

Tax justice is possible - and pragmatically deliverable

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I have the [following post on the opendemocracy blog today](#):

Stuart Weir offered two potentially contradictory comments on Nick Shaxson's new book 'Treasure Islands and the men who stole the world' in [his review for OurKingdom](#). First, he said "For me it is possibly the most important political book that I have read since The Spirit Level" but he later concluded, "Shaxson advances a set of reforms that could begin to curb the excesses of the offshore world, but they seem to me to be as remote as they are admirable." He then noted that [UK Uncut](#) — the somewhat ad hoc tax protest movement which seems to have taken inspiration from the [Tax Justice Network](#) for which Shaxson has worked and to which I am an adviser — are "really up against it — not only against the British establishment but international finance and the major powers that sustain a system that was one of the factors that made the financial crisis not only possible, but inevitable."

How can we reconcile the seemingly idealistic aspiration Shaxson has to offer, reflected in the hopes of a nascent protest movement, with the pragmatic need for radical reform within the world financial system?

To some extent, it has always been my role within the tax justice movement to resolve this apparent dilemma. As a chartered accountant trained by a Big 4 firm, who went on to be senior partner of the firm of accountants and to run a number of entrepreneurial businesses before becoming a tax and poverty campaigner (as well as, somewhat behind the scenes, continuing to practise in my profession), it has been my job to offer pragmatic solutions and reconcile the ideals of tax justice with the realities of deliverable regulation. It helps that I believe that reconciliation is possible. I make no claim that it is easy: I just say that if the political will exists then reconciliation is possible and I offer, in what follows, a number of examples on how that might be done.

The question is not whether big corporations are avoiding tax (they are) but whether they are being socially responsible.

First, and given recent protests about corporate tax behaviour perhaps most relevantly,

the key issue that is being addressed is not, in my opinion, whether large corporations are avoiding tax, or not. Most, in their more candid moments, will admit that they are. The issue is about their accountability for tax paid in a world where tax revenue has become one of the most sought-after commodities by governments around the world. The demand for information on tax paid is exacerbated by the fact that it is corporations, and large ones alone, that are seeing tax cuts in the current economic environment, with their UK headline rate falling from 28% to 24% over the next few years, but with their effective tax rates, currently around 21% based upon my research, likely to fall as a consequence to something in the order of 17%, which is way below the rate of income tax for most ordinary taxpayers in the UK, the new rate of VAT, and the rate of tax paid by small companies. In this environment, people are asking whether these operations are fulfilling their social responsibility to pay tax to the states that provide them with a licence to operate, and if so, in what amount?

How can we know what multinational corporations are doing with their money?

Some of the answers can be found through a new form of accounting called country-by-country reporting. It is, very simply, a demand that every multinational corporation of significant size should file, as part of its annual financial statements, a profit and loss account and limited balance sheet and cash flow information for each and every jurisdiction in which it trades, without exception. No jurisdiction would be exempt from disclosure, and disclosure would be based, most importantly, upon the value of transactions undertaken both on an intragroup and third-party basis. This would mean that activity artificially relocated through tax havens would be revealed for the first time in multinational corporation accounts, and the abuse that can flow from transfer pricing between related party companies, one in a high tax jurisdiction and one in a low tax jurisdiction, might be highlighted by the artificial reallocation of profits to low tax locations being readily apparent.

This is not fanciful or wishful thinking: this idea, which has come out of the tax justice movement, is now on the international agenda. I created the concept of country-by-country reporting in 2003 but despite its relative youth it has been endorsed by the EU Parliament on more than one occasion. It is currently subject to a European Commission consultation and an OECD review and is on the agenda of the International Accounting Standards Board with regard to the extractive industries. The idea also won backing from the last Labour government and Vince Cable whilst in opposition.

Simply disclosing data on these issues will impact on the behaviour of multinational corporations, would reduce the impact of tax havens on their behaviour, and will force them to allocate profits to the place where it is likely to have really been earned because the glare of publicity will prevent them doing otherwise. As physicists noted a long time ago, if you observe something you change it. We, at [Tax Research LLP](#), **want to look at multinational corporations' use of tax havens because we believe that in the process we will change their behaviour, and the amount of**

tax they pay in the right place in the right time.

Simple automatic information exchange can discourage people from using tax havens.

The issue of automatic information exchange has also become one of priority over the last few years, not least because of pressure from civil society organisations such as the Tax Justice Network. The OECD has promoted the idea of tax information exchange on request, but for that to work the tax authority making the request for information must have a ‘smoking gun’ which proves that the taxpayer they are investigating is associated with an offshore bank account. Given the secrecy in most tax haven jurisdictions this is almost impossible to secure in many cases. We have put forward practical alternatives to this problem, including the simple obligation to automatically exchange information annually on ‘financial structures’ in one jurisdiction from which a person from another jurisdiction benefits. As a matter of fact, under Financial Action Task Force rules on money-laundering, which apply almost universally around the world, financial institutions of all sorts must know the beneficial owners of the accounts that they operate. As a consequence, at least in theory, every single tax haven bank account in the world must have its beneficial ownership known to the bank that maintains it, however convoluted its ownership structure, and however deviously it may be constructed to avoid discovery. As a result, all the information to automatically exchange on this basis is already required to exist by law in all the tax haven jurisdictions worldwide.

We are simply suggesting very simple automatic information exchange that will not require long, technical complications in defining such things as income, gains, interest, profits, and so on — all of which will create nightmarish obstacles to agreement. All we want to know is whether or not a person from a place such as the United Kingdom has an interest in a financial structure (whether it be a bank account, company, trust, partnership, foundation or other arrangement) in a place such as the British Virgin Islands. And then it is up to the UK tax authorities to use that information to make further enquiries if they can see no trace of that interest being disclosed on a tax return in this country. This is low-cost, high impact data that will have a profound effect on behaviour. And discourage tax evasion, worldwide.

The accounts of all financial structures should be put on public record.

Finally, and for sound commercial reasons as well as for the purpose of stopping illicit behaviour, we argue that every company registry throughout the world (including that of the United Kingdom) should be duty-bound to determine who beneficially owns the companies that it registers using the same money-laundering identification rules that are required of private-sector financial operators. In addition, we believe that this information should be put on public record, and we believe that the accounts of every single company incorporated around the world, and of every other financial structure created under statute law — whether it be a trust, foundation or limited liability

partnership — should also have its accounts on public record. We do not, of course, require this of individuals. We think that there is a right to privacy, but that right is forgone when structures created by law are used to change property rights in a way that might prejudice the interests of other people. Companies, trusts, foundations and limited liability partnerships all have this potential inherent within them and those who use them are, therefore, accountable in our opinion to the society that granted them the privilege of using these mechanisms for the benefit that is secured as a result — particularly in the case of limited liability corporations, when the cost can fall upon others if that privilege is abused.

As with the other proposals, this is targeted at changes in behaviour. It is too easy to use a company to avoid identification when undertaking nefarious transactions. Too many companies in the United Kingdom, the United States, and many other locations, are unaccountable to anyone for their actions, even though they impact on others. And around the world, tax is lost to corporations that simply disappear from view to all authorities for all purposes from the moment after incorporation onwards. This is an abuse that we do not believe society can tolerate and that is why we suggest reform of company law to reflect the ethics, obligations and commercial risks corporations bring to bear upon others in the 21st century.

These proposals are not only moral: they will improve the efficiency of markets, so benefiting society as a whole.

This is not just about curtailing abuse; this is about creating the information needed for the effective operation of markets, for the mitigation of risk, and therefore the reduction of the cost of capital that results from that process, which will enhance investment in small business, and increase the rate of return to it, so increasing the well-being of society at large.

Let me put this way: we have ideals, and are proud of them. We think that people should seek to pay the right amount of tax in the right place at the right time, knowing always this can sometimes be difficult; the law is not a certain beast. But we also believe that the transparency and accountability that we demand will enhance the smooth operation of markets, improve the allocation of resources within society, reduce risk, encourage enterprise, increase the overall tax base, and therefore potentially decrease the tax rate on those that are tax compliant, and as a result contribute to well-being for all.

This is not just about living and trading ethically: this is about meeting the information requirements for effective markets that economists have long known to be necessary. We know that that information is deliverable at modest cost, but at potential significant yield for all but those who abuse tax and corporate law and, in turn, society. In that case, the real question we ask is: why isn't there the political will to tackle those who exploit the rules at a cost to the rest of us? That is the question that needs answering. And that's the question politicians who prevaricate on these issues need to address,

because an acceptable answer is hard to find.