



Finding the secrecy world

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Introduction

- There is a problem with the language of ‘offshore’
- A new language is needed that breaks the link with geography
- That new language will change the way we view the ‘secrecy world’
- This will have a positive impact on the way we regulate ‘the secrecy space’

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What is a tax haven?

- “There is no single, clear, objective test which permits the identification of a country as a tax haven”
- The Gordon Report to the American Treasury, 1981



We don't know

- “The term “tax haven” lacks a clear definition, and its application is often controversial and contested”
- Jason Sharman, Havens in a Storm, 2006



Is a tax haven an OFC?

- “It is difficult to draw a clear analytical distinction between a tax haven and an OFC”
- Mark Hampton, *The Offshore Interface*, 1996



Don't ask the regulators

- “There is no internationally agreed definition of what constitutes an offshore financial centre (OFC), but there are common perceptions. Generally, there is a tendency to adopt the approach of “you know one when you see one”.”
- The UK's Financial Services Authority to the Treasury Committee, House of Commons, 2008



Or the tax profession

- “If one had to choose a single criterion, we might define an offshore centre as one that is part of a jurisdiction that has few or no Double Tax Agreements (‘DTA’) with other countries. ... However, this is an oversimplification.”
- Deloitte to the Treasury Committee, House of Commons, 2008



Or the IMF

- “It has proven difficult to define an OFC using a widely-accepted description. A range of criteria have been used, including (i) orientation of business primarily toward nonresidents; (ii) favorable regulatory environment; (iii) low or zero tax rate; and (iv) offshore banking as an entrepôt business.”
- IMF, 2008
- Who then declared Offshore to be dead



A cause for celebration?

- “On a scale of one to 10, this is a 10. The IMF is probably the most respected financial agency in the world. The key message is that the IMF has acknowledged that it is wrong to distinguish between jurisdictions because they are either onshore or offshore. The distinction should always be that some are well regulated and others are not so well regulated.”
- Chief Minister Lyndon Trott of Guernsey, Guernsey Evening Press, 2008



Language is important

- “The Isle of Man has been urged to rebrand itself as an 'independent financial centre' rather than an offshore centre, as tax havens look to clean up their act.
- It has been suggested the territory move away from the label 'offshore', which has negative connotations, to 'independent financial centre'.
- 'Perception is reality and you will struggle as long as people talk about offshore,' the adviser said.”
- Accountancy Age, 2008



What this proves

- No one agrees what the language of offshore means.
- Despite that the use of that language is incredibly important
- Those involved think language has serious implication for the future of offshore regulation.



A failed attempt at precision

- Tax havens are places that create legislation designed to assist persons – real or legal - to avoid the regulatory obligations imposed upon them in the place where they undertake the substance of their economic transactions.
- OFCs are the commercial communities hosted by tax havens which exploit the structures that can be created using the tax haven's legislation for the benefit of those resident elsewhere.
- Creating Turmoil, Murphy, 2008, Tax Justice Network



Why did it fail?

- Because no one will give up what they already think
- So we have to start again



Why bother?

- There are 4 'offshore' concerns:
 - Money laundering
 - Terrorist financing
 - Financial stability
 - Tax evasion
- Disproportionate effort has been given to the first two.



Consequences

- IMF and FATF talk nicely to ‘tax havens’ for political reasons
- Basel keeps the bankers sweet
- FSF has been lost in the morass
- Only the OECD and EU tackle tax
- It’s been easy to divide and rule the regulators



Creating a new language

- What really happens?
- Where does it happen?
- Who regulates it?
- Where do they regulate it?
- Are we sure they’ve regulated it?
- What role do the professions play?
- How do we deal with the consequence?



The secrecy jurisdiction

- Secrecy jurisdictions facilitate the problem
- Places that create regulation for the primary benefit and use of those not resident in their geographical domain.
- They create a deliberate, legally backed veil of secrecy that ensures that those from outside the jurisdiction making use of its regulation cannot be identified to be doing so.



Secrecy jurisdictions: key points

- Both characteristics must be present
- Tax is not mentioned
- The range of regulatory abuse is too wide for tax to predominate
- Low tax is the marketing tool: secrecy is the key characteristic
- A regulatory race to the bottom is happening



Secrecy jurisdictions are not the scene of the crime

Macavity's a Mystery Cat: he's called the Hidden Paw –

For he's the master criminal who can defy the Law.

He's the bafflement of Scotland Yard, the Flying Squad's despair:

For when they reach the scene of crime - *Macavity's not there!*

T S Elliot



Very little happens in a secrecy jurisdiction

- The SJ is a place
- But its legislation is designed for use elsewhere
- The SJ's domestic economy is not secret
- Only the bit 'elsewhere' is secret
- And the bit 'elsewhere' has almost nothing to do with the SJ
- There's a 'ring fence' between the two



The secrecy space

- What this means is the SJ creates 'secrecy spaces'
- The 'secrecy space' is what was called 'offshore'
- Legally the Secrecy Space is not in the Secrecy Jurisdiction



The Cayman Secrecy Space

- *Cayman officials said they fully cooperate with the United States. Maples [and Calder] partners said that ultimate responsibility for compliance with U.S. tax laws lies with U.S. taxpayers.*
- *While U.S. officials said the Cayman government has been responsive to information requests, U.S. authorities must provide specific information on an investigation before the Cayman government can respond.*
- The Cayman secrecy space is in the USA

The secrecy space is 'elsewhere'

- The Euromarket is 'elsewhere'
- The offshore company is 'elsewhere'
- Elsewhere is 'not here'
- Where 'here' is the Secrecy Jurisdiction

Categorising transactions – 'here' and 'somewhere'

	'Here'	'Somewhere'
Country providing the transaction structure	Jurisdiction A	Jurisdiction A
Country providing regulation of the transaction	Jurisdiction A	Jurisdiction B
Transaction type	Onshore	Regulated somewhere else

Adding 'elsewhere'

	'Here'	'Somewhere'	'Elsewhere'
Country providing the transaction structure	Jurisdiction A	Jurisdiction A	Jurisdiction A
Country providing regulation of the transaction	Jurisdiction A	Jurisdiction B	Unknown
Transaction type	Onshore	Regulated somewhere else	In the secrecy space

And on to 'nowhere'

	'Here'	'Somewhere'	'Elsewhere'	'Nowhere'
Country providing the transaction structure	Jurisdiction A	Jurisdiction A	Jurisdiction A	Jurisdiction A
Country providing regulation of the transaction	Jurisdiction A	Jurisdiction B	Unknown	Nowhere
Transaction type	Onshore	Regulated somewhere else	In the secrecy space	Unregulated
Space name	The regulated space		The secrecy space	

How transparent?

	'Here'	'Somewhere'	'Elsewhere'	'Nowhere'
Country providing the transaction structure	Jurisdiction A	Jurisdiction A	Jurisdiction A	Jurisdiction A
Country providing regulation of the transaction	Jurisdiction A	Jurisdiction B	Unknown	Nowhere
Transaction type	Onshore	Regulated somewhere else	In the secrecy space	Unregulated
Space name	The regulated space		The secrecy space	
Transparency status	Transparent	Visible	Opaque	Impervious

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Who does this?

	'Here'	'Somewhere'	'Elsewhere'	'Nowhere'
Country providing the transaction structure	Jurisdiction A	Jurisdiction A	Jurisdiction A	Jurisdiction A
Country providing regulation of the transaction	Jurisdiction A	Jurisdiction B	Unknown	Nowhere
Transaction type	Locally Regulated	<u>Internationally</u> Regulated	Secretly Unregulated	Knowingly Unregulated
Space name	The regulated space		The secrecy space	
Market type	Regulated market		Unregulated market	
Transparency status	Transparent	Visible	Opaque	Impervious
Financial services providers	Local provider	International provider	Secrecy providers	

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Where does the cash flow?

Investments located in							UK
Secrecy provider							Guernsey
Unregulated entity	Settlor	Trust	Company	Directors	Bank		
Secrecy jurisdiction	UK	BVI	Jersey	Cayman	Isle of Man		

What really happens

It is in the grey secrecy space that the unregulated market exists, established by secrecy providers using unregulated entities registered in secrecy jurisdictions to move transactions from the regulated local or international sectors that are 'here' or 'somewhere' else that is identifiable into the secretly or knowingly unregulated spaces that are mythical locations 'elsewhere' or, maybe 'nowhere' at all.



The regulatory issues

- The secrecy space surrounds but is not in any secrecy jurisdiction
- Secrecy providers sell secrecy services into the secrecy space
- Raymond Baker estimates flows through the secrecy space are US\$1 to US\$1.6 trillion a year – 65% is commercial tax abuse, half from developing countries



Accountancy helps this

- The opacity of consolidated accounts massively helps this
- The secrecy space disappears from view in consolidated accounts
- It is used for intra-group trade – 60% of world trade according to the OECD
- Not one cent is in published glossy accounts
- The accounting profession exploits this



The new language

- Secrecy jurisdiction = tax haven
- Secrecy space = offshore
- Secrecy providers = offshore financial services
- Secrecy world = the offshore world



So what?

The BVI says:

- *Generally, the view is taken that the Treasury Committee's inquiry into offshore finance centres must not be seen as centering on the longstanding debate between onshore and offshore jurisdictions. Rather, it should be focused on the pertinent issue of the standard of regulation and supervision of financial centres, whether onshore or offshore, and a demonstrated willingness to cooperate on matters of exchange and sharing of information.*



Yes, and no

- The ‘onshore’ / ‘offshore’ debate is meaningless
- Both describe regulated spaces
- That’s why the secrecy jurisdictions have been able to say:
- *Jersey is well known ... as a Crown Dependency with a well regulated Finance Industry*



The issue

- The issue is not the finance industry in the secrecy jurisdiction
- It is the finance industry in the secrecy space
- This does exist, but has been ignored.
- As the BIS put it in this year’s annual report:
- “How could a huge shadow banking system emerge without provoking clear statements of official concern”
- Answer: they didn’t have the language to locate it



The challenge

- Extending regulation to the secrecy space
- Ensuring regulation is focussed on the secrecy providers who have the power in the relationship between them and the secrecy jurisdictions
- Understanding that regulation moves way beyond the secrecy jurisdictions and into accountancy, banking and the professions



Is it possible?

- Yes: create country by country reporting in accountancy
- Yes: end the secrecy – all legal entities including trusts have to be on the record
- Yes: require that professional bodies regulate their members for their actions wherever their consequence might be



What will happen?

- When the secrecy ends so will much of the abuse
- Tax yields will be higher
- Rates will be lower
- Markets will allocate resources more efficiently
- Welfare will be higher
- All for the cost of supporting a few small towns in the world
- And putting some lawyers, accountants and bankers back into gainful employment