

The UK has a constitutional duty to impose direct rule ...

log/2022/05/02/the-uk-has-a-constitutional-duty-to-impose-direct-rule-on-the-bvi-to-bring-its-role-as

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The [FT has noted that](#):

The acting premier of the British Virgin Islands, Natalio Wheatley, has rejected as “unacceptable” the reimposition of direct rule from London, setting up a confrontation with the UK over the central recommendation of an official inquiry into corruption and maladministration in the Caribbean tax haven.

He is wrong. And the fact that he does not recognise that the BVI is so systemically corrupt shows that, because that is what it is. That he comes from an old political family within the islands, also suggesting that he is part of the architecture that created this systemic problem is also indicative of why he is wrong and change must be imposed. It is apparent that the required changes cannot come from within the BVI now.

Let me offer some theory to support this argument. In 2009 [I wrote a paper for the Tax Justice Network](#) that has had some significance since then, not least in still shaping most of the work of the tax justice movement in putting a focus on secrecy, as it has also done for most regulators. The preamble to the paper noted:

Mapping the Faultlines Defining the Secrecy World

Defining the Secrecy World

Rethinking the language of ‘offshore’

Richard Murphy FCA

Purpose of this paper

The Mapping the Faultlines project is based on the assumption that the mechanisms that allow illicit financial flows to occur result from the synergistic relationship between the world’s tax havens and offshore financial centres. At the time the project was proposed these were defined as follows:

1. Tax havens are the legislative, judicial, fiscal and regulatory spaces provided by jurisdictions that encourage the relocation of economic transactions to that domain;
2. An offshore finance centre (OFC) is the commercial response to the provision of those legislative, judicial, fiscal and regulatory spaces by those seeking to profit from the opportunities they provide.

The project also set out to identify the characteristics that identify a location as having tax haven status.

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It soon became apparent that this would be difficult using prevailing language to describe the offshore sector since there was little agreement on what that language actually meant.

We therefore decided to reappraise the language of offshore and offer more accurate, and

The summary was quite short:

Mapping the Faultlines

Defining the Secrecy World

Summary

This paper sets out to show four things.

The first is that the existing language of the so-called ‘offshore world’ is inappropriate for the purposes of rigorous analysis of the issues to which that term has been applied. The paper offers a new language for this purpose. In that terminology the term offshore is replaced by the term ‘secrecy world’.

Second, it suggests that the assumption that the secrecy world is geographically located is not correct. It is instead a space that has no specific location. This space is created by tax haven legislation that which assumes that the entities registered in such places are ‘elsewhere’ for operational purposes, i.e. they do not trade within the domain of the tax haven, and no information is sought about where trade actually occurs.

Thirdly, this paper shows that the illicit financial flows that are the cause of concern with the secrecy world do not flow through locations as such, but do instead flow through the secrecy space that secrecy jurisdictions create (secrecy jurisdictions being the new term tax havens). As the paper shows, to locate these transactions in a place is not only impossible in many cases, it is also futile: they are not intended to be and cannot be located in that way. They float over and around the locations which are used to facilitate their existence as if in an unregulated ether. This suggests that any attempt to measure or regulate them solely on a national basis will always be problematic.

Finally, this paper suggests that the change in language that it promotes is consistent with existing understanding of the observed phenomena and adds new dimensions to the lexicon of offshore / the secrecy world. We hope that this new language will allow regulators to extend the scope of their work whilst also reducing the scope for sophistic and casuistic arguments put forward by those who exploit the secrecy world for personal gain.

What the paper did was develop a schematic summary of the new language that I proposed to explain the offshore world, which when fully developed looked like 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	Internationally 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	

An example demonstrated the idea in this way, showing how abuse existed in a secrecy space resulting from the interaction of many secrecy providers operating from secrecy jurisdictions:

Applying this language to the secrecy world

It is stressed that when using these definitions there is no overlap between the terms secrecy jurisdiction, secrecy space and secrecy provider. They relate to different parts of the unregulated market. To see how this works a diagram of the intricate structure of trusts , companies and bank accounts described above is needed, with the additional assumption added that the funds are ultimately invested in the UK and the advice upon it has come from

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What I suggested was that there was a systemic, deliberately created, interlocking network of secrecy jurisdictions and secrecy providers (banks, lawyers and accountants) who created a secrecy space in which abuse could take place beyond regulation. The book that I co-authored that resulted from this work is still one of the most cited in academic offshore literature.

The BVI is an enormous player in the creation of this secrecy space. It hosts 370,000 companies of which almost nothing is known. That is by continuing choice. The result is massive opacity in the world that undermines fair competition and effective markets and simultaneously permits corruption. I stress, this is deliberate.

The UK has the right to intervene for this reason. It is responsible for the maintenance of good governance, law and order and stable international relations in the islands. Law and order has obviously failed: the premier and a senior official are under arrest in the USA. Good governance has failed, as indicated by the choice to supply corruption services. And this is a foreign affairs issue. The companies the BVI creates are deliberately intended to undermine the law, order and tax systems of other states.

The BVI remains a key component in the creation of the secrecy space. It has to be taken out of action. But I stress, direct rule without ending this secrecy would make the UK responsible for it. And that would be intolerable, so direct rule comes with conditions, which is that BVI secrecy goes.

What does that mean? Full beneficial ownership of all companies on public record plus full accounts on that same record. That's the minimum demand for the BVI.

The UK must take control of the BVI now. It has a constitutional duty to do so. But if it does it cannot duck its own duty to end BVI secrecy. We will be watching.