Jersey Finance: promoting transfer mispricing

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It's really very strange to note that Jersey Finance have issued a report criticising Christian Aid's reports on transfer mispricing. There are a number of very good reasons for thinking it so, even before I turn to the deficiencies in the report they have issued.

First of all, what, might one ask, has this to do with Jersey? It's a good question, because it does not feature in those reports Christian Aid have issued. Nor would it seem likely that it should. Christian Aid's work relates to mispricing of goods, not services. More than 50% of Jersey's GDP is generated from financial services. That is not a trade in goods. It is a trade in services. Jersey has remarkably little trade in goods — apart from the tax abusive trade in importing and immediately re-exporting low priced goods from and too the UK, purely to avoid UK VAT — and so the question has to be asked why they might have sponsored such a report on an issue of no apparent interest to them?

Second, one has to wonder why they used the services of Richard Teather to undertake this work. Teather is a man of my acquaintance who promotes almost any cause that will make the wealthiest richer and the poorest poorer, whether it be flat taxes, tax competition (or tax haven activity by any other name) or even (and this one is key), tax evasion. As I have noted time and again, in his book on tax completion for the Institute of Economic Affairs he said when discussing attacks on tax havens by democratically elected governments

This is attacking a classic use of a tax haven, as explained in the previous chapter, in which a person resident in (or otherwise subject to the taxation system of) a highly taxed country places his capital in a tax haven where it can earn untaxed income. While there are many cases where the home country does not tax foreign source income (such as the UK's non-domicile exemption discussed above), most Western countries have a worldwide taxation system that seeks to tax the worldwide income of its residents (or all of its citizens in the case of the USA). This tax haven income therefore does not cease (legally) to become liable to tax merely by being earned offshore: it is still liable to tax and the investor has a duty to report it to his home tax authority. In practice, however, if the investor does not report his income, then the home country *can have great difficulties in discovering and taxing it, particularly if the haven country has strong banking secrecy laws.*

While I am not seeking to condone dishonesty or criminal activity, from an economic perspective this is merely another example of tax competition: ***indeed, it is often necessary behaviour in order to take advantage of tax havens. Without the willingness of some to engage in this sort of activity, tax competition would be much less effective and therefore reduce the benefits that flow from it for the rest of us.***

Prima facie that looks like an endorsement of tax evasion. He has ***commented on this site*** ***that he does not support tax evasion in the UK. When*** ***I asked him*** ***in response in which he jurisdictions he was supporting it he did not respond. Based solely therefore on his own writing real question has therefore to be asked about Richard Teather's ethics, let alone whether it is appropriate that he undertake work on behalf of a body representing the regulated financial services industry.***

Third, whilst I note Teather is a chartered accountant I also note he has no background in economics, statistics or any other relevant subject.

Fourthly, and rather oddly, although Teather rather boldly claims that "unfortunately the underlying data has not, until this time, received ...attention" this is simply not true. The issue was discussed — somewhat unsatisfactorily because the NGO side was precluded from the debate — in the pages of Taxation recently, and the comments I, Raymond Baker of Global Financial Integrity and Alex Cobham of Christian Aid made in response to challenge there can be found here. They deal with all the issues Teather raises and his claims are undermined at a stroke. They're also undermined by the fact that much of a conference at the World Bank last year, which Raymond Baker, Alex Cobham and I attended, was devoted to this issue, and only the most biased of observers could say that any serious charges were made to stick against Christian Aid's work. That does, though beg the question as to why Jersey Finance, funded as it is by the Jersey government, would want to fund a study that actually covers old ground at this time.

Fifth, if they did want to address an issue of no apparent concern to them, why was it they did so quite so remarkably inadequately? No one — and certainly not me, the Tax Justice Network, Christian Aid, Raymond Baker, Alex Cobham, or anyone else would say the view given in the two reports Teather refers to are definitive. No one would even claim Raymond Baker's work — although constructed on wholly satisfactory methodological principles - was now either up to date or the latest word in this issue, because clearly it is not. Teather deliberately ignores new reports from Global Financial Integrity, funded by the Norwegian government, working on entirely different

statistical bases from that which Christian Aid use which support (within reasonable limits making allowance for the quality of data, statistical methods and such things) the work of both Christian Aid and Raymond Baker's earlier work. In other words, using a variety of methods, data and statistical approaches the data on transfer mispricing broadly triangulates.

Of course "broadly" is the right word. There are remarkable data deficiencies in this area, which all who work in it acknowledge. That is why those of us working in it produce data that we always think understates the claims we make. This has, for example, recently been evidenced by the IMF acknowledging that funds held offshore may now be at least [$18 trillion a year](#) — a significant leap upward from the [$11.5 trillion](#) estimate for which I was ridiculed for some time, quite erroneously as history is now proving. In the case of transfer mispricing the data we have produced is also bound to be understated, whatever the inaccuracies (and they exist) in the models used to estimate the losses arising within the trade for goods. There are three reasons for this.

First the estimate made includes no calculation for transfer mispricing in transactions for services. Most informed commentators now think this is an area where abuse is likely to be much larger than in the trade for goods where systems have improved during this century.

Second, much (but not all) of the work relates to transfer mispricing where the goods are reinvoiced between the point of first export and the final point of arrival. This is, of course, something that does happen in places like Jersey, is almost always abusive, and may explain their interest in this issue because this is the only role they can have in this activity — and if that is the explanation it is one that hardly becomes them. They might have been wise to keep their heads down in that case. However, a lot transfer mispricing will actually occur within an invoice i.e. the goods are shipped out at too low a price and arrive at their final destination at that under price as well but the methods used do not generally find this. This means the transfer mispricing estimate offered is bound to be understated.

Third, all issues relating to finance, interest, royalties and other such issues are excluded. Which is convenient for Jersey.

Teather ignores all these points, completely.

What he does do is nitpick. Since he adds little to the debate in doing so I will not spend long on the flaws in all he has written. Suffice to say that the data Christian Aid used is the best available in the world — it reflects much of the available data on world trade, no more or less. It may have weaknesses in it that may disguise errors, but that is all that is available. And given the

enormous size of the population available any error one way is highly likely to be countered by an error the other way — that is the nature of large samples, rather conveniently.

To argue that the data is not good enough for the job in hand is also absurd — it is the data that is deemed decision useful for determining much of trade policy worldwide. That makes it fit or this purpose. To claim otherwise is firstly disingenuous.

Second, to argue in this way is to seek to deny the problem exists by claiming that only perfect data could prove the existence of a transfer mispricing problem. This flies in the face of all known experience of tax authorities and the triangulated data noted above, all of which shows the problem does exist.

Third seeking to demand, as Teather does, that there be data correction before use to eliminate certain transactions is absurdly arrogant. How, after all, does Teather know that outliers are either a) wrong and b) not compensated for, as I note previously?

Next, to use an interquartile range to estimate acceptably priced goods, as Christian Aid does, is not a random act of the researchers as Teather would seem to have it — it is the action of the IRS, who use the same method. If it is good enough for tax authorities to use it to identify risk, why shouldn't Christian Aid use it?

Finally (for now), as Teather notes, the results do not say the abuse is all in the developing world. They're not. We acknowledge that. That's to the work's credit, not discredit. It also signals that there is still a major problem of abuse — which he does not in any way seek to consider or address despite the obvious impact it might have on well being in developed countries. Why does he turn a blind eye to this finding? Is it because he is, as is noted to be his habit, happy to endorse such abuse as a beneficial facet of "tax competition"?

So, what does the report add to understanding? Well, nothing at all. Everything has been rehearsed before.

But what it does tell us is that Jersey Finance is worried about something — and since logically it can only be re-invoicing activity in the area of transfer mispricing of goods we have to assume as a result that this activity is substantially more significant to the financial services industry in the island than we previously thought.

What too does the report say? That Jersey Finance is undertaking — as we

already know — a very strong campaign to seek to undermine those who question tax haven / secrecy jurisdiction abuse — precisely because they are still in favour of it. This makes their weasel words on compliance with international cooperation and rooting out of tax abuse look exactly like what they really are — weasel words.

Finally, in choosing to align themselves with a person who condones the beneficial social effects (as he sees them, and which they explicitly refer to them in [their web biography of him]) of tax haven / secrecy jurisdiction abuse Jersey Finance shows its true colours — as a friend of political extremism, as a supporter of tax structures designed to undermine the tax revenues of other places and as such as an opponent of the democratic right of sovereign states to tax in accordance with the democratic mandate their electorates have given them.

This suggests Jersey Finance still sees Jersey as a classic secrecy jurisdiction. Secrecy jurisdictions are defined as places that intentionally create regulation for the primary benefit and use of those not resident in their geographical domain that is designed to undermine the legislation or regulation of another jurisdiction. They do in addition 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.

Jersey Finance is saying leopards don't change their spots and that Jersey is as ever it was.

And as a result Jersey Finance is openly promoting tax abuse — even if licit - that does, without doubt, harm the developing countries of the world and the poor wherever they are.

Jersey Finance might do that. But what one hopes is that the politicians of Jersey, the people of Jersey, maybe even those responsible people working in finance in Jersey will realise that Jersey Finance is failing them badly by doing all this.

Is that too much to hope?