Tax Justice for Africa

A Briefing for the Africa Progress Panel

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1. Summary

This report was written as a briefing for the Africa Progress Panel in January 2014. The intention was to compare the promises made to Africa in 2013 at the G8 and G20 summits with the outcomes that then looked likely. The report has now been published to coincide with the Africa Progress Panel's report for 2014[ii].

The report's findings are bleak. After the hope of 2013 by the beginning of 2014 the outlook for real reform was already limited across the whole spectrum of issues on which it was hoped there would be real reform. In summary, those issues were firstly country-by-country reporting, secondly automatic information exchange, thirdly the disclosure of the beneficial ownership of companies, fourthly continued progress with the Extractive Industries Transparency Initiative and lastly international tax reform.

Although many of these issues were on the agenda precisely because they were put there by development NGOs and were of particular importance to developing countries the organisation tasked with delivering reform is the Organisation for Economic Cooperation and Development – often seen as a club of rich companies and not without reason. The possibility for conflict of interests arising was created from the outset.

Unfortunately those conflicts have arisen. As the report summarises, across all the areas of concern it was already apparent by January 2014 that the OECD and the countries behind it were falling short on their promises. For example, as the report notes, by the time the OECD's Base Erosion and Profit Shifting was published the references to country-by-country reporting, so prominent in June 2013, had become a mere inferred hint within OECD Action Plan 13 implying it had already become, in the OECD's mind, a footnote to transfer pricing documentation. That, unfortunately, appeared true for all these concerns.

The inevitable consequence is a range of clearly expressed doubts within this report as to whether any promises will be fulfilled. Unfortunately nothing that has happened in the three months since the main body of this report was written has alleviated those fears. Indeed, as very limited progress on (and opposition to) country-by-country reporting has indicated, those from major developed countries (and most especially the USA) are putting self-interest above any consideration for those countries for which this agenda was supposedly created.

So what can be done? Of course it has to be hoped that the OECD will still, despite current pessimism, deliver for Africa. But hope is not enough and the sentiment of this report is that if the OECD is not going to deliver now then the time has come for Africa to begin building its own tax solutions. In the last decade radical, and sometimes simple, solutions on how to define the tax base, find it, count it and then collect it (which are the four key elements in any tax system) have emerged and if the OECD and its member states do not want to embrace these solutions for Africa that does not stop Africa embracing them itself.

This report suggests ways it might do that. So, for example, it suggests simple but effective forms of information exchange that are likely to have the desired deterrent effect that most of such systems rely upon it. It also suggests that Africa may need to consider its own forms of regional or continent wide corporation tax base alignment, unitary taxation and accounting reform to deliver progress in the fight against corporate tax abuse.

It is, however, the underlying message that is important and that is that the time has come when if the world is not willing to help Africa on these issues then it has to help itself. I genuinely believe that is possible and innovation to meet its needs can be achieved. If that does not suit the OECD, so be it. The hope must be that the UN might be an alternative host for the creation of this African (and maybe Asian and South American) approach to tax, but if it also fails Africa now has institutions of its own that could begin to take on this task. I believe it should now have the confidence to do so. And that's where the message of hope in this report comes from.

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2. Introduction

2013 was a memorable year for tax justice. From the moment UK Prime Minister David Cameron decided to react to political pressure resulting from multinational companies avoiding tax in the UK by making the issue a priority for the G8 a momentum for change was created that spilled over into the G20 and which will clearly last for some time to come. The dichotomy in the previous sentence should, however, be immediately apparent. Despite the best efforts of tax justice campaigners, many of them in development NGOs, whose tireless efforts put this issue on the international agenda, it was domestic pressure within developed countries that resulted in a call for action. Moreover, because the call for action came from those developed countries they in turn, through the G20, asked the OECD – a rich countries club – to deliver their programme of change. The possibility that the interests of developing countries might have been, at the very least, overlooked in this process has to be considered as a consequence.

In that case this review has four purposes. The first is to consider what was hoped for from the G8 and G20. Then what they thought they delivered has to be considered before, thirdly, looking at the OECD's interpretation of that call, and what others, such as the European Union, might have coincidentally supplied along the way. Finally it is important to go full circle and look at what is needed now if developing countries are to enjoy the tax justice they really deserve, and which will deliver them more of the freedom they need to decide on their own futures free from aid dependency.

3. What was hoped for in 2013

It is a little hard to summarise all the hopes those campaigning for tax justice had of the G8 and G20 processes in 2013 simply because of the diversity of those engaged in that campaign. However, it's not unfair to say that aspirations focused on five issues. These were firstly country-by-country reporting, secondly automatic information exchange, thirdly the disclosure of the beneficial ownership of companies, fourthly continued progress with the Extractive Industries Transparency Initiative and lastly international tax reform. A brief summary of each of important to make sense of what follows.

a. Country-by-country reporting

Country-by-country reporting is a form of accounting that was created by the NGO community specifically to provide the information that civil society needs to hold both multinational corporations and governments to account for the tax that should be paid in each country where it is due in the world[iii]. In that sense it is very much a development of the logic of the Extractive Industries Transparency Initiative, with which it has become quite closely associated through the work of Publish What You Pay, although its origins are in the Tax Justice Network and it has much broader application that the extractive industries.

The idea is essentially very simple. It is that each and every multinational corporation should, without exception, report the sales it makes, the profit it earns, the number of people it employs, the tax it owes and pays (which are not necessarily the same thing) and some other key accounting data in each and every country in which it operates in its annual, audited financial statements.

The aim is to inform stakeholders about the operations of multinational corporations working within the country in which they live and the contribution that those companies make to that society. This is its primary goal: it is about holding global corporations to account locally.

It also has the aim of providing that same accounting information to tax authorities so that they can compare the relative performance of multinational corporations in their country to that which those companies achieve elsewhere. This should then let those tax authorities choose the multinational corporations whose tax affairs they most wish to challenge using the scarce resources available to them and so maximise their tax yield. To best achieve these goals country-by-country reporting data has, of course, to be made available on pubic record and it must be comprehensive.

b. Automatic information exchange

It has now been realised that no domestic tax system has a hope of being effective without there being effective information exchange systems between states that ensure that a tax authority has a way of finding out about the income of those people (whether warm-blooded human beings or cold-blooded corporations) that are tax resident in their jurisdiction but who have income arising in another place that needs to be taxed in their home country.

For a long time it was thought by governments that what are called double tax agreements (or sometimes, when in more limited form, tax information exchange agreements) could handle this need for information exchange but campaigners pointed out that the limitations in these agreements. Those limitations focus on the fact that these agreements are very hard to use and so likely to be limited in scope. This is because the data that they deliver is not automatically supplied but has instead to be requested by the state that wants it. When making that request the required data has to be specified with considerable accuracy if the state providing it has a legal duty to deliver it. The result is that in most cases a requesting state has to actually know a source of income exists before they can even think about asking about it. This, of course, created very little chance of those agreements ever effectively tackling the problem of international tax evasion when much of that was undertaken through highly secretive tax havens where income can be entirely hidden from view making almost any information exchange request almost impossible to make.

The result was a demand from tax campaigners for automatic information exchange. This has a very different logic to it. That is because it requires that the state in which the income is earned must identify the true owner of that income and where they might be tax resident.

Then it places an obligation on that state where the income is earned to send the resulting information on that income source to the domestic tax authority of that place where the person enjoying that income is resident for tax purposes.

There are three obvious advantages to automatic information exchange. The first is that that amount of information flowing increases enormously. The second is that because the information is automatically supplied it is much more timely than information that has to be requested, which considerably enhances the chances of the right amount of tax being paid. Lastly, because taxpayers will know that information about their income in other countries will be supplied to their domestic tax authorities the incentive to try to evade tax by hiding funds offshore is dramatically reduced. The last of these is by far the most important. It works on the logic that prevention is better than cure.

c. Beneficial ownership information

What those campaigning for automatic information exchange realised is that it cannot deliver the benefits it is supposed to supply unless tax authorities within each country know which real live, warm-blooded human being owns the income that arises within its jurisdiction. This is not as easy as it seems, especially in places like tax havens that are, for good reason, better known as secrecy jurisdictions. In those places opacity about the ownership of income streams has deliberately been created to make sure that the tax authorities in those places and elsewhere cannot know who is taking advantage of those locations to hide their income from tax.

This process is achieved in a number of ways but the most obvious mechanism has been the refusal of such places to put on public record (or, in many cases, on any record at all) the real ownership of the companies and trusts that operate from within those jurisdictions so that those from outside them can have no idea what is going on there. The result has been that when a secretive company that files no details of who owns or manages it is in fact owned by a secretive offshore trust (that is not necessarily located in the same place as the offshore company) and that trust also supplies no information on who created it, runs it, or benefits from it, a double layer of opacity is created that has to date been almost impenetrable to tax authorities seeking to beat tax evasion worldwide.

The demand for beneficial ownership information is designed to counter this secrecy. What those demanding this data say is that anyone in the world is entitled to privacy when they undertake transactions in their own name, but when they use limited liability companies and trust arrangements created by statute law then they have an obligation to account to those who permit the creation of these structures and to society at large for the use that they make of them.

d. The Extractive Industries Transparency Initiative (EITI)

The EITI has been a campaigning success story. Created as a result of a civil society demand made before the turn of the century that companies engaged in the extractive industries

'publish what you pay' – meaning that they should place on public record information on all the payments of all sorts that they made to the government of a jurisdiction to ensure that the government in question could be held to account for the use that it made of those funds, so reducing the risk of corruption - the scheme now operates in 41 countries[iv].

However, that has not solved all the problems of accessing data on what happens in these states. The way in which countries reports varies, and some do not require what is called disaggregated data, which reveals payments by individual companies. Other countries engaged in the extractive industries simply refuse to engage with the EITI process. That means payments made in very many countries are simply unknown.

What those campaigning on this issue – many under the Publish What You Pay banner – wanted from the G8 and G20 processes was uniform reporting of payments made in the accounts of the companies making those payments irrespective of the demands of the countries in which they operate; that country demand being a pre-condition of the EITI process.

e. International tax reform

International tax reform was in many ways the most ambitious demand of those looking to the G8 and G20 during 2013, and yet also in very many ways the one that was most promised. In a speech to the World Economic Forum in Davos in January 2013 UK Prime Minister David Cameron said [v]:

> *We want to use the G8 to drive a more serious debate on tax evasion and tax avoidance. This is an issue whose time has come. After years of abuse people across the planet are rightly calling for more action, and most importantly there is gathering political will to actually do something about it.*
>
> *Again let me put my cards squarely on the table. Of course there is a difference between tax evasion and tax avoidance. Evasion is illegal. It can and should be subject to the full force of the criminal law. But what about tax avoidance? Now of course there's nothing wrong with sensible tax planning and there are some things that governments want people to do that reduce tax bills, such as investing in a pension, a start up business or giving money to a charity. But there are some forms of avoidance that have become so aggressive that I think it is right to say these raise ethical issues, and it is time to call for more responsibility and for governments to act accordingly.*

After such a comment it was inevitable that David Cameron would have to secure a commitment on this issue from the G8 or have his leadership of it branded a failure. The question was what the outcome would be.

The G20 had already commissioned a report from the OECD on this issue in 2012. The Organisation for Economic Cooperation and Development, which is based in Paris and which

represents just over 30 developed countries, has been given the responsibility for setting international standards for tax cooperation since the 1960s. As some therefore said, it had some responsibility for the mess that the world of tax was in at the start of 2012, but it was nonetheless given the task of overseeing reform of the process.

In February 2013 they gave their first tentative response to the demand for change and made clear that reform was inevitable, describing the process as one of tackling 'Base Erosion and Profit Shifting' (BEPS). The civil society response, at least in developed nations, was to call for a radical overhaul of the tax system[vi] and a move towards unitary taxation of the profits of multinational corporations, albeit within much of the existing OECD framework of tax treaties.

The detail of this proposal need not engage us here; the essence is what matters. That essence was a proposal to shift from taxing each member of a multinational group of companies as being independent and quite separate form all the others under common control and to instead tax that multinational group as if it was one single entity (which is, for example, how they present themselves in their own accounts sent to their shareholders) and to apportion the overall income it earns to the countries in which it operates on the basis of a formula that seeks to determine just where profit is really earned based on key economic data such as where sales are made, where people are employed and where physical assets are located. Few if any of those are, tax campaigners noted, in tax havens.

4. The G8 and G20 response

It should be said from the outset that the G8 and the G20 groups of countries are not the same, and that the OECD, on whom both rely, embraces more countries than either. It should also be said that developing countries are notable by their absence from all such bodies.

In 2013 it was the G8, the most exclusive of these clubs of nations, that had the first opportunity to respond to the demand for tax reform. The Lough Erne summit in June 2013 was a strange event (I was one of the very few 'outsiders' there) and any outcome seemed to hang in the balance as it progressed. Even the headline commitments appeared vague. The Lough Erne declaration was notable by saying, without exception, what should happen and not what would happen and yet those commitments, as far as they related to tax, had a hint of promise within them. The relevant statements were[vii]:

1. *Tax authorities across the world should automatically share information to fight the scourge of tax evasion.*
2. *Countries should change rules that let companies shift their profits across borders to avoid taxes, and multinationals should report to tax authorities what tax they pay where.*
3. *Companies should know who really owns them and tax collectors and law enforcers should be able to obtain this information easily.*
4. *Developing countries should have the information and capacity to collect the taxes owed them – and other countries have a duty to help them.*
5. *Extractive companies should report payments to all governments - and governments should publish income from such companies.*
6. *Minerals should be sourced legitimately, not plundered from conflict zones.*
7. *Land transactions should be transparent, respecting the property rights of local communities.*
8. *Governments should roll back protectionism and agree new trade deals that boost jobs and growth worldwide.*
9. *Governments should cut wasteful bureaucracy at borders and make it easier and quicker to move goods between developing countries.*
10. *Governments should publish information on laws, budgets, spending, national statistics, elections and government contracts in a way that is easy to read and re-use, so that citizens can hold them to account.*

It wasn't quite the wish list I would have written. Equally it was not too far from it in many key respects. As I read the statement that afternoon and gave a series of live interviews on it my spirits lifted.

The detailed leaders' communiqué was also important[viii]. Between repetition of the above noted desires in paragraph 25 they said:

We call on the OECD to develop a common template for country-by-country reporting to tax authorities by major multinational enterprises, taking account of concerns regarding non-cooperative jurisdictions. This will improve the flow of information between multinational enterprises and tax authorities in the countries in which the multinationals operate to enhance transparency and improve risk assessment.

And they added in paragraph 26:

A critical tool in the fight against tax evasion is the exchange of information between jurisdictions. We see recent developments in tax transparency as setting a new standard and commit to developing a single truly global model for multilateral and bilateral automatic tax information exchange building on existing systems. We support the OECD report on the practicalities of implementation of multilateral automatic exchange and will work together with the OECD and in the G20 to implement its recommendations urgently. We call on all jurisdictions to adopt and effectively implement this new single global standard at the earliest opportunity. It is important that all jurisdictions, including developing countries, benefit from this new standard in information exchange. We therefore call on the OECD to work to ensure that the relevant systems and processes are as accessible as possible to help enable all countries to implement this new standard.

As Queen's University Belfast academic Andrew Baker, a seasoned and long term observer of such summits noted in response to these commitments[ix]:

[T]he inclusion of points 25 and 26 in the communiqué are also remarkable for two other reasons.

First, is the story of how the concepts of Country by Country reporting and Automatic Information Exchange travelled from obscurity ten years ago, written off by officials and the big four accountancy firms as radical and maverick. They were barely talked about seriously in international policy circles even a year ago. Now they are the new orthodoxy at the core of the international tax policy agenda. It is a remarkable journey and a tale of how intellectual vision, persistence and tenacity, together with steely campaigning determination can overcome powerful vested interests and eventually shape, lead and refashion political debates and agendas.

Second, even as late as Tuesday morning it was far from clear that Country by Country reporting would be supported and called for in the communiqué. This was no pre scripted, precooked agenda. For those who wonder what the purpose of dragging leaders half way round the world to summit meetings to sign off on statements that are already agreed, the Lough Erne communiqué on tax is the clearest demonstration that real progress can be made at the summits themselves. I have been reading and tracking G7 and G8 communiqués for nearly 20 years. They are usually neither exciting nor inspirational. This was both.

I think Andrew was right on both counts. There can be no doubt that the commitments made at the G8 were historic, and that the unambiguous tone of the language used was unexpected.

There was other, partial, good news. In paragraph 31 it was said that:

> *[E]ach of us will take to tackle this issue to ensure that companies know who really owns and controls them by requiring companies to obtain and hold information on their beneficial ownership, and to ensure that this information is available in a timely fashion to law enforcement, tax collection agencies and other relevant authorities as appropriate.*

The issue of beneficial ownership was, therefore, partly addressed. So too was reporting in the extractive industries, in paragraph 36, which said:

> *The G8 will take action to raise global standards for extractives transparency and make progress towards common global reporting standards, both for countries with significant domestic extractive industries and the home countries of large multinational extractives corporations. Under such common standards companies would be required to report on extractives payments, governments would take steps to ensure disclosure compliance, and those governments that wish to move towards the Extractives Industries Transparency Initiative (EITI) standard will voluntarily report their revenues.*

There were, however, worrying signs. Despite the fact that paragraph 47 committed the G8 to open data, by which it was meant that government data should be on the public record by default, this idea was not embraced by many of the commitments made. So the commitment on country-by-country reporting was that this information should be prepared and supplied to tax authorities; there was no commitment to make it available to the public who also needed it. In fairness, there was no such concern with automatic information exchange; that was always going to be on a confidential basis, but the commitment on beneficial ownership was particularly perverse. There was no agreement on putting this data – which is key to transparency – on the public record. The paradox that key data needed to secure transparency would be secret was readily apparent from the moment that the commitment was published. At least the EITI commitment was to make the data public.

There were other worrying signs with regard to tax as well in the paragraphs on tax and development. The sentiments within them may have appeared appropriate but the failure to commit to more radical reform to ensure that developing countries secured their fair share of the global tax take was implicit in what they said. For example, a commitment to building capacity in developing country tax administrations was entirely appropriate, but training people in a system that has been shown not to work for the benefit of these countries does little to improve outcomes (paragraph 27). In addition, paragraph 29 committed to helping developing countries secure the information they needed to make the

arm's length pricing method of transfer pricing work, but implicit in that was a commitment to the separate entity basis of taxing the subsidiaries of multinational corporations which is at the heart of many of the problems in international taxation, especially as they relate to developing countries. By implication any move towards a unitary taxation basis that might help developing countries increase their corporation tax yield was rejected.

The conclusion from the G8 then was that commitments were made, but many appeared half-hearted and that given that transparency was meant to be one of the themes of the Summit there was a remarkable commitment to opacity implicit in many of them.

The stage was set for the G20, of which the finance ministers met in July and the summit itself was in September. Both were, from a tax perspective, upstaged by the publication before the finance ministers' meeting of the OECD plan on BEPS[x]. This is referred to in more detail below. The G20 narrative was therefore more muted in some respects than that of the G8. They were however keen to suggest their own essential role in the process:

> *The G20 has been at the forefront of efforts to establish a more effective, efficient and fair international tax system since they declared the era of bank secrecy over at the G20 London Summit in April 2009. (Paragraph 1)*

And commitments were made[xi]:

> *The G20 has now endorsed the development of a new global tax standard: to automatic exchange of information. (Paragraph 3)*
>
> *International collective efforts must also address the tax base erosion resulting from international tax planning. (Paragraph 5)*
>
> *The existing international tax rules on tax treaties, permanent establishment, and transfer pricing will be examined to ensure that profits are taxed where economic activities occur and value is created*. (Paragraph 7)
>
> *More transparency will be established, including through a common template for companies to report to tax administrations on their worldwide allocation of profits and tax*. (Paragraph 7)
>
> *Developing countries must reap the benefits of the G20 tax agenda. (Paragraph 8).*

Of course there was detail between those commitments, but it was notable that the statement was shorter than that made by the G8, contained less hyperbole, and dedicated half its space to the OECD action plan that was meant to implement the commitments made by the G20 and in turn the G8.

The G8 and G20 did as a result set the political framework for change in ways that many in the development community were encouraged by, but the big question remained, which was whether or not the OECD could rise the challenge they had been given.

5. The OECD's Base Erosion and Profit Shifting Agenda

a. Concerns about the OECD's ability to take on the task demanded of them

There were very good reasons to be concerned about the OECD's ability to deliver on the demand made of them.

The first concern was that the OECD's membership. There are currently 34 members of the OECD[xii]. The list includes 21 of the 28 European Union member states. No member is from Africa. Currently Chile is the only South American member state and there are no members from southern Asia. China is not in membership. The organisation has an extraordinary northern hemisphere and rich nation bias within it that, many suggest, does not make it suitable for setting standards for worldwide taxation.

There is an alternative standard setter available, which is the United Nations. It does have a tax committee[xiii]. It has a recognised bias to developing countries on this issue. That committee was ignored when it came to taking this matter forward and it has no formal representation in the OECD's BEPS process, partly due, some think, to what many perceive to be a long running sense of protectiveness on the part of the OECD because the UN is the only international agency bar the OECD that issues a transfer pricing manual.

The second cause for concern about the OECD is its track record in delivering real tax reform. Its 1998 report on harmful tax competition[xiv] was meant to have begun a process of closing down tax haven based tax abuse. If it had succeeded there would have been no need for action in 2013. In that case quite clearly it failed, a process admittedly assisted by the opposition of President George W Bush to that initiative from 2001 onwards.

President Obama changed the US approach to tax competition in 2009 in time for the April 2009 G20 communiqué to say[xv] that the assembled nations were committed:

> *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. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information;*

Unfortunately, they delegated the job to the OECD. As the European NGO umbrella group Eurodad noted[xvi] on 16 April 2009:

> *Costa Rica, Malaysia, Philippines and Uruguay. These were the only four jurisdictions which appeared in the OECD black list published on April 2, the day of the G20 summit. "They have now officially informed the OECD that they commit to co-operate in the fight against tax abuse. As a result, they have been moved to the category of "jurisdictions that have committed to the internationally agreed tax*

standard, but have not yet substantially implemented", reads the OECD press release of less than one week later. This means no black spots are left on the tax havens list.

What the OECD created was a three-tier rating for those places they considered at risk of creating abuse. Black listed states – which as noted, ceased to exist within a week of being named – were those places that showed no signs of cooperation with the international tax community on information exchange. Grey listed states agreed to make progress and white listed jurisdictions were deemed to have met the international standard for tax cooperation. This international required standard was, however, deemed to have been reached when a jurisdiction had signed just twelve tax information exchange agreements. These are a very limited form of information exchange agreement restricted solely to supplying data on request and with almost insurmountable hurdles of the type already noted in existence before such a request could be made.

There was no indication given as to why twelve such agreements were considered acceptable when the G20 itself comprised more than 20 states. Nor was any indication given as to whether or not the agreements were likely to give rise to actual exchanges of data. Two consequences followed. First, many of such agreements were signed between tax havens. The agreement between Andorra and San Marino signed[xvii] in September 2009 was clearly unlikely to give rise to any meaningful exchange of information and all parties, including the OECD, must have known that. This was what has been called by academic Dr Atul Shah 'constructive non-compliance'.

Secondly, because the Nordic states cooperated in signing such tax information exchange agreements and included in their network of states were Greenland and Iceland, between them representing less than 400,000 people, one sixth of any jurisdiction's needs could be met by signing agreements with this two places delivering, once again, almost meaningless agreements. Greenland has a result currently 34 tax information exchange agreements in place. South Africa has two. Nigeria has none.

The result was that this initiative was rapidly discredited. Only seven tax information exchange agreements were signed in 2012, all between Guatemala and the Nordic states. Tax havens and banking secrecy did not come to an end because the OECD failed in the task given to it.

As worrying was the third cause for concern. What the OECD put in place of the task given to it by the G20 in 2009 was what it called the Global Forum on Transparency and Exchange of Information for Tax Purposes[xviii]. This was, in effect, a peer review process of assessment by states of their own compliance with existing OECD information exchange requirements.

This proves has, admittedly, revealed some weaknesses in that state of compliance, and it is beyond dispute that this is welcome, but three concerns arise. The first is that this was an exercise in reinforcing existing practice and not changing it. The second concern was that tax

havens were given prominence in the process. The committee charged with this task was composed of the following states[xix] in 2013:

Bermuda (Vice-Chair)	Brazil	Cayman Islands
China (Vice-Chair)	France	Germany (Vice-Chair)
India	Indonesia	Japan
Jersey	Kenya	Singapore
South Africa (Chair)	Spain	Switzerland
United Arab Emirates	United Kingdom	United States

The peer review group was even more biased:

Argentina	Bahamas, The	Brazil	British Virgin Islands	Cayman Islands	China
France (Chair)	Germany	India (Vice-Chair)	Indonesia	Isle of Man	Italy
Japan (Vice-Chair)	Jersey (Vice-Chair)	Korea, Republic of	Luxembourg	Malaysia	Malta
Mauritius	Mexico	The Netherlands	Norway	St. Kitts and Nevis	Samoa
Singapore (Vice-Chair)	South Africa	Spain	Switzerland	United Kingdom	United States

Thirdly, the near absence of African states will be very apparent. If developing country concerns were meant to be at the heart of the OECD's concerns actions did not reveal that to be the case.

Unsurprisingly academics Niels Johannesen and Gabriel Zucman found in a paper[xx] published in 2012 that 'the G20 tax haven crackdown caused a modest relocation of deposits between havens but no significant repatriation of funds: the era of bank secrecy is not yet over.'

b. The BEPS Action Plan

Those looking to the OECD to a solution to the world's tax problems in 2013 did, therefore, start form a position of concern and much of what was said in its 15 point Base Erosion and Profits Shifting action plan issued in July 2013 did not allay those fears. That plan was as follows (with just headings being shown:

ACTION 1 – Address the Tax Challenges of the Digital Economy.
ACTION 2 – Neutralise the Effects of Hybrid Mismatch Arrangements.
ACTION 3 – Strengthen Controlled Foreign Company Rules.
ACTION 4 – Limit Base Erosion via Interest Deductions and Other Financial Payments.
ACTION 5 – Counter Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance.
ACTION 6 – Prevent Treaty Abuse.

ACTION 7 – Prevent the Artificial Avoidance of Permanent Establishment Status.
ACTION 8, 9, 10 – Assure that Transfer Pricing Outcomes are in Line With Value Creation
ACTION 11 – Establish Methodologies to Collect and Analyse Data on BEPS and the Actions to Address It.
ACTION 12 – Require Taxpayers to Disclose Their Aggressive Tax Planning Arrangements.
ACTION 13 – Re-examine Transfer Pricing Documentation.
ACTION 14 – Make Dispute Resolution Mechanisms More Effective.
ACTION 15: Develop a Multilateral Instrument.

Where, it might be asked, had all the hopes and aspirations gone? Where too were the clear statements of intent from the G8, in particular? Where, even, was there a reference to something as easily identified as country-by-country reporting?

c. Country-by-country reporting

The simple answer was that there was no reference to country-by-country reporting. Oblique inference to work upon it was hidden in in Action Plan 13. It had already become, in the OECD's mind, a footnote to transfer pricing documentation. In that context progress on this issue will be reviewed below amongst tax system reforms.

d. Automatic information exchange

And what of automatic information exchange? That is not referred to in the BEPS action plan at all. On this the issue action was referred to the tax haven dominated Global Forum on Transparency and Exchange of Information by the G20 who said in their communiqué:

> *The Global Forum on Transparency and Exchange of Information, the OECD Task Force on Tax and Development, the World Bank Group and other international organizations are key partners who can assist developing countries identify their needs for technical assistance and capacity building in implementing of the transparency and exchange of information standards, including through the multilateral Convention and automatic exchange of information. These efforts will help developing countries secure the corporate tax revenue they need to foster long-term development.*

The chance that representatives from Bermuda and The Cayman Islands, noted above, are likely to push this issue hard is difficult to believe. Whilst a progress report[xxi] on the work of the Global Forum on Transparency and Exchange of Information was issued to the G20 in September 2013 this did not refer to the new responsibilities devolved to it and a review of the organisations website[xxii] in January 2014 gave no indication that there had been any change in its remit or brief since 2009 whilst the model tax exchange agreements referred to were all old style, on request, agreements. Any evidence that automatic information exchange is making progress is very hard to find. Nor is there sign of this work on the

website of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters[xxiii] in January 2014. This is another OECD task force. This is despite the fact that the G20 asked that a programme for taking this work forward[xxiv] be available by February 2014.

e. Beneficial ownership

Did beneficial ownership fare any better? The sad answer is 'no'. This matter was referred to in the G20 Communiqué as follows:

> *The Global forum will draw on the work of FATF on beneficial ownership and ensure that all countries have information regarding the beneficial ownership of entities operating in their jurisdictions.*

The Financial Action Task Force (FATF) happens to be located at the OECD, but is not formally a part of it. Its primary concern is money laundering, on which issue it has been very effective at requiring the production of documentation and has been seemingly largely ineffective at stopping the abuse. It is also notable that a search on its web site[xxv] gives almost no clue as to any actions taken on this issue since July 2013. The indications are not good.

In practice real progress on this issue is only really being seen in the UK and, maybe, in its dependencies (with the latter being given little choice by the UK but do something). The UK's Prime Minister, David Cameron, has committed to a public register of beneficial ownership in the UK[xxvi]. However, the detailed information that will be required on that register and how it will be obtained and what quality control checks might apply to it are still unknown. If, as is thought likely, the information will be subject to voluntary control by companies and will be enforced by the UK's Registrar of Companies then the chance that there will be active enforcement of disclosure will be very low indeed. As example, maybe 350,000 companies a year fail to file basic information such as an annual return form with the Registrar if Companies in the UK a year and although a separate register of companies is maintained for Scotland as distinct from England and Wales no prosecutions have been brought in Scotland on any company law related issue for several years[xxvii]. If this same lax approach is adopted on this issue then the changes that have been announced are mere token gestures that will catch no one likely to actually undertake a crime.

f. The Extractive Industries Transparency Initiative

What then of the Extractive Industries Transparency Initiative? That did not make it to the G20 Tax Communiqué or to BEPS. It only made it to the more detailed declaration, where it was given this few lines[xxviii]:

> *We welcome initiatives aimed at increasing extractive transparency, including voluntary participation in the Extractives Industries Transparency Initiative (EITI) and take note of the progress.*

And that was it for the EITI. Within the G20 process the initiative died at that point.

It is of course true that there was progress elsewhere. The European Union passed its demand for disclosure within the extractive industries[xxix] in June 2013. This was an initiative driven almost entirely by civil society and certainly not by the G8 or G20 process. That process introduced a new obligation for listed and large non-listed extractive and logging companies to report all material payments to governments broken down by country and by project, when these payments have been attributed to a specific project. The following types of payments will have to be reported:

- production entitlements
- taxes levied on the income, production or profits of companies
- royalties
- dividends
- signature, discovery and production bonuses
- licence fees, rental fees, entry fees and other considerations for licences and/or concessions
- payments for infrastructure improvements.

This is, of course, very welcome, but there is a real problem with this disclosure in that whilst it provides information on payments made it provides no information to determine whether the data is likely to be in the correct amount. So, for example, taxes paid on income have to be declared but the amount of income does not need to be disclosed so the user of the data is no better off when seeking to determine whether the company in question has paid the right amount of tax; they simply know it has paid tax. Full country-by-country reporting of the sort civil society, including the Publish What You Pay campaign, wants would provide this additional information and from the tone of the G8 and G20 summit statements there would appear to be some expectation on the part of the politicians involved that this is what they thought were getting, but nothing could be further from the truth. The OECD delivery on country-by-country reporting will most definitely be very limited, and only to tax authorities and not to the public.

In the meantime attempts to introduce similar legislation in the USA have become bogged down in the Securities and Exchange Commission as oil and other companies have brought litigation to try to overthrow the requirements on them to disclose data and the outcome of this process is as yet far from clear[xxx].

If the Extractive Industries Transparency Initiative is making progress it is not because of the G8 or G20.

g. Tax system reform – including country-by-country reporting

So what of more radical tax system reforms? The best hint that there was room for real reform came from the G20 tax communiqué, which said[xxxi]:

> *Three actions are identified in the area of transfer pricing to put an end to the divorce between the location of profits and the location of real activities. Importantly, there is recognition that although the existing transfer pricing rules appropriately allocate income in many instances, special measures, either within or beyond the arm's length principle, may be required to address certain specific difficulties arising in the current system.*

That suggestion that there may be an opportunity to consider reform 'beyond the arm's length principle' suggested real reform as a possibility for the G20 leaders. But, just as country-by-country reporting had disappeared from view by the time the OECD considered the issue when they came to discuss such matters so had any chance of fundamental reform to the tax system vanished without trace in the BEPS report. This says:

> *In the area of transfer pricing, the rules should be improved in order to put more emphasis on value creation in highly integrated groups, tackling the use of intangibles, risks, capital and other high-risk transactions to shift profits. At the same time, there is consensus among governments that moving to a system of formulary apportionment of profits is not a viable way forward; it is also unclear that the behavioural changes companies might adopt in response to the use of a formula would lead to investment decisions that are more efficient and tax-neutral than under a separate entity approach.*

The status quo was to be maintained. The separate entity, arm's length pricing basis for allocating profits between states which has allowed the world's tax system to descend to the point where major US corporations were hiding 40% of their profits offshore[xxxii] and tax abuse has become the de facto norm for corporate behaviour was very clearly not open to challenge in the BEPS process. Instead, as the report also said:

> *Alternative income allocation systems, including formula based systems, are sometimes suggested. However, the importance of concerted action and the practical difficulties associated with agreeing to and implementing the details of a new system consistently across all countries mean that, rather than seeking to replace the current transfer pricing system, the best course is to directly address the flaws in the current system.*

It is undoubtedly true that the BEPS report seeks to address those flaws but there are real flaws in the way it seeks to do so.

Firstly, the flaws it seeks to address are technical, and are detailed and not systemic, systemic change having been rejected from the outset. As such the fundamental problem that international tax law has to date sought to tax multinational corporations as if they are a group of wholly unrelated entities when in fact they are one single entity subject to common management and control will continue. Such a fundamental flaw cannot be addressed by any piecemeal action; however well someone does something that is wrong it

remains wrong and it is this wrong action on international tax that the OECD is seeking perpetuate.

Secondly, the data needed to show what is wrong with the profit allocations that are made within the existing international tax system that could be provided by full country-by-country reporting but this proposal is already being watered down. The OECD is pulling back from the term country-by-country reporting. The idea of publishing full profit and loss accounts for each jurisdiction in which a corporation trades has already been dispensed with. Instead at best just four variables, being sales, labour costs or headcount, profit and tax paid (almost inevitably meaning cash settled and not the tax due) will be disclosed and this data really is insufficient to provide the risk assessment tools needed by tax authorities to work out who really is, and is not, shifting profits for tax purposes.

There is one undoubted reason why the OECD has pulled back from country-by-country reporting in this way. Country-by-country reporting was always designed to provide the information required to allow a formulary apportionment calculation to be undertaken on the financial statements of any multinational corporations reporting under country-by-country reporting[xxxiii]. When the OECD held a public hearing in Paris in November 2013 to consider country-by-country reporting and other transfer pricing issues it became very clear[xxxiv] that the terms country-by-country reporting and unitary apportionment formulas were completely linked in the minds of many delegates from the business community, and in some cases, from the OECD. The fear of unitary approaches was almost palpable in the assembly; the only obvious reason being that many of those present must expect that it will result in them paying more tax in the places where they really earn it.

As has already been noted, the OECD is only too willing to acquiesce to their demand to pull back from anything linked to unitary taxation. Since it is thought that country-by-country reporting challenges the OECD's commitment to the arm's length pricing basis of transfer pricing by suggesting an alternative profit apportionment mechanism that may result in something much closer to the right amount of tax (but no more) being paid in the right place 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, the OECD has no real enthusiasm for country-by-country reporting. It is something that has been foisted upon them against their will, and their track record suggests that in that case they will do all they can to kill it. For that reason it is to be consigned to a footnote in transfer pricing documentation, will not be the basis for tax assessment that many G20 leaders may have expected it to be, and the data it will provide will not be made public.

Nor, as importantly, is it clear that demand will be made for the universal supply of country-by-country reporting data to all tax authorities. There was considerable discussion at the OECD in November 2013 about this data only being made available to the head office jurisdiction of a multinational corporation with that country then making it available to its tax treaty partners. That would almost automatically deny this invaluable data to most developing countries – as was clearly the intent of those making this suggestion, with the implication being that such tax authorities could not be trusted with such revenue sensitive

data. In fairness, some business representatives at the meeting objected to this proposal but the fact that it was even suggested shows how far some multinational corporations are willing to go to make sure that tax authorities do not have the information they need to collect the tax due to them.

h. Conclusion

2013 was a year of considerable hype and promise from the G8 and the G20 with regard to international tax reform. Unfortunately, those bodies then gave the task of delivering that reform to the OECD, which is the body where tax reform goes to die. It looks like the OECD is living up to its reputation on this issue. Much is, of course, still promised and papers on many issues, including country-by-country reporting, will be published in 2014, but the fact is that the approach to reform that the OECD has adopted is wrong because systemic issues have been ruled as being unacceptable for consideration and yet it is systemic faults in the international tax system that have brought it to its knees. Nothing can overcome that flaw that has been designed into the OECD process from the outset.

6. Who is to blame?

Before considering what Africa might do about the tax problems it still faces in 2014 it may be worth for a moment considering who is to blame for the problems that are now being faced with taking forward the promised progress on international tax reform.

The first group who must be blamed are the politicians who promised reform and then did not deliver on it. David Cameron is a case in point. He made tax a main theme of the G8 whilst a the very same time his government was moving the UK from a system of corporation tax that charged companies on their worldwide income to one that charges them to tax only on their income arising in the UK. This makes it considerably easier for those companies to hide profits in tax havens and much more attractive for them to do so. It also removes an essential protection for developing countries in which UK companies have subsidiaries. That is because at one time it was likely that tax shifted by such subsidiaries into tax havens might eventually be taxed in the UK, so providing some incentive not to abuse. Now any such shift of profits gives an absolute tax saving, leaving such subsidiaries considerably more vulnerable to tax abuse.

The possibility in that case that the politicians who made declarations of what should happen may have done so more to appease public demand for reform instead of having any real intent to deliver on it has to be considered a real possibility, especially given the vagueness of the promises in the G8 declaration, for example.

The second group who might accept blame are the OECD. Politicians can, of course, be criticized for referring this issue to the OECD, but then the G8 and G20 both represent developed countries and the OECD is the rich nations think tank on how to make globalisation work, so the referral may not be surprising in itself. What the OECD can take blame for is in interpreting the brief they have been given as being a demand to tinker with the existing tax system rather than to deliver real change in it.

The OECD is part of the problem in world tax because it has been the primary architect of the current international tax system and as such many people who work for it have considerable personal and intellectual capital invested in perpetuation of a system they know intimately. The chance that they were ever going to suggest the radical reform that is needed was as, as a consequence, low and it looks likely already that this will be the outcome. In January 2014 we have already learned that on one key issue, reform of the taxation of the digital economy, it has been concluded that no action is possible.

The third failure is of the business community. That community knows it is under pressure but has not responded to the challenge it has been given. Instead it, and its tax representatives in the form of international firms of lawyers and accountants, has resorted to a stout defence of the existing tax system that has suited them so well. This has been seen in consultations at the OECD and pronouncements from that community. Big 4 accountants EY did for example, in August 2013 say of country-by-country reporting[xxxv]:

The floodgates are, however, not yet open. Any further regulatory developments, in the EU at least, will take a number of years. This suggests that the development by organisations of alternative tax transparent reporting approaches such as increased narrative disclosure and more informative tax reconciliations may yet stem the tide on country-by-country reporting.

The fight against tax reform that may benefit developing countries in the business community is incredibly well resourced and should not be under-estimated. The language used is typical of their representation of issues relati8ng to tax reform.

The fourth failure was on the part of developing countries. Too few have been willing to come forward and demand reforms that would meet the needs of their states for extra revenue. In some cases that may be because of a lack of awareness, but too often it has been because of concern about challenging the status quo. That status quo has to be challenged now or aid dependency will continue. As is explored in the final section of this report, the world's developing countries may now have to take this matter into their own hands if they are to get the reform they want and need.

Finally, some blame for what happens falls on the NGO activists who started much of this process of reform. We did not anticipate the rate of change that would lead to such apparent progress in 2013 and had not therefore moved sufficiently quickly from a state of suggesting that there was a problem needing addressing to having invested enough in the potential solutions that would address the problems we had highlighted. Country-by-country reporting was reasonably well developed, and so too was thinking on automatic information exchange, but the EITI has not reformed its own accounting approaches quickly enough since its inception and this has not helped reform in this area. In addition, mechanisms relating to beneficial ownership had not been sufficiently thought through in many cases. The need for workable solutions in 2013 had not been anticipated well enough.

The result is that in combination the opportunity of 2013 may not be delivered upon. Evidence that the issue of tax reform has slipped off the agenda of the World Economic Forum in January 2014 suggests that might be the case amongst developed countries. If that is true then the question has to turn to what African states can do about this.

7. Where does Africa go now?

Africa needs tax reform. It needs it most especially with regard to those taxes that it has greatest prospect of collecting, and taxes on corporations rank high on that list. That is why the risk of non-delivery on the promises of 2013 is so significant for Africa.

It would then be easy to say that what Africa needs now, most especially in the light to the suggestion that workable solutions had not been properly identified in all cases in 2013, is a list of those workable solutions that can be dropped into place. That may, however, be a mistaken approach as yet for a number of reasons.

What is very clear is that the key changes that could have made a real difference in 2013 were those that really rocked the existing tax system. Country-by-country reporting and automatic information exchange were at the core of these system-rocking ideas. The EITI is useful, but a sideline to country-by-country reporting in reality whilst beneficial ownership data is really needed to make automatic information exchange work. There were therefore two dominant demands, both of which were about transparency.

It is important to recall in that case that transparency was being demanded for a reason, which is that tax systems cannot work unless the tax base – what is to be taxed – can be located, its ownership identified, its value quantified and the demand for payment can be enforced. These are issues at the vey core of tax system design. Country-by-country reporting and automatic information exchange fir firmly into this tax system design process.

For example, country-by-country reporting tries to locate corporate profits and reveal their ownership whilst at the same time quantifying them. Likewise, automatic information exchange is about identifying who is resident in a country and has income arising outside it that should be within the charge to tax in the place where they live. Again, it locates assets, identifies ownership, can provide value if information on income arising is shared, and therefore provides the legal system with a basis for making a demand for tax. Both are fundamentally about tax base identification. They are as a result key building blocks for a successful tax system in a globalized environment with easy electronic communication and their absence to date has led to widespread corruption.

However, much as I support their use they are not, in themselves, enough to deliver all the reform Africa needs. Tax systems are about much more than simply raising revenue. They are about at least four other objectives as well. The first is repricing goods and services that the market has incorrectly priced. The second is to redistribute income and wealth to alleviate poverty and create a more balanced economy. The third is to assist management of the economy through fiscal policy whilst the last is to help raise representation: countries with direct taxes have better rates of involvement in democratic processes.

Of these four the last has little to do with corporation tax: companies should not vote. Fiscal policy is however a key reason for taxing companies in Africa and incentives, allowances and

reliefs given to them have played a major role in many governments' economic strategies (rightly, or wrongly). So too is repricing important when it comes to the impact of corporate activity on the environment, for example, whilst in many states redistribution of the wealth that can be captured by corporations engaged in the extractive industries is vital if the needs of all in the community are to be met. The points made are important: I repeat then that effective tax systems are about more than just raising revenue.

In that case the first step for Africa now is to ask just what it wants from its tax systems. Each state has to ask this for itself, of course, but there is a collective responsibility as well. That is because it is now all too apparent that if cooperation is not a part of the international tax agenda tax competition rapidly takes its place, and that has been a key reason for the problems that have arisen with base erosion and profit shifting. So Africa, separately, regionally and even across the continent needs to think collectively about tax and what the process of collecting tax means for it.

It would be preemptory to suggest what the outcome of any such considerations would be, especially when I am not African, but there are indicators as to where Africa should go on this issue if it is to address the challenges it faces. I offer these in no particular order in the hope that they might stimulate debate.

Firstly, African states must be willing to think creatively. The OECD BEPS process is likely to fail because it is refusing to reform a tax system that too many in developed countries have too much intellectual capital invested in to want to change. This should not constrain Africa. Africa, if anything, needs change more than the OECD does. The tax system it has is not working and by common consent African states are underinvested in tax collection. That does, however, mean that change could be easier and quicker to deliver in Africa than elsewhere because the reasons for change are bigger and the resistance to it smaller than in OECD states. Change is therefore possible. The fact that developed countries do not want to make change should not prevent African states from making progress.

Secondly, change in Africa has, I suggest, to be based on sound conceptual thinking. The BEPS reforms are mere tinkering when what is required is systemic reform. There are few conceptual thinkers on taxation issues but that should not stop Africa searching them out and using their expertise in combination with local experience to develop new thinking for Africa on what a tax system should look like.

There is particular importance to this point. The OECD approach is extraordinarily colonial in its style. It says, admittedly implicitly but nonetheless quite clearly, that whatever suits developed countries must suit developing countries as well but there is no reason at all why this need be the case. The focus for tax in Africa is always going to be on corporation tax and royalties as a priority, on sales taxes, VAT and tariffs for their ease of collection and on income taxes as a limited activity for those who might have sufficient income to pay them. This, from the moment it is stated so boldly, suggests that any African tax solution is going to be fundamentally different from a system of taxation in operation in developed countries.

Africa should now be bold enough to believe that different solution is both possible and desirable.

Africa should also invest in making that happen. There is no reason why African corporation taxes need be the same as European or American ones. The taxation of royalties is a particular issue for developing countries where insufficient theoretical work has been undertaken as yet to suggest an optimal solution for charging appropriate to various sectors. And some issues, such as the taxation of joint ventures, payments in kind and tariff related issues are of much greater significance in Africa than many other places. As such it should be obvious that African solutions may be needed on these issues. The OECD is not looking for them. Africa should seek them for itself.

In that case it needs to be bold on other issues as well. The fact that country-by-country reporting is now discussed around the world shows that in just over a decade a major accounting reform can impact on the international agenda. What is of particular note is that this has happened despite the indifference (for which should be read, the opposition) of the International Accounting Standards Board, the largest accounting standards setter in the world, which has to date refused to proactively address this issue. That indifference is the explanation for the reason why the European Union, OECD and US Senate have taken this issue on themselves.

Of these three by far the most effective to date on this issue has been the EU and whilst I am not for a moment suggesting that Africa should create a similar body, what Africa can do is agree that there is an African need for African accounting solutions that deliver the information African states and African people need for the economies they have at present. It is very unlikely that adoption of International Financial Reporting Standards as issued by the International Accounting Standards Board could achieve that goal for Africa. In that case I am suggesting Africa needs to do this by itself.

As simple example of the reason for saying this, the International Accounting Standards Board has explicitly stated that financial statements prepared under International Financial Reporting Standards can only, at best, serve as the starting point for determining taxable income and that this is not, and never will be, their primary purpose.[xxxvi] When, however, Africa very clearly, needs data to help it collect tax as a matter of priority and has, in contrast, little need to be concerned about the information needs of financial markets, for which purpose International Financial Reporting Standard are designed, to even think of using IFRS as Africa's standard accounting system is absurd. The time has come for Africa to develop its own accounting standards – call them Tax Reporting Standards if you will given their required focus – that meet African need.

Country-by-country reporting could undoubtedly form a part of such Tax Reporting Standards but these standards could go much further than that. They could be designed to highlight the needs for information on tax sensitive issues in many African states. Such issues include intra-group trading, royalty and similar payments, management charges, employment data and information on interest paid to related entities that is vital for

assessing whether profit is being stripped from African companies in this way. There is no reason why this information could not be in accounts: African states could combine to demand it. They could similarly demand that African companies report on all their transactions with tax havens. It is entirely appropriate that they do so. This is the data that the users of these accounts need, unlike (apparently) the uses of accounts in developed countries. Accounts are only useful if they meet need; African accounts have to be designed to ensure that they do.

To ensure that is the case the standard they must meet is easily specified: they must provide readily accessible data to determine that most companies are paying something close, at least, to the right amount of tax in the right place at the right time, which is the desired tax goal that has to be achieved with the decidedly limited resources that are available. Cost effective data supply to tax authorities has to be at the core of African Tax Reporting Standards. They could have the power to transform Africa's tax yield.

A next important step would be for African states to agree that they will each agree to demand the same data form the companies trading in Africa so that a level playing field is created for tax data. This means that what is called a 'combined report' is sent to all countries so that there can be no playing off one against another. This, of course, saves companies administration costs at the end of the day. Country-by-country reporting is a key part of such a report.

Such a report could also provide the data for unitary taxation in Africa, for which the time may have arrived. If African states, as a whole, demanded that multinational corporations supplied them with a combined report, as noted above, including country-by-country reporting data, and also developed African Tax Reporting Standards to supply the information also noted above, then the availability of such data within Africa could form the basis for establishing formula based apportionments of profit in Africa – which would be much cheaper and easier to agree than the current costly and ineffective arm's length pricing systems for which almost no data is available in Africa – as the OECD has implicitly agreed to be the case. This could, once again, increase African tax yield because the tax base on which tax could be charged would be much more consistently located and valued with its ownership determined for the purpose of raising effective tax demands.

This, though, is not to deny the need for African tax authorities to access to data from outside Africa. Africa could achieve this in two ways. If African states were willing to coordinate a demand for full country-by-country reporting they could fuel the demand for this data internationally. As noted, many of its corporation tax information needs would be met as a consequence and so too would EITI data be readily available without a great deal of additional accounting being required since the full version of country-by-country reporting that I have pioneered is intended to supply all likely required EITI data as a matter of course and on a consistent basis.

Country-by-country reporting data does not though stop the need for data from tax havens. This data is vital to stop corruption, to enforce income tax and to also secure information on

payments made by multinational corporations to tax haven companies. However, Africa needs to look at solutions for automatic information exchange that are workable within its context, always taking into account the fact that it has, at least at present, limited resources to handle any information it receives from such places. This, I suggest, means that Africa needs to look at a different form of automatic information exchange from those developed for use in the OECD states. Those OECD states might want to exchange information with tax havens on account balances, income earned, capital gains made and so on, but the assumption is that this data will be shared between states with the reciprocal power to provide that information in return. Most African state will find that reciprocal sharing hard at present and as a result might be excluded from the benefits of automatic information exchange as a result.

It should always be borne in mind in this context that the main benefit of automatic information exchange is not the data supplied (useful as it might be) but the fact that the very fact that data is being supplied has a deterrent effect on those thinking of using tax havens in the first place (much as, incidentally, country-by-country reporting will do the same for multinational corporations that use such places: the glare of publicity is something no tax avoider or evader seeks). In that case a simpler form of automatic information exchange could, I suggest, be used by Africa than is required by developed countries.

I proposed such a system[xxxvii] in 2009. In it I suggested using the logic of deterrence noted above coupled with the logic that tax havens should now be willing to sign tax information exchange agreements with any country that requests them. This is not as perverse as it sounds, despite the criticism of tax information exchange agreements already made in this paper, for two reasons. The first is that automatic information exchange of the sort noted below provides the information that overcomes most of the existing hurdles to using tax information exchange agreements. The second is that the tax information exchange agreement model exists; there is no point reinventing the wheel if one already exists. If the OECD offers a partial solution it is up to Africa to make it work for its own purposes.

In that case developing countries do not need to know the precise details of interest, profits, gains or other income accruing to offshore structures created by, owned by, or which benefit people resident within their jurisdictions to enable them to make an effective enquiry under a tax information exchange agreement. They simply need to know:

1. That such a structure owned by a person resident in their country exists in a tax haven (a bank account qualifying by itself as a structure for this purpose);
2. What each component of that structure (trust, company, or foundation) is called;
3. Who manages that structure;
4. Where, precisely, it banks;
5. Who in their jurisdiction benefits from it.

If this data were available to African states coupled with a network of standard tax information exchange agreements with tax havens then it is likely that almost all African states could and would substantially increase the number of tax information exchange

requests that they make. What is more, the amount if reliable information they should expect to secure in return from such requests would increase considerably.

It should also be noted that the fact that many African countries may not be able to reciprocate such automatic information exchange at present is unlikely to be a problem: few tax havens would ever want to make such an enquiry of an African state because they are very unlikely to want to tax any income arising in African countries. For that reason the absence of information in Africa at present should not be an impediment to progress on this issue in the immediate future.

What is important about this proposal, that on Tax Reporting Standards, and those on country-by-country reporting for Africa and unitary taxation within Africa, is one consistent theme: they are all about maximising revenue from data collected at minimum cost but with maximum social impact, to which local transparency could add considerably as and when it is politically feasible. All of which begs the question, can Africa do this?

A paper of this length highlights so many issues and potential solutions that it is easy to feel despondent about the chance of anything suggested actually happening. And yet Africa should not feel that way. Goodwill is with Africa on these issues. And Africa has resources the world needs. It should be willing to trade them, for profit and for tax revenue. It is not one such trade that is needed; it is very definitely both.

And, to its advantage, Africa does not have tax or accounting systems that are so entrenched that change is impossible, as many developed countries think to be the case of their own systems.

Most of all, Africa can work regionally, and some regional economic organisations exist, which help this process of change. Of course coverage is not universal and agreement is not always easy. But what is actually needed are just five things to make progress at even a regional level:

- A willingness to try;
- A willingness to innovate and find African solutions to tax and accounting;
- Agreement on what is to be taxed;
- Acceptance that some issues may be impediments to progress and can be put aside for now; the suggestions made in this paper do not (despite OECD claims) require all issues to be resolved at once. Piecemeal progress is not only possible, it is desirable in many cases so that lessons are learned along the way;
- A willingness to share data to achieve outcomes, and to learn from results.

The suggested approaches make all these aims possible.

More work would be needed before progress could happen, but the key point is the essential one and is this: if the OECD will not deliver on tax and accounting reform for its own peculiar reasons then Africa cannot afford to wait for decades before developed

countries agree to tackles these again. They have to agree to tackle these issues together, now.

That is the first step on the journey to tax reform, for which journey much of the map has been, or is being, worked out. It will just take courage to embark. But there's little to lose when the existing global tax system so undermines the revenues of so many African countries. The opportunity is there to be grabbed.

8. Endnotes

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[ii] http://africaprogresspanel.org/wp-content/uploads/2014/05/APP_AR2014_LR.pdf

[iii] A detailed explanation is available here http://www.taxresearch.org.uk/Documents/CBC2012.pdf

[iv] See http://eiti.org/countries

[v] https://www.gov.uk/government/speeches/prime-minister-david-camerons-speech-to-the-world-economic-forum-in-davos

[vi] See 'No more shift business' http://www.christianaid.org.uk/Images/No-more-shifty-business-response-to-OECD_tcm15-68250.pdf

[vii] https://www.gov.uk/government/publications/g8-lough-erne-declaration/g8-lough-erne-declaration-html-version

[viii] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207771/Lough_Erne_2013_G8_Leaders_Communique.pdf

[ix] http://www.psa.ac.uk/political-insight/blog/lough-erne-summit-and-tax-justice-story

[x] http://www.oecd.org/ctp/BEPSActionPlan.pdf

[xi] https://www.g20.org/sites/default/files/g20_resources/library/Saint%20Petersburg%20G20%20Leaders%20Declaration%20-%20Tax%20Annex.pdf

[xii] http://www.oecd.org/general/listofoecdmembercountries-ratificationoftheconventionontheoecd.htm

[xiii] http://www.un.org/esa/ffd/tax/

[xiv] http://www.oecd.org/tax/transparency/44430243.pdf

[xv] http://news.bbc.co.uk/1/hi/business/7979606.stm

[xvi] http://eurodad.org/3595/

[xvii] http://www.oecd.org/countries/sanmarino/43743679.pdf

[xviii] http://www.oecd.org/tax/transparency/

[xix] http://www.oecd.org/tax/transparency/draft%20annual%20report%202013%20%20for%20GF_2.pdf

[xx] http://www.bi.edu/InstitutterFiles/Samfunns%C3%B8konomi/Papers/Spring%202012/Johannesen.pdf

[xxi] http://www.oecd.org/tax/transparency/progress_report__G20.pdf

[xxii] http://www.oecd.org/tax/transparency/abouttheglobalforum.htm

[xxiii] http://www.oecd.org/ctp/exchange-of-tax-information/conventiononmutualadministrativeassistanceintaxmatters.htm

[xxiv] https://www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG.pdf

[xxv] http://search.fatf-gafi.org/search/C.view=default/results?q=beneficial+ownership

[xxvi] http://www.theguardian.com/business/2013/oct/31/public-register-firms-secret-owners-cameron

[xxvii] http://www.companieshouse.gov.uk/about/pdf/companiesRegActivities2012_2013.pdf table D2.

[xxviii] https://www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG.pdf

[xxix] http://europa.eu/rapid/press-release_MEMO-13-541_en.htm

[xxx] http://www.publishwhatyoupay.org/where/coalitions/united-states

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[xxxiii] Since the author of this note was also the creator of country-by-country reporting I can make this claim with some confidence.

[xxxiv] http://www.taxanalysts.com/www/website.nsf/Web/RequestInformation?OpenDocument&trial=ITN&dn=2013-28219&title=Transfer%20Pricing%20Is%20Still%20Dead%3A%20The%20End%20of%20Transfer%20Pricing%20Is%20Nigh%20.%20.%20.%20or%20Maybe%20Not

[xxxv] http://www.ey.com/Publication/vwLUAssets/Tax_Transparency_-_Seizing_the_initiative/$FILE/EY_Tax_Transparency.pdf

[xxxvi] See http://www.ifrs.org/IFRS-for-SMEs/histroy/Meeting-Summaries-and-Observer-Notes/Documents/SME0806b02Aobs.pdf.

[xxxvii] http://www.taxresearch.org.uk/Documents/InfoEx0609.pdf