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LABOUR AND TAX JUSTICE

NICK BERNARDS, ROBERT O'BRIEN, FALIN ZHANG

ABSTRACT

The failure of wealthy corporations and individuals to pay their share of tax shifts the burden to less-well-off citizens, or results in programmes and services being terminated or underfunded. This paper is designed to facilitate discussion about the issues surrounding corporate and elite tax abuse. It begins with some preliminary definitions and makes a suggestion that using a term such as "tax abuse" helps to focus on the implications of tax manipulation, whether it is legal or illegal. Part I looks at the general issue of corporate and individual tax abuse. Corporate activity primarily takes the form of profit shifting, where companies organise their activities to show profit in low-tax jurisdictions. Individual abuse takes the form of asset transferring, where wealth and income is transferred to or hidden in low-tax areas. Part II focuses upon the issue in developing countries.

Drawing examples primarily from Africa, the operation of tax havens, investment routing and transfer pricing are highlighted. Reform measures enacted to deal with these problems are considered, as are the lessons from these experiments. The concluding section raises some points for general discussion.

INTRODUCTION

Labour unions and progressive social forces rely on healthy state finances to fund social programmes, redistribute wealth and support economic development. The failure of wealthy corporations and individuals to pay their share of tax shifts the burden to less- well-off citizens or results in programmes and services being terminated or underfunded. Abuse of the tax system harms the ability of states to act in the people's interest. This paper examines corporate and elite tax abuse and its implications for labour.

Tax codes and tax policy are deliberately complicated. Power and wealth flow to those able to master and manipulate the intricate rules. This paper is designed to facilitate discussion about the issues surrounding corporate and elite tax abuse. It begins with some preliminary definitions and suggests that using a term such as "tax abuse" helps to focus on the implications of tax manipulation, whether it is legal or illegal. Part I looks at the general issue of corporate and individual tax abuse. Corporate activity primarily takes the form of profit shifting, where companies organise their activity to show profit in low-tax jurisdictions. Individual abuse takes the form of asset

transferring, where wealth and income are transferred or hidden in low-tax areas or tax havens.[1] Part II focuses upon the issue in developing countries. Drawing examples primarily from Africa, the operation of tax havens, investment routing and transfer pricing are highlighted. Reform measures enacted to deal with these problems are considered, as are the lessons from these experiments. The concluding section raises some points for general discussion.

DEFINITIONS: TAX ABUSE VS. TAX AVOIDANCE VS. TAX EVASION

Academic articles and the press use a number of different terms to describe individual and corporate attempts to minimise or reduce the tax owed to the state: tax avoidance, effective tax planning, aggressive tax planning, and tax evasion. *Tax avoidance* involves arrangements which legally minimise tax. This involves both *effective tax planning* which is consistent with the intent of the law, and *aggressive tax planning* which is judged to violate the intent of the law but which is still legal. *Tax evasion* involves arrangements which are clearly illegal. In practice, the line between these different tax avoidance strategies is blurry and schemes can be retroactively shifted from one category to another by national tax authority rulings. A further complication is that activity which is illegal in one state may be legal in another.

States often use the tax code to further particular policy objectives such as supporting economic development in particular fields. Thus, lowering one's tax bill through effective tax planning can be consistent with national goals. In contrast, aggressive tax planning and tax evasion are designed to avoid legitimate tax burdens and undermine the revenue-gathering powers of the state.

For labour it is best not to focus upon the issue of whether a particular scheme is legal, since even legal schemes can deprive the government of badly needed revenue. Following the advice of the Tax Justice Network (www.taxjustice.net), it is better to focus on the economic and political impacts of particular activities. Thus, this paper will focus on tax abuse – the anti-social organisation of one's affairs to avoid paying a fair share of tax.

Driven by different national tax systems, corporate and individual tax abuse schemes vary. However, some common schemes are utilised worldwide and have similar international and domestic reasons. The following section introduces some common schemes used by corporations and individuals, analyses the main factors that allow or encourage these schemes, and examines international and national efforts to fight against them.

[1] According to the OECD (1998), a tax haven usually has the following features: no or only nominal taxes, lack of effective exchange of information, lack of transparency and no substantial activities.

PART I

CORPORATE AND INDIVIDUAL TAX ABUSE

CORPORATE TAX ABUSE: PROFIT SHIFTING

A common strategy used by corporations to avoid paying their fair share of tax is profit shifting – reducing overall tax liability by reporting profits in low-lax or no-tax foreign jurisdictions by artificially reallocating income and expenses. In practice the specific ways of shifting profit vary depending on different situations, but they can include: transfer pricing, contract manufacturing, relocation of property rights, debt allocation and others. Table 1 lists major profit-shifting schemes:

Table 1: Profit-shifting schemes

Scheme	Description
Transfer pricing	Controlling the pricing of goods and services sold between affiliates within an enterprise.
Debt allocation	Moving or assigning debt for tax purposes between affiliates within an enterprise.
Contract manufacturing	Contracting with a third-party manufacturer through a shell company in a low-tax or no-tax jurisdiction to produce items that will be sold in a high-tax market.
Relocation of property rights	Relocating property rights to an affiliate in low-tax or no-tax jurisdictions.
Hybrid entities	Entities can be recognised as a corporation in some jurisdictions but not in others.
Conduit	Incomes are paid by a company to a conduit company in a low-tax or no-tax jurisdiction and then redistributed by that company to its shareholders as dividends, interest, royalties, etc.
Treaty shopping	A corporation establishes a foreign subsidiary in one of the countries that signed a favourable tax treaty and thus enjoys a favourable tax rate in all these countries.

In the recently disclosed Luxembourg tax files,[2] more than 350 multinationals around the world, including FedEx, Pepsi, Ikea, Skype and Disney, have used these various profit- shifting strategies to dodge taxation in their home countries. Profit shifting is probably the most widely used strategy by multinationals in their efforts to reduce tax. An example of how this works is provided by the video communications company Skype. Skype bases its European operations in Luxemburg. However, rather than have one company there, it has two - Skype Communications and Skype Technologies. Skype Communications takes payments for Skype services from the public, but officially does not own the intellectual property rights of the brand or the software for the business. It pays large licence fees to Skype Technologies. Interestingly, Skype Technologies does not own the property rights either. They are owned by Skype Limited which is based in Ireland. However,

[2] Since late 2014, the International Consortium of Investigative Journalists (ICIJ), together with more than twenty other news organisations worldwide revealed Luxembourg's favourable tax deals with many of the world's largest corporations.

Skype Limited in Ireland is owned by Skype Technologies in Luxemburg. This allows Skype Technologies to get a favourable tax ruling from the Luxemburg government, thus avoiding 95 per cent of the tax on the licence revenue that Skype Communications originally paid Skype Technologies (both based in Luxembourg). Confused? You are supposed to be. This successful tax-avoidance scheme is designed to confuse the public and to avoid paying tax (Bowers, 2014).

The magnitude of corporate profit shifting and resultant revenue costs are hard to calculate accurately, but estimates are shocking. For example, the largest US-based companies transferred about $206 billion to their stockpiles of offshore profits in 2013 (Rubin, 2014). Developing countries lose around $124 billion from offshore assets held in tax havens, which outweighs the $103 billion overseas aid that developing countries receive annually (Oxfam, 2009).

What are the factors facilitating this type of corporate tax avoidance? In addition to the profit-maximising nature of corporates, there are five major factors which together provide opportunities for corporate tax avoidance through shifting profit.

1. Some domestic tax codes encourage companies to report profits overseas and leave them there. For example, the United States, home to a large proportion of world's top 500 multinationals, has a worldwide tax system which allows US multinationals' residual profit after paying taxes to the host countries to reinvest in their foreign operations (Hodge, 2011). Additionally, tax on the incomes of foreign subsidiaries of US multinationals is deferred until income is repatriated (Gravelle, 2015). This tax regulation enables many iconic US-based companies, as disclosed in the Luxemburg tax ruling files, to dodge tax by utilising the profit-shifting strategy. For example, Caterpillar changed the address of its global parts business to Switzerland from the US and thus reduced its taxes by $2.4 billion from 2002 to 2012 (Rubin, 2015). At the same time that it was avoiding paying its share of tax, Caterpillar was busy forcing its unionised workforce in the US to accept benefit concessions and wages freezes (Mertins, 2012)

2. Advances in communication and transportation technologies encourage multinational corporations to seek the best places worldwide to locate production, transfer profits or house property rights with the intention to lower tax. Starbucks, for example, concentrates its foreign profits in the Netherlands by housing some of its intellectual property there (Rubin, 2015).

3. International competition encourages some states to act as tax havens while others engage in a race-to-the-bottom tax-cutting policy to retain investment. Luxemburg's favourable tax rulings disclosed recently are an example.

4. Large accounting firms help corporations arrange their affairs to avoid tax, taking advantage of the national tax loopholes, and eased international capital flow and harmful national competition discussed above. The biggest accounting firms have, on the one hand, provided some governments with expert accountants to draw up tax laws, but on the other hand have offered advice to multinationals and individuals on how to exploit loopholes in these laws. This

may cause severe conflicts of interest. For example, KPMG's staff advised on some UK tax codes, such as "controlled foreign company" and "patent box" rules and at the same time the company helped clients to reduce tax using its insider knowledge of legislation (Syal et al., 2013). It is alleged that all of the "big four"[3] accounting firms use the knowledge gained from their staff working for the UK Treasury to help clients avoid paying British taxes (Syal et al., 2013).

5. Effective international state tax cooperation is difficult. National taxation systems are to a considerable extent determined by national economic and political systems. Disputes about appropriate levels and subjects of taxation open the field to corporate tax arbitrage. Harmonising national taxation systems treads on national sovereignty. As a result, international cooperation can be reduced to information exchange.

INDIVIDUAL TAX ABUSE: ASSETS TRANSFERRING

Individual tax abuse under different national tax systems also takes various specific forms. In the international realm the underlying logic is to hide personal taxable assets in low-tax or no-tax jurisdictions by either transferring taxable assets offshore or not reporting overseas assets in the home country. The specific ways of transferring are varied, complicated and veiled, but the destinations of these assets are relatively concentrated and evident – tax havens. The Tax Justice Network has estimated that as of 2010 at least $21 trillion to $32 trillion (yes, trillion!) of private financial wealth has been invested virtually tax-free through tax havens (Henry, 2012). This figure is equivalent to the size of the US and Japanese economies combined (BBC, 2012)!
The factors that provide opportunities for individual tax abuse include:

1. Home countries fail to control rampant private-assets outflow for tax avoidance purposes because of loopholes in national taxation systems.
2. Growing international financial globalisation and ease of making transactions on the Internet provide channels for asset transferring and thus facilitate individual tax abuse (Gravelle, 2015).
3. Tax havens are ideal destinations for these assets.
4. Banks and professional accounting firms provide services to help individuals circumvent complex national and international tax scrutiny.
5. Weak international regulations have failed to prevent or curb individual abuse.

A distinct feature of international individual abuse is the crucial role played by banks and professional accounting companies in facilitating this activity. Most individuals do not have the skill or time to devise complicated avoidance schemes and thus they rely on the assistance of professionals. The leaks of HSBC files disclose the activity of that particular bank in helping wealthy individual clients dodge national taxes (Leigh et al., 2015).

[3] PricewaterhouseCoopers(PwC), Deloitte, KPMG and Ernst & Young

INTERNATIONAL AND NATIONAL RESPONSES

The response of international institutions and national authorities is one of high rhetoric and low achievement. International institutions and governments proclaim a desire to fight tax abuse but their measures have minimal impact. The steps that have been taken focus on four areas.

1. Closing loopholes in national tax systems. Largely responding to the astounding figures disclosed recently on corporate and international tax avoidance, many tax authorities are more actively scrutinising their systems and closing loopholes. For example, the US tax authority plans to close a tax loophole that allows US firms to avoid paying taxes on overseas profit by imposing a one-off 14 per cent tax on US profits stashed overseas as well as a 19 per cent tax on any future profits (BBC, 2015).

2. Addressing harmful tax competition and tax havens. In 1998, the Organisation for Economic Cooperation and Development[4] (OECD, 1998) highlighted the negative effects of tax havens or harmful preferential tax regimes, and listed the factors that can be used to identify them. Following the 2008 global financial crisis, the G20[5] demanded that tax havens meet international standards for information sharing and transparency. In 2010 the US passed the Foreign Account Tax Compliance Act to stop the outflow of money to tax haven bank accounts. In 2012 the European Commission presented an action plan to strengthen the fight against tax fraud and tax evasion. Since the launch of the international crackdown on tax havens in 2009, offshore centres have signed dozens of information-exchange agreements; however, wealth held in offshore financial centres did not decrease but instead grew by hundreds of billions dollars in 2012 (Houlder, 2013). These agreements and the wave of crackdowns did not result in the repatriation of funds, but rather caused a relocation of deposits to the least-compliant havens (Johannesen and Zucman, 2014).

3. Increased scrutiny of giant banks and professional accounting firms. Bank secrecy in countries such as Switzerland, Luxembourg and some other tax havens has recently been eroding. In 2009, G20 leaders called for ending the era of bank secrecy as a crucial part of its global initiative to fight tax avoidance and evasion. Upon this call, the OECD issued a *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, which provides a framework for governments to obtain and share detailed account information. In addition to the country-level cooperation and regulation, individual banks are under stricter scrutiny. For example, following the recent leak of tax files, Swiss bank HSBC faces criminal investigations in the United States, France, Belgium and Argentina. However, the role of accounting firms remains under-addressed. Recently a UK parliamentary committee has highlighted PriceWaterhouseCoopers's activity in promoting tax avoidance on an industrial scale (Milligan, 2015).

[4] The OECD is an intergovernmental think tank primarily composed of advanced industrialised countries.
[5] The G20 represents the governments of twenty major economies, including ten large developing ones.

4. Renewed attempts at international cooperation. Several recent projects and reports have highlighted the need to reform international taxation rules. The OECD, mandated by the G20, launched a Base Erosion and Profit Shifting (BEPS) project to curb profit shifting. It has held numerous meetings, made recommendations and issued a regular series of reports, but its impact is unclear at the moment (OECD, 2015). In February 2015, the High Level Panel on Illicit Financial Flows from Africa (established by the African Union [AU] and the UN Economic Commission for Africa [ECA]) released its report with a series of recommendations (AU/ECA, 2015). The report argued that illicit or illegal transfers of money out of Africa was equivalent to all of the development aid flowing into the continent. They argued for incorporating reduction of illicit flows and tax evasion and the recovery of stolen assets into the Post-2015 Development Agenda.

It should be noted that international union organisations like the International Trade Union Confederation (ITUC) and the Trade Union Advisory Committee (TUAC) have raised important critiques of the OECD BEPS guidelines. In particular, TUAC has called for greater representation of civil society and the Global South in consultations on the BEPS guidelines (Habbard, 2014). Similarly, a collection of eighty NGOs addressed two important criticisms of the BEPS process in a letter to the OECD in June 2014. The letter criticises the new rules because they "[do] not suggest any re-examination of the basic principles of the system, but are restricted to actions aimed at making the existing rules more effective".[6]

Despite this flurry of activity the will to prosecute tax abuse is severely lacking. The UK serves as a useful example. Of the 1 000 cases of HSBC account holders suspected of hiding money from British tax authorities, only one was prosecuted (*The Guardian,* 2015). The British tax authority, HMRC, prefers to have wealthy tax cheats confess and pay back portions of their theft than to prosecute them for illegal activity. HMRC has also refused to open a criminal investigation into HSBC's activities. The policy of ignoring financial crime or allowing offenders to buy themselves out of prosecution stands in stark contrast with the threat of jail that hangs over poor people caught abusing the social benefits or the welfare system. The degree to which tax abuse is engrained into the operating procedures of the state itself is provided in a Canadian example. A government-controlled entity, the Public Sector Pension Investment Board, has used Luxemburg shell companies to avoid German tax when purchasing real estate in Berlin (CBC, 2014). Government entities are using offshore companies to deprive other states of tax revenue.

The lack of state commitment to curbing tax abuse can be seen in the fact that very little information on these activities comes from police investigations or prosecutions. The public must rely on individuals working at financial institutions to leak confidential information in order to get a sense of the extent of the corruption in the financial system.

[6] The letter can be downloaded from: http://www.finnwatch.org/images/lausunto_BEPStoimintasuunnitelma.pdf

PART II

TAX JUSTICE: ISSUES AND OPTIONS FOR DEVELOPING COUNTRIES

This section focuses on two key issues relating to tax abuse for developing countries: (1) the role of tax havens in shaping global financial flows; and (2) the role of transfer pricing. Each problem is considered in turn. A final sub-section offers some tentative conclusions about the prospects for strategies combating tax abuse.

TAX HAVENS, DOUBLE TAX AVOIDANCE AGREEMENTS AND "ROUND-TRIPPING"

Tax havens or offshore financial centres can facilitate a wide range of tax abuse from illicit financial practices to legal tax avoidance. Banking secrecy makes it much easier for corporations or individuals to hide funds from taxation, or to conceal the proceeds of criminal activity or corruption. This can be particularly damaging for developing countries, most notably in Africa (Ndikumana, 2014). Ndikumana and Boyce (2011) estimate that, when illicit outflows are taken into account, Africa as a region is in fact a net *creditor* to the world, in spite of the considerable flow of aid and loans to Africa. Illicit outflows like these are dominated by wealthy individuals. Zaire (now the Democratic Republic of the Congo) is perhaps the most egregious example: between 1968 and 1990, Zaire lost an estimated US$12 billion in flight capital; President Mobutu Sese Seko himself amassed an estimated fortune of roughly US$4 billion, much of which wound up in Swiss bank accounts (Ndikumana and Boyce, 1998). The High Level Panel on Illicit Financial Flows estimated that Africa loses US$50–60 billion per year to illicit financial flows (AU/ECA, 2015). These flows represent massive losses for developing countries in terms of the resources available for development.

Tax havens can also be destructive for development in other ways. Stephen Ellis (1996), for instance, very carefully documented the ways that apartheid-era Special Forces in South Africa, the American Central Intelligence Agency (CIA), and Italian right-wing parties all used financial secrecy arrangements in the Seychelles to launder funds or conceal weapons purchases. The function of the Seychelles as a tax haven played a considerable role in facilitating the destabilisation of a number of southern African countries by apartheid security forces in the 1970s and 1980s. Relatively conservative "financial integrity" organisations as well as multilateral programmes run by the World Bank tend to focus on these kinds of "secrecy jurisdictions" and illicit financial flows more generally insofar as they address issues relevant to tax justice.

However, the role of offshore financial centres in (legal) strategies for routing investments also poses considerable problems for developing countries. Double Tax Avoidance Agreements (DTAAs) are bilateral treaties that establish rules for the taxation of foreign citizens and investments. Normally, the point of a DTAA is to prevent individuals or companies from being taxed twice for the same earnings. DTAAs accordingly lay out rules for deciding to which signatory country earnings will be attributed. However, they are frequently utilised as a mechanism for tax avoidance.

Global firms and wealthy individuals use two strategies to exploit DTAAs between low-tax jurisdictions and developing countries. One is routing investments through low- tax jurisdictions. For instance, a British company might set up a subsidiary in Mauritius, and then use that subsidiary to make investments in Mozambique. The big four accounting firms play a significant role in promoting these sorts of investment strategies. In 2013, for example, a representative from Deloitte Mauritius gave a presentation to a conference in Beijing hosted by the International Financial Law Review detailing ways in which investors could exploit Mauritian DTAAs with African countries to lower their tax bills.[7] Even aid funds have been routed through Mauritius. A report from War on Want (2012: 17–18) details ways in which food aid for Africa from the UK Department for International Development (DfID) has been channeled through a public–private investment fund, the Emerging Africa Infrastructure Fund (EAIF), incorporated in Mauritius. DfID has channeled over £100 million through EAIF since 2002, with plans to contribute a further £100 million in the years 2011–2015. DfID also provides equity to EAIF through the Private Infrastructure Development Group (PIDG), also incorporated in Mauritius. DfID contributed £459 million in core funding to PIDG in 2012–2015, with the possibility of increasing this to £700 million depending on performance. The point is that a massive portion of British aid funding is now being channeled through private actors, who are routing the money so as to avoid paying taxes either in Britain or in the African countries ultimately on the receiving end of these investments.

The other main strategy, increasingly common in bigger developing countries like China and India, is called "round-tripping". For instance, an Indian investor sets up a holding company in Mauritius, then uses that holding company to invest the money back in India. If the arrangement is structured so that most or all of the income earned falls under Mauritian jurisdiction, then under the DTAA the Indian investor can drastically reduce his or her tax bill. Wealthy individuals in India have been able to use similar arrangements to trade Indian stocks without paying capital gains taxes. If stock in Indian companies is traded by holding companies registered in Mauritius, under the current DTAA the profits from the sale of stock would be attributed to Mauritius, where there is no capital gains tax. These strategies are prevalent on a remarkable scale. Mauritius is the single largest "home" country for FDI in India (although since 2007 Mauritius has lost some ground to Singapore) (UNCTAD, 2013: 7); indeed, at one point most "Mauritian" FDI into India "originated" from a single building in Port Louis (Sasi, 2012). Hong Kong plays the same role for investments in China. Investment arrangements are structured so as to maximise the profits attributable to the Mauritian holding company under the terms of the DTAA, which can drastically lower investors' tax bills, even eliminating tax liabilities altogether.

Some efforts are underway to revise existing taxation treaties. Indonesia simply cancelled a DTAA with Mauritius over concerns about round-tripping, while China has demanded renegotiation. India, meanwhile, has sought to renegotiate its agreement with Mauritius, as well as passing a new set of Generalized Anti-Avoidance Regulations (GAAR). While GAAR is a positive step, it has been watered down in the process of implementation, and in response to opposition from business

[7] The presentation is available from https://www.kepa.fi/tiedostot/deloitte-mauritius.pdf . It was also the subject of a report by ActionAid (2013) and was the basis of an article in *The Guardian* (Doward, 2013).

constituencies in Mauritius, India and the Big Four.[8] Investors have expressed fears about the possibility of "heavy- handed" application of GAAR rules as a means of slowing or mitigating the reforms (Anand, 2014).

An important point to underline is that most tax havens or offshore financial centres (OFCs) are developing countries themselves. Hampden and Christensen (2002) note that a considerable number of small island economies around the European periphery, in the Caribbean and the Indian Ocean, are highly dependent on offshore finance. Mauritian tax laws and its aggressive pursuit of DTAAs over the last thirty years have been part of a coherent development strategy. Mauritius aims to position itself as a hub for investments into Africa and India. This sort of strategy is appealing to some developing countries – especially (somewhat ironically) as a means of defence against capital flight. Ghana, for instance, introduced legislation intended to establish Accra as an offshore hub in West Africa (Vicek, 2011). The offshore finance legislation in Ghana is troubling. It was in many ways designed for and by financial capital. The Bank of Ghana recruited the Mauritian branch of Grant Thornton, a global accounting firm, to conduct a feasibility study for the project in 2006; Barclay's Bank of Ghana was recruited in drafting the legislation in 2007 and was awarded the first (and only) offshore financial licence.

Nonetheless, a working paper on the prospects for offshore banking in Ghana, published by the Bank of Ghana in 2006, explicitly notes that while money held in an offshore centre would be difficult to tax, the presence of an offshore centre in Ghana would actually increase the possibility that flight capital currently held abroad might remain in Ghana (Amediku, 2006; Vicek, 2011).[9] The point is that it might well be a reasonable response for states, faced with capital flight to tax havens, to try to capture some of those flows themselves.

One important step to reducing the role of tax havens and OFCs, then, might well be efforts to shift the development strategies pursued in those countries operating offshore financial centres. For trade unions in particular this means a commitment to solidarity with workers' organisations and other civil society organisations pushing for alternative development strategies in offshore financial jurisdictions.

TRANSFER PRICING

Transfer pricing involves making payments for the transfer of goods or services between affiliates of the same corporation in different countries. It is largely concerned with the price assigned to purchases of goods and services by a subsidiary of a multinational corporation from headquarters or from another subsidiary. Deliberate misinvoicing of imports and exports can be a means of illegal tax evasion. Misinvoicing refers to fraudulent reporting of the value of traded goods – say, for instance, reporting a shipment of ten tonnes of ore as five tonnes and pricing it accordingly. The scale of illegal misinvoicing is quite large. A report from Global Financial Integrity estimates the annual revenue loss to developing country governments as a result of misinvoicing at

[8] PwC (2013a) gives a summary of the revisions to GAAR as compared to the original legislation.

[9] Barclay's offshore licence was eventually withdrawn in 2011, with officials citing concerns about creating a haven for money launderers and the inability of the country to properly administer the service (*Modern Ghana News,* 2011).

betweenUS$98 billion and US$106 billion between 2002 and 2006 – or more than 4 per cent of total tax revenue in the developing world (Hollingshead, 2010)!

As with tax havens, there is a lot of grey area around the pricing of imports and exports. Transfer pricing policies offer considerable scope for (legal) profit shifting. The OECD gives some guidance on transfer pricing. The key concept is called the "arm's length principle". In short, it means that imports and exports between related companies should be priced as if they were taking place on the open market.

The arm's length principle, however, leaves a lot of room for legal transfer pricing strategies that still allow corporations to transfer profits to low-tax jurisdictions. For many goods and services, it is not clear what exactly an "arm's length" price actually is. The OECD has published several versions of guidelines on determining such prices. You can get a rough sense of how complicated the task actually is from the length of the most recent edition of the guidelines, which runs to 302 pages (375 including annexes) (OECD, 2010). None of this, however, helps remedy the basic problem: most of the time, there is no clear reference against which to assess whether prices are really "arm's length".

This is especially problematic with respect to what are called "intangible" services – services that do not need to be carried out on site: marketing, legal services, etc. One important tax-avoidance strategy is to centralise intangible functions in a subsidiary in a low-tax jurisdiction. This means that marketing or research and development (R&D) for the whole corporate group can be carried out from one national subsidiary. Increasingly, this does not necessarily mean the corporation's home country, but rather where it is most advantageous for tax purposes. Other affiliates will pay fees to a related company in a low-tax jurisdiction for such services. Here again, the big four accounting firms play a major role in promoting these kinds of structures, and offer consulting services to help companies put them into practice. PwC (2013b), for instance, publishes regularly updated reference guides on transfer pricing strategies, which advocate locating as many intangible service functions as possible in low-tax jurisdictions. PwC and the rest of the big four also offer custom transfer price strategies for corporate clients. The end result is that subsidiaries in higher-tax jurisdictions record losses (and thus avoid paying corporate taxes), while group profits are concentrated where taxes are lowest.

The consequences for developing countries of transfer pricing for intangible services can be highly significant, and indeed they stretch beyond tax justice. Dick Forslund (2014) of the Alternative Information and Development Centre in South Africa, reveals that the mining company Lonmin PLC's South African subsidiary was "losing money" and "unable" to afford increases in wages primarily because the company was making large annual payments – in the ZAR200 million range – for "marketing services" to a related company in Bermuda.

Forslund shows very clearly that Lonmin's "losses", and consequently the company's unwillingness to entertain the prospect of wage increases in the platinum sector, were in effect the result of a deliberate tax avoidance strategy on the part of the corporation. Lonmin mines are now infamous as the site of the Marikana Massacre where South African police killed thirty-four striking miners in August 2012 (Chinguno, 2013).

Beyond shifting the costs for intangible services, goods that are openly traded on exchanges (including most commodities) are also subject to having their prices manipulated in a variety of ways. This is a particularly significant problem in the extractive sector, which is of concern to many developing countries. The main mechanism here is the use of long-term contracts: A subsidiary mine will sign a contract with the parent company to sell its products at a particular price for an extended period of time. In theory, these contracts are a means of guaranteeing price stability for the subsidiary – investments and expenses can be planned more effectively if the subsidiary knows roughly what its revenues will be over the long run. However, in practice these contracts are often used to hold down export prices, and thus avoid royalty payments and corporate taxes in the producing country. Commodity prices tend to move in cycles; a long-term contract signed when prices are at a low ebb is a means of tax avoidance. This kind of strategy is very common among mining companies.

The Swiss commodities trade is illustrative of widespread tax abuse. Switzerland, despite producing very few commodities, has miraculously become one of the largest commodity exporters in the world! A major reason for this is the so-called "transit trade" in commodities taking place through Swiss affiliates of global mining groups (Berne Declaration, 2011). Transit trade refers to commodity trades between an exporting country and an end country that are routed (on paper) through a third country. For instance, the title to a shipment of copper from Zambia might be sold to a Swiss affiliate firm, and then sold on to another subsidiary in the Netherlands for final sale. Often the physical commodity itself will never even reach Switzerland. It will instead be sold on to the Dutch affiliate almost immediately and the shipment will be routed directly from Zambia to the Netherlands. Importantly, the average prices for commodity exports from developing countries to Switzerland are lower than average for exports to other countries, while Swiss (re)exports are more expensive than the average (Cobham, 2014). What this means, in effect, is that transfer prices are being structured so that profits on trade in commodities are concentrated in the Swiss headquarters or affiliates or a number of different global commodities or mining firms. A leaked audit of Swiss-based mining conglomerate Glencore's operations at Mopani Mine in Zambia in 2010 found that between 2003 and 2008 Mopani's revenues were deflated by a cumulative total of more than US$700 million through the use of long-term contracts signed at a low ebb in the price cycle (Grant Thornton, 2010: 14–15). The US$700 million figure reflects the difference between the price Glencore paid to the Mopani Mine and the actual price of copper on the London Metal Exchange (LME). The audit also found that the mine used a variety of other practices to reduce its tax payments.

It is important to note that there seems to be some movement at the moment to restrict these practices. Reforms are uneven, and they are often balanced against the concerns of countries to

attract investors. The Zambian case in particular is worth discussing, because Zambia has undertaken some of the most dramatic reforms to its tax code for mining. Zambia's mining privatisation, carried out under World Bank pressure in the early 1990s, left the country's mining industry largely under the control of a handful of foreign investors; they held contracts granting rights to individual mines over long periods of time with very generous tax concessions (Lungu, 2008a; Fraser and Lungu, 2007). A well-coordinated campaign from civil society, in which the Mineworkers Union of Zambia actively participated, helped to create pressure for reform (Lungu, 2008b). Zambian actors drew effectively on international links to publicise problems in revenue collection in mining. One of a number of important changes to the tax code in Zambia was a move to assess royalties not on declared revenues, but based on a benchmark price per volume.

This means that regardless of the price that Glencore pays Mopani, royalty rates are assessed as a proportion of the LME price. Similar civil society campaigns are underway in Tanzania (albeit led mainly by religious groups) (Curtis and Lissu, 2008) and Sierra Leone (where unions have been very active) (NACE, 2009, 2010). The Tanzania Minerals Audit Agency published a report in 2009 calling for reforms in royalty assessments in line with the new model in Zambia (TMAA, 2009). Reforms have been slower in Sierra Leone, but some progress is being made.

REFORM STRATEGIES: LESSONS LEARNED

One important lesson from the cases discussed above is the importance of building coalitions between unions and other actors in civil society. Civil society pressure played a key role in the reforms mentioned in the previous section. Additionally, reform efforts in the absence of organised civil society pressure are more vulnerable to being watered down, as was the case with GAAR in India. Trade unions seeking tax justice need to make decisions about how to relate to the considerable number of CSOs devoted to tax justice and financial integrity already in existence. Some cases discussed above nonetheless suggest the potential role that participating in these sorts of coalitions can play in creating pressure for reform. In Zambia and elsewhere in Africa, unions have participated in transnational, North–South coalitions in favour of tax reform in the extractive sector. In Sierra Leone, unions have similarly participated in multi-actor civil society commissions concerned with public revenues from mineral industries. These strategies can leverage worker pressure on fiscal issues in particular industries quite effectively.

Nonetheless, some CSOs focused on tax justice and financial integrity – especially "global" organisations like GFI, focused primarily on illegal tax evasion – can in fact be quite conservative in character. A GFI report on the loss of tax revenues due to trade misinvoicing, for instance, concludes that confronting tax evasion effectively requires "fiscal responsibility, closing budget deficits, and keeping inflation low", and "governance reform – through the development of institutions, strengthening the rule of law and confronting corruption" (Hollingshead, 2010: 19). It is not always easy to see how unions can collaborate with the hodgepodge of development NGOs, think tanks, religious organisations and other activists making up the civil society movement around tax issues.

A related lesson is that tax reforms are often constrained or enabled by broader development strategies. This is true in at least two ways. First, setting up an offshore financial centre is a deliberate strategy pursued by some developing countries. Moreover, Ghana's recent effort to set up an offshore centre indicates that it remains a potentially appealing strategy. Second, a development strategy based on foreign investors operating in enclaves increases the vulnerability of developing countries to tax avoidance. The kinds of profit shifting made possible in these cases not only deprive developing country governments of tax revenues, but also enable the extraction of capital that might otherwise contribute to higher wages, better working conditions or local development. Similarly, certain tax avoidance strategies – such as the use of long-term contracts to keep internal prices of minerals down – are facilitated by volatility in commodity markets. In short, the absence of stronger international management of commodity prices facilitates the use of long-term contracts as a tax avoidance strategy.

Reform strategies have thus far failed to adequately address the contradictory role of the big four accounting firms in facilitating tax avoidance. Even the biggest multinationals generally rely on these firms to design their transfer pricing and investment routing strategies. Ironically, though, private accounting firms, including the big four, are also often contracted to conduct audits of tax compliance on behalf of developing country governments, as in the Grant Thornton audit of Mopani. They have also played a more explicitly political role in some cases, as in the campaign to water down India's GAAR reforms. Accountants are currently largely self-regulated. There are international accounting standards in place, but these are privately drafted and administered, and are normally restricted to "technical" issues. Strategies to regulate the role of accountants are sorely needed.

POINTS FOR DISCUSSION

This paper has argued that tax abuse by corporations and wealthy individuals is a serious problem that poses a challenge for labour and progressive social groups seeking to use the state to address economic issues. Tax issues concern basic fairness, and the abuse of tax codes is a mechanism for amassing and concentrating wealth. This section raises some issues to be considered and discussed further.

EDUCATION

Tax matters are notoriously complex. To what degree are trade unions aware of tax abuse issues? Would an education campaign be useful? Are there models for such a thing in the tax field? The ITUC and TUAC have held some expert meetings on tax abuse, but how widely is this information known (TUAC, 2013)?

SIGNIFICANCE

How great a priority is tax justice for trade unions? How great a priority should it be? Is it worth investing resources in this field?

WHAT TYPE OF THINGS SHOULD TRADE UNIONS ADVOCATE?

Here are some things that could be considered:

- Given the abuse that comes with complicated tax codes, is there a case to be made for simplification of all national tax codes?
- The distinction often made between legal tax avoidance and illegal tax evasion seems to imply that tax avoidance is acceptable. Is it in labour's interest to stress other terms such as tax abuse or tax dodging?
- Is it possible to forge alliances with tax justice NGOs, and for what purpose?
- The OECD seems to deal with tax havens as a question of transparency, but perhaps it is tax havens themselves that need to be curtailed.
- Discussions continue at the OECD on curbing profit shifting. What is labour's stake in this? Can a simple, effective solution to profit shifting be developed? Some have argued that TNCs should be treated as unitary actors for taxation purposes rather than as a series of subsidiaries.
- Is there some way that corporate activity could be deglobalised so that subsidiaries have to provide their own "intangible" services (marketing, legal, etc.), thus reducing the possibility of profit shifting?
- Can some of the lessons from the extractive sector be expanded and generalised?
- Do trade unions agree with the tax justice network's suggested initial five steps: a) force TNCs to report activity country by country; b) a unitary tax; c) mandate automatic information exchange between financial institutions and tax authorities on wealthy individuals; d) clarify ownership of all companies; e) make tax evasion a money-laundering offence similar to how drug money is handled?

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ROSA LUXEMBURG STIFTUNG
JOHANNESBURG
237 Jan Smuts Avenue | Parktown North 2193
P O Box 3156 | Parklands 2121
Telephone: +27 (0) 11 447 5222/5224 | E-mail: info@rosalux.co.za | Website: www.rosalux.co.za

ROSA LUXEMBURG STIFTUNG

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