg, a rate of 29.6 per cent was in existence for many years.¹⁵ The charge was notional, however, because only a few, almost entirely domestic, companies were subject to it. The vast majority of companies locating activities in Luxembourg were international in their focus, and in their case rates as low as 0 per cent could be agreed with the tax authorities.

This difference between a domestic and international rate was commonplace. For example, when the first Financial Secrecy Index was being prepared, Jersey, Guernsey and the Isle of Man all had what appeared to be corporate tax rates of 20 per cent, but the effective rate of that tax for any company that earned its income outside the islands in question was 0 per cent. As a result, the vast majority of companies paid nothing. For this reason, tax rates were considered very poor indicators of whether or not a given jurisdiction was a tax haven.

There were, however, plenty of other indicators available. In the first Financial Secrecy Index we used twelve indicators of tax haven behaviour. This has changed subsequently as the index has developed, with one or two indicators

being dropped and others being added. The fifteen now used are based on four key themes that are tested in a number of ways, as noted in [Appendix 2](#). The more positive the answers that the jurisdiction secured the better its Financial Secrecy Index score. The scores are not arrived at arbitrarily: some are determined by direct survey enquiries to the jurisdictions in question, while many are based on data held by the OECD, the Financial Action Task Force that deals with money laundering, and other such agencies. Because of the depth of the data, it is no surprise that each Index takes two years to prepare.

This data is not the sole determining factor in the score, important though it is. Obviously, some places are deeply secretive, but in practice remain almost unused by anyone for tax abuse purposes because they are geographically or economically inaccessible. Montserrat might be a perfect example. A tiny island of just 4,900 people, it was devastated by a volcanic eruption in 1995, and while it has many of the secrecy indicators that might mark it out as a place of concern, the fact is that almost no money flows through it according to all available international indicators, most of which come from the IMF.

This fact is taken into account in assessing the overall score in the Financial Secrecy Index. The secrecy score that a jurisdiction is awarded, where a score of 100 represents maximum secrecy, is weighted by a second measure that indicates the relative importance of that jurisdiction in the world's international financial flows. Because of the enormous difference in such flows, this factor has to be carefully calculated to make sure that everybody ends up on the same scale. But the effect is intentional: a place with maximum secrecy but very limited financial flows is not as important as a place with significant secrecy and large sums flowing through it, where the relative resulting harm is bound to be greater even if the secrecy is not as bad. Ten jurisdictions (Bolivia, Dominican Republic, Gambia, Maldives, Montenegro, Paraguay, Taiwan, Tanzania, Venezuela and Nauru) are not scored on the index because of a lack of relevant data.

The Financial Secrecy Index is reproduced in its entirety in [Appendix 3](#) to this book. Readers turning to the index will see territories highlighted in dark grey, which are UK Overseas Territories (OTs) and Crown Dependencies (CDs), where the British queen is head of state, powers to appoint key government officials rest with the British Crown, laws must be approved in London, and the UK government holds various other powers.¹⁶ Territories marked in light grey are British Commonwealth territories, which are not OTs or CDs but whose final court of appeal is the Judicial Committee of the Privy Council, in London.¹⁷

If the global scale weights of just the OTs and CDs were added together (5.7

per cent of the global total, and 23.1 per cent with the United Kingdom included), and then combined either with their average secrecy score of 65.9 (63.62 with the UK) or their lowest-common-denominator score of 71.27 (Turks and Caicos Islands), the United Kingdom, with its satellite secrecy jurisdictions, would be ranked first in the Financial Secrecy Index by a large margin, with a score of 1,580 or 2,221, respectively (compared to 1,466 for Switzerland). There is a very strong case for saying that London is the epicentre of the largest tax haven network in the world.

What will surprise many are the trends that the data presented in the Financial Secrecy Index reveal. The table on [page 193](#) of [Appendix 3](#) summarises the top twenty results for each of the FSIs produced to date. It also shows their placing in the summary of pre-2007 tax haven listings, noted above for the sake of comparison. The table forms the basis for the analysis that follows.

First of all, there is a marked importance among larger countries, like the United States and the UK (which, as we have seen, would be much more significant if listed with all the tax havens it controls). This reflects a trend for the significance of larger countries not generally thought of as tax havens or secrecy jurisdictions to increase over time. This is very clearly indicated by those places that joined the top-twenty listing as the research developed. Very few people will think of Japan and Germany as secrecy jurisdictions, but the data very clearly shows that they are. Their secrecy scores are lower than those of places more conventionally thought of as tax havens, like the Cayman Islands, but are on a par with a place like Luxembourg, which few would dispute has justified this title over many years. They may be a little more open than the United States, but the fact is that these places do, like the United States, justify their inclusion in the list because they provide various aspects of secrecy to those who use the structures that they permit and this creates the risk that some of the very substantial financial flows through these locations might be illicit transactions, whether they relate to tax or other forms of abuse. It is for precisely this reason that, to the surprise of many, more major economies are now featuring in the higher echelons of the *FSI*, while more familiar tax havens, like the British Virgin Islands, do not now appear in the top twenty.

Germany offers a revealing example. Its secrecy score is 56 for *FSI* purposes. This places it below what many regard as a critical threshold of between 60 and 65 in this ranking, which has long seemed to differentiate what might be thought of as the ‘conventional tax havens’ from the rest of the field. However, on the fifteen indicators the *FSI* uses, Germany only scores clear

marks on two. These two show that it does fully participate in automatic information exchange for tax purposes, and it does have a strong commitment to participating in double tax agreements with other nations.

Germany has not so far tried to establish registers of trusts, although in the future it looks likely that the European Union will require it to do so. Nor does it require that company ownership records be readily available online, and the same problem exists with accounts: systems on this are fractured, and thus fail to meet expected standards. In addition, the state does not require that companies making payments to nonresidents, such as banks and companies paying dividends, automatically report this data to its tax authority so that it can be exchanged with other countries. Nor has the national tax authority yet adopted appropriate methods for identifying taxpayers, to help eliminate international tax abuse.

When these factors are combined, it becomes clear that there are problems in Germany relating to access to the data needed to make sure that tax abuse does not take place. As we now know, this requires that the owners of companies and trusts, as well as the recipients of payments, be readily identifiable. Germany is not as yet in a position to achieve these goals, and has a lot of reform to undertake. It is welcome that, in July 2016, the EU announced measures that might force it to move in the right direction; but there is not yet any guarantee that Germany will act effectively on this issue. It is rightly identified as a problem by the Financial Secrecy Index.

The United States is another case worth noting, because it has consistently featured near the top of the Financial Secrecy Index and is, according to many in the more conventional tax havens, the most serious secrecy jurisdiction that exists in the world.¹⁸ In the latest *FSI*, the United States had a secrecy score of sixty, which is high for a country of any size. Like Germany, it managed just two good scores out of fifteen. Again, like Germany, it is obviously committed to bilateral tax agreements, and so scored well in this area. In contrast to Germany, it is also very good at taxpayer identification within its tax administration; but thereafter, things are not so good.

In particular, the United States got no marks at all in seven categories, and some of these are particularly worrying. So, for example, it simply makes no effort to identify who owns the millions of corporations that are located within it. Corporate registration is delegated to states, and the simple fact is that many of those states have competed with each other since the nineteenth century to provide secrecy to the owners of US companies. There may as a result be more secret corporations in the United States than in the rest of the world combined.

The problems do not end there. The country is not good at requiring that the accounts of corporations be filed on public record, and appears to be vehemently opposed to the publication of country-by-country data, seen by many as the best way to tackle multinational corporation tax abuse. In addition, many US corporations – because of the variety of forms in which they are constituted and the way in which those forms can be used for tax purposes – represent almost perfect mechanisms for tax avoidance.

All of this is compounded by the fact that, while the United States demands significant data from every other country in the world on the income of its citizens in those other jurisdictions, under the terms of what is called FATCA (Foreign Accounts Tax Compliance Act),¹⁹ it is completely unwilling to supply, in exchange, similar information on the income that a nonresident might earn within the United States to the country in which they are really tax resident. This makes the United States by far the largest country in the world not properly committed to the automatic information exchange of tax data: Panama is, curiously, now its nearest rival. As a result, the United States is, very appropriately, high on the list of countries causing considerable concern to those who want to stop tax haven abuse.

What these case studies demonstrate is that, while it is undoubtedly true that some of the more conventional tax havens, like the Cayman Islands and Switzerland, continue to justify their inclusion at the top of the ranking, there has been a marked development in which these places have ceased to be the most important secrecy jurisdictions. Bermuda provides a clear indication of this direction of travel. It was in the top group in the pre-2007 lists, appearing on every single list of tax havens that was surveyed up to that date. Despite this, it has been ranked seventh, eleventh and then fourteenth in the *FSI* rankings of 2009, 2011 and 2013, respectively, before falling to thirty-fourth place in 2015. There are still significant secrecy problems in Bermuda: its secrecy score is higher than that of any of the major countries previously noted, at sixty-six out of 100; but the point is that it, unlike many of the major countries, is complying with international expectations that it will improve its systems – particularly in relation to information exchange, to which it has now committed.

This does not mean there is no reason for concern about Bermuda: the secrecy provisions within the jurisdiction mean that, when it comes to actually exchanging the data it has committed to supply in future, it may encounter real problems in doing so. The current state of its administration of company and tax information suggests it may simply be unable to capture what is required for this purpose, but at least it is moving in the right direction.

The same cannot be said of all places. There are, for example, some very notable trends in the Middle East and Asia. Singapore has crept steadily up the rankings, from eighth in 2009 the fourth in 2015, and the trend in the case of Hong Kong has been even more marked, from tenth in 2009 to second in 2015. Both are seriously committed to secrecy: Singapore has a secrecy score of sixty-nine, and Hong Kong's is a highly significant seventy-two. This implies that secrecy is embedded in their economies, financial services systems and taxation culture.

The arrival of Macau and China in the 2015 *FSI* top-twenty, ranking at eleventh and twentieth respectively, indicates that secrecy may also now be becoming a systemic problem in China and its related jurisdictions. This needs to be put in its context: according to some reports, China has the biggest problem with international illicit financial flows – many of which will relate to tax evasion – in the world.²⁰ Whether China is inadvertently promoting an activity that is already beyond its own control, or is in fact encouraging these flows, is an unresolved question.

The Middle East has shared in this trend of an increasing presence in the ranking of the world's secrecy jurisdictions. Bahrain was ranked at thirty-second in the pre-2007 overall listing, but has moved from fourteenth to ninth in the *FSI* for the period between 2009 and 2015. Meanwhile, Dubai was fiftieth in the 2007 listing, and did not appear in the *FSI* top twenty in 2009, but has since then crept up from eighteenth (2011) to sixteenth (2013), and is now tenth. The force of this development may not be quite as marked as those of Singapore and Hong Kong, but the trend is as clear.

What is apparent from this data is that a substantial change in tax haven activity is taking place, recently confirmed by the Panama Papers. As data produced by the International Consortium of Investigative Journalists has shown the firm at the centre of these disclosures significantly reduced its scale of operations after 2009. In 2005 Mossack Fonseca formed more than 13,000 offshore companies for its clients, representing its all-time peak level.²¹ The numbers hardly changed in 2006 and 2007, but then fell in 2009 to about 8,500, before falling again from 2013 onwards. With the incorporation of just 4,341 new companies in 2015, it had approached one-third of its peak level.

In fact, Mossack Fonseca's network of offshore companies peaked at 81,810 in 2009, and since then has fallen steadily. In 2015 the number had reduced to 66,153. This remains significant, of course, but what it clearly implies is that there has been a significant change in behaviour. This is clear from the fact that, in 2015, Mossack Fonseca closed 8,864 companies, which was more than twice

the number it incorporated. The demand for its services was in decline even before the Panama Papers were disclosed.

The same trend can be seen elsewhere. The number of banks operating in Jersey fell from forty-six in 2009 to thirty-two in 2016.²² Total funds under management in the Isle of Man in 2015 amounted to \$21.4 billion – a figure that had flat-lined since 2011, and which was far below their peak of \$50 billion in 2007.²³ The number of companies in Cayman increased from 74,905 in 2005 to 93,693 in 2008 – a leap of 25 percent. By 2015, that number had increased to only 98,838, which in fact represented a fall from the previous year.²⁴

In contrast, there were 1,980,000 companies in the UK in 2005, which increased to 2,423,000 in 2008 (an increase of 22 per cent), but that number increased to 3,464,000 in 2015.²⁵ The growth in Cayman from 2008 to 2015 was 5.5 per cent; in the UK it was 43 per cent. The difference before and after 2008 is significant. What is not clear, however, is whether the amount of wealth offshore has stalled. Gabriel Zucman, in *The Hidden Wealth of Nations*, suggests that in 1980 around 6 per cent of world wealth was in tax havens, and that by 2013 that figure had risen to 10 per cent, and continued to increase thereafter. If this is true, it is appropriate to speculate on what is happening.

The first thing to note is that Gordon Brown may have been right when he said, in 2009, that policies put into effect that year represented the beginning of the end of the tax havens, even if few believed it at the time. While many of the measures announced that year appeared to be almost inconsequential in the real fight against tax haven abuse, what does now seem clear is that the apparent threat that they posed represented a real turning point in tackling one type of tax haven activity: personal tax evasion.

The explanation for this change must be behavioural: there was no real change in the risk of using tax havens as a consequence of the measures taken in 2009. The number of prosecutions on the basis of the very limited number of leaks from tax havens since then has been very low: 3,600 UK residents were identified by the HMRC to be using bank accounts that might have sheltered illicit funds in the Swiss branch of HSBC, as a result of a leak of data from that bank, but only one person was prosecuted.²⁶ Anyone could see that tax information exchange agreements were virtually useless; and yet, indisputably, the use of tax havens has declined. The only obvious reason that can be suggested for this is that some people – almost certainly those with the most to lose by being caught – realised that, while the 2009 measures against tax haven abuse were supine in the face of the real tax haven threat, they did represent the beginning of a process that would lead inevitably to greater transparency.

If this is the explanation – and it is hard to see any other –, then those who saw the writing on the wall were remarkably foresighted. What they may have realised was that the public mood on tax evasion had changed, and that, as tax haven use was seen as the most egregious form of this activity, being associated with such places carried a considerably higher risk than it had before the crisis erupted. If this was the case, then those who began to leave tax haven activity behind after 2008 were ahead of both the regulators, who did not realise this was happening, and large corporations, which seemed much slower on the uptake in this matter than individuals.

The Cost of Tax Havens

According to the Tax Justice Network, the scale of tax abuse is difficult to quantify: ‘Measuring the size of the offshore economy is an exercise in night vision. It is hard to define it; it is fragmented and messy, and it is swathed in secrecy. Official international efforts to measure the various aspects of the phenomenon have been inadequate.’¹

As someone who has been involved in the work of the Tax Justice Network, as well as a number of other projects on estimating tax abuse more generally, I have to agree. Precisely because the whole intention of offshore activity is to provide secrecy, those hoping to estimate the costs that offshore impose upon the rest the world are left measuring shadows.

This may also explain why no one attempted any such exercise until 2000. In that year, the UK branch of Oxfam, the international development charity, published what was in hindsight a seminal, if largely unnoticed, report. Entitled ‘Tax Havens: Releasing the Hidden Billions for Poverty Eradication’, this report set out to estimate the cost to developing countries resulting from the abuse of their economies by tax haven–located activity. As was noted in the introduction to the report,

Secrecy, electronic commerce and the growing mobility of capital have left all governments facing problems in revenue collection. The borderline between tax evasion and tax avoidance is becoming increasingly blurred. But at a conservative estimate, tax havens have contributed to revenue losses for developing countries of at least US\$50 billion a year. To put this figure in context, it is roughly equivalent to annual aid flows to developing countries. We stress that the estimate is a conservative one. It is derived from the effects of tax competition and the non-payment of tax on flight capital. It does not take into account outright tax evasion, corporate practices such as transfer pricing, or the use of havens to underreport profit.²

Those involved in preparing the report included John Christensen, later to become the founding director of the Tax Justice Network, and Sol Picciotto of Lancaster University, who is still very active in this field. Having had the opportunity to work with both of them, I am well aware that they thought the scale of the problem much bigger than what was reported in 2000 but did not

think the world would believe that it was as significant as the then available data suggested. Caution was applied as a result. By and large, most estimates have seemed to apply the same notes of caution since then.

The importance of the Oxfam report was in the links that it made between different parts of the problem, and not in the numbers as such, which were little reported at the time. The connection, for example, made between the sum of tax lost as a result of tax haven abuse and the value of development funding has been a recurring theme of all discussion ever since the report was published. Indeed, when John Christensen and I were directing the Tax Justice Network in its very early days, we made a policy decision that we would expose the activities of large companies linked to developing countries that were using tax havens. This was perhaps the best decision we could have made, simply because it triggered a response in the public, press and political imagination, which clearly suggested that the use of tax havens was not a victimless activity.

The next estimate of the cost of tax havens came from Raymond Baker, in his 2005 book *Capitalism's Achilles Heel*. His work, which is hampered by methodological problems, sought to be more all-encompassing than Oxfam's. After taking into account corruption, criminal conduct, transfer mispricing and fake transactions, Baker estimated that cross-border flows of global dirty money might stand anywhere between \$1.1 trillion and 1.6 trillion annually. He suggested that about half of this sum flowed from developing and transitional economies, and two-thirds of that related to commercial dirty money. In his estimation, only a very small proportion of the total – approximately \$50 billion – related to corruption.

Also in 2005, the Tax Justice Network published its first estimate of the cost of offshore, of which I was a co-author. Entitled *The Price of Offshore*, it used data from the Bank of International Settlements, wealth managers and commercial banks to estimate total wealth, as well as the likely profile of wealth portfolios and the proportion that might be offshore.³ Based on apparent similarities in the various sources, it calculated offshore wealth to be something between \$10 trillion and \$12 trillion. Assuming then current rates of return on investment and, allowing for the fact that some tax might be paid at source on the returns in question, it estimated that \$255 billion of tax might have been lost a year worldwide as a result of wealthy individuals holding assets offshore. The report explicitly omitted any reference to the costs of corporate tax abuse or of tax competition.

Now considered outdated, and based on data sources that have since been improved upon, at the time the report had a significant impact. As in the Oxfam

report that went before it, the intention in presenting estimates was to underestimate asset wealth, so that any error was likely to be weighted on the side of caution.

Other estimates followed. The OECD, for example, suggested in 2008 that ‘developing countries are estimated to lose to tax havens almost three times what they get from developed countries in aid’.⁴ Given that the OECD estimated total aid in 2008 at \$125 billion, this suggested they thought the loss to be around \$375 billion at the time: one of the highest estimates ever made.⁵ It is not at all clear how the OECD came up with the stated ratio of tax loss to development aid.

There are other estimates from the same period, including Christian Aid’s 2008 report ‘Death and Taxes: the Toll of Tax Dodging’ and its follow-up 2009 report ‘False Profits: Robbing the Poor to Keep the Rich Tax-free’.⁶ The first suggested that corporate tax losses to the developing world might be as much as \$160 billion a year, which was somewhat more than the combined aid budgets of the whole rich world. The second suggested that, between 2005 and 2007, the total capital flow from bilateral trade mispricing into the EU and the United States from non-EU countries was more than \$1.1 trillion.

Both reports attracted criticism for their use of the work of US-based professor of financial management Simon Pak, which was based upon price variations in world trade data. There is now doubt as to whether the data Pak used was sufficiently robust to support the conclusions drawn from it. The estimate on corporate taxation losses was also suggested to be outside the plausible range, partly because it was based on estimates of trade mispricing that were questioned mainly by researchers at the Oxford Centre for Business Taxation, working on behalf of the UK’s Department for International Development.⁷ But my own peer-reviewed work, paid for by the World Bank, did suggest that the estimated sum was within the plausible range based upon auditing techniques.⁸ It was certainly also consistent with the OECD’s prevailing view of the period.

The intervention into this issue from the academic team at Oxford sparked furious debate, not least because it was asked why the UK’s Department for International Development was willing to fund critics of the idea that tax havens caused harm, but not those trying to assess the scale of the problem. In addition, their suggestions were controversial at the time. The first of these was that the methodologies used needed improvement; but they failed to recognise that all of them were what could fairly be called experimental, in an area where no work had been undertaken before. They also criticised data sources, which in

retrospect has been shown to be fair comment. But, perhaps most importantly, they did not suggest significant alternative methodologies or indicate how further research might be undertaken, and it remains the case that, on this most important of policy issues, academic engagement has, to date, been far too limited.

One direction of travel in response to this controversy has been to put the scale of offshore tax losses in their context. For example, in 2011 I estimated the total cost of tax evasion in the world as a whole at \$3.1 trillion, or about 5 per cent of world GDP at the time.⁹ My work was based on peer-reviewed data published by the World Bank on the size of the world's shadow economies. It did not for a moment suggest that all the money estimated to be lost could be recovered. What it showed was that offshore was only one, and by no means the largest, potential cause of tax loss in the world.

Another recent focus has been on more robust processes of estimation. In 2012 the Tax Justice Network published 'The Price of Offshore Revisited'.¹⁰ The research for it was undertaken by James Henry, a former chief economist of McKinsey & Co. This work has been an ongoing development based on wealth data from banks, wealth managers and consulting firms, as well as the IMF, World Bank, United Nations and Bank for International Settlements. The aim was not to rely on one method of estimating offshore wealth or the sums lost as a consequence, but instead to prepare a range of estimates, and publish them as such. In the process, this work laid aside the previous estimates of trade mispricing as the basis for estimating the loss to developing countries, because of the criticism to which they had been subjected. The resulting estimates were based on four approaches:

- a model of country-by-country unrecorded capital flows based on official data and the mismatches in them (which are commonplace, and often large);
- a cumulative offshore wealth model that tracked the growth of funds over time;
- an offshore investor portfolio model, based on cross-border asset data; and
- direct estimates of offshore assets under management for the world's top fifty global private banks.

It should be stressed that, in every case, the data used is incomplete, and more than one explanation of its effects is possible. Not all the data is consistent, either: wealth managers do not always agree with each other, for example. But certain trends are apparent:

- unrecorded capital flows suggest that funds accumulate offshore;
- this trend is supported by the trends in accumulated offshore wealth over time;
- asset portfolio models suggest that there must be offshore wealth that is unrecorded, but is nonetheless real;
- the sums held under the management of the world's top fifty global private banks have grown considerably.

On this last point, the report noted ([page 32](#)),

In December 2010 by our estimate the world's top 50 global private banks alone had \$12.06 trillion of private cross-border financial wealth under management. This compared with 2005 when our estimate is that the top 50 managed US\$5.4 trillion, an average annual growth rate for the industry of nearly 16% despite the world economy's ups and downs. Nor are these all the client assets that these institutions handle. There are also bank deposits, which are usually included under managed assets, as well as assets under custody and administration, including brokerage assets. Depending on the year, these additional assets typically add at least 25% to the total. Allowing for this as well as for underreporting and other data problems these figures are consistent with our overall \$21 trillion–\$32 trillion estimate for global offshore financial assets as of 2010.¹¹

The last two figures represent the range of offshore wealth that the Tax Justice Network estimated to exist in 2010. The range was deliberately wide: the data could not support greater accuracy. The lower estimate is usually used. The report estimated annual loss of revenue at between \$190 billion and \$280 billion, roughly twice the amount of OECD country-development assistance provided to developing countries around the world. This estimate excluded all losses to inheritance, capital gains and other taxes.

Tellingly, the report estimated that at least one-third of all private financial wealth in the world, and nearly half of all the offshore wealth, was owned by the world's richest 91,000 people in 2010, who between them represented just 0.001 per cent of the world's population that year. The next 51 per cent of all wealth was owned by the next 8.4 million people, who represented just 0.14 per cent of the world population.

This estimate by the Tax Justice Network was not the only new data presented on this subject in recent years. Oxfam prepared another estimate in 2013, suggesting that \$18.5 trillion of assets were located in tax havens¹² with a potential cost in terms of lost tax revenues of \$156 billion a year. The relative similarity to the Tax Justice Network estimate is apparent, although the method of calculation was vastly simpler. Oxfam estimated that 19.5 per cent of total global deposits were held in tax havens by people not resident in those places and extrapolated on this basis. The methodology has its weaknesses, although

based on credible data: its significance is that it is another estimate that fits a trend of the reported losses being of similar orders of magnitude.

The two most striking alternative estimates are those of Gabriel Zucman and the IMF. Zucman, a French economist, first published his estimates of the cost of tax havens in 2013, and repeated them in the English edition of his book, *The Hidden Wealth of Nations*, in 2015.¹³ There are problems with Zucman's work, however. Strikingly, at no point does he say what jurisdictions he considers tax havens, and he often overstates the importance of Switzerland. But, most importantly, his data only considers bank deposits and readily marketed financial securities as offshore wealth, and this approach is bound to underestimate the scale of offshore tax abuse.

Zucman admits to ignoring real estate, the control of private companies, and titles to art and intellectual property, as well as other tangible assets, all of which are widely owned offshore. In addition, his estimates ignore the fact that much of the capital offshore may itself have come from tax-evaded sources. Moreover, he makes an estimate of the loss to offshore caused by the tax-avoiding activities of US companies and then fails to use it in his overall total. All this means that his estimates of offshore funds and the tax lost to them cannot help but be too low.

Despite these criticisms, Zucman still comes up with estimates of offshore wealth that, while conservative, are at the same time substantial. He offers the estimates given in [Table 5.1](#).¹⁴

Table 5.1: Offshore Wealth and Tax Evasion: Regional Estimates 2014

	<i>Offshore wealth US\$bn</i>	<i>Share of financial wealth held offshore %</i>	<i>Tax revenue loss US\$bn</i>
Europe	2,600	10	78
United States	1,200	4	35
Asia	1,300	4	34
Latin America	700	22	21
Africa	500	30	14
Canada	300	9	6
Russia	200	52	1
Gulf countries	800	57	0
Total	7,600	8	190

Source: gabriel-zucman.eu/files/Zucman2015MissingWealth.xlsx.

Zucman's estimate of the assets held in tax havens is much lower than those of the Tax Justice Network and Oxfam, despite which his estimate of lost tax

revenues exceeds that of Oxfam's (although this is because he includes lost taxes on inheritance and wealth that Oxfam exclude), and is at the lower end of the range suggested by the Tax Justice Network.

It is also notable that Zucman's estimate of the cost to the UK of tax haven activity suggested that \$284 billion (£172 billion) was held offshore in 2014, with a tax cost of £4.8 billion.¹⁵ My own estimate of the UK tax gap for 2014, published by the UK trade union PCS, suggested that the total cost to the UK of offshore tax activity may not have exceeded £4.3 billion in 2012, a figure that may have grown by 2014 because of rising markets and inflation, but is very close to what Zucman suggests.¹⁶

What is clear is that there is not yet any consensus on the scale of assets held offshore. Nor might there ever be, since what territories and assets should and should not be included is always open to dispute. Nevertheless, there is a growing consensus that the cost of offshore tax abuse might be at least \$200 billion a year, or thereabouts – although with a much smaller part of this sum directly attributable to developing countries than some past estimates have suggested, partly because asset-based estimates (as more recent calculations all are) exclude from consideration the cost of transfer mispricing and relocated corporate tax abuses.

These exclusions make the estimated cost of base erosion and profits shifting (BEPS – the technical name given to most international corporate tax avoidance) a matter of some significance. There has still been remarkably little effort made to research this issue. One estimate of this comes from a 2015 IMF working paper on the impact of BEPS on developing countries, by Ernesto Crivelli, Ruud De Mooij and Michael Keen.¹⁷ This paper looked at the 'spillover effects' of BEPS, which it defined in two ways, termed base and strategic spillover.

Base spillover is the impact of one country's tax policy on the tax bases of other countries, whether through changes in the real location of activities such as investment, or simply through changes in where profits are recorded (as occurs in tax havens). In contrast, strategic rate spillovers relate to the impact on a country's policy choices of tax changes abroad – or, in other words, the impact of tax competition.

The paper has been revised significantly since it was first published, but, as Alex Cobham of the Tax Justice Network has suggested, the likely impact for developing countries that the paper still implies is a loss of at least \$200 billion a year (although the earlier version implied \$600 billion a year).¹⁸

The OECD has also offered estimates: it has suggested that in 2014 the losses to BEPS might have been between \$100 billion and \$240 billion. This

figure is in addition to the costs resulting from assets located in tax havens noted previously, from the likes of Gabriel Zucman and the Tax Justice Network.

We can safely conclude that it is likely that, on top of a loss of at least \$200 billion because of assets being located in tax havens, it is likely that at least another \$200 billion – and maybe more – of corporate tax revenues are lost because of tax competition and its implications. Thus, the problem is significant, lying within or above the range that the NGO researchers who first raised the subject suggested.

The Implications of Tax Lost to Tax Havens

It is important to place these losses in an appropriate context. For developed countries, losses (to the UK, for example) of up to £5 billion from hidden wealth, plus a similar potential sum resulting from the transfer of the profits of corporations to tax havens (which together represent maybe 1.5 per cent of the total tax take), are significant, but affordable. For such a country, it could be said that these revenues might either be made good from other taxes or, as I have argued,¹⁹ by running bigger deficits and printing more debt to pay for it. There are several reasons, however, why this argument is not universally applicable.

The first is that, though a country like the UK might enjoy this option, not all do. As the IMF paper noted above suggested, the impact on many developing countries may, as a proportion of their total tax collected, be much higher than in developed countries, because developing countries generally rely much more heavily than developed countries on the corporate tax revenues that can be shifted into tax havens. Whereas it is unusual for corporate tax revenues to exceed 10 per cent in a developed country (they are less than 7 per cent in the UK), it is commonplace for them to form up to 20 per cent of the revenues of developing countries, and so they are much more vulnerable to these losses. This is one reason why the whole BEPS initiative was supposed to be for their benefit, even if doubts remain as to whether the promise has been fulfilled.²⁰

What is more, while it is true that most developed countries can issue debt with ease, or have other taxes they can raise to compensate for any losses to tax havens – and as a result suffer little absolute loss in terms of direct economic outcomes – this is not true for developing countries. They do not have any of these options: their bonds are expensive even if there is a market for them, while alternative tax bases are often not available. This is precisely why NGOs and campaign groups have always highlighted the cost of tax havens to developing countries. For them, the cost is real and in all likelihood remains currently at a level similar to the funds they secure in development aid. The cost of tax haven

abuse for such countries and their populations is thus indisputable, and in human terms far too large for the world to tolerate.

That argument, however, only considers the pure economic cost of this issue. The real costs are very much larger, as it includes the continuing aid dependency of developing countries. This dependency removes their autonomy, leaving them exposed to the political will of other countries. At the same time, it denies their elected representatives some of the real choices that would be available if such aid funding could be eliminated and be replaced by taxes. The cost of tax havens to these places is thus seen in the degradation of both their democratic processes and their identity as nation-states.

In a fragile world, therefore, the well-being of far too many countries is prejudiced in this way, and the knock-on effects are palpable: dependent states cannot take the risk to develop the potential of their populations. Large parts of the world's population are being denied opportunity as a consequence, and all because of the activities of a relatively small number of accountants, lawyers, bankers and wealth managers in tax haven states.

The real cost of that activity is seen in the unnecessary deaths of children in infancy; in the denial of a proper education to children, and especially girls; and in the inability of countries without the necessary infrastructure to develop their economies as they should. The cost to the long-term wealth of these nations is incalculable.

But it should not be imagined that these costs arise only in developing countries. The IMF may have identified spillover costs in terms of tax revenues lost, but the spillover effects are in fact very much broader than that. There is, for example, a massive cost related to loss of trust.

Around the world it is now widely understood that many people feel alienated from what are described as economic and social elites. What may have begun as a discussion among activists of a world divided between the 1 per cent and the 99 per cent has now generated a common perception: there is a new understanding that the world is split not into classes, but rather between a tiny minority that enjoys most of the benefits of globalisation, and everyone else. This perception has largely been fuelled by a very clear-eyed, and accurate understanding that those elites have been using tax havens to hide their wealth, while the companies that they control have been using them to avoid tax. If there is a political movement towards the extremes as a consequence – as represented, for example, by the rise of Donald Trump and Bernie Sanders in the United States, the UK vote to leave the European Union, and the growth of far-right parties in a number of European countries – then the role of tax havens in

disguising the activities of elites has had a significant role to play. The fact that many of the politicians who have exploited these situations have explicitly embraced anti-tax haven positions provides some indication of the power of this narrative.

The most telling cost of taxing abuse, however, is one that is little mentioned. This is the cost of secrecy itself, which is fundamentally what tax havens are all about. Such secrecy is used for the purposes of deception. Some of that deception may be legitimate, but some uses of secrecy may hide illegality. In practice, though, the difference is largely immaterial: what matters is that, when businesses use this power to deceive, they are abusing markets. It does not matter whether the business in question is one of the largest in the world or, in effect, a one-person enterprise that is trying to hide its activities from competitors, tax authorities, a spouse or others. In every case, the impact is remarkably similar.

Firstly, if markets are to be efficient in the way that economists have described – and as those who suggest they provide optimal solutions profess to believe they operate – then there must be the highest-quality information available to all market participants so that they can act rationally, allocating resources to the person who is best able to use them to maximise return, and who exposes the provider of capital to the lowest risk in that process. Very obviously, tax havens undermine these principles. They are in fact designed to deny market participants the information they need to act rationally, allocate resources efficiently, and minimise risk.

The consequence is obvious: if risk is increased, then the required rate of return within marketplaces also increases. This means that the number of projects that can be invested in is reduced, so that the amount of capital committed is diminished. As a consequence, productivity declines, and along with it growth, output, wages and profits. This is the only logical consequence any economists can draw from tax haven activity: this uncomfortable fact may also explain why so many economists simply refuse to examine the subject. But it can safely be said that, as a result, tax havens harm growth; those among the 99 per cent of the population who think they have lost out as a result of tax haven activity are absolutely right: they have.

That impact, however, is both direct and indirect. The market imperfections resulting directly from tax havens have a real economic cost, but so do the indirect ones. Because tax havens diminish trust in business, and trust has always been the basis on which commercial contracts really work, the knock-on effects are almost impossible to calculate, but very real. The whole basis on which the

mixed economies that operate in almost every state in the world are meant to work is threatened by the loss of confidence created by the opacity that spills over from tax haven activity.

The perverse fact is that those market ideologues who have promoted tax haven use as a mechanism to challenge the state have instead created one of the biggest threats to the market itself. This was the inevitable consequence promoting the use of secrecy in the marketplace: they should have known that this would undermine the very essence of capitalism, but appeared not to do so. Unless the use of tax haven secrecy can be curtailed now, the reality is that all markets are at risk. Thus, beating tax havens is not just about the collection of tax; it is about saving capitalism from itself.

But that will require strong government, and it is not just in developing countries that tax havens threaten the existence of the kind of government that we need. In July 2016 the *Financial Times* ran an editorial saying that ‘business leaders have greater responsibilities than obeying the law’.²¹ They were right to do so – and it should be noted that the comment was made in the context of the use of tax havens.

Again, that was appropriate, we should understand why. The article in question did not say that businesses must comply with the spirit as well as the letter of the law, but that was its implication. From this it follows that businesses must be tax compliant – which, as I have argued, means that a taxpayer seeks to pay the right amount of tax (but no more), in the right place and at the right time, where ‘right’ means that the economic substance of the transactions undertaken coincides with the place and form in which they are reported for taxation purposes. Tax compliance and the use of tax haven secrecy are mutually incompatible.

When people see large companies and wealthy people using tax havens to avoid the tax obligations imposed upon them by the governments of the places where they really earn their income, they are more willing to believe that an example has been set that they might follow. The consequence of this is that they too might try to avoid their obligations to pay tax. They may not necessarily do so using tax havens: they may not be able to afford the fees that tax haven accountants, lawyers, bankers and wealth managers charge. But this will not deter them. In many cases, they will evade rather than avoid tax, believing that this is in any case what happens in tax havens, because of the secrecy that they provide.

The consequences are real: in the UK, for example, the government admits that it loses at least 7 per cent of tax revenues to tax avoidance and tax evasion,

at an annual cost of at least £34 billion.²² I have argued that the real losses may be substantially higher, and may amount to £120 billion a year.²³ The reason for this difference does not matter at this point in the argument; the reality is that there is a significant loss, in which the abuse of tax havens plays a real part – while it plays an even bigger part in influencing those who think it is acceptable to emulate the behaviour of legitimate tax haven users to try to avoid and evade their tax obligations, however that goal is achieved.

Tax havens undermine developing countries, free markets, economic growth, government revenues and the general stability of the societies in which we live by eroding the trust on which we are all mutually dependent. And this is not accidental, but by design. The secrecy they supply is deliberately intended to deny information to those who have a good reason to know it. Deceit is at the core of their activities, and, because of their influence, is now undermining our societies. That cost cannot be quantified, but justifies the action still required to close down tax haven activity – even if, at least in developed countries, the measurable impact in terms of revenue lost to tax havens is smaller than most people believe.

Tackling Tax Havens

As I noted in [Chapter 1](#), before 1997 there was no real demand for change in tax havens. In that year the OECD and EU both demanded such change, beginning a process that has continued, subject since then to significant oscillations in both political whim and economic circumstances.

The OECD initiative was in many ways the more important of the two.¹ It identified tax havens as places characterised by the following:

- a) No or only nominal taxes.
- b) Lack of effective exchange of information [because] businesses and individuals can benefit from strict secrecy rules and other protections against scrutiny by tax authorities.
- c) A lack of transparency in the operation of ... legislative, legal or administrative provisions
- d) No substantial activities [in the tax haven that] would suggest that a jurisdiction may be attempting to attract investment or transactions that are purely tax driven.

The difficulty was not so much with these definitions, but with the title of the report, which said that it was intended to address ‘harmful tax competition’. This created two difficulties. The first was that it suggested that there might be the possibility of benign tax competition, although no one seemed able to suggest what that might look like in practice. This meant that the whole approach was fraught with uncertainty over its intent from the outset. Second, in 2001 President George W. Bush’s administration decided that it did not accept that any such thing as harmful tax competition existed, and as a result withdrew support from the OECD process except with regard to its anti–money laundering measures, which were boosted in the wake of 9/11.

The international move against tax havens looked as if it had been brought to an end by this decision, although the money laundering reforms that were pursued turned out to be significant. They resulted in supposedly standard

procedures worldwide requiring that providers of financial services properly identify the beneficial owners of the accounts that they maintained – and, just as importantly, the supposed sources of funds held within them. These procedures are now the basis for many of the measures that have been proposed to tackle tax haven secrecy. But this was not their intention when they were introduced: the rule of unintended consequences definitely applies in the realm of anti-tax haven initiatives.

Thankfully, the Bush administration's decision did not bring all reform to an end. In 1997 the EU had also indicated that it felt harmful tax practices needed to be addressed, when it issued its EU Code of Conduct on Business Taxation (see [Chapter 1](#)).² Importantly, it followed this up in 2005 by acting in isolation to create the first, albeit limited, automatic information-exchange system from tax havens. In retrospect, this arrangement seems deeply unambitious, since it only exchanged information on interest (not any other source of investment income) earned by individuals (not companies or trusts) from the places where it was earned to the countries where they really lived. But since it provided opt-outs that many tax havens, like Luxembourg, Austria and the UK's Crown Dependencies, took advantage of for some time, which meant that information did not need to be exchanged so long as nominal tax was paid on the interest earned at the time it was credited to a bank account, the whole arrangement was incredibly easy for anyone serious about hiding their identity to avoid. It was assisted by the fact that simply by putting a bank account into the name of a company the information sharing arrangements no longer applied. The suggestion that a barn door had been left open for avoiders to use was hard to resist. Nevertheless, the important fact was that it proved information exchange was desirable, achievable, and potentially effective in fighting tax abuse, and this meant that it had a long-term significance way beyond its immediate effectiveness.

The 2008 global financial crisis created a renewed demand for further tax haven reform. Gordon Brown and other world leaders sought to hand the blame for a US-made crisis on to tax havens, and demanded action against their chosen culprit, whose culpability was now conveniently endorsed by the new Obama regime in the United States. The following year, the OECD responded. What it delivered fitted with the precedent established by this date: it was weak, it was avoidable, and it had little discernible impact.

That was because it focused in the first instance on the creation of a list of supposedly non-compliant nations. These were those that had not signed twelve OECD approved tax information exchange agreements. Within days of the

scheme being announced, most of the world's tax havens had been taken off the supposed blacklist, partly as a result of the ease with which they could sign such agreements with each other. It was very hard to take this process seriously as a result.

Nor was the second OECD process adopted at the time much better. It revived a forum that reviewed the progress of states in putting in place the necessary arrangements for tax information exchange to take place, including those required by the new tax information exchange agreements noted above. This initiative was also flawed. Firstly, this was because it focused on process rather than outcome – whether the paperwork gave rise to meaningful information exchange was not the prime issue of concern for some time; rather, simply having the right mechanisms was. Secondly, the involvement of many tax havens in the process (Jersey had a prominent role) meant that many smelled a rat. In effect, what the scheme permitted was the claim that tax havens had made for several years – namely, that they were very well regulated, when in truth almost nothing was happening to effectively tackle tax abuse. Mechanisms such as this one from the OECD, whether wittingly or otherwise, provided tax havens with far too many opportunities to claim that they had complied with all that was being asked of them when almost nothing was really happening to tackle the underlying core issue of preventing tax abuse.

It was the United States that first signalled its disquiet with such an approach. Driven by the obvious assistance that Swiss banks had provided to many US citizens who wanted to evade tax, it had introduced its Foreign Accounts Tax Compliance Act (FATCA) in 2010. However, this was yet another flawed proposal (see [Chapter 1](#)). While FATCA imposes considerable penalties on banks operating in other jurisdictions around the world that fail to supply data to the US tax authorities on the income of US citizens arising in those places, the arrangement is entirely non-reciprocal. The US gives these countries no data in exchange for what it receives – despite the fact that US companies incorporated in states like Delaware but trading outside the United States can offer considerable attractions for those seeking corporate secrecy and relief from all tax (whether legally or illegally) on their operations.

The result was that, by 2012, it was apparent that the OECD initiatives launched in 2009 had failed, and another process of reform was needed. As had been the case in 2009, the OECD pursued this objective in two parts. Its Base Erosion and Profits Shifting project was targeted at multinational corporations. The project title referred to corporations' ability to shift their profits from high-tax locations into tax havens, thereby undermining the tax base of the former

locations. This project sought to address this issue in no less than fifteen sub-parts, all negotiated during the period between 2013 to 2015.

The second initiative was focused on creating an effective automatic exchange of tax data between nations states, including those that are tax havens. More than one hundred countries have now signed what is called the Convention on Mutual Administrative Assistance in Tax Matters, and the half-hearted EU information exchange scheme of 2005 should now be replaced by something much more effective. But this is conditional upon the tax havens, in particular, having available the data they are supposed to exchange when the scheme comes into effect by 2018. Whether this will prove to be the case, no-one really knows.

The trouble with these schemes is that, like all previous reforms, they have failure built into them from the start. For example, included in this new raft of initiatives is a proposal that the largest multinational corporations should supply country-by-country reporting data (see below, pp. ***-***); but what is specifically required is that the data in question be kept absolutely secret. Likewise, retrieval of much of the data to be subject to automatic information exchange is dependent upon jurisdictions knowing the beneficial ownership of companies located in their territory and having access to their accounts; but without this data being placed on public record, no one will know whether this data either exists or can be exchanged. The result is a set of hollow promises. Transparency will be achieved, we are told – but in secret. This paradox appears to be lost on those proposing such arrangements. As a result, demand for further change has already been expressed.

What is clear as a result is that anti-tax haven initiatives now appear to follow a pattern of obfuscation in the first instance, followed by a frenetic period of activity by international agencies that results in them issuing a series of recommendations for action by individual countries (including tax havens), after which foot-dragging and half-measures from the countries tasked with adopting the proposals hampers any real progress. This process usually begins with a growing awareness of risk, which now very often comes to light as a result of political activism, which in turn generates less-than-wholehearted political will in favour of change. Demands for such change are then passed to an international agency (the OECD, the EU, or whatever) that is instructed to produce proposals, most of which when finally presented are so compromised by the negotiation involved that they very rarely meet the expectations of those who originally demanded action. These proposals are then half-heartedly implemented – before the demand resurfaces for political reforms to tackle the problem that remains unaddressed, and a new wave of reform is initiated.

At the end of 2016, this reform process is at an implementation stage: the OECD's latest proposals have been passed to countries to be adopted. However, once it becomes clear many of the 2015 initiatives will not work as expected, or there is another financial crisis (and both are possible, maybe simultaneously), the demand will almost inevitably arise for further reforms. In response, the OECD will declare the last (2015) round of recommendations a success, but say that they are now in need of amplification, and the process of change will begin again.

That is precisely why it makes sense to start considering now what the next round of changes must be. I predict that these debates on reform will come in three broad forms. The first will include proposals for more regulatory change; the second group will impact on those I call the secrecy providers – the accountants, lawyers, bankers and wealth managers who populate tax havens; and, lastly, there will be a focus on procedural changes required in the future if the outcomes of these processes are to be monitored effectively, since they are currently assessed inadequately.

The tax justice movement has always sought to offer solutions to the problems it has highlighted. This has been the basis for its success. The country-by-country reporting changes already implemented, and the demands for automatic information exchange from tax havens and for data to be made available publicly from both companies and trusts, all originated within the tax justice movement. What are required now are developments on these issues and on new fronts that will ensure that, when politicians are next looking for an answer to the tax haven problem (as they surely will be), there are ready solutions for them to apply. What follows are the particular solutions I would propose.

Public Country-by-Country Reporting

The data to be supplied by the world's major companies to their head office tax authorities under OECD guidance on country-by-country reporting is somewhat less than I proposed when I first suggested this system of accounting in 2003.³ They will need to supply just seven pieces of data for each jurisdiction in which they trade. The first set of data relates to their sales: information from the sales made from each jurisdiction in which they trade will have to be supplied, split into two parts. The first will consist of the sales made to genuine customers, and the second will include sales made to other companies in the multinational group of companies of which they are a member. Adding these two together, of course, yields the total sales for the country in question.

The next category of data is on profits earned before tax, and tax paid in each country. The tax figure is to be supplied in two ways. One figure to be disclosed is the tax the company estimates to be due on its declared profit; the other is the tax actually paid in the year, which will in many cases be based on the profit of the previous year. This provides an easy way of checking whether or not the previous year's tax estimate was broadly correct.

After this tax data is supplied, two further pieces of information are required, both of which give some indication of the scale of the company's operations in a jurisdiction. The first is the number of people employed during the period, and the second is the total value of the investment the company has made in the jurisdiction split between share capital and retained profits.

This is the bare minimum of data required for the process to be described as country-by-country reporting. It would, for example, be helpful to include data on intra-group purchases as well as sales, payroll costs as well as the number of employees (which would then have allowed average pay by country to be calculated), and data on finance income and costs. These last two would help with the monitoring of interest receipts and payments, which are commonly used to shift profits for tax-avoidance purposes; but the reality is that the OECD has decided that this data is not required, whether appropriately or not. What is clear is that, because of the 2015 OECD recommendations on base erosion and profits shifting, the vast majority of the major multinational corporations in the world will now have to prepare this data for their tax authorities to use.

Country-by-country reporting data is entirely new information: companies have not until now been required to provide an overview of precisely what they do in any one territory either to their tax authorities or in their published accounts. Country-by-country reporting data provides that missing information. I should stress, however, that this is not information on the basis of which the corporation, or its component entities, will then be taxed. Country-by-country reporting does not itself change tax rules. It is explicitly intended by the OECD that, at present, all multinational corporations should still be taxed on an individual subsidiary-by-subsidary basis. What this data instead does is give the clearest possible indication of where a multinational corporation might really make its income, declare its profits, and pay its taxes. The usefulness of the data is in revealing whether the reported profits really align with the likely sums earned in each location, and thus whether tax shifting is likely to have taken place.

Country-by-country reporting achieves this by providing data that is intended to reflect where the substance of the trade of a company really takes place. It is

not possible to make profit without making sales to real customers, and you must always engage the services of real people and actual capital assets to ensure that those customers' needs are met. Country-by-country reporting data is meant to deliver just enough data to indicate where those sales take place, and where people are employed and assets held. This data can then reveal whether profit-shifting to abuse tax systems is likely to have taken place, which requires some fairly elementary maths. A tax authority that wants to work out whether it is receiving its fair share of the total profit that a multinational company has made, as compared to the sums declared in its jurisdiction, need only apply a formula to the total profit of the multinational corporation. This formula might reasonably be made up of three parts. The first would be the proportion between third-party sales within a country and total sales. The second would be the ratio of in-country employees to total employees. And the last would be the ratio of local assets employed to total assets employed.

In [Table 6.1](#), the data with a grey background is the country-by-country reporting data supplied by the company – excluding that on tax paid, which is only really useful when comparing one year with another.

Table 6.1: Unitary Taxation

<i>Country</i>	<i>Company A X</i>	<i>Company B Y</i>	<i>Company C Z</i>	<i>Group</i>
Country tax rate	30%	20%	0%	
	£'m	£'m	£'m	£'m
Third party sales	500.0	400.0	0.0	900.0
Intra-group sales	0.0	0.0	100.0	1000.0
Total sales	500.0	400.0	100.0	1000.0
Number of employees (actual)	8000	9000	50	17050
Profit before tax	10.0	20.0	80.0	110.0
Tax due	3.0	4.0	0.0	7.0
Total assets invested	200.0	250.0	5.0	455.0
Percentage of third party sales	55.6%	44.4%	0.0%	100.0%
Percentage of people employed	46.9%	52.8%	0.3%	100.0%
Percentage of assets invested	44.0%	54.9%	1.1%	100.0%
Average of the above three percentages	48.8%	50.7%	0.5%	100.0%
Expected profit that should arise in the country	53.7	55.8	0.5	110.0
Difference between expected profit and profit actually reported:	43.7	35.8	-79.5	0.0
Expected tax consequence	13.1	7.2	0.0	20.3

The group is made up of three companies (A, B and C) in three countries (X, Y and Z). Countries X and Y have reasonable tax rates. Country Z is clearly a tax haven. Company C in the tax haven only makes sales to the other two companies: it would be nice to know which, but we are not given that data. What we do know is that its sales will be matched by purchases in companies A and B. As a result, its sales are cancelled out by the matching purchases in the group company accounts, and those group accounts consequently only report sales of £900 million. This is a level of sales high enough to require the group to supply country-by-country reporting data to its parent company's tax authority, who must then share it with the other countries involved. Thus, if the parent company was A in country X, it would have to share it with countries Y and Z (although Z may not be interested, as it does not charge corporation tax).

As is clear from the data, both employment and investment in assets are also heavily biased towards companies A and B, but the rather small number of employees in company C in the tax haven seem to be extraordinarily profitable. This may seem artificial or fabricated, but data as absurd as this has been found in IT companies, with Ireland playing the role of country Z.

The three percentages – of third-party sales to total third party sales, employees to total employees, and local assets to total assets – are then calculated and averaged. This is where things get interesting: this average percentage is then multiplied by total reported group profits to suggest an expected profit figure for the country in question, based on the reported likely level of real economic activity undertaken there. This expected profit for the jurisdiction is then compared to what has been declared there. In this example, this suggests that profits of £34.7 million have been shifted out of country X and £35.8 million out of country Y, all of which turned up in country Z. If this data is a true indication of the profit shifted then, country X has lost £13.1 million in tax and country Y £7.2 million. Country Z has, of course, gained nothing except the tax paid by the fifty employees who would otherwise probably not be located there. The important point is that both countries X and Y now have some pretty strong evidence to confront the multinational corporation with the suggestion that it has been avoiding tax. This evidence can be prepared quickly and persuasively from this data. That is the whole point of country-by-country reporting.

It is important to note that this works in practice. In 2013 the European Union required that a more restricted version of this data be published by banks based in Europe. A little over an hour after Barclays published its first ever report on this basis, I had completed an analysis of the information it had

supplied that revealed some startling facts.⁴ For example, Barclays's 54,595 employees in the UK managed between them, according to Barclays data, to generate a loss of £1,339 million – or about £24,500 each. On the other hand, the mysteriously productive fourteen employees Barclays had in Luxembourg generated a profit of £1,380 million: a staggering £98.6 million of profit per head. And Luxembourg was not the only tax haven in which Barclays' employees appeared so much more productive than in the UK: in Jersey, they generated profits of £2.8 million each.

It does not take much effort to realise that this kind of data suggests that companies have questions to answer about their tax affairs. Barclays did not provide those answers in 2014, but in subsequent years the country disparities in performance displayed in their data have declined; something has clearly been learned as a result of providing such glaringly strange data, which implied that Barclays made profits in tax havens but major losses in its biggest commercial centre of trading. In its most recent report of this type, Barclays has included narrative reports to try to explain some of the anomalies; but still, in 2015, each employee in the UK made a profit for the company of just over £26,500, while those in Luxembourg made £9.6 million each, and those in Jersey almost £260,000 each. The evidence is very clear that country-by-country reporting data raises many questions that need answering in corporate accounts, can reveal that tax shifting to low-tax jurisdictions is taking place, and may help tax authorities.

But, in that case, it is absurd that, while the OECD is now demanding that country-by-country reporting data be produced for tax authorities, it is simultaneously saying that it must only go to the tax authority of the reporting company's head office jurisdiction – leaving all other countries to wait upon it to share that data, if it is so inclined – while also demanding that maximum security be applied to this data to prevent it from entering the public domain (with the exception of EU banks and a few other cases, where different rules now apply).

What is now clear to many investors and other interested parties – including politicians, regulators, and communities with an interest in the activities of major companies in particular locations – is that, if this data is so valuable to tax authorities, then it is also vital to the other users of a company's accounts. These other users of accounts are saying, as a result, that country-by-country reporting information should be available in audited form at the same time as the company places its other accounting data on public record.

The most obvious reason to do this is in order to expose the tax risk inherent in a company to its investors: after all, if tax authorities have this information and might use it to challenge a company's tax affairs at potential cost to its

shareholders, then those investors should be given the chance to assess that risk in the same way as the tax authority so that they can then decide on that basis whether they want to be a part of the company, or not. Failure on the part of a company to supply this data to its members when it will now be in its own possession seems to reflect a glaring gap in corporate governance and reporting standards.

Another reason for demanding this data is that it will bring pressure to bear on companies to clean up their acts. They have used tax havens until now because it has been possible to do so in secret. Once that use is exposed, behaviour is likely to change: companies do not want to look like cheats. The change in the data at Barclays offers some indication of this: the profits they have reported in tax havens have fallen since the introduction of limited country-by-country reporting for banks in the EU. It is very likely that this trend would be replicated by other companies. As a result, tax risk for investors would fall – producing, among other things, more secure pension funds – and tax haven usage would fall – generating increased tax payments in the countries where tax is really due, consequently providing a benefit for entire national communities.

Moreover, country-by-country reporting would provide something that is sorely lacking at present in the behaviour of multinational corporations – namely, summarised data on what activities each corporation's business consists of, and what it contributes to each country in which it operates. Existing accounting data makes it almost impossible to establish this information, which would be invaluable for politicians, regulators, civil society, journalists, trade unions and others who want to assess the real risks of engaging with a company.

Data on tax risk is not the only thing country-by-country reporting exposes. It also reveals shifting sales patterns, and thus market trends, changing patterns in employment at the company, regional variations in reported profit, and the vulnerability to closure of activities in specific locations. In addition, the commitment that a company has really made to a market may be assessed based on the sums it has invested.

All of this data, of course, is useful to tax authorities – but its uses extend way beyond that. It is accounting data that lets customers, suppliers (including employees), governments and communities assess the risk that they run in dealing with a multinational corporation in a specific location. This is information wholly unavailable to most of them at present. The result of publishing country-by-country data, then will not just be better accountability for tax purposes, but also better corporate accountability in general. No wonder some multinational companies are working so hard to make sure that country-

by-country reporting data will not be publicly reported: it would expose their internal workings in a way that has never been done before.

It is not too bold a claim, therefore, to say that country-by-country reporting is about holding globalised companies to account locally. This is important: it is increasingly clear that people in widely dispersed and differing economies feel alienated from the benefits of economic growth, which seemingly accrue only to an elite who happen to own and control the world's largest corporations. Making those companies accountable is an essential part of holding that elite to account, and of rebuilding an association between these companies and the communities that host them. Such accountability will also strengthen the sovereignty of the nation-state for tax and accounting purposes. As globalisation seeks to skew rewards towards a minority, the state is the only available mechanism for ensuring that rewards from trade are redistributed towards those who have either earned or require them – whether they are employees of the companies in question, or those for whom the state must provide, such as the pensioners who once worked for such companies.

Failure to make such information publicly available threatens the social and economic fabric of many countries. It is time for the companies in question to realise that the elites that are being rejected are not just those who occupy the political field (although that is happening), but also those within commerce – and to do something about it. I do not say that country-by-country reporting is a complete solution to this process, but it provides the data that might initiate a dialogue, and gives us the information to hold companies to account.

Registers of Beneficial Ownership of Companies and Trusts

In 2005 I suggested that full registers of the beneficial ownership of limited companies and trusts were vital if the secrecy undermining markets and tax revenues was to be beaten.⁵ At the time, such a statement was unusual: most people treated the suggestion as incomprehensible. In July 2016, however, the European Commission published a proposal for the establishment of precisely such registers.⁶ While this was a step forward, it is not as yet as robust as it needs to be, and loopholes remain. It should be understood that, as important as the disclosure of the beneficial ownership of all companies and trusts may be, such transparency will not by itself be enough to ensure that tax haven secrecy is cracked for good.

This can only really be achieved if the following data is readily available in a set of published accounts for all companies, without exception, whatever their size:

- company name
- company number
- place of incorporation (registered address)
- location(s) where the company trades, if this differs from the place of incorporation, as it very often does
- names of directors
- the nature of the trade it conducts
- names of owners of any stake in the company exceeding 10 per cent
- what other companies it controls, and how

as well as:

- an income statement (profit and-loss-account), which can be consolidated with its subsidiaries if appropriate, as could other financial data in that case
- a balance sheet (statement of affairs)
- a cash-flow statement
- a statement on taxes due for the current period, taxes due in future periods, and tax paid
- a note on accounting policies
- an explanation of rewards paid to directors
- details of payments to other staff and the total number of such staff
- notes explaining other data in the income statement and balance sheet
- country-by-country reporting data, if the company trades in more than one jurisdiction.

For trusts, some variation is required, and in this case it might be appropriate to exempt smaller trusts that do not control trading entities, such as limited companies, from the disclosure requirements. The remaining trusts might need to disclose:

- the name of the trust
- the trust deed that governs the trust's management, plus any side letters of instruction to trustees
- the place where the trust is considered resident
- a usual business address at which the trustees can be contacted
- names of the trustees and where they are resident
- names of all those who have benefited from more than 10 per cent of the

trust's income or gains in the last five years.

as well as

- an income statement
- a statement of affairs (balance sheet), plus supporting notes to ensure that the nature of the assets and liabilities of the trust can be understood
- a statement on taxes due for the current period, taxes due in future periods, and any tax paid
- details of all payments to beneficiaries during the last period that exceed either 10 per cent of the trust's income and gains for the period or 10 per cent of the total payments made.

In both cases, this information is vital. For example, it is essential to know who the real, warm-blooded people who own and direct companies are, so that the risk of engaging with their companies can be properly appraised, and to ensure that those really responsible for ensuring that the company complies with its legal obligations (such as paying tax) can be identified. The only exceptions would be in cases where there is a genuinely diverse ownership – and most companies for which that is true will be quoted on stock exchanges. We need this data if we are to be sure who ultimately controls a company, who appoints its management, and who might save tax or secure some other advantage as a consequence of that company's use.

Without such data, responsibility for the architecture of the offshore world cannot be established. That would mean that no one could be made accountable for what happens in the secrecy spaces I have described, and that would render all other efforts to secure accountability meaningless. That is why registers of beneficial ownership are so important.

But this information is not enough by itself. Knowing who is accountable for what happens in the secrecy space without knowing what is actually going on within it would render the effort expended to secure beneficial ownership data largely irrelevant. The availability of the accounts of all companies operating in tax havens – and all other locations – is therefore the next category of data we must demand in order to crack open tax havens. The case of the ownership of the British Home Stores group of companies in the UK by offshore companies that we know to be associated with Lady Christina Green offers an instructive example. While we know that the group in question (which failed in 2016 less than a year after being sold, with the loss of 11,000 jobs) was owned for the benefit of Lady Christina and her family, we do not know how that was

arranged, what the financing arrangements between offshore companies used for the purpose and British Home Stores really were, how the benefits of ownership were distributed, or whether any tax was paid as a result – because none of the accounts for the relevant companies are available.⁷ Knowing the ultimate beneficial ownership is therefore not enough: when things go wrong (as they have in the case of British Home Stores), there is a need to ‘follow the money’ to understand what has happened. This is not possible unless accounts are available.

It is also essential to be specific about the data that such accounts must supply, so as to avoid any doubt about what is being asked for. The bare minimum level of disclosure that is currently tolerated for what are called small companies in most EU states is simply not adequate for these purposes. This is because bare-minimum disclosure does not require any profit-and-loss account data to be included; as a result, no information on tax due is made available either. We have somehow reached a position in which information on the payment of tax – which even the *Financial Times* expects that a company should make available in exchange for the extraordinary privilege of limited liability that it is granted by society – is not disclosed on public record by more than 90 per cent of companies in the European Union.⁸

This point is of particular concern in the United States. In a state like Delaware (which, because of its lax rules, is now home to more than a million corporations but only 945,000 people),⁹ incorporation is commonplace precisely because the accounts of private companies are never required to be published, and the details of the directors and owners of corporations can also be easily hidden. Wyoming and Nevada compete with Delaware to provide this service. The result is that there may be 2 million corporations formed in the United States each year about which its authorities effectively hold no data. As Jason Sharman of Griffiths University, Australia, who has spent much time studying this issue, has noted: ‘Foreigners looking to evade tax in America are usually safe because of its secrecy.’¹⁰ Unsurprisingly, the Tax Justice Network has named the United States as one of the top tax havens in the world.

Establishing legal requirements relating to disclosure will not, however, mean that the law in question will necessarily be complied with: law-breakers are to be found everywhere – especially, it seems, among the world’s users of limited-liability corporations. This means that it is vital that mechanisms exist to identify who should be complying with the law on disclosing beneficial ownership data and accounts, in case those responsible should fail to do so.

Logically, such discovery mechanisms should extend to all companies: after

all, any company not complying with a legal requirement represents a potential threat to the integrity of the reporting system as a whole. Pragmatically, however, the goal is to make sure that tax is paid. Companies that genuinely do not trade therefore have to be accepted as being of little concern, as they will not have any tax owing. The number of such companies may be high; it is entirely possible that there are at least a million non-trading companies in the UK at any time. All attention should thus be focused on identifying which companies really do trade. These are the companies in which non-compliance with disclosure on beneficial ownership and accounts may be linked to real tax loss.

Thankfully, identifying these companies is possible. This is because the vast majority of the world's banking is undertaken by only a few hundred banks, all of which are ultimately registered in major onshore financial centres.¹¹ Moreover, almost every trading company in the world will make use of the services of one or more of these banks. It should therefore be made a condition of the grant of a banking licence to a head office of any bank that each of its subsidiaries and associates (and the net should be cast very wide) annually reconfirm the identity of the ultimate beneficial ownership of all the companies to which it supplies services, wherever in the world they might be. This should apply wherever they are incorporated, and wherever they trade.

It should also be required that the data in question be supplied simultaneously to three parties: the company regulator of the country where the entity was incorporated; the tax authority of the place where the company trades (if different); and the tax authority of the place where the majority or largest part of the beneficial ownership of the company is resident for tax purposes. If there is joint ownership, both tax authorities need to be advised.

In addition to basic data on the identity and location of the corporation, as well as on those who own and manage it (which every bank must have in order to comply with anti-money laundering regulations), the information supplied would specify the numbers of the bank accounts that were maintained for the company, and the total sum deposited in and paid out of such accounts (excluding internal account transfers) in a year. Since, as a matter of fact, banks must have all this data the cost of assembling this information should be small. In addition, the data should be very accurate: company numbers, and passport or social security numbers for individuals, are all that is likely to be required to ensure a very high success rate.

There will, of course, be those who object. I have already dealt with the issue of privacy, as opposed to secrecy, in the case of limited companies, and have shown that this is not a valid reason for objection. Only the question of human

rights is a real cause for concern; but, unless there are clear signs that the human rights of those whose data might be supplied may be prejudiced in a recipient state (which is an issue that should probably be decided on a country and not an individual basis, resulting in a 'blacklist' of those states who could not be trusted), then the relevant data should be submitted to that state. The net outcome would be extraordinarily beneficial.

First, that is because secrecy would be shattered within most of the tax haven world, since most offshore transactions are undertaken through limited companies and trusts whose affairs would now be opened to scrutiny. Second, as a result, either voluntary compliance rates would increase significantly, or the use of offshore companies would plummet. Third, and most importantly, tax authorities and company regulators would have reliable data on which companies were trading in their jurisdictions. This would mean that both could then enforce an obligation on such entities to file their accounts and tax returns, and to make payment.

Lastly, in order to ensure that those responsible for filing data really do fulfil their obligations, there must be consequences for those who fail. In the first instance, the tax authority in the country where trade was taking place or beneficial ownership was located should be able, if accounts or tax returns are not filed, to make request of a company's bank (whose identity will, of course, now be known to them) for the bank statements for the period in question. The tax authority in question should then be permitted to estimate the tax due. And if the company does not then pay that tax the individual owners and directors responsible for managing it should be made personally liable to do so. The time has come when abuse of the privilege of limited liability should no longer be tolerated. The limited liability of the beneficial owners of companies that do not comply with their legal obligations should be revoked: those who abuse offshore should assume personal responsibility for doing so.

It is perfectly possible to draft legislation that will achieve this goal. In fact, I did so in the UK in 2013, for the late Michael Meacher MP, who presented it to the UK House of Commons as a private member's bill. It was talked out by government-supporting MPs who argued that it was unacceptable, as it would increase UK tax yield. Extraordinarily, the fact that the new revenue might come from those who were evading their responsibilities did not appear to be an issue for these MPs.

At some point, public sentiment on this issue will change. Regulation in this form will then be needed, and should be promoted internationally.

Reforming Corporation Tax

The next change needed in order to tackle international tax abuse is the reform of corporation tax. Some argue that the only acceptable reform to corporation tax is to abolish it completely, but I cannot agree. Companies are distinct and separate entities from their members with their own legal identities and claims to income and assets. Why these claims should go untaxed when those of real, warm-blooded human beings are subject to tax is very hard to understand, unless the aim is to reduce the tax liabilities of companies' wealthy owners. Exempting companies from tax would simply allow wealth to accumulate in them untaxed, forever: a better tax wheeze would be hard to imagine. Companies must therefore be taxed to stop a most basic form of abuse.

There are two other reasons for taxing companies. One is that it is efficient to do so: in many cases it is much easier to tax a company than all of its shareholders, even if you could locate them. This has the second advantage of ensuring that at least some tax is paid in the place where the company trades, rather than in the tax haven where its shares may be registered.

Corporate taxation is therefore a necessity. That makes it very unfortunate that corporation tax is currently based on the fantasy that each individual company that is a member of a group of companies is entirely independent of any other company that might own it and must thus be taxed as a wholly independent entity. This, of course, makes no sense at all. As a matter of fact, much abuse happens because companies are brought together into group structures that are deliberately intended to reduce their tax bills. A corporation tax system that puts tax authorities on the back foot from the outset by pretending that this is not the case really does not help their cause.

It is also unfortunate that, for all the effort expended on initiatives such as the OECD's BEPS project, this fundamental problem remains in place. In effect, BEPS is a sticking plaster on an open wound that will not heal: so long as the corporate tax system pretends that groups of companies do not exist, nothing can be done to tax them effectively.

In the Internet era, we can no longer pretend that the far-flung subsidiary companies of multinational corporations are really independent entities. This might have been plausible in the steamship age of the 1920s, but not now. The reality is that multinational corporations really are single entities, split into parts for operational convenience alone, and the economic substance of the entity as a whole must now be taxed. To put it another way, we should tax groups as single entities.

Technically, this can be done. We already have group accounts, because they

are considered the only true and fair representation of what a group of companies really does: or, to put it another way, the accounting profession already accepts that groups of companies really are, in effect, single entities. And now we have country-by-country reporting, though so far only for tax purposes. Combining these factors suggests two possible corporation tax reforms, the first of which is unitary taxation.

Under unitary taxation, a group of companies is treated as one single company for the purposes of taxation, however many individual companies it comprises. So, for example, in the case study on country-by-country reporting discussed earlier in this chapter, the three separate companies that made up the group would be treated as if they were one single entity. In the real world, this might also mean a group of companies like Shell, operating in more than seventy countries and with 93,000 employees, which is likely to have many hundreds of subsidiaries, will also be treated as if it is just one company.

Unfortunately, while this is the basis for group accounting, there are many good reasons why the profits recorded in those group accounts may not form a suitable basis for a tax charge. No one should be surprised by this; my own research has shown that there is not at present a single country in the world that charges a company tax based on the profit figure it declares in its accounts. Without exception, as far as I can discover, all jurisdictions think that there is good reason to make an adjustment to that profit figure when it comes to tax. This is not the place to explore the technicalities of those adjustments, but it should be noted that they have three essential goals. First, they seek to standardise the claim for expenses made in some cases, such as expenditure on new plant and equipment. Second, they disallow expenditure for tax purposes that the company can legitimately incur, but which tax authorities do not regard as a reasonable offset against taxable income. Third, in this somewhat abbreviated list, adjustments are made to prevent tax cheating. So, for example, if a company is found to be artificially transferring its profits to a tax haven, then tax authorities reserve the right to adjust its declared profits to prevent the tax consequences of that abuse. There is no doubt that, when it comes to unitary taxation, adjustments of the first two kinds would be required – but the great advantage is that there would be no reason for the last type of adjustment, because all profit shifting takes place within a group, and by treating it as a single entity, such games would be rendered ineffective.

Unitary taxation does assume that a set of rules could be advanced in which company profits are adjusted for tax purposes. No one should underestimate the scale of negotiations required to achieve this goal, but it should still be easier to

achieve, and much easier to understand, than the OECD's Base Erosion and Profit Shifting process, which was finalised in 2015. Once this tax-adjusted profit is established, what unitary taxation does is apportion the total resulting sum to all the individual countries in which the company trades on the basis of a formula.

It is no accident that the most commonly suggested formula for this purpose is the one I explained earlier in this chapter, in discussing country-by-country reporting. I am able to say this with confidence because I designed the first version of country-by-country reporting and intended it to supply the data required for use in this unitary apportionment formula. The manner in which the OECD has adopted it may be simpler than I first proposed, but it is still intended to achieve this goal. In other words, if the group of companies in that example was to be taxed on a unitary basis, then country X would be apportioned £53.7 million of the group's profits, which it would then be able to tax; country Y would be apportioned £55.8 million, and country Z (the tax haven) would be apportioned just £0.5 million of the profits. Crucially, though, the rate they would then apply to those apportioned profits would be entirely up to them. Many countries, including the UK, have objected to the idea of unitary taxation (which has been proposed for use within the European Union) on the grounds that it undermines their tax sovereignty, when in fact the exact opposite is the case: unitary taxation helps bring tax competition to an end, allowing countries once again to determine their own tax rates.

The debate on corporation tax reform should also consider another possible option: Alternative Minimum Corporation Tax (AMCT). Unitary taxation would bring an end most corporate tax abuses in tax havens, but if that is not yet possible (and it is not hard to predict that there will be objections to a unitary approach), then AMCT might be a step on the way to achieving a better corporation tax system in the meantime.

The simple goal of AMCT is to ensure that a minimum rate of corporation tax is paid on the declared profits of a multinational corporation. This could be done relatively easily. If, for the time being, it is agreed that the profits declared in the consolidated group accounts of such a company are a true and fair reflection of its performance (and that is what its auditors do say in almost every case, after all), then the AMCT due should be that figure multiplied by the AMCT rate.

The AMCT recognises two fundamental facts. First, like unitary taxation, it is based on the obvious fact that the world's multinational corporations are, in effect, single entities. Second, AMCT reflects the fact that, just as the

corporation is seamless when it crosses boundaries, so too are the benefits the corporation obtains from incorporation, limited liability, the rule of law, the upholding of contracts and private property rights, the maintenance of regulation that ensures people can have confidence to trade with it in safety, and much else besides.

This implies that, while no entity but a nation-state can impose taxes, the obligation to pay those taxes exceeds the obligation to any state in particular: just as there are universal rights, so too are there universal obligations that transcend borders, and the duty of a multinational corporation to pay tax is one of them. AMCT imposes a tax charge that recognises this fact.

How, then, might such a tax work? A global minimum corporation tax rate would be set at a level below the corporation tax rate in most countries. That is because the AMCT is not designed to replace local corporation taxes in those countries that think such taxes are desirable, but instead to supplement and support them. The AMCT rate would then be applied to the agreed global profits of the company subject to the charge. The most obvious jurisdiction to impose this would be that in which the parent company of the group was located, but if it refused to do so (because, for example, it was located in a tax haven), then another state could indicate that it intended to take on the responsibility for doing so.

The sum collected from the AMCT would then, in the first instance, be distributed to the jurisdictions where the group subject to the charge trades: this would be shown by their country-by-country reporting. The obvious formula for apportionment would be the one already outlined in the country-by-country reporting example in this chapter, but it would have to be adjusted if any part of the charge would as a result be allocated to a state that had a tax rate lower than the AMCT rate. In that case, the state in question would only get the sum due at their prevailing tax rate on the profits in question. In places like Cayman, this would of course mean that nothing at all would be allocated, as they have no corporation tax at present. Those sums unpaid to these low-tax states would then be put back into the pot available for distribution to states that do charge taxes on profits at rates higher than the AMCT charge, and they would receive a secondary distribution as a result. In this way, the rights of those states that want to impose taxes would be reinforced, while the places that promote tax competition would find their efforts undermined without their decision to charge no tax being challenged.

To put it another way, the sovereign right of those states that do not wish to charge corporation tax would be respected, but the obligation of companies to

pay tax on all their profits, in consideration of the benefits that they obtain from the countries that are likely to supply them, would be upheld by requiring that a minimum contribution be paid by them, irrespective of where they might record their profits.

The results of this reform are clear. Firstly, the incentive to use tax havens would be dramatically reduced. Secondly, the incentive to engage in tax competition would also be reduced. Lastly, profits would be more likely to be reported where they really arose – though in some extreme cases (such as the United States, because of its high headline tax rate) the problem might not go away entirely. For this reason, AMCT might be best seen as a step on the path towards unitary taxation, rather than a solution by itself.

Tackling the Tax Haven Suppliers

The solutions I have presented so far are aimed at eliminating large parts of the tax haven problem. They would, at the same time, make global capital accountable, and so improve the quality of markets and the rate of worldwide investment by lowering the cost of capital, and therefore see productivity and growth increase around the globe. Unfortunately, this is not going to happen overnight.

One reason for this is the massive opposition to change that has come from within the accountancy, legal, banking and wealth management professions. Their well-being has been challenged by progress in the battle against tax abuse because there can be little doubt that they have made significant profit from their exploitation of the world's tax havens. It is now time to challenge their activities.

I have already noted that banking licences for head-office operations should be made conditional upon much more extensive information exchange on the services supplied by any subsidiary or branch, wherever it might be. That automatic information exchange should not just be international: it is also essential that domestic tax abuse be confronted. If there was agreement on this issue within the G7 countries, then most of the world's banks would automatically be covered by this regulation.

Accountancy and audit are the next-easiest targets. Just four firms dominate this market – PricewaterhouseCoopers, Deloitte, EY and KPMG; in fact, if another handful of firms were also included, the vast majority of the accountants and auditors servicing most of the world's major users of tax havens could be brought under an entirely different regulatory environment. In essence, the new approach required is simple, and is not entirely dissimilar to that directed at banks. It is built upon the fact that all these firms already require regulation.

At present, all these firms legally disaggregate themselves into separate entities in the various jurisdictions in the world that they work in, despite representing themselves as if they are a single entity when it suits them to do so. The time has come for this disaggregation to be called out as the charade that it very obviously is, if the marketing of these firms is to be believed. This is a case in which economic and marketing substance must take precedence over the legal form that they choose to use. The authorities in the G7 states must therefore agree that these firms' licences to operate should be wholly dependent upon four things.

Firstly, they must be willing to cooperate with public country-by-country reporting. They have not done so to date, and in some cases have been major opponents of its introduction. This is unacceptable in the current environment. The auditors at the core of these firms are all variously licensed in ways that require them to advance the public interest, and country-by-country reporting is now clearly understood to do that. They have no right to put their clients' demands for secrecy above their professional obligations to the public, and must be reminded of that fact.

Secondly, they must be willing to disclose such tax-avoidance arrangements as they have put in place in tax havens, which have impact on other jurisdictions. Precedents for such disclosure arrangements on tax avoidance-schemes exist in countries like the UK, but so far have had only a domestic impact. This must change immediately, and an international dimension must be added to such disclosure regimes.

Thirdly, they must agree to new codes of conduct that will explicitly require all their member firms only to undertake tax planning activities that are within the spirit of the law of all the jurisdictions that might be impacted by them. There should be specific provision made in such codes that any person who breaches this obligation will be subject to professional sanction, including the loss of their qualification, and that they and their firm will also be subject to fines if they do not comply.

Finally, these firms should be required as a condition of their licences to bring pressure to bear upon their professional institutes within all the jurisdictions in which they operate to replicate these requirements in the codes of professional ethics applying to all professional accountants in those places. In combination, these changes might create real change in the behaviour of this profession.

The reform of law firms involved in tax haven activities might be a little more

difficult, partly because there is no international network of lawyers that readily overlaps between tax havens and the major domestic legal practices in the world. As a result, a variety of approaches is needed.

There has been a steady move within thinking on taxation in recent years towards what are now called ‘general anti-avoidance principles’ in taxation law. What these say is that if a lawyer inserts a clause into a contract that has the sole or main purpose of avoiding tax, then that clause should be ignored for the purpose of calculating any tax liability that is owed by the taxpayer who tried to take advantage of it. Such clauses might by themselves have the effect of potentially dissuading both lawyers and their clients from inserting such clauses into contracts; but what would really change behaviour would be the attachment of penalty clauses to such provisions. Such clauses might suggest that, if a change has to be made to a tax liability as a result of the use of a general anti-avoidance provision, then a penalty of up to 100 per cent of the tax that the taxpayer sought to avoid would be payable both by the taxpayer and by each of the firms of professional advisers who had played a part in implementing any such scheme. To ensure that such threats of penalty are really effective, the sum due must be the personal liability of any lawyer, accountant, banker or wealth manager who might be involved, if the business by which they were employed when offering advice did not make payment of the penalty due on their behalf.

In the summer of 2016, the UK suggested such a penalty regime for abuses of domestic UK tax law.¹² The idea needs to be extended internationally, and states must agree to cooperate with each other in imposing the resulting penalties on all those responsible for paying them: international tax cooperation must now be extended to cover this issue if the rule of law is to be upheld, as every country should wish it to be. In this way, the arrangements could be extended to cover the activities of so-called wealth managers, who are often based in tax havens, and who play a key role in creating abusive tax arrangements. This is not to say that all tax abuse will end if these changes are made, but there is unambiguous evidence that the 2009 changes in tax haven information exchange rules, while ineffective in themselves, did create a change in behaviour among many users of tax havens. The same outcome would be likely if properly designed general anti-avoidance principles were put into widespread use.

Political Will

Throwing a spanner into the works of all the professions linked to tax havens is a crucial step but, it has to be said that there is one final change that is necessary if tax havens are to be beaten, and it involves the creation of political will among

the governments that are currently suffering a loss of revenue to these places. Since political will is somewhat hard to define, in the rest of this chapter I suggest some possible means for doing so.

Beating tax haven (and other tax) abuse is a laudable goal in itself, but we will only know if it has worked if more tax is collected as a result. To demonstrate this requires that a country measure its tax gap over time, which very few countries do at present. The tax gap is the difference between the tax that would be paid in a country if its laws were complied with by all resident taxpayers in the way that its tax authority deems correct, and the sum that is actually paid.

The UK is just about the only country in the world to undertake such an exercise annually – and it does so very badly indeed.¹³ For example, some 32 per cent of the data it publishes is described as ‘illustrative estimates’ – in other words, made up figures without any evidential support. But at least the UK tries, even if the result should not be afforded much credibility. Only the European Union makes anything like a similar effort, and then only in relation to VAT, while other countries, such as the United States and Sweden, which have attempted this exercise, have not updated their working methods for some time (since 2010 in the case of the United States, and since 2012 in Sweden).

Some other countries, including Denmark, the Netherlands, and most recently Canada, have examined their tax gaps, but the vast majority of countries do not appear to have done so. The belief that finance ministers are serious about closing their tax gaps, whether caused by domestic tax abuse or by tax havens, is not credible when they will not even take the steps necessary to estimate their scale. Anyone concerned with tax haven abuse has to make the monitoring of tax gaps one of their central demands.

The next step is to ensure that the world’s tax authorities have the resources they need to tackle the problem of tax havens. In some countries, there are concerted efforts being made to shrink the size of tax administrations. For example, the United States shrunk the size of its Internal Revenue Service by 13,000 employees between 2010 and 2014, representing a loss of 13 per cent of its staff.¹⁴ Australia has reduced its tax staff by 4,400 in the last three years, and it has been widely reported that this has reduced its capacity to tackle multinational corporations. The UK has reduced the number of its staff employed on tax work by 35,000 since 2005, representing a reduction of some 38 per cent, and more cuts are now expected.¹⁵ While such cuts continue, there is little hope of eliminating tax abuse. The folly of cutting staffing levels within tax authorities when tax is still due must, apparently, be pointed out repeatedly.

Of course, it can be argued that some of these staff reductions are the result of the impact of computerisation, and this is certainly a factor. But there is much more to it than that. The culture of ‘productivity’ has undoubtedly been embraced by many tax authorities on the assumption that what might be good for the private sector necessarily works just as well for the state. This, unfortunately, is a misconceived philosophy.

If tax havens are to be beaten, it will be necessary to hold governments to account for the hypocrisy that appears to be inherent in almost all anti-tax haven initiatives that have so far been proposed, by organisations like the OECD. The latest example of this hypocrisy became apparent in July 2016, when the OECD published its new criteria for what are to be considered ‘cooperative’ tax regimes on automatic information exchange. These criteria are important – they may define whether or not sanctions will be imposed by the European Union and other states on certain jurisdictions.

The OECD proposed that, in order to avoid blacklisting, any state must meet two of the following three criteria:

1. The country receives a rating of ‘largely compliant’ or better from the OECD’s Global Forum, as regards the ‘exchange of information on request’ standard of transparency.
2. The country commits to adopting automatic information exchange (the so-called Common Reporting Standard, CRS), and to beginning exchanges by 2018 at the latest.
3. The country has signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCMAA), a framework for all kinds of information exchange, or has what the OECD considers a sufficiently broad exchange network providing for the exchange of information on request, as well as for automatic exchange of information.

As the Tax Justice Network pointed out in an immediate response to the proposals,¹⁶ if they are read at face value, the United States clearly fails to meet these criteria, as do Israel and Turkey, along with a relatively short list of rather more familiar culprits.

In the case of the United States, this is because it has not ratified the MCMAA referred to in the third criterion. In addition, it is only ‘largely compliant’ with the first criterion, as a result of a political fix: there are US legal entities (single-member LLCs without US-sourced income) for which there is no ownership information whatsoever in the United States, which is unacceptable in

a 'largely compliant' state, despite which the United States has been granted that status.

And that is not the end of the problem in the case of the United States, because it has also blatantly refused to comply with the commitment to engage in automatic information exchange required by the seconded criterion. It demands vast amounts of data from other countries under the terms of its Foreign Accounts Tax Compliance Act of 2010, but steadfastly refuses to supply any in exchange; and yet the United States is apparently considered compliant, because it is named in a footnote in the relevant OECD document, and on the basis of this fudge is deemed to comply when it obviously does not. If the effort to beat tax haven abuse is to be credible, it must not resort to this level of manipulation. Such hypocrisy has to be identified for what it is, and ended, if tax haven abuse is to be beaten.

The aim of pursuing these goals is unambiguous: to remind politicians, tax authorities and other agencies that the goal of defeating tax haven abuse is not just about passing well-intentioned laws, but always to make sure that these laws were applied. If tax gaps are monitored by well-resourced tax authorities, which really understand what tax is for and cooperate in open and transparent ways, then we might really beat tax haven abuse, and build a better society as a consequence.

CHAPTER 7

The Post–Tax Haven World

It is hard to imagine a post–tax haven world. For anyone who has only lived in the era of neoliberalism and globalisation that has existed since the 1980s, tax havens have been a continuing and pervasive presence impacting on almost everything large business has done, and much of what government could do. To consider a world without tax havens is to imagine a place that few have really experienced. But it is necessary to make the effort if the continuing struggle of beating tax haven abuse is to be vindicated.

No one, of course, can be completely confident about their predictions for the future, and I am no exception. It is therefore appropriate to note the basis on which I make my suggestions. In the introduction to this book, I said that tax havens have had three goals: to undermine the rule of law, to prevent democratically elected governments from delivering the policies that their electorates might expect, and to increase the concentration of both income and wealth. Each of these goals has been achieved behind a veil of secrecy that has been expressly designed to prevent what is happening from becoming apparent, and to deny the data necessary in order for governments and markets to make informed decisions.

In a world without tax havens, therefore, I do assume that the rule of law will be improved, democracies will better reflect the will of their electorates, and income and wealth inequality will fall. This will be possible because transparency will increase, and with it the quality of decision-making by governments, regulators, investors, businesses, consumers, employees and civil society will improve.

I am not saying that transparency is a panacea: it is not. There are occasions when we all know that privacy is important, and I explicitly recognise that fact in this book. But informed decision-making requires data. When and how to deal with corporations and other entities created by law is one such decision, especially if those entities already have the economic odds stacked in their favour because they enjoy limited liability. There are other cases in which this is also true. Knowing, for example, that a candidate for political office has made

use of tax havens would seem to be important: the prime minister of Iceland had to resign in 2016 following revelations in the Panama Papers that his family had made use of such facilities. The politician may not benefit from transparency in such a case, so it is not a universal good: the gain to the electorate at large outweighs, I think, the cost to the tax abuser in such cases.

This is the basis for my reasoning, coupled with two further assumptions. The first is that democracy is, as Winston Churchill had it, ‘the worst form of Government except [for] all those other forms that have been tried from time to time’.¹

Second, I assume that society will want to continue to organise itself in what is best described as a mixed economy, in which government and private businesses cooperate, sometimes in an uneasy tension, to meet the needs of people living in a community. This necessarily means that effective, open, fair and efficient markets are beneficial. I am aware, of course, that some think there are better ways of organising economies, but, rather like democracy, though mixed economies may have their faults, they seem to be better than all other alternatives currently available. This makes the effort to improve them worthwhile.

Markets would be fundamentally different without the existence of tax havens. This is because markets would operate in the way that those who argue they are socially desirable suggest is necessary. This will be a result of the massive increase in transparency that the ending of tax haven practices will deliver.

Among smaller companies, the publication of beneficial ownership data and significantly enhanced accounting information will reduce the risk to many in undertaking trade in this sector. Businesses should survive for longer, make more money, and prosper for longer as a result. Transparency will not guarantee success to any business, but it will reduce the risk that another business will bring it down by defaulting on its debt. It will also reduce the chance, that another business will be able to undercut it because it does not pay its taxes, and that other businesses can grow faster because they use tax-free, illicitly obtained funds to invest. Level playing fields are meant to provide the foundation of fair markets: abolishing tax havens will help deliver them.

At the other end of the market, the introduction of country-by-country reporting for multinational corporations, which many now think is inevitable, will see a huge increase in transparency among publicly quoted companies. This reporting will revolutionise the way in which major multinational corporations work: a policy of artificially relocating profits to tax havens will be readily

apparent as a result of such reporting, and, as a result, few will take the risk of doing so. Shareholders already tell me they will not tolerate such policies if they become aware of them.² Nor will the public, when it comes to consumer-facing companies.³ The reaction of Starbucks to its poor tax publicity, which led it to make additional voluntary tax payments in the UK, may have been extreme, but indicates the power consumers have on this issue in some markets. The ramifications of this phenomenon are significant and wide-ranging.

In the first instance, there may well be a period during which some multinational corporations appear to pay more tax. That will be because those companies will be going through a process of adjustment in which past abuses are being ironed out of their tax structuring. They may see a fall in their stock market value as a consequence. On the other hand, those companies that require no such tax risk correction are likely to see a corresponding increase in value: they will represent a lower-risk investment for some time to come. Awareness that tax abuse correlates with risk will remain a market phenomenon, until the point when all companies have reacted to country-by-country reporting.

While that adjustment process is going on, some other businesses will see a significant change in the demand for their services: as the demand for tax haven transactions falls, so too will the tax haven activities of the big four accountancy firms decline considerably. It is very likely that they will pull out of many such locations as a result. For the big four, the immediate benefits will be apparent: the young graduates on whom they are dependent for a continuing supply of new talent will once more be able to consider these firms as a career option to which some element of shame is no longer attached.

Just as important, though, will be the increase in trust in these firms and the opinions that they offer, with resulting benefits to their clients. When confidence in big businesses and those who manage and advise them is at an all-time low because of the overwhelming evidence that so many of them have been seeking to free-ride on the tax system, at the expense of the majority in any society the importance of this change in the relationships of trust that underpin markets cannot be overstated. Trust is the bedrock of any society, as it is of markets themselves. The fact that trust has been systemically undermined by tax haven activity for at least thirty-five years has led to a corrosive atmosphere in which many now doubt that the business community is fit to play its part in a mixed economy. Given that mixed economies have been the foundation of prosperity since the Second World War, this is a matter of some concern.

The benefits that might arise from an increase in trust would be very hard to measure. Some might be relatively tangible: the development of more successful

partnerships between the public and private sectors is one potential outcome. When so many of these arrangements have in the past been associated with some form of tax abuse, this would be welcome. The days when most of the premises used by the UK's HMRC are owned by an offshore company should be consigned to the past.⁴

Other returns to increased trust might arise solely within the business community, whose members will also have a greater ability to appraise who they wish to partner with. When financial stability is a key factor in many business relationships and tax risk can jeopardise it, it is important to know that a corporate partner has low tax risk built into its structure. There will, of course, be some losers, who will not win contracts because their arrangements do not stand up to scrutiny; but in the longer term, there are likely to be significant gains.

Investment markets will also change as a consequence. This will be partly because the data made available by country-by-country reporting will permit better analysis of the geopolitical and commercial risks inherent in the chosen structures of multinational corporations, meaning that some might appear more attractive than at present and others less so, whether or not they have been abusing tax regulations. The ability to appraise this risk, and the fact that tax abuse in these companies should have been reduced, will then mean that investment might then be undertaken on the basis of which company is best able to actually make a return on capital whilst meeting market needs, rather than from undertaking high-risk tax or market arbitrage activity that is hidden behind a veil of secrecy. In other words, there is a real chance that markets will focus on such priorities as making a return from meeting consumer need, rather than a company's ability to abuse tax regulations.

This shift will have real economic consequences. Since the risk of investing will be reduced by enhanced transparency, the overall rate of return that will be required by financial markets will fall. In the short term, this might increase the value of shares, which should appeal to pension funds. In the longer term, the lower cost of capital will be reflected in the price that companies have to pay for the funds they use, and this will mean that more of the investments they wish to make should be affordable. In turn, this should lead to more funds being invested in productive activities. If that is the case, there should be an increase in labour productivity as a consequence, and this should flow into an increase in wages, and therefore in GDP. If such consequences resulted from increased transparency, it would deliver an almost universal gain.

Beating tax havens will allow markets to work as they should. The fight

against tax havens is thus part of the challenge of saving capitalism from itself.

Government Without Tax Havens

The post-tax haven world will also see a change in the relationship between governments, businesses, and taxpayers. Firstly, this will be because all forms of tax abuse will be much harder to undertake without tax havens. Perhaps as importantly, the increased transparency that will result from the abolition of tax havens will mean that there should be an increased prospect of trust in tax systems as a whole because the chances of tax cheating will have diminished, and it is frequently said by those who cheat that they do so because they think others have got away with abuse. This will affect three groups of stakeholders.

For individuals, the new disclosure regimes governing tax havens are likely to mean that tax authorities will have an increased confidence in the data that they are supplied with by taxpayers. Evidence from the United States has shown that, when a taxpayer knows that the government is supplied with data on a source of income that they earn by an independent third party, the likelihood that they will declare that income increases significantly.⁵ Two things are likely to happen as a result. First, taxpayers will spend less time trying to hide their income; and second, tax authorities will spend less time auditing taxpayers' affairs, because they will have less reason to do so. Consequently, both parties are likely to win.

This will have further consequences. Since tax compliance is likely to increase if tax haven abuse is defeated, a government's ability to use tax rates and allowances to achieve social and fiscal goals will also increase, because the targeting of reliefs, allowances and incentives will improve. The result will be that a government will have more effective control over the macro-economy, as well as an enhanced ability to focus resources on those in need, knowing that, if this involves redistribution, those who are expected to pay will be more likely to do so.

The ramifications will also spread beyond the domestic economy. Closing down tax havens will, for example, remove a lot of tax competition (though not all of it), and will as a result reduce the downward trend in corporation tax rates. This will raise government revenues and redress the balance between individual and corporate taxpayers, and thus have a favourable impact on income and wealth distribution.

On the subject of wealth, the impact is likely to be significant. Precisely because wealth would no longer be able to flee to a tax haven at the first hint of a tax demand, the yield from all wealth-related taxation would be likely to

increase considerably in a post-tax haven world. This is not because the design of such taxes will necessarily change that much, but because, for the first time, it will be possible to secure the data needed to assess such taxes either as a result of automatic information-exchange systems operated with tax havens, or simply because wealth will no longer go to such places.

When the effects of these changes are combined, the increased tax yields that will result in some areas – such as wealth, corporate and business taxes – might mean lower taxes for a great many other people. This is likely to be of greatest benefit to those on lower incomes. The economic multiplier effect of abolishing tax havens – that is, the relationship between the cost of the tax cut that their abolition may permit and the resulting sum injected into the economy by way of additional spending – is likely to be quite high, because savings rates are relatively low for those on lower incomes.

But there will be other consequences, such as reduced demand for government services from those on lower incomes. This virtuous cycle of growth might be created at the expense of those in higher income and wealth brackets, and of larger companies, but widely accepted research has shown that even they might benefit from reductions in overall levels of inequality, through the growth that it will generate.⁶ It can be quite plausibly argued that all parties will win from this process.

The situation of developing countries in a post-tax haven world deserves special mention. As I have noted, no one can say with certainty how much has been lost to tax havens by developing countries, because the secrecy that tax havens supply obscures the data that is needed to assess the true scale of the loss. What is clear, however, is that these nations have suffered disproportionately compared to other states. This is, firstly, because they are much more dependent on highly mobile corporate tax revenues for their overall income than most developed countries. But, secondly, since wealth concentration in these countries is so high, the scale of loss from the activities of relatively few citizens who might abuse tax havens to hide their income and wealth has been colossal. The result is that, while we can be sure that these countries will not recover all that they have lost, they do stand to gain considerably.

Depending upon the scale of success, it is possible to predict that these countries might cease to be aid-dependent if the tax haven era is brought to an end. For the first time, the dichotomy between developed and developing countries, with all the values with which those terms are laden, might become irrelevant. The implication of dependency would be removed. Political independence deriving from economic autonomy may become achievable for

many formerly developing nations. The psychological, social and economic impacts of this are incalculable.

The prospect of creating tax systems that are both truly effective and democratically accountable, alongside the possibility of having a system in place that reduces corruption, is very real indeed. If these processes speed the flow of resources towards necessary projects within such states, the prospect of economic transformation is high. And all of that will become possible because the top-down corruption that tax havens have fed, which has given rise to abuse throughout public and commercial life in far too many countries, will have been cut off at its roots. The opportunity for corrupt funds to remain forever hidden will be eliminated if tax haven activity is shattered by a new era of transparency. In short, in many countries the end of the tax haven era might deliver hope where it has been hard to find.

Tax Havens in the Post-Tax Haven Era

There remains the questions of what will happen to the finance industry in tax havens in a post-tax haven world, and where that might leave the places that have made this activity fundamental to their economies.

The reality is that there may be no more than a few hundred thousand people working in tax haven activities around the world. Jersey, for example, is a place that seems dependent upon the financial industry. The island claimed that some 23 per cent of all its employees, or 13,010 people, worked in this sector in December 2015. Many of these people were not from the local population: indeed, most of the representatives of Jersey's finance industry appear to be UK expatriates, and the same trend can be found in many other tax havens. If the tax haven activity of places like Jersey were to close down, it can be assumed that many of these people would leave for good.

Tax haven enthusiasts in Jersey have long told those who have objected to their practices that 'there is a boat in the morning', with the clear implication that if the objector does not like what is happening, then they are free to leave. The ending of tax haven activity might simply change who catches the boat: it will be the accountants, lawyers, bankers and wealth managers who will be looking to work elsewhere. So the financial services industry in many tax havens will not collapse, but simply vaporise. Many working within it at the time will discover that 'elsewhere' might, after all, have a very real meaning for them when they leave in pursuit of it.

What is unlikely is that they will find jobs in the financial services sector of those states that have exploited tax havens. For example, even though the City of

London and the UK's tax havens may have been inextricably linked for more than half a century, it is very unlikely that there will be work in the UK for most of those leaving those tax havens. This is because the City of London will very probably itself shrink as result of tax haven activity coming to an end. This decline can be initially explained in purely economic terms. Whatever claims tax havens might have made, they have never added value to the world economy: rebooking transactions that really take place elsewhere could never have done that.

As a result, the only way in which the tax haven industry has ever been able to sustain itself has been by capturing part of the proceeds that its clients have secured for their own personal gain by avoiding tax and other regulations through the use of secrecy jurisdictions. If those clients are no longer able to secure such savings, and their wealth shrinks, as I predict it will, then the financial services sector will no longer be able to free-ride on the back of the abuse it enables its clients to partake in. The inevitable result will be that this sector's activities in places like London and New York will shrink.

In some cases, this might mean that whole financial market sectors may close. For all practical purposes, for example, the entire hedge fund industry is recorded as taking place offshore, even if it is largely managed from London and New York. Whether it can survive with onshore regulation and onshore taxation is a moot point: what is certain is that the financial services world will look very different once tax haven activity has been shut down – and it will be all the better for it, since its focus will be upon the efficient allocation of capital, not on speculation.

That process of allocating capital will involve fewer people. Closing tax haven activity will therefore have consequences in many countries that have preferred not to think of themselves as tax havens, including the UK, the United States, the Netherlands, New Zealand (where there is a thriving trust industry), and elsewhere. But this development will be beneficial. The Tax Justice Network has described the impact of tax haven-linked activities on these economies as a 'finance curse'. This means that tax haven-linked activity has frozen out other more productive activity either by overpaying those who could be more usefully engaged elsewhere or by so altering their exchange rates that industrial and service activities located in these places have had real difficulty competing in international markets.

If the activities of the finance industry in these places were curtailed, there would be three consequences. In the first instance, there would be far fewer people working in the sector, and they might not be as well paid. The rest would

have to go looking for work elsewhere, and might, even if paid less, add more value to the economy as a whole. The impact of this trend will become particularly notable when fewer graduates who might have real potential to offer in productive employment are sucked into the financial services sector.

The next impact will be that there will be less hot money flowing into these countries, and this will have an impact upon their exchange rates; other economic activity in these countries will, as a consequence, become more attractive. The opportunity available to those formerly in the financial services sector to secure gainful employment, albeit not at the salaries they once enjoyed, will therefore increase.

Lastly, there is no reason to assume that these changes will result in a fall in GDP in countries like the UK, which will be impacted in these ways, or that they will suffer a significant decline in their tax revenues, or a loss in their ability to provide fundamental public services. In fact, the exact opposite might prove to be the case when the distortions that tax haven-linked activity have created are eliminated from their economies.

But the situation for those left in tax havens after the finance industry has evaporated may be different. It cannot be pretended that life in such places will be as easy as it has been in the past. This is simply to recognise the fact that, throughout history, when an industry has come to the end of its useful life, whether for economic or moral reasons (think of slavery), a period of disruption follows in which the places that have been dependent upon it adjust to their new economic circumstances. This will be inevitable in many of the smaller jurisdictions that have relied on tax haven activity to build and even grow local employment. There is no realistic prospect of such places enjoying a sudden rush of new administrative jobs likely to replace those that are lost.

No amount of emotional blackmail from tax haven locations claiming that they are the victims of the process of ending tax haven activity should be succumbed to – partly because it is simply not true. It is, after all, the tax havens that have been imposing economic harm on other states for decades. Moreover, such appeals would be little different from a proven criminal appealing from the dock that they cannot possibly be given a prison sentence because who, in that case, will cook supper for their children that evening. No judge would consider such an appeal to be reasonable, and nor should we permit tax havens to continue their activities simply because they might eventually have a lower overall income as a result.

What this will inevitably mean is that some of those local people who have stayed in places like Jersey because of the employment opportunities that the

finance industry has offered will have no choice but to do what so many from small economies have had to do throughout history, which is to seek their fortunes elsewhere. It must be stressed that there is nothing unusual or oppressive about this: the same pattern of economic relocation is to be seen within many countries when a large source of local employment has ceased to be competitive for either technical or economic reasons. It is generally accepted that this is a fact of economic life: the impact of the change can be cushioned temporarily, but must be accepted in the longer term.

That said, there are measures that the states that will benefit from the closure of tax haven activity can take that will make sense both to speed this process and to lessen the international stress arising from it. Offering financial support to the governments of smaller tax havens as they plan the necessary changes to their economy is one such measure; many will be short of revenue while this change takes place. Providing direct aid to new industries may also be appropriate. Some tax havens that have developed excellent communications infrastructure could, for example, be hosts of new universities. If they are located in attractive places – as many are – that might add to their marketing appeal. Alternatively, assistance for those wishing to relocate with, for example, favourable visa terms may also be appropriate, and help to ease social distress.

Direct support for those who stay may also be required. For example, it is highly likely that property prices in many tax havens will fall considerably as a result of the end of their activity in the financial services sector. This will be the inevitable consequence of a population exodus, but will leave many local people who stay behind with mortgages that considerably exceed the value of their properties. The governments of former tax havens must not hesitate in acting to support their local populations in these cases (hard as this might be for many of them, after what will often have been a lifetime of favouring the financial services sector). This could be done, for example, by making it illegal for any bank to make a claim on a mortgage that exceeds the market value of a property in those tax havens impacted in this way. I make this suggestion simply to show that the majority of such problems can be solved. The same will be true of what might well prove the biggest problem of all – namely, ensuring that the pensions of former tax haven civil servants, on whose agreement any transition will be dependent, will be paid. There is no way around this other than for the G7 and EU to settle these contracts: it will be worth their while to do so.

All this being said, whatever happens, the future economic prospects of the world's better-known tax havens will look very different after the transition to a post-tax haven era from how they look today. The most telling sign that this

change might already be in progress came in the summer of 2016, with reports that maybe 75 per cent of deposits at a bank in Belize had been withdrawn because of the prospect of new automatic information-exchange arrangements being imposed in that jurisdiction.⁷ It matters little whether automatic information exchange will work: the fact that people think it might is already changing behaviour. Many large companies have told me the same thing: they are simplifying their corporate structures precisely because they do not want to face the risk of criticism if country-by-country reporting does go public, and are consequently closing down tax haven subsidiaries as fast as they can.

The inescapable fact is that the tax haven world is in inexorable decline as a consequence of these changes in behaviour. It is still in need of a good shove, based on the recommendations included in this book, for closure to finally happen, but happen it will. The only variable left to consider is how long it will be before mass dissatisfaction among electorates forces politicians to act as a necessary condition of retaining their grip on power.

My suggestion is that, in the face of political populism on both the left and the right that has enthusiastically embraced anti-tax haven sentiment as a key part of its core offering, many more mainstream politicians will smell the coffee, and jump with ever-increasing fervour on the pro-transparency and anti-tax haven political bandwagon. The process that Gordon Brown began in April 2009, when he announced at the London G20 Summit that the beginning of the end of tax havens was underway, will eventually prove to be inescapable, and all mainstream politicians will realise that they have to deliver on this issue if they are to meet the reasonable demands of their populations for greater economic justice as a condition for continuing political support.

Wise tax haven politicians will read the runes and realise that those who move first will suffer the least harm. Based on past experience, the Isle of Man, which has always had astute political antennae on such issues, may well be a place to watch for signs that this is happening; but it is already apparent that sentiment is changing. My own discussions with tax haven politicians suggest that they realise they are already living on borrowed time.

This chapter has outlined a plan for change to tackle tax havens. It has also suggested that, if those politicians who have long been sympathetic to tax havens really value democracy, vibrant mixed economies and effective markets, they will support this process of change. Social pressure will require no less, and I am optimistic that it will happen. The alternatives are too uncomfortable to contemplate. And that, in itself, is a basis for optimism.

Society in the Post–Tax Haven Era

Finally, what of the social impacts of the post–tax haven era?

Since they were first used in the middle ages, trusts have always been a deliberate weapon for preserving the interests of a few while subverting the objectives of society at large; their aim has always been to concentrate the ownership of wealth. Tax havens simply gave the world’s trust administrators a new and unforeseen opportunity to extend the scope of their activities, but their purpose never changed. The consequence is all too apparent: as successive data reporting suggests that the wealthiest have become wealthier while those on average or lower rates of pay have struggled to see any increase in their well-being for a very long time, societal stresses have increased. An awareness that tax havens have contributed to this increasing wealth divide is growing. In a post–tax haven world there will be an inevitable move to counter this growing disparity in economic outcomes.

Tax reform will offer one way of tackling this issue. This will come partly from equalising the tax rates charged on earned and unearned income, which are at present heavily biased against those who work. This situation has arisen because governments have been persuaded, or have persuaded themselves, that if they are not generous on the taxation of capital it will simply move somewhere else – which usually means to a tax haven. It might still do so in a post–tax haven world, but automatic information exchange will mean that tax authorities will still be able to track it, and thus keep it within their tax net if its owner is in fact resident in their jurisdiction. It is only the tax abuse, largely orchestrated from tax havens, and permitting this disparity in tax rates, that has so heavily biased the tax system in favour of the wealthy.

According to the same logic, tax rates on capital gains may also become aligned with those on income: economically, there is no justification at all for any disparity between the two, but such differentials have been commonplace because of a fear that capital might flee to tax havens if they did not exist.

Another potential development might be the emergence of real wealth taxes. These might be charged as a proportionate sum on declared wealth (with substantial penalties, including forfeiture of assets at their under-declared value to encourage proper compliance), or they might be in the form of new taxes on gifts, whether upon death or during lifetime. In either case, the chance of capital fleeing to avoid such taxes will be dramatically reduced in the post–tax haven world.

The introduction of land-value taxation may also feature in this new environment, because the tracking of land ownership will be easier when the

opacity of offshore ownership can be removed from the list of problems any such tax faces at present.

The appropriate balance of these potential new and changed taxes will be for each jurisdiction to decide upon, but it is highly likely that wealth, as the only tax base that is currently growing steadily, will be increasingly made subject to tax. The first reason to do this will be to tackle inequality and its consequences. A second will be to correct for the past under-taxation of wealth. Finally, the wealthy have by far the largest stock of private property rights, and they should make an appropriate contribution to the state for all it does to protect those rights. They do not do so at present.

The post-tax haven world should thus be a place of increasing economic equality. This is not the place to reiterate all the social, health, economic, educational and other opportunities that increasing equality is known to give rise to, because others have done that. Nor is this the place to point out all the benefits that reduced tension in society might deliver. But saving democracy seems to be one of the most significant of these, and is worth exploring.

As awareness has grown of the apparent impotence of governments in the face of wealth-accumulation assisted by the opacity afforded by tax havens, the faith of many people in the democratic process, in parliaments and in government appears to have declined, and populism of the left and right has flourished as a consequence. Faith in the power of the ballot box has also dissipated – and with good reason. A persistent assault on the power of governments to levy taxes has been systematically waged from the world's tax havens since the early 1980s. This attack has been consciously coordinated, and has had some success. The cost is now plain to see: the process of democratic government on which Western capitalism is based has been systematically undermined. Bizarrely, this has been done by those purporting to promote a particular form of market activity.

It is not just the power to tax that has been undermined; as we have seen, trust is also being eroded. But so too is the rule of law. Secrecy jurisdictions have deliberately challenged the rule of law in a profoundly aggressive fashion: their aim has been to prevent other states from imposing their chosen regulations, including those on tax. While libertarians like to claim that all taxation is theft, they forget that it is in fact a property right like any other, created by the same parliamentary legal process that invariably supports all private property rights, and enforced through the same courts to which a citizen may resort if they think their own claims to their property have been violated. The extra-territorial challenge from a tax haven to the right of a state to uphold

its own law is thus not an action to defend liberty, but is instead akin to a challenge to the right of that state to self-determination. Aggression of this sort has not uncommonly been described as war, and that term is appropriate in this case. It is tax war, and not tax competition, in which tax havens are engaged.

Such war has consequences: trust has been eroded in the system of representation and the structure of society as we know it as a result of the actions of tax havens. When populist politicians in various states hint that extra-parliamentary action may be required to rein in the activities of multinational corporations that abuse tax regimes, they are implicitly suggesting that the power of the state has been so eroded by the ability of these companies to float free of regulation through their use of tax havens that the democratic process and the laws it creates may no longer be enough to curtail their activities. If democracy is to survive, therefore, tax havens must be brought to an end.

It is my hope that I have set out some ways in which this might be achieved. Many of these proposed steps can be undertaken by individual nations acting in isolation – that is even possible for unitary taxation, for example. But there is no doubt that international cooperation between those states that want to proclaim the right of the state to govern global capital would be helpful, not just to the state bureaucracies involved, but to their entire populations – including even the wealthiest among them, whose well-being, if not their measurable wealth, would increase as a consequence.

I have suggested many of the outcomes that I think such a process might give rise to. If it also resulted in increased engagement with and faith in the democratic process, that might be the most important victory of all. Tax havens have challenged the freedoms of us all. Clear evidence that faith in democratic processes had been restored would be the surest indication that their stranglehold on the modern nation-state had been broken.

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Appendix 1: Financial Secrecy Index

Initial list of tax havens requiring investigation by the Tax Justice Network for its first Financial Secrecy Index in 2009

Rank	Location	<i>Int'l</i>										Total	
		<i>Bureau Fiscal Docs 1977</i>	<i>Charles Irish 1982</i>	<i>Hines Rice 1994</i>	<i>OECD 2000</i>	<i>IMF 2000</i>	<i>FSF 2000</i>	<i>FATF 2000/02</i>	<i>TJN 2005</i>	<i>IMF 2007</i>	<i>STHAA 2007</i>		<i>Low-TaxNet 2008</i>
1	Bahamas	1	1	1	1	1	1	1	1	1	1	1	11
2	Bermuda	1	1	1	1	1	1	1	1	1	1	1	11
3	Cayman Islands	1	1	1	1	1	1	1	1	1	1	1	11
4	Guernsey	1	1	1	1	1	1	1	1	1	1	1	11
5	Jersey	1	1	1	1	1	1	1	1	1	1	1	11
6	Malta	1	1	1	1	1	1	1	1	1	1	1	11
7	Panama	1	1	1	1	1	1	1	1	1	1	1	11
8	Barbados	1	1	1	1	1	1		1	1	1	1	10
9	British Virgin Islands	1	1	1	1	1	1	1	1		1	1	10
10	Cyprus	1		1	1	1	1	1	1	1	1	1	10
11	Isle of Man	1		1	1	1	1	1	1	1	1	1	10
12	Liechtenstein	1	1	1	1	1	1	1	1		1	1	10
13	Netherlands Antilles	1	1	1	1	1	1		1	1	1	1	10
14	Vanuatu	1	1	1	1	1	1		1	1	1	1	10
15	Gibraltar	1		1	1	1	1	1	1		1	1	9
16	Hong Kong	1	1	1		1	1		1	1	1	1	9
17	Singapore	1	1	1		1	1		1	1	1	1	9
18	St Vincent & Grenadines	1		1	1	1	1	1	1		1	1	9
19	Switzerland	1	1	1		1	1		1	1	1	1	9
20	Turks &	1	1	1	1	1	1		1		1	1	9

	Caicos Islands											
21	Antigua & Barbuda	1		1	1	1	1	1	1	1		8
22	Belize			1	1	1	1	1	1	1	1	8
23	Cook Islands			1	1	1	1	1	1	1	1	8
24	Grenada	1		1	1	1		1	1	1	1	8
25	Ireland	1	1	1		1	1		1	1	1	8
26	Luxembourg	1		1		1	1		1	1	1	8
27	Monaco	1		1	1	1	1	1	1		1	8
28	Nauru	1	1		1	1	1	1	1	1		8
29	St Kitts & Nevis			1	1	1	1	1	1	1	1	8
30	Andorra	1		1	1	1	1		1		1	7
31	Anguilla			1	1	1	1		1	1	1	7
32	Bahrain		1	1	1	1		1	1			7
33	Costa Rica	1	1			1	1		1	1	1	7
34	Marshall Islands			1	1	1	1	1	1		1	7
35	Mauritius				1	1	1	1	1	1	1	7
36	St Lucia			1	1	1	1	1	1	1		7
37	Aruba				1	1	1		1	1	1	6
38	Dominica			1	1	1		1	1	1		6
39	Liberia	1	1	1	1				1		1	6
40	Samoa				1	1	1	1	1	1		6
41	Seychelles	1			1	1	1		1		1	6
42	Lebanon			1		1	1	1	1			5
43	Niue				1	1	1	1	1			5
44	Macau			1		1	1		1			4
45	Malaysia (Labuan)					1	1		1		1	4
46	Montserrat			1	1	1			1			4
47	Maldives			1	1				1			3
48	United Kingdom		1						1	1		3
49	Brunei	1									1	2
50	Dubai								1		1	2
51	Hungary							1	1			2
52	Israel							1	1			2
53	Latvia									1	1	2
54	Madeira								1		1	2
55	Netherlands	1							1			2

56	Philippines	1		1		2
57	South Africa	1			1	2
58	Tonga		1		1	2
59	Uruguay				1	1
60	US Virgin Islands		1		1	2
61	USA	1			1	2
62	Alderney				1	1
63	Anjouan					1
64	Belgium				1	1
65	Botswana					1
66	Campione d'Italia				1	1
67	Egypt			1		1
68	France	1				1
69	Germany				1	1
70	Guatemala			1		1
71	Honduras	1				1
72	Iceland				1	1
73	Indonesia			1		1
74	Ingushetia				1	1
75	Jordan		1			1
76	Marianas				1	1
77	Melilla				1	1
78	Myanmar			1		1
79	Nigeria			1		1
80	Palau		1			1
81	Puerto Rico	1				1
82	Russia			1		1
83	San Marino		1			1
84	Sao Tome e Principe				1	1
85	Sark				1	1
86	Somalia				1	1
87	Sri Lanka	1				1
88	Taipei				1	1
89	Trieste				1	1
90	Turkish Republic of Northern Cyprus				1	1
91	Ukraine			1		1

A full explanation of the methodology used and the sources of data is available at R. Murphy, 2009, *Where Are The World's Secrecy Jurisdictions?*, London: Tax Justice Network available at http://www.financialsecrecyindex.com/Archive2009/Notes%20and%20Reports/SJ_Mapping.pdf

Appendix 2: Tax Justice Network Assessment Criteria

The current criteria for assessment used by the Tax Justice Network Financial Secrecy Index *Knowledge of the beneficial ownership of entities using the location*

1. Is there banking secrecy?
2. Are trusts and foundation details available for scrutiny on a public register at low cost?
3. Is the beneficial ownership of companies known to the jurisdiction?

Corporate transparency

4. Is information on the ownership of companies available on a public register that anyone might inspect at low cost?
5. Are the accounts of all companies available on a public register that can be inspected at low cost?
6. Does the jurisdiction require that companies include country-by-country reporting in their accounts?

Tax and financial regulation

7. Are all people making payments of interest and dividends to non-resident people required to report this to the jurisdiction's tax authority?
8. Does the jurisdiction's tax authority have a unit dedicated to reviewing the affairs of high-net-worth individuals, and does it use standardised systems ensuring that information they receive regarding a taxpayer's affairs are automatically matched to the right file? This is, in effect, a measure of the tax authorities' likely efficiency in tackling tax abuse.
9. Are the worldwide income and capital gains of tax resident people and companies in the jurisdiction subject to taxation within it? This is important because if they are not then tax abuse is much easier to arrange.

10. Does the jurisdiction prevent the use of entities likely to be of use for serious tax avoidance?

International standards and cooperation

11. Does the jurisdiction have an effective anti-money laundering regime?

12. Is the jurisdiction committed to full automatic information exchange with other countries to ensure that those places receive the data they need to check that their own tax resident people are appropriately charged tax arising from the income earned in the jurisdiction supplying the data?

13. Does the jurisdiction have sufficient double tax agreements with other countries so that most other places will have the ability to ask the jurisdiction for further information relating to the income or gains of one of their tax resident people arising in the jurisdiction?

14. Has the jurisdiction signed up to international agreements to beat tax abuse, organised crime and money laundering?

15. Does the jurisdiction actually cooperate on money laundering issues?

A full explanation is available on the Tax Justice Network Financial Secrecy Index website.

Appendix 3: Secrecy Index Rankings

Compiled by the Tax Justice Network

<i>RANK</i>	<i>Jurisdiction</i>	<i>FSI Value</i>	<i>Secrecy Score</i>	<i>Global Scale Weight</i>
1	Switzerland	1,466.1	73	5.625
2	Hong Kong	1,259.4	72	3.842
3	United States	1,254.8	60	19.603
4	Singapore	1,147.1	69	4.280
5	Cayman Islands	1,013.2	65	4.857
6	Luxembourg	817.0	55	11.630
7	Lebanon	760.2	79	0.377
8	Germany	701.9	56	6.026
9	Bahrain	471.4	74	0.164
10	United Arab Emirates: Dubai	440.8	77	0.085
11	Macao	420.2	70	0.188
12	Japan	418.4	58	1.062
13	Panama	415.7	72	0.132
14	Marshall Islands	405.6	79	0.053
15	United Kingdom	380.2	41	17.394
16	Jersey	354.0	65	0.216
17	Guernsey	339.4	64	0.231
18	Malaysia (Labuan)	338.7	75	0.050
19	Turkey	320.9	64	0.182
20	China	312.2	54	0.743
21	British Virgin Islands	307.7	60	0.281
22	Barbados	298.3	78	0.024
23	Mauritius	297.0	72	0.049
24	Austria	295.3	54	0.692
25	Bahamas	273.1	79	0.017
26	Brazil	263.7	52	0.678
27	Malta	260.9	50	0.990
28	Uruguay	255.6	71	0.037

29	Canada	251.8	46	1.785
30	Russia	243.3	54	0.397
31	France	241.9	43	3.104
32	Isle of Man	228.6	64	0.068
33	Liberia	218.2	83	0.006
34	Bermuda	217.7	66	0.042
35	Cyprus	213.9	50	0.518
36	Liechtenstein	202.4	76	0.010
37	Ireland	187.4	40	2.313
38	Belgium	181.2	41	1.863
39	Guatemala	177.2	76	0.007
40	Israel	173.8	53	0.166
41	Netherlands	168.4	48	0.322
42	Chile	166.7	54	0.120
43	Saudi Arabia	163.9	61	0.037
44	Australia	148.1	43	0.586
45	India	148.0	39	1.487
46	Philippines	146.1	63	0.020
47	Vanuatu	142.8	87	0.001
48	Ghana	139.2	67	0.010
49	Korea	124.3	44	0.302
50	US Virgin Islands	118.2	69	0.004
51	Samoa	117.5	86	0.001
52	Mexico	117.1	45	0.211
53	Norway	110.7	38	0.731
54	New Zealand	109.4	46	0.129
55	Gibraltar	109.3	67	0.005
56	Sweden	100.9	36	1.006
57	Aruba	99.5	68	0.003
58	Italy	98.7	35	1.218
59	Latvia	92.8	45	0.113
60	Belize	92.5	79	0.001
61	South Africa	90.9	42	0.203
62	Botswana	90.6	71	0.002
63	Anguilla	89.4	69	0.002
64	St Vincent & the Grenadines	79.7	78	0.000
65	Antigua & Barbuda	79.6	81	0.000
66	Spain	77.5	33	1.090
67	Costa Rica	74.9	55	0.010
68	Turks & Caicos Islands	72.5	71	0.001
69	St Kitts and Nevis	68.4	78	0.000

70	Curacao	67.8	68	0.001
71	Iceland	67.1	46	0.035
72	Seychelles	60.8	71	0.000
73	Slovakia	60.1	50	0.011
74	Macedonia	59.5	66	0.001
75	Poland	57.2	36	0.172
76	Monaco	53.7	74	0.000
77	Estonia	52.9	44	0.023
78	Portugal (Madeira)	52.5	39	0.063
79	St Lucia	51.7	83	0.000
80	Brunei Darussalam	47.4	83	0.000
81	Czech Republic	44.2	35	0.105
82	Grenada	42.2	76	0.000
83	Denmark	38.2	31	0.219
84	Hungary	37.3	36	0.052
85	Greece	37.2	36	0.046
86	San Marino	33.3	70	0.000
87	Andorra	27.3	77	0.000
88	Slovenia	22.5	34	0.019
89	Dominica	21.3	76	0.000
90	Finland	19.4	31	0.025
91	Cook Islands	17.8	76	0.000
92	Montserrat	10.9	67	0.000

Dark grey: UK Overseas Territories (OTs) and Crown Dependencies (CDs) *Light grey:* British Commonwealth territories
Financial Secrecy Index Rankings, 2009–2015

	2009 Ranking	2011 Ranking	2013 Ranking	2015 Ranking	Pre 2007 List Ranking
US (Delaware)	1	5	6	3	61
Luxembourg	2	3	2	6	26
Switzerland	3	1	1	1	19
Cayman Islands	4	2	4	5	3
United Kingdom	5	13	20	15	48
Ireland	6				25
Bermuda	7	11	14		2
Singapore	8	6	5	4	17
Belgium	9	15			–
Hong Kong	10	4	3	2	16
Jersey	11	7	9		5
Austria	12	17	18		–
Guernsey	13		15	17	4
Malta	14	10	12	8	22

Bahrain	14	10	13	9	52
Netherlands	15				55
British Virgin Islands	16	11			9
Portugal (Madeira)	17				54
Cyprus	18	20			10
Panama	19	14	11	13	7
Israel	20				52
Japan		8	10	12	–
Germany		9	8	8	69
Marshall Islands		16		14	34
United Arab Emirates (Dubai)		18	16	10	50
Bahamas		19			1
Lebanon			7	7	–
Malaysia (Labuan)			12	18	45
Canada			17		–
Mauritius			19		35
Macau				11	44
Jersey				17	5
Turkey				19	–
China				20	–

Source: Prepared by the author based on *Financial Secrecy Index* listings and data previously noted in this chapter.

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