

Neoliberal tax specialists can't have it both ways - it...

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Sometimes an article hits a nail on the head. [George Monbiot did that with his article](#) on the UK as a tax haven on Monday. He has changed the nature of the debate - and congratulations to Richard Brooks and Nick Shaxson for informing his contribution.

Not all agree though. Take Mike Devereux at the [Oxford Centre for the Non-Taxation of Business](#). He has written in the Guardian this morning, and [I'll let him have his say](#):

George Monbiot ([To us, it's an obscure shift of tax law. To the City, it's the heist of the century](#), 8 February) asserts that UK tax policy on foreign branches, banks and tax havens is designed to support a fantastically wealthy elite. The focus of his ire is on a proposal to exempt foreign branches of UK companies from UK tax. In fact, this would simply bring foreign branches broadly into line with the treatment of foreign subsidiaries.

The principle that would be applied — common to most tax systems around the world — is that the UK should only tax profits arising from economic activity in the UK. Very broadly, we don't tax the profits of foreign activities of UK companies, and by and large foreign governments don't tax the UK activities of their own companies (the US is an exception).

Monbiot is right, though, in questioning the proposed treatment of foreign losses, which would allow companies to choose not to opt for exemption and so continue to receive relief for foreign losses. It is not clear why we should allow companies to choose how to be taxed.

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First Devereux's wrong. That's not the whole focus of his ire. A cut in the corporation tax rate from 28% to 24% also annoys him. So too does a 10% tax rate for patent income. And so [too does a proposed 8% tax rate on the offshore finance functions of groups of companies](#) gall him. He's also, I suspect, pretty annoyed that the argument

that the proposed new tax treatment of foreign branches just brings them into line with foreign subsidiaries fails to recognise the fact that foreign subsidiaries only achieved this status in 2009.

But I suspect what really irritates is the argument that the UK should only tax profits arising from economic activity in the UK. As I am sure Mike Devereux knows, in a world where capital flows freely, it can be very difficult to prove where an economic activity occurs. Accountants and lawyers are, of course, masters of the art of disguising the reality of a transaction behind an alternative legal form, which determines the way it is then taxed. It is all too easy to dress up a finance transaction as taking place offshore when its substance does occur entirely onshore. This is, indeed, the basis of the defence that offshore gives with regard to its lack of responsibility for the current financial crisis. It says, and to some degree accurately, that nothing takes place offshore. Of course, in the sense that the only thing that happens offshore is the accounting for transactions that take place "elsewhere" this is right.

But note but Mike Devereux is not relying on this argument to make his claim. I am sure he is entirely happy for these transactions to be legally recorded offshore, even though it is of course absolutely inevitably the case that their substance arises onshore. But if legal form is followed Devereux will not have these transactions taxed here, even though that is where their substance arises as he will argue that they take place "elsewhere" - that is, offshore. And it is offshore that is getting special, new privileges which will make the UK a tax haven - as Monbiot said.

And what really irritates me is the duality of this: that offshore argues everything is "elsewhere" and so onshore and so do those who want to reduce the UK tax base by arguing that "elsewhere" is offshore.

Both cannot be right.

And we know it. Sometime we have to choose substance (which means it's onshore and so taxable here) over form (it's offshore).

But neoliberal tax cannot have it both ways.