

# The dynamics of tax havens: An analysis from an international and domestic perspective



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## Abstract

*Since the occurrence of history's biggest data leak known as Panama Papers, more focus has been placed upon offshore dealings and tax havens. With no clear definition on what tax haven is, this research will be exploring the usage of tax haven internationally whilst paying particular attention to the United Kingdom, its perspectives and approaches.*

*The first chapter will be covering the definition of tax haven, clarifying the difference between tax avoidance and evasion whilst discussing what it entails in certain countries and the consequences for the people in those countries.*

*In the second chapter there'll be arguments against the available legal instruments in various countries directed at tax havens. Focus will be placed on the OECD and its criteria in categorising countries as tax havens. The question to be answered is whether or not the criteria's are fair?*

*Following on will be the United Kingdom's approach to tax haven, its considerably weak legislations on tax haven and the issues it poses. All this will be addressed in relation to ways in which the UK is already considered to be a tax haven country and the negative impacts of it. References will be made to the upcoming Brexit which will see UK through some drastic changes and the points to be drawn out in relation to Brexit is the effect it may have on UK being a tax haven.*

*Many issues are raised in this paper, with the majority stemming from the OECD and its lack of attitude to being more stern on tax abuse. The result concludes that OECD's criteria are indeed weak and unjust. As for the UK, it remains debatable whether or not the country is already a tax haven. Many would agree that it is in practice, whilst OECD suggests otherwise.*



## Acknowledgments

After some intensive weeks, it is truly an honour to finally be at the stage where I declare my acknowledgements. This by far has been the most difficult piece of work ever achieved, the process has been challenging, rewarding and full of ups and downs. I have learnt a great deal in this field, taking me from being a masters student to a student that has mastered her field. All of this would not have been reality if not for God, along with the great support and encouragement of the people around me at the time of this dissertation.

Firstly, I would like to thank Dr Grasso who has been a fantastic supervisor throughout this research paper and a great mentor in general. His passion and knowledge of the law is admirable. Glad to have had the opportunity to take the module 'Financial Crime and corporate criminal Liability' which was taught by Dr Grasso. This particular module eventually led to me doing my dissertation in this area. Worried that I would not have enough time to write this paper, my supervisor headed me to the right direction which led to the completion of this.

Most importantly, a massive thank you to my family. Particularly my husband who at the same time was also doing his masters degree but was selfless in making sure I had time to complete my paper, and for all the times he drove me to lectures and seminars. My two beautiful kids who made the process that little bit harder but the more rewarding. My parents/In-laws who continuously prayed for me and repeatedly checked on my progress.

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## List of Abbreviations

<b>AEOI</b>	Automatic Exchange of Information
<b>ECOSOC</b>	The United Nations Economic and Social Council
<b>EU</b>	European Union
<b>FTT</b>	First-tier Tribunal
<b>GSK</b>	GlaxoSmithKline
<b>HMRC</b>	Her Majesty's Revenue and Customs
<b>ISA</b>	Individual Savings Account
<b>MCMAA</b>	Multilateral Convention on Mutual Administrative Assistance
<b>NHS</b>	National Health Service
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>UK</b>	United Kingdom
<b>UN</b>	United Nations
<b>US</b>	United States
<b>VAT</b>	Value Added Tax
<b>WTO</b>	World Trade Organisation

## Introduction

Cambridge dictionary defines tax to be ‘an amount of money paid to the government that is based on your income or the cost of goods or services you have bought’. In the UK, there is no one definition or Act that defines what tax is in general. However, we are provided with legislations such as Corporation Tax Act 2010 which provides helpful suggestions but not comprehensive enough. This brings us right to the first issue of taxation as a whole, although we know what it is but what does the law define it to be? A simpler, straightforward legislation would make for a less complex situation.

April of every year in the UK is considered to be the tax year where one receives a tax return and any money owed.<sup>1</sup> The importance of tax is essential in order to keep the country running effectively and for citizens to enjoy the benefits it creates. Along with this yearly review, also comes changes in the policies such as ‘changes to savings, taxes, training and the employment of foreign workers’.<sup>2</sup> The needs of the country are likely to change and by having a yearly review of policies, this allows the country to meet up with the needs of the country or so it may seem. As the need of the governments is at times disguised as the needs of the country. Needless to state, tax plays a very important role in the day to day running of a country.

In a world where the rich ensures to remain rich and the poor aim to be rich, how can an equal society ever be obtained? There is no one-way solution or answer to this and such idea is impossible, certainly not through the means of taxation. Citizens are often complaining about the amount of tax they pay, with the idea that the rich should pay more than the poor. Which of course is not something a rich or wealthy individual wishes to do. In 2014 in the UK, it was stated ‘the public are misled about this country's tax system. They think households with the highest incomes pay more than those with the lowest, whereas the opposite is the case’.<sup>3</sup> This is just one of many examples of how the system of tax often places more burden on lower earners in comparison to higher earners, as they often turn a blind eye to cases of tax evasion by wealthy individuals and corporations. Every year there are promises made to tackling the issue of tax evasion and offshore dealings. For example, the Financial Secretary to the Treasury, David Gauke once said ‘Hiding money in another country at the expense of honest UK taxpayers is not acceptable and we have made it clear we will put a

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<sup>1</sup>Self Assessment Tax Returns: Deadlines - GOV.UK' (*Gov.uk*, 2017) <<https://www.gov.uk/self-assessment-tax-returns/deadlines>> accessed 18 July 2017.

<sup>2</sup>Chris Giles, James Pickford and Vanessa Houlder, 'UK'S New Tax Year And The Changes You Need To Know About' (*Ft.com*, 2017) <<https://www.ft.com/content/e4b7d006-192b-11e7-a53d-df09f373be87?mhq5j=e1>> accessed 20 July 2017.

<sup>3</sup>Katie Allen, 'British Public Wrongly Believe Rich Pay Most In Tax, New Research Shows' (*the Guardian*, 2017) <<https://www.theguardian.com/money/2014/jun/16/british-public-wrong-rich-poor-tax-research>> accessed 20 July 2017.



stop to it'.<sup>4</sup> Such statements will continue to remain promises unless drastic changes are made, particularly within the legislations and its stance on offshore dealings and tax evasions.

The area of tax law is one that is very debatable, particularly when it comes to avoidance, evasions, and tax havens. Hence why the overall objective of this paper will be focusing on United Kingdom (UK) being a tax haven, particularly after the finalisations of Brexit. In doing so, there will be a conducted investigation in the area of tax abuse.

This paper will review the literature on UK's legislation on tax haven as it is agreed to be considerably weak. Whilst discussing the potential backlash and problem that may arise from this. Arguments will be made on current literature relating to tax avoidance and evasion regarding the many confusing and conflicting definitions that fail to provide a distinctive difference between the two.

'Nobody agrees what a tax haven is. In truth, the term is a bit of a misnomer, for these places don't just offer an escape from tax; they also provide secrecy, an escape from financial regulation, and a chance to shrug off laws'.<sup>5</sup> The lack of international definition on tax haven leads right into the significance of this topic. Often authors provide their own definition on tax haven, which tends to be a broad and non legal one. It is important that an international legal definition is established in order for the surrounding issues to be better spotted and handled. After all, it would make an easier task to handle an international issue that has an international definition.

Aside from the definition of a tax haven in the UK and how the difference between tax avoidance and evasion is identified. Other questions to be asked in this research includes OECD's fairness on its criteria for categorising countries as a tax haven. The research seeks to look at where the UK currently fits in on the provided criteria and the likelihood to this changing based on the effects of Brexit.

The sections within this paper begin with tax avoidance and evasion as it explains what it means whilst highlighting the difference. Subsections within this heading consist of tax haven and what it entails, implications and the effects and within a chapter of its own is the Panama papers. The entire section establishes the negative effects of tax haven within the society and the separation of rules for the haves and the have not as the event of Panama papers sheds

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<sup>4</sup>Net Closes In On Offshore Tax Cheats - GOV.UK' (*Gov.uk*, 2017) <<https://www.gov.uk/government/news/net-closes-in-on-offshore-tax-cheats>> accessed 20 July 2017.

<sup>5</sup>Nicholas Shaxson, *Treasure Islands: Tax Havens And The Men Who Stole The World* (The Bodley Head 2011) 8.

light on the ways in which the wealthy individuals hide their money through the means of tax avoidance and evasion.

The next chapter is dedicated to the available legal instruments relating to tax avoidance, evasion, and tax haven. Focusing particularly on the OECD's unfair criteria in identifying a country as a tax haven and the need for change in its criteria. This is then followed by a brief look at HMRC's position concerning tax abuse in the UK and a need for less secrecy and more transparency. The last chapter looks at the UK as a tax haven with arguments as to why the country is already considered to be a tax haven, with examples such as the recent decrease in corporation tax rate. This is followed by a subsection on Brexit. This goes on to expand on the idea of Brexit being a tax haven and more heavily so following on from the country's departure from the European Union. Furthermore is a discussion on how the UK can move forward following the effects of Brexit and general analysis on all that had been discussed followed by a conclusion on the paper.

The topic of Brexit itself is still a relatively new one, let alone in connection to it possibly leading the UK to become a tax haven country. Meaning, very few have been written in the area. Hence why the questions are being asked in order to explore the possible answers or better yet provide relevant solutions.

This research proves to be very relevant in the area of law as it challenges the weakness of the international and domestic legislation on tax haven. Many fail to challenge the threats and issues it possesses to the country as a whole, more importantly on the citizens. In the next few months, we will be seeing the UK through a big change in the country's relationship with the European Union and this is bound to bring about many uncertainties and changes in legislations which includes the area of tax law. That alone confirms the relevance of this research as it potentially provides a future insight into the UK becoming a tax haven country.

## Tax avoidance and evasion: The borderline of the legality and illegality

‘Tax evasion is an illegal activity undertaken to reduce an individual or company’s tax bill’.<sup>6</sup> The key word in this definition is the fact that such act is “illegal”. It is considered to be a criminal offence in most countries, with the exception of a few such as Switzerland<sup>7</sup> and Liechtenstein<sup>8</sup> where it is considered to be rather a civil offence. Such countries are amongst the list of jurisdictions that many would consider being a tax haven, perhaps that is why tax evasion is considered not to be a criminal act in such places. Tax avoidance is not easily defined as it is a ‘gray area between tax compliance and tax evasion’.<sup>9</sup> The confusion begins with the thin line between the two. What makes avoidance of tax legally different from that of evasion? Well, the lack of international tax rule makes it all the more difficult to really pin point the difference. In the words of Dennis Healey, the difference between tax avoidance and evasion is “the thickness of a prison wall”.<sup>10</sup> Tax avoidance occurs in many forms. Such as aiming to pay less tax than required to by the laws of one’s country or ‘that tax is paid on profits declared in a country other than where they were really earned’.<sup>11</sup>

In the UK, there are different tax systems which include direct and indirect taxes. ‘Direct taxes are charged on income, profits or other gains and are either deducted at source or paid directly to the tax authorities’.<sup>12</sup> These taxes are all controlled and administrated by Her Majesty’s Revenue and Customs (HMRC). Indirect taxes, on the other hand, are those that ‘are charged when a taxpayer buys an item and are paid to the vendor as part of the purchase price of the item’.<sup>13</sup> An example of this is the value added tax (VAT) that is included in a restaurant bill. Taxation has been a part of the UK’s system for centuries. Originally for the purpose of raising money ‘but more recently in order to support the work and machinery of Government’.<sup>14</sup> Similarly, in the United States of America, there are a few forms of taxes that

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<sup>6</sup>Ronen Palan, Richard Murphy and Christian Chavagneux, *Tax Havens: How Globalization Really Works* (Cornell University Press 2009). 9

<sup>7</sup>BBC NEWS | Business | Switzerland Eases Banking Secrecy' (*News.bbc.co.uk*, 2009) <<http://news.bbc.co.uk/1/hi/business/7941717.stm>> accessed 29 August 2017.

<sup>8</sup>Richard Murphy, 'Why Is Liechtenstein A Tax Haven?' (*Tax Research UK*, 2008) <<http://www.taxresearch.org.uk/Blog/2008/02/20/why-is-liechtenstein-a-tax-haven/>> accessed 29 August 2017.

<sup>9</sup>ibid. 10

<sup>10</sup>ibid. 10

<sup>11</sup>ibid. 10

<sup>12</sup>Melville Alan, *TAXATION FINANCE ACT 2015* (21st edn, Pearson 2016). 3

<sup>13</sup>Katie Allen (n3)

<sup>14</sup>'Taxation' (*UK Parliament*, 2017) <<http://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/taxation/>> accessed 20 July 2017.

range from income tax which varies amongst local government, to sales tax and property tax.<sup>15</sup>

When it comes to tax avoidance and evasion, many would ask “well what is the difference”? In its simplest form, one is legal and the other is completely illegal. Tax evasion is considered to be the illegal one of the two, whilst tax avoidance is legal. Although one might argue as to just how legal it is. Borderline legal perhaps? ‘In some cases, avoidance can quickly turn into evasion’.<sup>16</sup> In summary, avoidance of tax is a way of bending the rule whilst evasion breaks the law.

There are many ways in which individuals and corporations avoid taxes on a regular basis, everyone is guilty of doing such and even the government sometimes encourages this through the recent example with Individual Savings Account known as ISA, this allows for a tax-free way to save and invest one’s money. ‘When people avoid tax in this way they are doing precisely what Parliament intended’.<sup>17</sup> It becomes illegal when it goes against what Parliament never intended. But how can Parliament’s intentions be determined in cases where it is not clarified or certain? Such missing link provides many loopholes to which the rich take advantage of.

Often when tax evasion is discussed, we think of the one percent, the super rich and so on, but in reality, there are many actions that fall under the definition of tax evasion. For example, the graduate that decides to start offering private tutoring services for cash in hand or that mobile hairstylist that also offers their service in return for cash in hand. Often taxes are not being paid on these cash in hand jobs and there are quite a number of people out there that are guilty of this, although this is looked at as a lesser crime than that committed by the big companies more or less it is the same evasion of tax. ‘There are many shades of tax avoidance, but it is not illegal as long as you are open about it. However, if HMRC thinks you've gone too far you'll have to pay the tax back’.<sup>18</sup>

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<sup>15</sup>Alexander E.M. Hess, 'Seven Ways Americans Pay Taxes' (*USA TODAY*, 2014) <<https://www.usatoday.com/story/money/personalfinance/2014/01/04/taxes-americans-pay/4307825/>> accessed 31 August 2017.

<sup>16</sup>Brian Milligan, 'Tax Avoidance: What Are The Rules?' - BBC News' (*BBC News*, 2017) <<http://www.bbc.co.uk/news/business-27372841>> accessed 20 July 2017.

<sup>17</sup>Ben Chu, 'Why What David Cameron Did Isn't Illegal, Just 'Immoral'' (*The Independent*, 2017) <<http://www.independent.co.uk/news/uk/politics/what-difference-between-tax-avoidance-evasion-david-cameron-offshore-panama-papers-a6974791.html>> accessed 18 July 2017.

<sup>18</sup>Ruth Jackson, 'Tax Evasion Or Tax Avoidance: What's The Difference?' (*The Week UK*, 2015) <<http://www.theweek.co.uk/personal-finance/62606/tax-evasion-or-tax-avoidance-whats-the-difference>> accessed 18 July 2017.

Many countries such as the United States, Japan<sup>19</sup> and even the United Kingdom itself are no stranger to taxing its residents worldwide income. This helps the day to day management of the country and creates a better lifestyle for the citizens by pouring it towards transportations like the London red bus, healthcare such as NHS, education such as the free government schooling for under 18 and even benefits to those on low or no incomes such as housing benefits. There are certain countries in particular that many would consider to being undoubtedly tax haven countries. Examples of this include the Cayman Islands and Switzerland. Meanwhile, there are also a few countries that are in fact tax haven countries but unknowingly or not as obvious to the rest of the world. This includes countries like New Zealand, Mauritius, Dubai and even Kenya who has a new legislation 'designed to create classic offshore omertà, fit for hiding and protecting endless crimes and abuses'.<sup>20</sup> Such decision could be disastrous and damaging to the country, particularly the citizens. What is certain is that the people at the receiving end are the elites and big corporations who are indeed the true winners, as more countries will be seen slowly turning into tax havens and offering competitive low tax rates in order to gain more investments in their countries.

Corporations and wealthy individuals are no strangers to tax avoidance as they have great support system made up of lawyers and accountants to help, guide and advise them on just how to effectively get richer whilst avoiding tax. The giant of pharmaceutical companies GlaxoSmithKline (GSK) showcases an example of how a tax is strategically avoided. In a 2012 BBC documentary, GSK was placed under fire as avoiding tax through the set up of 'a new company in the tiny European tax haven of Luxembourg'.<sup>21</sup> The way it worked was that the new company which was created as a subsidiary company. They lent GSK a figure of £6.34 billion, which GSK had to pay back an interest that amounted to £124 million. Reality is that, the £124 million of interest is money that is being deducted from the taxable profits, therefore making it unavailable as part of the UK tax. The company wanted to pay less tax and the subsidiary company in Luxembourg allowed just that as the tax rate was less than 1% in comparison to that in the UK of 28%. 'As a result, GSK potentially avoided up to £34m in UK corporation tax'.<sup>22</sup> Examples as such remain why some continue to question why tax avoidance is considered legal but as former HMRC investigator Richard Brooks accurately stated: "We're seeing really with these, for the first time, exactly how companies avoid tax through a jurisdiction that wants to help them do it". Things may be very well different as the UK prepares to leave the European Union, with companies such as GSK no longer having the freedom to move so freely in other European countries. Which in a sense may disrupt

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<sup>19</sup>Just Landed, 'Taxes In Japan' (*Just Landed*, 2017) <<https://www.justlanded.co.uk/english/Japan/Japan-Guide/Money/Taxes-in-Japan>> accessed 31 August 2017.

<sup>20</sup>Nicholas Shaxson (n5). viii

<sup>21</sup>BBC - Panorama: The Truth About Tax - Media Centre' (*Bbc.co.uk*, 2012) <<http://www.bbc.co.uk/mediacentre/latestnews/2012/panorama-truth-about-tax.html>> accessed 13 July 2017.

<sup>22</sup>ibid.

their abilities to lean on tiny European countries in order to help them avoid UK taxes. The relationship on Brexit and UK as a possible tax haven would be discussed in much detail later in this paper.

### **Tax haven and what it entails**

‘Jurisdictions that deliberately create legislation to ease transactions undertaken by people who are not resident in their domains, with a view to avoiding taxation and/or regulations, which they facilitate by providing a legally backed veil of secrecy to make it hard to determine beneficiaries’.<sup>23</sup>

This definition highlights tax haven countries to be jurisdictions that intentionally chooses to create or bend laws that enable them to create that tax haven. Focusing on the word ‘deliberately’ is important as it makes the action and attitude towards tax haven more alarming. It is perhaps a different outlook when the intentions of becoming a tax haven are not present. Although measuring a country’s intention may not be straightforward but it is traceable by means of the country’s legislations and transparency. Focusing and aiming at people who are not residents is highly problematic and damaging to the other countries of those residents. Accepting and allowing non-residents to hide their finances by not paying taxes rightfully in their own residing countries is a case of having your cake and eating it too. Residents are to pay their taxes, otherwise face the consequences that follow which could include fines and imprisonment but ironically, tax haven countries will punish its own citizens when a tax is evaded whilst allowing and helping non-residents to use its country as a tax haven. As we come to find out throughout this paper, fairness and tax does not go hand in hand.

Facilitate is to make, and tax haven countries make legal weapons available in order to make matters complex in a way that makes beneficiaries difficult to trace. Examples of this are shown in the Panama Papers where many wealthy individuals use this style to hide money that is difficult to trace back to them. More will be discussed further on the Panama Papers and how it has brought great attention to the issue on tax havens and the use of offshore companies.

The world of tax haven appears to be very secretive, almost like a cult. ‘The term “tax haven” has been widely used since the 1950s’.<sup>24</sup> A tax haven is considered to be a country or place that offers low tax rate, they are ‘low-tax foreign countries that offer advanced communication facilities, promote themselves as offshore financial centres, and have histories

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<sup>23</sup>Ronen Palan (n6). 236

<sup>24</sup>ibid. 17



of featuring legislation promoting business or bank secrecy'.<sup>25</sup> In addition, it can be said that tax haven countries are known to not be corporative with exchanging information on its financial services with other countries or jurisdictions.

Perhaps one of the biggest problems in the area of a tax haven is the lack of definition. 'No one can say with certainty what elements are required for a country to constitute a tax haven because no precise or exact definition exists'.<sup>26</sup> What we have now is the organisation for Economic Co-operation and Development (OECD) features of tax haven which will be examined later in this paper. Although the features itself appears to not be sufficient enough for today's society in identifying tax haven jurisdictions.

Tax haven countries allow one to escape the rules, laws and responsibility by allowing their money to be placed in a country they consider to be better suited where lower or no tax is accepted. 'Tax haven countries offer foreign investors low tax rates and other tax features designed to attract investment and thereby stimulate economic activity'.<sup>27</sup> The offer of low tax certainly brings in investments to the particular country but at the same time, it draws away the rightful tax owed to the governments and citizens of the other countries. It is somewhat a selfish act where one has to put its country first by allowing such low or little tax rate whilst depriving another country of it. For example 'The United States Treasury conservatively estimates that tax havens cost the United States over \$100 billion annually in lost tax revenue'.<sup>28</sup>

Many countries such as the Cayman Islands and Monaco are branded as tax haven jurisdictions whilst countries like Ireland remain in continues debate as to being labelled a tax haven. Reason being its low corporation tax at just 12.5% which is one of the lowest in Europe and suggests that the UK is on a path to becoming a tax haven for big corporations such as Apple and Facebook setting up its headquarters in Ireland. However, this is arguable as Ireland does not present the secrecy that is constant in other tax haven jurisdictions, nor is the low tax rate targeted at particular corporations. Rather, the low tax rate is available to all corporations throughout the country. Point being, a country does not simply fall into the tax haven bracket by offering low tax rates. There are other criteria to be met, and this will be discussed later through the OECD's criteria.

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<sup>25</sup>James R. Hines, 'Do Tax Havens Flourish?' (2005) 19 Tax Policy and the Economy. 77

<sup>26</sup>Timothy V. Addison, 'Shooting Blanks: The War On Tax Havens' (2009) 16 Indiana Journal of Global Legal Studies.

<sup>27</sup>James R. Hines (n25). 65

<sup>28</sup> *ibid.* 65

Many research has shown that tax haven countries attract more foreign investments<sup>29</sup> and in return, such countries tend to be far more developed economically than that of higher taxing countries who may not rapidly develop. 'For tiny, palm-fringed islands, it can even make sense to set taxes at 0%, as the local economy will be boosted by the resulting boom in law and accounting'.<sup>30</sup> Such countries believe that 'a small percentage of something is better than a large percentage of nothing'<sup>31</sup> and that is one of the main factors that drives them to become tax havens.

Some would identify relocating to a tax haven jurisdiction to be the best option for an individual in avoiding paying tax but 'there are more sophisticated ways to avoid paying tax and escape regulations'.<sup>32</sup> This includes the usage of permanent tourists and moving mobile capital. Permanent tourist is where an individual is considered to be 'a tourist-a person who is just passing through'.<sup>33</sup> One of the main advantages of this is that an individual that is considered to be merely passing through is not subject to taxes amongst other things. As for moving mobile capital, this is done by moving the capitals into 'various instrument of offshore'.<sup>34</sup> For companies, they can 'relocate by the simple expedient of creating new subsidiaries in tax havens'.<sup>35</sup> Available options like this make it even more difficult to fight and account for the crime of tax.

These offshore businesses are far from simply just the means of taking deposits in the bank. Rather, it consists of far more complexity and strategy all in the name of paying very little tax. 'Money is actively managed, lent, reinvested, borrowed, used as collateral, pooled in collective investment vehicles and channelled through secondary markets back into onshore stock exchanges, property developments and industrial enterprises'.<sup>36</sup> The process is highly complex and requires legal and accounting expertise and such procedure brings about a similarity of turning a dirty money into a clean one, better known as money laundering. There are many debates regarding the thin line between the two, what is for certain is that

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<sup>29</sup>Phillip Inman, 'Britain Is A Corporate Tax Haven – That's Why US Firms Are Keen To Uproot' (*the Guardian*, 2014) <<https://www.theguardian.com/business/2014/jul/02/britain-corporate-tax-haven-mothercare>> accessed 31 August 2017.

<sup>30</sup>Tim Harford, 'How Much Of The World's Wealth Is Hidden Offshore? - BBC News' (*BBC News*, 2017) <[http://www.bbc.co.uk/news/business-40442595?ocid=socialflow\\_facebook&ns\\_mchannel=social&ns\\_campaign=bbcnews&ns\\_source=facebook](http://www.bbc.co.uk/news/business-40442595?ocid=socialflow_facebook&ns_mchannel=social&ns_campaign=bbcnews&ns_source=facebook)> accessed 18 August 2017.

<sup>31</sup>*ibid.*

<sup>32</sup>Ronen Palan (n6). 82

<sup>33</sup>*ibid.* 82

<sup>34</sup>*ibid.* 83

<sup>35</sup>*ibid.* 83

<sup>36</sup>Peter Drahos, *Regulatory Theory: Foundations And Applications* (ANU Press 2017). 663

there is a present relationship between money laundering and tax evasion and avoidance. This initially means, tax haven countries to an extent are partaking in money laundering as they often are not concerned with where the money is coming from. 'Laundering criminal proceeds through a tax haven is therefore merely a matter of finding a bank in that country to accept your deposit without asking questions'.<sup>37</sup> The legislations and relevant organisations need to urgently address this.

One of the earliest Caribbean tax haven countries was Bermuda. This dates back to 1932<sup>38</sup> as the country refused to 'introduce British company law to the territory'<sup>39</sup> but only to end up being used for tax avoidance. Such example is a country that can be described as accidentally becoming a tax haven and still maintains its status as a 'pure tax haven'.<sup>40</sup> Whilst there are other countries that purposely became just that. This does not in any way justify that there are good and bad tax havens. However, it points out that each tax haven countries varies in its reasoning and intentions.

Unfortunately, tax haven is likely to expand and evolve as it faces new challenges. As one door closes, another one opens. In other words, as new legislations and organisations such as OECD fight to put and end to tax haven through the use of laws, policies and etc. There will always be loopholes, crafty lawyers, accountants and bankers who find new ways of evolving the world of tax havens. Ultimately, tax haven raises 'questions about power and wealth in an increasingly integrated world economy'.<sup>41</sup>

### **Implications and the effects**

There are many effects tax haven has on citizens of a country, this is mostly negative for countries to whom the taxes are owed and mainly positive to those countries that permit such avoidance of taxes for the business it brings to them. For one, 'the poor make easier targets than the rich'.<sup>42</sup> This presents an unfair situation where the financial crimes of those that are poorer are upheld and punished far more in comparison to those by the rich. An example would be an illegal claim to social benefits being looked upon as horrific and a cruel act whereas a crime of tax evasion is not necessarily looked at in the same manner. It can be

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<sup>37</sup>'Tax Havens / Bank Secrecy « Global Financial Integrity' (*Global Financial Integrity*, 2017) <<http://www.gfintegrity.org/issue/tax-havens-bank-secrecy/>> accessed 31 August 2017.

<sup>38</sup>Ronen Palan (n6). 126

<sup>39</sup>ibid. 126

<sup>40</sup>ibid. 126

<sup>41</sup>ibid. 238

<sup>42</sup>Richard Brooks, *THE GREAT TAX ROBBERY: How Britain Became A Tax Haven For Fat Cats And Big Business* (1st edn, Oneworld 2013). 13

argued that the reason for such is due to the media's perception of people falsely claiming benefits which frustrate tax paying citizens but the same negativity is not poured into people evading tax. Perhaps citizens are not well informed on such acts. 'If the public realised the extent to which tax evasion is a drain on the economy it could create an atmosphere in which evasion and avoidance would be less socially acceptable'.<sup>43</sup>

There are many implications for tax havens, some that many may not even be able to fathom. Tax havens are certainly attractive to investors, especially foreign ones and who is to blame them. Would you opt to pay more tax if you could pay less? Choices of tax haven countries become a game of cat and mouse as investors chase after the country that is able to offer them the best rate. 'They undermine the regulatory and taxation processes of the mainstream states by the provision of what may be described as get out of regulation free cards'.<sup>44</sup> Aside from this, the flow of budgets and spending of a country is disturbed, all for the benefit of a small group known as the elites or the wealthy. 'The big losers from the tax haven games are the salaried middle classes'.<sup>45</sup>

Some of the biggest e-commerce companies are guilty of easily evading taxes. We take Apple, Google and even Amazon as examples. Last year in 2016, was a showdown between Apple and Ireland on how the computer company had gotten away with paying such little tax and why Ireland had created such a low tax rate of just 4 percent on foreign profits worth nearly 200 billion US dollars within the last 10 years.<sup>46</sup> Laws and rules were clearly being bent and twisted as the usual corporate tax rate in Ireland were 12.5 percent but yet in 2014, Apple managed to pay the equivalent of less than 1 percent.<sup>47</sup> The company was eventually ordered to pay 11 billion pounds of back taxes to Ireland. This was a staggering figure that aimed to set examples for other big companies that may aim and hope to conduct in such illegal state aid. Further actions are required so that cases as such does not continue to persist.

'Cost of tax evasion and avoidance to developing countries was at least \$50 billion a year'.<sup>48</sup> The implications of such actions are unfair to citizens that are missing out on the taxes that are owed to their countries. Shifting profits out of a country, particularly undeveloped or

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<sup>43</sup>ibid. 14

<sup>44</sup>Ronen Palan (n6). 3

<sup>45</sup>ibid. 157

<sup>46</sup>Vanessa Houlder, Alex Barker and Arthur Beesley, 'Apple'S EU Tax Dispute Explained' (*Ft.com*, 2016) <<https://www.ft.com/content/3e0172a0-6e1b-11e6-9ac1-1055824ca907>> accessed 27 July 2017.

<sup>47</sup>Simon Bowers, 'The Apple Tax Ruling – What This Means For Ireland, Tax And Multinationals' (*the Guardian*, 2016) <<https://www.theguardian.com/business/2016/aug/30/eu-apple-ireland-tax-ruling-q-and-a>> accessed 31 August 2017.

<sup>48</sup>Ronen Palan (n6). 227

developing country discourages the growth of such countries and adds to such countries inability to raise adequate tax avenues. These profits and tax revenue are those that should go towards better provision for the citizens for the likes of transportation, healthcare, education and more. '30% of wealth in Africa is hidden offshore. He calculates an annual loss of \$14bn (£11bn) in tax revenue'.<sup>49</sup> The contribution that figure could have made to the continent of Africa yearly could be positively effective. This could have amounted to better roads, more schools, more hospitals and even better opportunities for citizens, but unfortunately, the finances are sitting in an offshore somewhere.

Aside from that, it is also equally unfair to have different tax rates for different companies. This does not promote equality or trust within corporation dealings in a particular country. As mentioned earlier, tax haven promotes illegal activities such as money laundering, 'Rawlings and Unger (2005) argue that some tax havens specifically target criminal money as a developmental strategy'.<sup>50</sup> With the level of secrecy involved in a tax haven, how can one be sure that the money being hidden are earned through clean and legal means?

'The UK Crown Dependencies and some other tax havens charge locally owned companies income tax on their corporate profits but do not do so on companies owned by nonresidents'.<sup>51</sup> Such behaviours are common amongst tax haven countries that tend to penalise its own residents for the attempt of using the services of a tax haven but are more than welcoming towards nonresidents making use of the same tax haven services.

In conclusion, the implications and effects of a tax haven are never ending. Tax haven allows and enables wealthy people and corporations to hide money that should be taxed and used towards several means for the benefit of a better state. The residents of those countries, particularly average working individuals are indirectly being punished for the hidden money as they are left to pay for the actions of the rich. Whilst being deprived of the country's tax revenue. Looking back at the various financial crimes such as the Ponzi scheme and Bernard Madoff, one common factor is the existence of hidden money through the usage of tax havens. Needless to say, tax havens are used as tools for committing criminal activities. It is no secret that banks are at the centre of a tax haven as they help their clients in dodging financial rules and regulations. A stricter regulatory is required in order to monitor the professionals that continue to help bend the rules.

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<sup>49</sup>Tim Harford (n30) <[http://www.bbc.co.uk/news/business-40442595?ocid=socialflow\\_facebook&ns\\_mchannel=social&ns\\_campaign=bbcnews&ns\\_source=facebook](http://www.bbc.co.uk/news/business-40442595?ocid=socialflow_facebook&ns_mchannel=social&ns_campaign=bbcnews&ns_source=facebook)> accessed 1 August 2017.

<sup>50</sup>Ronen Palan (n6). 73

<sup>51</sup>ibid. 31

Tax haven leaves society without a trustful relationship as it corrupts the market with its world of secrecy whilst empowering the rich and depriving the poor.



## How Panama Papers sheds light on the greed of tax

Before light was shed on the Panama papers, there was the Liechtenstein debacle where more than 4,000 bank customers information was leaked by an informant. Those customers 'had assumed they could rely on banking secrecy to avoid disclosure'.<sup>52</sup> What made the bank attractive was the secrecy it provided as 'tax advantage would not be available if secrecy did not protect it from discovery'.<sup>53</sup> Liechtenstein absolute secrecy provision puts it right in the middle of what OECD and many scholars define tax haven to be. This includes but is not limited to the lack of transparency, no or only nominal taxes and lack of effective exchange of information. The results of its actions are much bigger than the size of the country. They continue to lack transparency which OECD fails to intervene with. This leaked data certainly brought about growing concerns on the issue of tax havens and offshore companies. Forward to a few years later when the world was shocked at the revelation known as the Panama papers.

The name Panama papers 'was a conscious echo of the Pentagon Papers: volumes of secret documents leaked in 1971 by Daniel Ellsberg that lifted the lid on the US war in Vietnam'.<sup>54</sup> Clearly, the Panama papers are not the first of high profile documents being leaked but non the less, it is known as the biggest data leak in history. As it brought about more light to the issue of criminal acts and wrongdoings in relation to tax and offshore dealings.

The leak was of 11.5 million documents and included records of 214,000 offshore companies along with passport scans, bank statements and much more.<sup>55</sup> One of the most shocking facts about the documents were the names of the people involved, for example, the likes of the father of the former prime minister of the UK, David Cameron whose father had managed to avoid paying a single penny of tax in Britain for three decades.<sup>56</sup> This was done through many trickeries and clever strategies put in place. Cameron had shares in his dad's tax haven fund before selling it off right after becoming prime minister but such information coming to light makes one question our leaders, those who are put in place to make legislations and serve the country but yet they appear to bend and twist the laws as it suits them. It is simply unfair for the hardworking individuals and smaller companies to pay taxes whilst wealthier individuals and bigger corporations are able to get away without paying an adequate or no tax through offshore structures that are considered to be legal. Where is the balance of fairness?

This is just one example out of many as 'those who dutifully paid there taxes were, in fact, dupes. The rich, it turned out, had exited from the messy business of tax long ago'.<sup>57</sup> Which

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<sup>52</sup>ibid. 239

<sup>53</sup>ibid. 239

<sup>54</sup>Bastian Obermayer and Frederik Obermaier, *The Panama Papers: Breaking The Story Of How The Rich & Powerful Hide Their Money* (Oneworld Publications Ltd 2017). ix

<sup>55</sup>ibid. viii

<sup>56</sup>ibid. x

<sup>57</sup>ibid. Foreward

shows how injustice the system is, as the working class and ordinary tax payers continue to religiously pay taxes whilst the rich get away without the same. Why exactly is this allowed? There is no surprise that the rules surrounding tax was made for the rich and they'll continue to twist and bend it as they see fit. Hence why reports such as the Panama Papers fails to be an alarming surprise It is simply something old that the media is now heavily bringing to light.

Often, wealthy individuals may argue on their end that why should they have to pay so much into the country's pot when they do not necessarily benefit from what the tax produces, such as transportation, education and healthcare. Understandingly, as an individual that is financially comfortable enough to pay for private healthcare, transportations, education and so on. It may appear unfair to have to pay for something that is not necessarily of direct benefit to one. However, as citizens of a country, it is required to abide by the laws of the country and to also put the country into consideration. Especially in the case where your finances are being earned in that country but yet there is avoidance to give back and do one's duty as a resident. To argue the point further, there are also many other benefits that are created by tax and is not something that one can particularly buy. This includes the police force, overseas defence and law and order.

## Legal Instruments

‘We cannot ignore the role civil society groups have played in raising awareness of tax abuses’<sup>58</sup> and yet legal instruments continue to fail by not providing an adequate solution. When it comes to the rich against the poor, it would appear that there are different rules concerning tax as ‘the poor make easier targets than the rich’<sup>59</sup> and the below chart shows just how much so.

<b>Tax/benefit</b>	<b>Prosecutions per £1bn of fraud</b>
Direct taxes (e.g. income tax)	5
Indirect taxes (e.g. Customs duties)	50
Tax credits (child and working family)	140
Benefits (e.g. unemployment, disability) <sup>60</sup>	9000

Such figures continue to make headlines as ‘the poorest 10 per cent of households in the UK pay a greater proportion of their income in tax than the richest 10 per cent’.<sup>61</sup> The inequality between the rich and poor is present and becoming more alarming.

The complexity surrounding tax law appears to have been purposely made as such, to confuse and bore the average working man. Leaving it to experts such as lawyers, accountants, and bankers to find loopholes and use to their benefits and of the clients to which they represent. This, of course, is regardless of the average individuals that end up having to make up for the cost of the tax abusers actions.

OECD’s unfair criteria for determining a tax haven jurisdiction is discussed below. Aside from the organisation’s unfair criteria, the makeup of the organisation itself appears to be somewhat unfair as the majority members are developed countries. The issue with this is that developing countries are often greater victims of tax avoidance and evasion but yet those countries are not properly represented on the issue of international tax cooperation. ‘In order to reduce inequality within and among countries, all countries must have a seat at the table in

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<sup>58</sup>Ronen Palan (n6). 226

<sup>59</sup>Richard Brooks (n42). 13

<sup>60</sup>ibid. 12

<sup>61</sup>Ben Kentish, 'The Poorest Pay Higher Taxes Than Richest, According To New Figures' (*The Independent*, 2017) <<http://www.independent.co.uk/news/uk/home-news/lowest-earners-more-tax-richest-office-national-statistics-inequality-council-tax-vat-equality-trust-a7704331.html>> accessed 11 August 2017.

setting international standards'.<sup>62</sup> The importance of this is urgent as it would play such a significant role in minimising international tax abuse.

### **OECD's unfair criteria**

Established in 1961, the Organisation for Economic Co-operation and Development (OECD) is headquartered in Paris, France with 35 countries serving as members. The mission of the organisation 'is to promote policies that will improve the economic and social well-being of people around the world'.<sup>63</sup> Whether or not the organisation is meeting its mission, is arguable and questionable. Reasons for this will be discussed further as OECD's criteria for categorising tax haven countries will be examined.

OECD's criteria for identifying tax haven countries are set out with four key factors; no or nominal tax on the relevant income, lack of effective exchange of information, lack of transparency and no substantial activities. These criteria were set in 1998 and may be in need of an update. A country would need to meet all the four criteria in order to be classified as a tax haven. Which means by eliminating one of the criteria, a country can exclude itself from being identified as a tax haven by the OECD.

All four criteria were set in 1998 by the OECD. The first is 'No or nominal tax on the relevant income'.<sup>64</sup> This is simply too vague as no further explanation is provided regarding relevant income. What is considered to be relevant may differ from one person to another and as identified, this alone cannot classify a country to be a tax haven as tax rates differ in each country. Which means if a country's tax rate is low or nominal, it should not automatically place the country as being a tax haven.

'Lack of effective exchange of information'<sup>65</sup> comes in as the second factor. What exactly does the OECD mean by this? There is no clarification on the type of information that is to be questioned. It can be assumed that the required information to be exchanged would be for tax purposes but such a factor is too open and not specific enough. Such could lead to different interpretations and could be used to one's advantage.

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<sup>62</sup>José Ocampo and Magdalena Carmona, 'Tax Avoidance By Corporations Is Out Of Control. The United Nations Must Step In' (*the Guardian*, 2015) <<https://www.theguardian.com/commentisfree/2015/sep/30/tax-avoidance-corporations-impacts-the-poor-united-nations-step-in>> accessed 17 August 2017.

<sup>63</sup>About The OECD - OECD' (*Oecd.org*, 2017) <<http://www.oecd.org/about/>> accessed 11 August 2017.

<sup>64</sup>'Countering Offshore Tax Evasion' (*OECD*, 2009) <<https://www.oecd.org/ctp/harmful/42469606.pdf>> accessed 24 August 2017.

<sup>65</sup>*ibid.*

Thirdly, is 'lack of transparency'.<sup>66</sup> As clear and straight to the point as this may seem, in reality, it is just too vague. Many country lack transparency for one thing or another based on the laws of the jurisdiction. OECD would need to provide further information on what withheld information would classify a country as not abiding by this factor. Would a country be required to be transparent at all cost even if it breaks the laws of that country?

OECD's last factor states 'no substantial activities'.<sup>67</sup> This factor was stated to not be 'considered when determining whether a jurisdiction was cooperative'.<sup>68</sup> This begs the question of its relevancy or importance in having it as one of its four factors in identifying a tax haven. All in all, the four list provided by the OECD appears to be weak and ineffective in practice.

Liechtenstein has discussed above as being a tax haven, aside from them, OECD has identified 2 other jurisdictions as uncooperative tax havens. 'Andorra, Liechtenstein, and Monaco - that have not made commitments to the principles of transparency and exchange of information and therefore have been identified by the OECD's Committee on Fiscal Affairs as uncooperative tax havens'.<sup>69</sup> This dates back to 2002 and since then, those three countries have since been removed from the list of uncooperative tax havens due to their commitments of being more transparent. Since 2009 'no jurisdiction is currently listed as an uncooperative tax haven by the Committee on Fiscal Affairs'.<sup>70</sup> It is difficult to accept that the Committee on Fiscal Affairs fails to identify any jurisdiction as being a tax haven.

Aside from the four factors discussed above used by the OECD in identifying tax haven countries, released last year were three criteria used for identifying jurisdictions that are considered to be cooperative regarding tax transparency. The criteria are as follow:<sup>71</sup>

1. whether the country or jurisdiction got at least a "largely compliant" rating for implementing the OECD standard on exchange of tax information on request;

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<sup>66</sup>ibid.

<sup>67</sup>ibid.

<sup>68</sup>ibid.

<sup>69</sup>'Fighting Offshore Tax Evasion - OECD' (*Oecd.org*, 2017) <<http://www.oecd.org/ctp/fightingoffshoretaxevasion.htm>> accessed 15 August 2017.

<sup>70</sup>ibid.

<sup>71</sup>Rick Mitchell, 'OECD Lists One Tax Haven, Tax Justice Network Says 'Nonsense!'' (*Bna.com*, 2017) <<https://www.bna.com/oecd-lists-one-n73014460947/>> accessed 24 August 2017.

2. the country's commitment to automatic exchange of tax information starting in 2017 and, at the latest, 2018; and
3. the country's implementation of legal instruments needed to carry out information exchange—particularly the multilateral convention on mutual assistance, now signed by more than 100 countries, or a sufficiently large exchange network permitting both exchange on request and AEOI.

A country only needs to meet two out of three of the criteria in order to be regarded as cooperative. Which means escaping one criterion will not place a country as being uncooperative according to OECD. This is problematic as it is once again proves that OECD is not being stern enough in its criteria or factors. The three criteria should all have to be fulfilled in order to be regarded as being cooperative as opposed to providing a leeway of a satisfactory two out of three.

The first criterion stating “largely compliant” shows weaknesses and acceptance to loopholes. Full compliance would otherwise close or drastically reduce any areas for loopholes which would add difficulty to any secrecy in tax information. It is, therefore, no surprise to find out that countries such as the US and Switzerland are considered to be largely compliant. Debatable, the criteria were made to provide an escape route for the countries that would otherwise have been considered a tax haven.

The second criterion appear to be reasonable and fair criterion. However, it may not be realistic in practice because how do you judge or measure a country's commitment. Or better yet, a country may commit to the second criterion whilst at the same time purposely delaying or not even providing the required tax information. Once again, this provides loopholes, a commitment to agree to provide tax information does not necessarily translate to tax information being actually exchanged.

Lastly, is the signature of the convention. It has been signed by over 100 countries but what exactly does this mean? Over 100 countries may have signed it but has it been implemented or come into force in all the 100 countries. The three criteria are weak and unsatisfactory, let alone the acceptance of only two of the three criteria needing to be met. Or the fact that signature of the convention is enough without it coming into force. A stricter approach needs to be adopted by the OECD. By setting out these three criteria, it now needs to be followed thoroughly. All three criteria should be met as opposed to two out of the three. At this point, OECD has to stop playing the field and start showing some serious intentions into transparency and a solution for a tax haven.



Following from the G20 summit earlier this year, Trinidad and Tobago remain the only country that fails to meet the international standards on transparency.<sup>72</sup> Surprisingly the least, other expected countries such as Bermuda and the Netherlands managed to somehow not be included on the list, despite them having been ‘featured on an Oxfam list of the worst corporate tax havens published last year’.<sup>73</sup> It is easier to pick on the small Caribbean Island to label as a tax haven jurisdiction instead of pointing the finger at the bigger and more powerful countries. Such results, further suggest OECD’s inability to adequately handle the matter of tax haven as no serious approach as been seen or known to be taken by the organisation and many consider the OECD search for transparency to be “opaque”.<sup>74</sup> The idea of Trinidad and Tobago being the last tax haven in the world is clearly far from the truth and certainly controversial. ‘In our estimate, there are between forty-six and sixty active tax havens in the world right now’.<sup>75</sup>

‘With the OECD failing to get serious on an approach against tax havens, it is vital the EU continues its work towards a more comprehensive list of tax havens that is not just based on secrecy, but also on harmful tax practices, including extremely low tax rates’.<sup>76</sup> Perhaps, OECD is not equipped enough to effectively make a difference to eliminating the abuse that exists within tax. The problem begins firstly with OECD’s criteria that are simply too soft and not stern enough. Progress has been made over the past few years and that is partly due to the OECD. However, it appears that the organisation is focused more on announcing success by declaring that there are no or few countries considered to be a tax haven, as opposed to an announcement that suggests otherwise. Which would place the organisation in a bad light and make them appear to not be effective. ‘It’s disheartening then to see the OECD fall back into the old pattern of creating ‘tax haven’ blacklists on the basis of criteria that are so weak as to be near enough meaningless, and then declaring success when the list is empty’.<sup>77</sup>

A specific and singular definition of tax haven provided by the OECD would provide great guidance in deciding on what states serve as a tax haven. The question now remains whether or not OECD is efficient and needed. Looking at the progress so far, or the lack of, it may be

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<sup>72</sup>Vanessa Houlder, 'Trinidad & Tobago Left As The Last Blacklisted Tax Haven' (*Ft.com*, 2017) <<https://www.ft.com/content/94d84054-5bf0-11e7-b553-e2df1b0c3220>> accessed 15 August 2017.

<sup>73</sup> 'Oxfam Disputes Opaque OECD Failing Just One Tax Haven On Transparency' (*Oxfam NZ*, 2017) <<https://www.oxfam.org.nz/news/oxfam-disputes-opaque-oecd-failing-just-one-tax-haven-transparency>> accessed 15 August 2017.

<sup>74</sup>*ibid.*

<sup>75</sup>Ronen Palan (n6). 5

<sup>76</sup>*ibid.*

<sup>77</sup>Vanessa Houlder, 'Trinidad & Tobago Left As The Last Blacklisted Tax Haven' (*Ft.com*, 2017) <<https://www.ft.com/content/94d84054-5bf0-11e7-b553-e2df1b0c3220>> accessed 15 August 2017.

time to find a new solution and that may not be with the OECD. 'OECD is funded by its member countries'<sup>78</sup> with a yearly budget of '\$370 million'.<sup>79</sup> Based on that information, it is no surprise that none of the funding members are considered to be tax havens. After all, OECD cannot bite the hands of the country that funds its day to day running. This in itself requires further research as member countries may be buying their way out of not being classified as a tax haven jurisdiction. 'The OECD treats its Members differently than those nations listed as tax havens'.<sup>80</sup>

Poorer countries are the greater victims of a tax haven but yet the organisation that deals with tax haven are one that is made of developed countries. This somehow does not seem to be the right direction for a favourable change. The evidence gathered concerning OECD suggests that the organisations interest will always be with its members who are from developed countries. 'The current system is feeding the historical levels of inequality, impeding the fulfilment of human rights, tearing away at the global social fabric and endangering future economic growth'.<sup>81</sup>

Founded in 1945,<sup>82</sup> the United Nations (UN) may pose to be a better-suited organisation to deal with the continuous issues of tax havens. This is an organisation with 193 members with its mission and work 'guided by the purposes and principles contained in its founding Charter'.<sup>83</sup> With more members than that of the OECD, this means the voices of more countries are heard and represented. An international topic such as tax haven requires an international observer, and that watchdog may just be the UN. 'The United Nation is also a better forum to create a solution which can positively affect both developed countries and especially the developing countries'.<sup>84</sup>

With members covering almost every nations, this would encourage the voices of all nations to be heard. This includes the big and small nations along with the weakest and the most

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<sup>78</sup>'Budget - OECD' (*Oecd.org*, 2017) <<http://www.oecd.org/about/budget/>> accessed 19 August 2017.

<sup>79</sup>Veronique Ruggy, 'It's Past Time To Dump The OECD' (*Reason.com*, 2017) <<http://reason.com/archives/2017/04/13/past-time-to-dump-the-oecd>> accessed 19 August 2017.

<sup>80</sup>Kimberly Carlson, 'When Cows Have Wings: An Analysis Of The OECD's Tax Haven Work As It Relates To Globalization, Sovereignty And Privacy' [2002] *The John Marshall Law Review*. 180

<sup>81</sup>José Ocampo and Magdalena Carmona, 'Tax Avoidance By Corporations Is Out Of Control. The United Nations Must Step In' (*the Guardian*, 2015) <<https://www.theguardian.com/commentisfree/2015/sep/30/tax-avoidance-corporations-impacts-the-poor-united-nations-step-in>> accessed 24 August 2017.

<sup>82</sup>'About The UN | United Nations' (*Un.org*, 2017) <<http://www.un.org/en/about-un/>> accessed 21 August 2017.

<sup>83</sup>*ibid.*

<sup>84</sup>Kimberly Carlson (n80). 180

powerful. Both the OECD and the UN have the same aim which is to solve the international issue that is tax haven being used for the purpose of evasion and avoidance. Both organisations share similar aim but their approaches and solutions vary. OECD's criteria have shown itself to be weak, ineffective, outdated and unrealistic with an urgent need for change. However, UN's approach is to 'empower nations by offering training to tax administrators of transitional and developing economies'.<sup>85</sup> It is not to say that this is the magical solution that awaits society, but it is a step in the right direction. Developing countries are more likely to benefit from such training in order to gain a better understanding of their very own tax system as well as that of other jurisdictions. This is a plan that is far more realistic than that of the OECD as it promotes more dialogue between its members, therefore naturally resulting into more transparency. Also bear in mind that its members consist of far more countries than that of the OECD. "Two heads are better than one". In that case, an organisation consisting of more members is better than that of fewer members. Therefore, 'I urge the UN General Assembly to draft a convention to outlaw tax-havens worldwide'.<sup>86</sup>

### **HMRC's approach to tax**

HMRC continues to battle against tax evasion. This 'is a non-ministerial department, supported by 2 agencies and public bodies'.<sup>87</sup> Established in 2005 as a replacement for Inland Revenue and Customs and Excise, with the purpose and role of collecting 'the money that pays for the UK's public services and helps families and individuals with targeted financial support'.<sup>88</sup> They also govern tax evasions and avoidance in the UK by making it 'hard for the dishonest minority to cheat the system'.<sup>89</sup>

Earlier this year, HMRC launched a tax fraud and evasion hotline that enables the public 'to report evasion and tax fraud'.<sup>90</sup> This is all in the hopes of reducing the amount of money that is lost to tax abuse on a yearly basis. Whistleblowing has proven to be very effective in the society as it aids the job of bodies such as HMRC whilst entrusting citizens to do the right

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<sup>85</sup>ibid. 188

<sup>86</sup>The Correspondent, 'UN Wants To Abolish Tax Havens Worldwide' (*DAWN.COM*, 2016) <<https://www.dawn.com/news/1290264>> accessed 22 August 2017.

<sup>87</sup>'About Us - HM Revenue & Customs - GOV.UK' (*Gov.uk*, 2017) <<https://www.gov.uk/government/organisations/hm-revenue-customs/about>> accessed 22 August 2017.

<sup>88</sup>ibid.

<sup>89</sup>ibid.

<sup>90</sup>ibid.

thing by informing on wrongful acts. In 2012, HMRC was said to have spent one million pounds in three years towards the payment of whistleblowers.<sup>91</sup>

Hopefully, this is just the beginning of HMRC's plan in tackling tax abuse as there is still more work to be done. Out of its 56,000 staffs, 26,000 of them are dedicated to 'focusing on tax evasion, avoidance, and fraud'.<sup>92</sup> This shows the body's serious attitude towards the problem at hand. On the other hand, it is questionable as to why almost half of HMRC's staff is focused on just tax abuse. Is the issue that out of hand, or perhaps the workload is proving too difficult for HMRC to handle alone. As mentioned above, the poor make an easier target than the rich. This is evidence amongst HMRC's released regular list of offenders as it often includes the 'small business people including restaurant owners, fisherman, newsagents and car traders, not the sort who have Swiss bank accounts'. It would appear that the 26,000 staffs are busy catching the small fishes whilst letting the big ones swim by.

HMRC's inquiries and the investigation are often costly and time consuming. The bigger the cases, the likely it is to be more costly and time-consuming. This brings about the theory of why HMRC's targets are often the less wealthy. A case of tax abuse worth a couple of thousands would be less costly to investigate in comparison to one that is worth millions. Which enlightens a concern of HMRC perhaps not having enough funds/budget or time to sometimes investigate the bigger tax evasion and avoidance crimes.

One of the main complaints about the work of HMRC concerning tax is the slow pace in which investigations and conclusions are reached. An example of such can be seen in a recent case of *Jörg Martin v HMRC* [2017] UKFTT 488 (TC) where the First-tier Tribunal had to step in and make a decision regarding HMRC's ongoing three years investigation which had received no action.<sup>93</sup>

### **Less secrecy and more transparency**

Secrecy = Selling point / attractiveness / tax haven opportunities

No secrecy = No shield / fear of tainting one's reputation / reduced tax haven opportunities

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<sup>91</sup>Oliver Wright, 'Recession Brings Out The Snitches As HMRC Pays Whistleblowers £1' (*The Independent*, 2012) <<http://www.independent.co.uk/news/uk/politics/recession-brings-out-the-snitches-as-hmrc-pays-whistleblowers-1-million-over-last-three-years-for-7987757.html>> accessed 22 August 2017.

<sup>92</sup>Brian Milligan, 'HMRC Still Not Doing Enough To Tackle Tax Fraud, Say Mps - BBC News' (*BBC News*, 2016) <<http://www.bbc.co.uk/news/business-36044321>> accessed 22 August 2017.

<sup>93</sup>Jörg Martin - Tribunal Directs HMRC To Close Its Inquiry Into Tax Avoidance Scheme | Lexology' (*Lexology.com*, 2017) <<https://www.lexology.com/library/detail.aspx?g=f7aaa637-34a7-48fb-90c2-ac01b53f30ed>> accessed 22 August 2017.

Switzerland is considered to be the beginning and trend setter for banking secrecy which dates back to 1713 with 'regulations limiting bankers' ability to share information about their clients'.<sup>94</sup> It is no surprise that Switzerland later 'made it a criminal offence for bankers to disclose financial information'.<sup>95</sup> This was due to the fact that by having secrecy banking, it was boosting the country's economy and other countries followed, especially small islands that wanted to also boost their economy and were limited to the ways in which they could do so. Which leaves financial services as the better alternative and option. Historically, the UK itself 'encouraged them to develop financial expertise, plugged into the City of London'.<sup>96</sup> This confirms UK's influence and control on the countries and Island that were once under its thumb.

The tax information Exchange Agreement between OECD's member states and tax havens encourages 'greater transparency and accountability'.<sup>97</sup> Many consider greater transparency to be the solution. Undoubtedly, it is to an extent but the information that is transparent does not account for all the available information. 'Many havens may have protested that they are transparent, that they have signed all the necessary information agreements, and that they are well regulated, but the world remains unconvinced. The available evidence does not prove their good intentions'.<sup>98</sup>

In 2008, EU proposed an extension on its Savings Tax Directive.<sup>99</sup> This places a restriction on secrecy as the beneficiary has to be known and therefore be taxed. Not every state took kindly to this proposal at first but the Savings Tax Directive has since been repealed and replaced by the new standard as of 2016. It would appear to be the much-needed solution. However, this is just the beginning steps to battling tax haven and the secrecy created around it. EU members may be heading in the right direction but the same cannot be said for Britain as the directive will fail to apply to the country following Brexit.

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<sup>94</sup>Tim Harford (n30) <[http://www.bbc.co.uk/news/business-40442595?ocid=socialflow\\_facebook&ns\\_mchannel=social&ns\\_campaign=bbcnews&ns\\_source=facebook](http://www.bbc.co.uk/news/business-40442595?ocid=socialflow_facebook&ns_mchannel=social&ns_campaign=bbcnews&ns_source=facebook)> accessed 18 August 2017.

<sup>95</sup> *ibid.*

<sup>96</sup> *ibid.*

<sup>97</sup>Ronen Palan (n6). 230

<sup>98</sup>*ibid.* 240

<sup>99</sup>*It seeks to link together the information that banks must hold on the beneficial ownership of the entities with which they contract and the obligation either to exchange information with the country of residence of the beneficial owner of an account or to withhold tax of up to 35% from payments made. ibid.* 245

In order to achieve a satisfactory level of transparency which eliminates tax havens, these changes have to be implemented. Firstly, an account of all companies should be held on public record with no secrecy which enables hidden agendas. Secondly, as suggested earlier, all beneficiaries to be known and placed on public record as well as the directorships. Such steps will show an attitude that is against tax evasion, illegal avoidance and overall abuse of the tax system. Some countries are engraved deeply in secrecy such as that of banking secrecy that it would require a drastic change of the constitution itself in order for there to be any real potential of transparency. 'In some countries, banking secrecy is so deeply enshrined in law that it would require constitutional change for it to be removed'.<sup>100</sup> A clear example of such would be Switzerland, but yet OECD fails to recognise it as being a tax haven.

Tax evasion is one thing, whilst tax avoidance is far more complex and may require more than transparency. Reason being, with transparency, it can be helpful towards tax evasion once there is an end to banking secrecy and an account of who owns what and where. However, the same may not necessarily apply to tax avoidance as it is far more difficult to track and monitor ways in which taxes are being avoided. There is simply too many tricks and tactics involved in avoiding taxes.

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<sup>100</sup>Ronen Palan (n6). 33



## United Kingdom as a Tax haven

‘Turning the U.K. into a tax haven will cause more damage inside the country than it will across the Channel’.<sup>101</sup>

‘It is now clear that Britain sits, spider-like, at the centre of a vast international web of tax havens, which Hoover up trillions of dollars worth of business and capital from around the globe and funnel it up to the City of London’.<sup>102</sup> Tax legislation could be made simpler so that there is clarification on what is legal and what is not. As opposed to the complexed rules that we currently have in place. ‘The longer and more complex the rules, the more opportunities are created for avoidance and evasion’.<sup>103</sup> Perhaps, this was the plan all along.

It is arguable that it is not the idea of having to pay tax itself that most UK citizens are frustrated with, but rather the amount or percentages in which they have to pay ‘I’m mortified to have to pay 50%’.<sup>104</sup> It can certainly be frustrating being in a position where 50 percent of your earnings get taxed. As a Christian, you think to yourself, the law of God requires one to pay 10% of earnings in tithes, then why is the law of government requiring so much more based on one’s earnings. Frankly put, that 10% may be enough to run a church but it would not be enough for the citizens to enjoy certain benefits and opportunities that are put in places such as NHS, public transports, and free education.

There is no argument that as tax payers in the UK, one does get value for their money but there is also no argument that there is sometimes misuse and mismanagement of tax money. It is an up and down, pro and con situation that can and will never be pleasing to everyone but it is essential in order for the economy to efficiently run. There are tax payers, especially the wealthy ones, who moan about not necessarily using the benefits that the taxes caters for such as the NHS as they opt for private healthcare or private schools for their children. This is a choice of theirs and should not be looked at as “I don’t use it so why pay for it”. It is better for the country to have a citizen pay for it and not use it as opposed to using the services whilst evading paying the rightful tax.

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<sup>101</sup>Alex Cobham, 'Britain As A Tax Haven? It Already Is' (*POLITICO*, 2017) <<http://www.politico.eu/article/britain-as-a-tax-haven-it-already-is-brex-it-article-50-eu-negotiations-theresa-may/>> accessed 14 August 2017.

<sup>102</sup>Nicholas Shaxson (n5). Preface

<sup>103</sup>Ronen Palan (n6). 125

<sup>104</sup>Richard Brookes (n42). 10

Historically, countries like the United Kingdom would not have been associated with being a tax haven but time has changed and the small number of tax haven countries has now expanded, with it partly due to the fact that ‘between the 1970s and the turn of the twenty-first century, the amount of money kept offshore has increased massively’.<sup>105</sup> The government of Bermuda has hit back at British efforts to end offshore financial secrecy, claiming the UK itself is a “tax haven”.<sup>106</sup> Unlike the UK, Bermuda has been a long targeted and criticised tax haven country for years but now they are firing back as the deputy premier and finance minister, Bob Richards claims that ‘The UK is a tax haven’.<sup>107</sup> The UK is often amongst the first to point fingers at other countries, especially smaller countries and it appears that the reason for that may be to drive attention away from its own flaws and problematic tax laws.

‘Major financial centres such as London and New York continue to process, manage and reinvest funds that flow in and out of tax havens by way of stocks, shares and pension funds’.<sup>108</sup>

Most tax haven jurisdictions are known to be small islands and countries such as Bermuda and Panama but that trend does not eliminate bigger countries such as the UK from also being tax havens. ‘However just because larger states or territories, with population of say half a million to ten million, will have more varied economies does not mean they are not tax havens’.<sup>109</sup>

‘Some tax havens, including Monaco, San Marino, Switzerland, the UK, the Bahamas, and Dubai, have specialized in providing real or virtual residence for wealthy individuals’.<sup>110</sup>

## **UK after Brexit:**

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<sup>105</sup>Peter Drahos, *Regulatory Theory: Foundations And Applications* (ANU Press 2017). 658

<sup>106</sup>Juliette Garside, 'The UK Is A Tax Haven' – Bermuda Attacks Plan To End Financial Secrecy' (*the Guardian*, 2017) <<https://www.theguardian.com/business/2017/feb/06/uk-tax-haven-bermuda-financial-secrecy-offshore-companies>> accessed 20 July 2017.

<sup>107</sup>ibid.

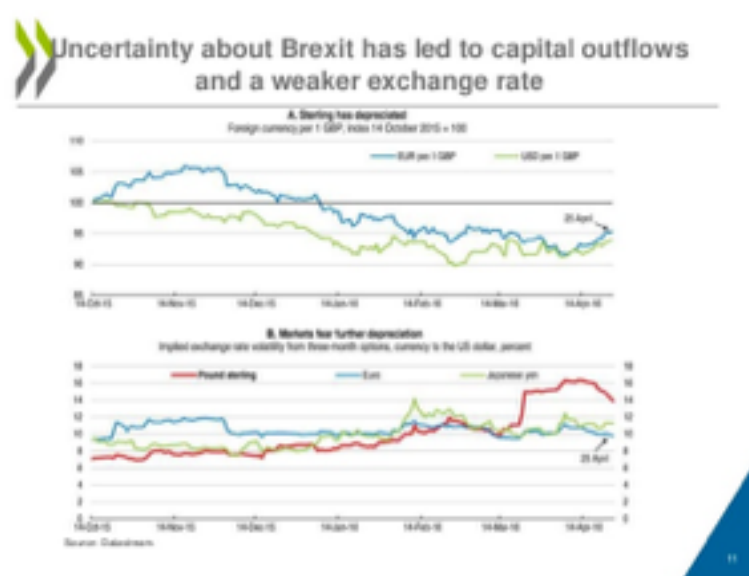
<sup>108</sup> Peter Drahos (n36). 658

<sup>109</sup>Ronen Palan (n6). 30

<sup>110</sup>ibid. 81

‘Brexit will provide the U.K. with greater liberty in its pursuit of becoming a tax haven’.<sup>111</sup> For other EU states on the other, more power may be coming their way following Britain’s departure. Such power could produce legislations that make matters more difficult for Britain, and EU will be in a better position to enforce further regulations on transparency. What we may witness in the next few years could be somewhat a battle between EU State members against Britain.

Since the announcement of Brexit, UK has had quite a few lows such as weaker exchange rate. As the pound sterling depreciated, UK appeared to be a weaker country.



History shows that the United Kingdom and the British empire has had a huge role in the development of tax haven till date, as ‘United Kingdom retains responsibility for fourteen Overseas Territories, eleven of which are permanently populated. Of those, seven are tax havens’.<sup>112</sup> The British law surrounding tax was created for the rich with many loopholes to be used to their advantage to create what we know as tax havens and some former colonies seized the opportunity on this.

Back in 2015, UK was considered by some to be moving in the paths of becoming a tax haven ‘the drift towards ever-lower rates of corporation tax in the UK upsets governments in the EU and the US who see the UK becoming a tax haven in relative terms’.<sup>113</sup> This was all

<sup>111</sup>Alex Cobham, 'Britain As A Tax Haven? It Already Is' (*POLITICO*, 2017) <<http://www.politico.eu/article/britain-as-a-tax-haven-it-already-is-brexit-article-50-eu-negotiations-theresa-may/>> accessed 14 August 2017.

<sup>112</sup>Ronen Palan (n6). 124

<sup>113</sup>Vanessa Houlder, 'UK Could Be Branded A Tax Haven After Osborne’S Surprise Cut' (*Ft.com*, 2015) <<https://www.ft.com/content/0e8ce3d0-1b63-11e5-8201-cbdb03d71480>> accessed 25 July 2017.

due to George Osborne's corporation tax cut which came about as a surprise by reducing the rate to 18 percent. Unbeknown, this was just the first public step towards the UK becoming a tax haven, as we now have the Brexit situation.

The idea of Brexit screams high possibility of the United Kingdom becoming a tax haven. Many consider Brexit to be a disastrous choice but for now, nothing has been confirmed until the exit deal has been negotiated through Article 50 of the Treaty of Lisbon. The Article has been recently triggered by Prime Minister Theresa May as of 29th of March 2017 which means Britain 'should officially leave the EU no later than April 2019'.<sup>114</sup> 'The government could try to entice businesses to the UK after EU withdrawal by cutting taxes and regulation'.<sup>115</sup> Such action is more likely than not and it will certainly affect the EU whilst leaving regular workers to cough out and bear the cost.

'Britain is willing to rip up its economic model and become the tax haven of Europe if it is shut out of the EU's single market'.<sup>116</sup> The possibility of this happening is extremely likely as the dust of Brexit is yet to be settled, and upon a settlement that does not favour Britain, it is believed that the leaders of the country will do whatever it takes 'to bounce back after Brexit'.<sup>117</sup> The condition of Britain after Brexit will certainly shape the direction in which the country will go. Based on the current affairs of Theresa May and her leadership skills, the country may not have access to the European market and this would be a hard pill to swallow as it would be a great loss for the economy. As it is now, the main concern appears to be that of immigration control, as Britain claim to want more control on who they let in the country. There is no doubt on this, however, the focus on immigration is to an extent a cover up as to the real push behind Brexit, which is arguably for the purpose of the country becoming a tax haven.

On the other hand, the whole debate and suggestion of Britain becoming a tax haven could be a form of threat to the European Union leaders, in order for the UK to be given a desirable exit. Suggesting that if the UK is given what it wants, it may refrain from lowering

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<sup>114</sup>Michael Wilkinson and Robert Midgley, 'What Is Article 50? The Only Explanation You Need To Read' (*The Telegraph*, 2017) <<http://www.telegraph.co.uk/news/0/what-is-article-50-the-only-explanation-you-need-to-read/>> accessed 21 July 2017.

<sup>115</sup>Will Worley, 'Netherlands 'Will Block Post-Brexit Trade Deal' Unless UK Clamps Down On Tax Avoidance' (*The Independent*, 2017) <<http://www.independent.co.uk/news/uk/politics/netherlands-brexit-tax-avoidance-trade-deal-lodewijk-asscher-theresa-may-conservatives-a7527656.html>> accessed 19 August 2017.

<sup>116</sup>Adam Withnall, 'UK Could Become 'Tax Haven' If It Is Shut Out Of EU After Brexit, Chancellor Suggests' (*The Independent*, 2017) <<http://www.independent.co.uk/news/uk/politics/brexit-eu-chancellor-philip-hammond-welt-am-sonntag-uk-tax-haven-europe-a7527961.html>> accessed 26 July 2017.

<sup>117</sup> *ibid.*

their tax and possibly becoming a tax haven to the point in which unfair competition arises with the EU countries.

It is known that UK is a favourite of many business as it allows them to do businesses in other European countries and reach the consumers in the UK along with those in Europe with many other benefits such as no duty fee when importing or exporting within the EU and the overall UK is easy to deal with. According to GOV.UK, 'more companies locate their business in the UK than anywhere else in Europe'.<sup>118</sup> This alone suggests that many businesses may relocate once the UK officially leaves EU as they will no longer enjoy the benefits it entails. One of the ways in which the UK may choose to retain its current businesses and promote the arrival of new ones is to lower its taxes. Overall, the behaviour of the UK after Brexit will be determined by the agreements reached.

It is worth noting, according to financial times, the yearly amount of corporation tax gained from the UK is roughly £50 billion pounds, with the year 2016-2017 accounting for £56 billions to be specific. This makes a huge contribution to the daily runnings and up keep of the country. Such funds are heavily relied upon which means lowering corporation tax could amount to less money for the country to rely on. Perhaps it is believed that regardless of lowering the corporate tax, more businesses would come forward, therefore, resulting in more tax overall?

That aside, the UK will be in for a very competitive ride if it goes forward with the idea of lower tax as countries such as the United States with already low tax rates will pose as a serious competitor for the UK. Tax haven places are usually small countries, usually not as big or established as the UK, and the effects of such countries stand to be minor compared with the effects and impact the UK could have on other countries if it were to become a tax haven.

It is certain that members of the OECD have certainly got their eyes on the UK since the announcement to leave EU but that itself is not enough. Brexit could not have come at a better time for the leaders, as it is exactly what is needed in order to fully turn Britain into the tax haven country they've always wanted it to be. This is just the beginning stages as we will see Britain beginning to get its hands dirty and being competitive with the likes of British Virgin Islands and others as a means of being seen as an attractive country to the elites and

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<sup>118</sup>Why Overseas Companies Should Set Up In The UK - GOV.UK' (*Gov.uk, 2017*) <<https://www.gov.uk/government/publications/why-overseas-companies-should-set-up-in-the-uk/why-overseas-companies-should-set-up-in-the-uk>> accessed 26 July 2017.

those with big pockets. 'If you think the City of London is corrupt today, wait and see what the Brexit-boosted lobbyists and fantasists have in mind'.<sup>119</sup>

Brexit was sold to the voters to be of priority concern regarding immigration, but what lies behind closed doors was the beginning of a tax haven journey for Britain which will be heavily influential on other countries. If or rather when the UK slashes its corporation tax even further, there is no doubt that other countries will follow suit as it is seen as a game of the survival of the fittest. With plans to reduce corporation tax to 15 percent which is almost half of what it used to be, this shows the willingness and almost desperate actions to cater to the elites and wealthy organisations in order to bring their business to Britain instead of the other low taxed countries.

To an extent, the exposure of David Cameron and his late father's involvement in offshore affairs contributed to the eagerness of Brexit.

It is believed that environmental and political conditions often adds to a country becoming a tax haven and based on that, a country simply learns 'to take advantage of the conditions they faced'<sup>120</sup> which means Britain might be heading to taking advantage of its current condition based on political factors.

### **Moving forward:**

Secrecy is such a big part of the way in which tax haven work, so why not strip away its power by eliminating the secrecy of it. As Britain begins making its own laws on taxation, the push for transparency would hopefully reduce the number of those that rely on tax havens as a way of avoiding or evading tax. 'Take away secrecy, and they would desist from doing so of their own volition, for the fear of the effect on their reputation or for fear of prosecution'.<sup>121</sup> The world of taxation is very political and if a country recognises or considers being a tax haven to be good for its own economy, laws are then put in place to support that idea. The Swiss bank has proven this to be correct since the 1920s due to its banking secrecy which boosted the country's economy hence why 'in 1934 the Swiss made it a criminal offence for bankers to

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<sup>119</sup>Nicholas Shaxson (n5). ix

<sup>120</sup>Ronen Palan (n6). 18

<sup>121</sup>ibid. 244

disclose financial information'.<sup>122</sup> Such actions come as no surprise as laws have a record of being made with purposely placed loopholes.

The declining rate of corporate tax will only amount to an increase in other areas of taxes such as income tax and those that affect your average salaried working individual. 'A decline in nominal and real corporate tax in OECD countries contrasts with a rise not only in income tax rates but in other forms of taxation'.<sup>123</sup> Responsibilities of the wealthy people should not be shifted onto those with lower income.

On one hand, the pending trade agreement between Britain and EU may divert Britain's intention on becoming a tax haven. Trade agreement or not, Britain will do just fine but the question is, at what cost? Survival of the fittest is what comes to mind as Britain will proceed and do whatever it takes to survive following on from Brexit, which is why it could be potentially dangerous if the departure is concluded without a suitable trade agreement. Britain will be in an equally or even better position once it settles trading deals with EU and other countries separately whilst following WTO rules. The EU membership is a costly one and would save UK billions of pounds yearly which could go towards the cost of exporting and funding other necessary provisions.

In continuation, Britain would need to embrace patience as it could take years for agreements to be reached, not just with EU but with the other developed countries such as the US. 'UK civil service may lack the capacity to strike major trade deals quickly'.<sup>124</sup> It is a waiting game as others are watching and waiting to see the agreement that will be reached between the UK and EU. Following on from this will determine the directions and agreements that are reached between the UK and other countries. Therefore resulting in more delays.

As mentioned earlier, OECD does not appear to be efficiently dealing with tax abuse, as very little has changed since the past few years, along with its weak and outdated criteria on tax haven. 'OECD is not the appropriate body to set the rules for tax cooperation'.<sup>125</sup> An ideal proposed solution could be a collaboration of the OECD and the UN, particularly the ECOSOC department of the UN. Both organisation has its strengths which would be better

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<sup>122</sup>Tim Harford (n30) <[http://www.bbc.co.uk/news/business-40442595?ocid=socialflow\\_facebook&ns\\_mchannel=social&ns\\_campaign=bbcnews&ns\\_source=facebook](http://www.bbc.co.uk/news/business-40442595?ocid=socialflow_facebook&ns_mchannel=social&ns_campaign=bbcnews&ns_source=facebook)> accessed 1 August 2017.

<sup>123</sup>Ronen Palan (n6). 157

<sup>124</sup>Peter Foster and James Kirkup, 'What Will Brexit Mean For British Trade?' (*The Telegraph*, 2017) <<http://www.telegraph.co.uk/news/0/what-would-brexit-mean-for-british-trade/>> accessed 19 August 2017.

<sup>125</sup>John Christensen, 'Tax Avoidance By Corporations Is Out Of Control; The UN Must Step In' (*Tax justice network*, 2015) <<https://www.taxjustice.net/2015/10/01/tax-avoidance-by-corporations-is-out-of-control-the-un-must-step-in/>> accessed 24 August 2017.

utilised in coming together to battle the war against tax evasion and illegal avoidance. Both organisation should be able and willing to share necessary information with each other and come up with joint decisions and guidance on how to go about finding an international solution to the matter at hand. The UN's priority would appear to be the developing countries whilst OECD's interest lies with the more developed countries, but with a joint effort, both developed and undeveloped countries will be represented with the aim of meeting their interests whilst creating a better and equal society or close enough as can be achieved.

There are extremely wealthy individuals and organisations who are residents in developing countries but fail to support the growth of the country as they hide their wealth in other jurisdictions. For the undeveloped and developing countries, training should be provided so that such countries do not fall victims to being used as a tax haven or residents shifting their earned profits elsewhere. Developed countries, on the other hand, need to be better monitored so that they do not continue to cause damage to the poorer countries through the means of accepting hidden money which could be used in those developing countries. 'Wealthy dictators and their cronies loot developing countries and stash it offshore, in secrecy'.<sup>126</sup> The promotion of inequality caused by tax haven needs to be stopped.

As for the UK, all that had been discussed and the evidence provided throughout this paper confirms that the UK is, in fact, heading towards becoming a tax haven. What that means for UK citizen is unclear as of yet. It is also not expected that OECD would classify the UK as a tax haven, let alone step in to intervene. The UK and the US will gracefully be considered as tax haven jurisdictions by many, whilst OECD completely ignores those facts presented, as the two countries continue to have the organisation under its thumb.

An immediate solution is needed before the occurrence of another economic crisis such as that of 2008.<sup>127</sup> It should not take for such to happen before society realises the further and growing impact of the tax abuse that is known as evasion and avoidance. It is clear that those who write the law, also create 'more obscure, complex, and sophisticated instruments of avoidance'.<sup>128</sup> That leaves the question as to who can be trusted with the intention of creating laws to beat tax abuse without purposely placed loopholes available to professionals to be used for the benefits of wealthy individuals. It would appear to be an international problem that needs an international response and governance.

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<sup>126</sup>'Inequality & Tax Havens - Tax Justice Network' (*Tax Justice Network*, 2017) <<http://www.taxjustice.net/topics/inequality-democracy/inequality-tax-havens/>> accessed 24 August 2017.

<sup>127</sup>'The Origins Of The Financial Crisis' (*Economist.com*, 2013) <<https://www.economist.com/news/schoolsbrief/21584534-effects-financial-crisis-are-still-being-felt-five-years-article>> accessed 30 August 2017.

<sup>128</sup>Ronen Palan (n6). 104



## Conclusion

The days of the Panama Paper is not far behind us and nor is the solution to tax avoidance, evasions, and the haven. The main aim of this paper is to investigate the UK's approach to tax haven and the role of the OECD in fighting tax abuse. To this end, It would appear that the first solution would be the provision of a single legal international definition of a tax haven, along with a clear distinction between evasion and avoidance. This would be a great first step to be followed internationally so that every jurisdiction has an understanding of what the law requires.

From what has been gathered, it is evident that only the wealthy individuals and corporations benefit from a tax haven. To which they pass on their burden unto those less wealthy. Regardless of how tax haven is looked at or defined, one thing that is certain is the unfairness of the act. It is a serious crime that some jurisdiction continues to take lightly.

As expected, the available legal instruments are scanty as the OECD is not proving to be much effective. It is proposed that the OECD together with UN join hands in battling tax haven as both organisation would provide a platform where all countries are heard and taken into account. Together both organisation may be better suited to come up with criteria that are considered to be fairer than the present OECD's criteria.

The UK appears to be open to the idea of becoming a tax haven for the leaders of the country fail to strengthen its legislations in disapproval of tax haven. Instead, it dances on the issue. More than likely, Brexit will see the UK through becoming a full tax haven. Brexit happens to be the excuse that the UK has been waiting for in order to justify its intentions of becoming a tax haven.

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