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Tax havens

**Secrecy jurisdictions and journalistic investigations:
How to make it part of the global discussion?**

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1. Introduction

“There is a building in the Cayman Islands that houses supposedly 12,000 US-based corporations. That's either the biggest building in the world or the biggest tax scam in the world, and we know which one it is.”

Barack Obama during the 2008 U.S. Presidential Election campaign

Oxfam published a report in January 2016, stating that 62 billionaires have a combined fortune in excess of what's possessed by the poorest half of the world's population.¹

Another calculation by the same organization showed that one per cent owns 99% of the world's wealth. The imbalance is growing: The rich is getting richer, the poor are getting poorer. The gap is biggest in developing countries, but the Nobel Price-winner Joseph E. Stiglitz has shown that it also applies to the US, where the top one percent controls 40 percent of the nation's economy.²

The implications are severe. The French economist Thomas Piketty argues that after decades of growing equality and welfare systems that benefits those in need, things are reversing. The inequality in modern economies is approaching levels last seen before the First World War.

Tax havens are a critical component in this development. They make up a legal but questionable system that work against the intentions of international tax policies, and undermine an important feature of democracy: Equality before the law. Multinational companies can set up intricate structures where profits are shifted to tax havens – to slash their contribution to society. Very wealthy people can do the same, for instance by transforming themselves into an enterprise. The result is that small companies and citizens on ordinary salaries must carry a heavier burden for financing public costs in their

¹ <http://www.oxfam.org.uk/media-centre/press-releases/2016/01/62-people-own-same-as-half-world-says-oxfam-inequality-report-davos-world-economic-forum>

² Joseph E. Stiglitz, *Of the 1%, by the 1%, for the 1%*, Vanity Fair, 29 April 2014

respective countries.

Even worse, tax havens facilitate corruption, fraud and illegal trade with terror groups and blacklisted regimes. Tax havens don't only attract their global clientele with low or no tax. Their main selling point is secrecy, an escape from national laws and regulations. Bank accounts, trusts and transactions: through a number of such mechanisms the identity of the people behind the big flows of money may be hidden from any government in the world. The purpose is to evade public scrutiny and criminal investigation, which entails the obstruction of a free press.

Tax havens are masters of opacity; thus there are strict laws in place that forbids any form of disclosure or investigation. In some places, like the Cayman Islands, one may be arrested for asking questions³. The British Virgin Islands has proposed a law that cracks down heavily on data leaks: A whistleblower can get up to twenty years for disclosing deposits and transactions, while a journalist can get fifteen years for reporting on the leaks.⁴

Despite measures to quell investigations into them, we know there are between 50 and 60 tax havens in the world, and that they are used by millions of companies. However, to have an address in a tax haven don't necessarily mean a physical presence. Close to 20,000 companies are registered in Ugland house in the Cayman Islands, named after a Norwegian shipping magnate and made famous by Barack Obama. An office block in the US state of Delaware, houses 200,000 corporations.⁵ However, a visitor to many of these companies will meet a closed door. There are no people actually working for the company here, it's only a postbox.

Given the closed doors and secrecy, it is hard to define how much money is stashed away. The Economist estimated \$20 trillion in 2013, deposited by more than two million

³ Perretti J. Cayman. Inside Britain's Trillion Pound Island. BBC, 22 February 2016

⁴ Sascha Chavkin, BVI considers tough prison sentences for data leaks, ICIJ, 18 February 2014

⁵ Andrew Clark, Welcome to tax-dodge city, USA, The Guardian, 10 April 2009

companies and several thousand individuals.⁶ Tax Justice Network believes it is even more. In 2012 the NGO published a paper claiming that \$32 trillion in private financial wealth was hidden offshore – which is close to the annual output of the Chinese, Japanese and U.S. economies combined.⁷

In terms of private offshore wealth, The Economist ranks Switzerland as number one. Britain, the Channel Islands and Ireland are lumped together as number two, while the U.S comes in as number five. However, the UK – or rather the City of London – is bigger than at first sight. Ronen Palan, professor of political economy at City University, describes the City of London as central in the web of offshore financial centers: Jersey, Bermuda, Seychelles, and about twenty other places widely regarded as tax havens, are all former outposts of the British Empire. The relationships to UK are still strong. Palan says:

“We have, to put it provocatively, a second British Empire, which is at the very core of global financial markets.”

There is an army of bankers, lawyers and accountants that ensures that money is routed via tax havens into the City – the biggest financial centre in the world. They are all bound by a code of silence. In his book *Swimming with Sharks*, Joris Luyendijk documented the complete lack of job security in The Square Mile. Talking to a journalist could be the same as signing your resignation letter. Moreover, breaking a confidentiality clause also ensures that you will be sued and banned from future work in the financial sector.

Despite strict measures to limit transparency, there have been several cases that have given us a glimpse into offshore finance. I will look at three of them, namely Lux Leaks, Swiss Leaks and Panama Papers. My question is: What are the ingredients of these leaks that made it part of the global discussion?

⁶ Storm Survivors - Special Report, Economist, 16 February 2013

⁷ James S. Henry, *The price of Offshore Revisited*, June 2012

2. Secrecy jurisdictions: Mechanisms to prevent transparency

“Secure your wealth with an 82-year-old proven, virtually 100% courtroom-proof structure. This fascinating structure has managed to evade the slickest attorneys’ tricks and protect the wealth of individuals worldwide for the last eight decades.”

Blurb for a Ramses Owens presentation (partner in Mossack Fonseca - big provider of legal services offshore)

When talking about tax havens, it is common to use the term “offshore”. Tax havens form an international financial structure that floats above national laws. Here we are in uncharted waters, what happens is unknown. A great number of mechanisms ensure that deposits and transactions remain secret. In this chapter I will look at some methods used to provide anonymity to people with fortunes they wish to hide. They create great obstacles to anyone trying to investigate, no matter whether they are from law enforcement or the media.

There is a vast array of lawyers and bankers specializing in offshore activities. The essence of their services is to provide clients with a safe haven from domestic tax and regulations, making sure that financial activities are kept in the dark. Confidentiality is the key word. In Switzerland – and other tax havens – bankers promise to take your secrets to the grave. Those who break the secrecy may be prosecuted and sentenced to prison. Lawyers operate in the same environment. If a lawyer takes on a client, the relationship comes with a promise: The protection of confidential information is above everything else. This duty continues despite the end of the retainer and even after the death of the client.

One popular vehicle to mask the identity of an asset holder is the trust. The underlying idea of a trust is to separate different aspects of ownership. Under a standard trust a person gives up money or property for the benefit of someone else. The beneficiary is supposed to behave within a set of rules, enforced by a third person. However, in tax havens there are laws that cover up the arrangements of the trust. Thus it allows a person to merely pretend to have given away his or her belongings, while in reality still controlling it.

Another method is the creation of an offshore-company, where the directors are completely detached from the owner. A journalist or crime investigator may find information about the directors, but nothing to identify the real possessor. These kinds of directors are called nominees. In many cases they don't know anything about the company they are supposed to run. The nominees are simply called in by a lawyer to sign three sets of papers. In the first they promise to do what the real owner tells them. Secondly they hand back control to the real owner. Thirdly they sign an undated resignation letter, so the arrangement can be brought to a halt, also retroactively.⁸ It is not uncommon for a nominee to represent thousands of companies.

Often the owner of an offshore-company is not mentioned anywhere. They may even use code names like James Bond and Betty Blue when communicating with lawyers and bankers, both on the telephone and by mail. Being anonymous is not a problem for access to their assets. Bearer shares can be issued. They say that the money belongs to whoever physically holds the shares. Normally they are issued in large and round numbers like 10,000 or 100,000 pounds.

Tax havens also grant secrecy to financial refugees by refusing to share information with other jurisdictions. A sophisticated variant of this refusal happens when a tax haven promises to share whatever information they have – and simply makes sure that the necessary information does not exist there.

Even though the origin of money is highly illegal, the vehicles of financial secrecy are by themselves legal. Lawyers are used to ensure the creation of shell companies, registration of nominees, and the cross-border transactions which are aligned with relevant regulations. As a profession they are supposed to know their clients through rigorous due diligence. If they see a “red flag” they should deny the potential customer their services. However, an undercover investigation for the US TV-program “60 minutes” documented that this is not

⁸ David Leigh, Harold Frayman, James Ball, The Offshore Trick: How the BVI “nominee director” system works, The Guardian, 25 November 2012

always the case. A journalist went to New York City and pretended to represent a politician that had obviously stolen money from a poor country; he needed help to launder and invest his money. Of the 16 lawyers he recorded with a hidden camera, only one turned him away.⁹

Given the secrecy protected by law, it is virtually impossible to link people to big fortunes and trace the movement of the money – even for criminal investigators. At an anti-corruption conference in Oslo, two officers from FBI said that they had spent large parts of the last ten years tracing millions of dollars stolen from a former politician in Nigeria. Their aim is to return the money. However, they are still far from success, because they are denied insight by law into many of the tax havens involved. Much time is spent in courts trying to open the books.¹⁰ In the meantime the cash is transferred to another place. It is quite common that offshore bank accounts have a “flee clause” in case anyone starts to pry.

Even though tax havens offer a wide range of obstacles to prevent investigations, journalists have got hold of millions of documents detailing financial affairs of all shades. The most prominent cases have one thing in common: They are based on leaks and published by an international consortium of investigation journalists.

⁹ Steve Croft, 60minutes: Anonymous, Inc, 31 January 2016

¹⁰ The anti-corruption conference arranged by Transparency International, 10 June 2016

3. Lux Leaks

“We will try to put some morality, some ethics, into the European tax landscape”

Jean-Claude Juncker, former prime minister of Luxembourg and current president of the European Commission, speech in Brussels July 2014

Lux Leaks was the first major leak to hit the headlines in the western world. In the coming paragraphs I will look into the case that raised public awareness of the shady practices in tax havens, and how it transformed the debate on international tax reform.

Antoine Deltour – a former auditor in PWC, one of the Big Four accounting firms – decided to leak 28,000 pages involving more than 340 companies for moral reasons. He wanted the world to know that there is a great industry around aggressive cross-border tax avoidance. In this case PWC had negotiated a great number of “sweetheart deals” with Luxembourg: By routing profits through the tiny country, international companies could shave off billions of pounds in taxes.

A French journalist was the first to report on the leak, but it was too big for one single organization. Little happened before the International Consortium of Investigative Journalists (ICIJ) took the lead. ICIJ is a global network of journalists, dedicated to topics that know no borders: International crime, corruption, and the accountability of power. More than 80 journalists in 26 countries were engaged to break down the confidential information Deltour obtained from PWC, and assess the signification worldwide.

In November 2014 the media working with ICIJ published their reports in a coordinated international operation. It was a big bang, exposing what had been kept secret until then. Based on artificial flows of income across borders, the tax base of other European countries was undermined.

The Guardian writes:

“The EU alone says its member states lose each year between £39.9bn and £55.8bn to those avoiding corporation tax. It estimates that multinationals can pay up to 30% less than rival companies which do not operate across borders.”¹¹

The timing of the Lux Leaks was important for the response. The world had been suffering from the financial crisis, triggered by reckless speculation of bankers and investors. In order to prevent the total collapse of the global economy, governments decided to bail the banks out. However, it was ordinary citizens that paid the price. Measures to cut state spending were executed in most western countries. Planned projects came to a halt, public servants lost their jobs, welfare of all kinds were reduced, and unemployment soared.

In the midst of the revelations was Jean-Claude Juncker, who had just been appointed new president of the European Commission. He had been the finance and prime minister in Luxembourg when the country was turned into a center for corporate tax avoidance. Lots of countries missed out on billions of pounds, which might have alleviated their socio-economic plight, but Juncker said:

“No one has ever been able to make a convincing and thorough case to me that Luxembourg is a tax haven. Luxembourg employs tax rules that are in full accordance with European law.”¹²

That is not entirely true. Lux Leaks triggered a series of investigations, and in 2015 EU decided that some "sweetheart" deals between member states and corporate giants can be classified as illegal subsidies, violating the EU's state aid rules. As a result Starbucks and Fiat must each pay up to 30 million euros in back taxes.¹³

Nick Mathiason of the Bureau of Investigative Journalists, says: ¹⁴

“It was devastating for Jean Claude Juncker, who came under immense pressure, because he

¹¹ Simon Bowers, The Guardian: EU plans to tackle tax avoidance are a good start – but only a start, 12 April 2016

¹² Mike Bird, Business Insider, Bombshell Report On Luxembourg's Shady Tax Deals, 6 November 2014

¹³ Mehreen Khan, The Telegraph: EU rules Starbucks 'sweetheart' tax deals are illegal state subsidies, 21 October 2015

¹⁴ Author interview, February 2016

was the prime minister and finance minister during the time Luxembourg emerged as a tax haven and a secrecy centre. The story exposed how global companies were paying tiny amounts of tax and that the schemes they used were signed off by the Luxembourg authorities, at the time when Jean Claude Juncker was about to be officially sworn in as the president of the European Commission. It led to a vote of no confidence, which he did win, but his presidency suffered a lot. It also set in train a number of EU investigations into the European tax system and how it incentives tax abuse. So it was very impactful."

Lux Leaks may indeed change the way multinationals report their profits and tax payments in all nations within the EU; a draft on new legislation was presented in April 2016. Moreover the competition commissioner, Margrethe Vestager, has delved into tax avoidance strategies involving Belgium, Netherlands and Ireland and decided that 35 multinationals had to give back 700 million euros in dodged taxes. And it may be much more ahead. As one EU official puts it: "We are talking billions and billions."¹⁵

¹⁵ Financial Times, EU tax: Tough love for multinationals' sweetheart deals. 13 July 2015.

4. Swiss Leaks

“We quite rightly prosecute and often jail people guilty of damaging our society through conventional crime and antisocial behavior. The way we treat systematic tax evasion should be no different.”

Danny Alexander, the former Liberal Democrat chief secretary to the Treasury

In February 2015, three months after Lux Leaks, came Swiss Leaks. This time it was not about multinationals, but very wealthy individuals from all over the world. 106,000 bank clients from 203 countries were named in the secret files documenting that the Swiss arm of the bank HSBC had helped many of them conceal undeclared accounts. This was big money: More than 100 billion dollars in the period from 2005 to 2007.

The French newspaper Le Monde came into possession of the banking data in early 2014 and was the first to investigate. Again the journalists realized that it was too big for one paper, and ICIJ was brought in to become the driving force.

Over a period of six months 140 journalists around the world worked together. When they published simultaneously in 45 countries – 9 PM Greenwich time 8th February 2015 – it hit like a bombshell. HSBC had catered for people close to discredited regimes, and people that the UN had connected to arms trafficking, blood diamonds and bribery. According to Guardian, much of the financial dealings were conducted not only with the knowledge, but also with the encouragement of the HSBC.¹⁶

The reports led to a number of criminal investigations across the globe. However, given the comprehensive list of names and dates, there have been few prosecutions. France and Spain are among the few that flexed muscles, claiming millions back in taxes. In the UK the state tax agency HMRC has most notably been heavily criticized for letting the white-collar

¹⁶ Juliette Garside, Patrick Winter and Karen McVeigh, The Guardian, HSBC files: international outcry over activities at bank's Swiss arm, 9 February 2015

criminals off the hook. Given the many names, it annoyed many that only one person was prosecuted.¹⁷ The campaign group Avaaz – boasting 40 million members – even initiated proceedings against the UK tax office over its decision to offer amnesty to hundreds of people, as long as they simply paid back their tax. Normally this is an incentive for people to come forward before they are being caught, not after.

Alex Wilks, Avaaz’s campaign director, said:

“If the police extended the terms of knife amnesties to criminals caught carrying weapons, the public would be outraged. Tax officials must urgently explain why they gave get-out-of-jail-free cards to so many wealthy tax dodgers.”¹⁸

In UK several media outside the ICIJ picked up on the leaks. Some questioned the relationship between the government and HSBC, which may have fueled public anger. The popular newspaper Daily Mail wrote about a “dirty deal” that let bankers and British tax cheats “off the hook”. Apparently the former tax head of HMRC who agreed on the deal in 2012, moved to a job in HSBC in 2013.¹⁹ Adding to the same sentiment: Lin Homer, the chief executive of HMRC during the period of failed investigations, was on the New Year honors list 2016 – and made a dame. Several media now just refer to her as Dame Disaster.

Despite the lenient attitudes in a number of countries, it is fair to say that Swiss Leaks had an impact. Lindsay Green Barber – director of strategic research at the US based Center for Investigative Reporting – maintains that Swiss Leaks is a model for international investigative reporting, how it works and the impact it may have.²⁰ She elaborates:

“ICIJ is a huge network of journalists across the world, with great capacity to process information. The centre of the leak was in Switzerland, but ICIJ had an army of reporters to follow up all over the world. We saw different angles at different points of time. I think it is the

¹⁷ Richard Murphy, Tax Research UK, 1 May 2015

¹⁸ Juliette Garside and James Ball, The Guardian: HSBC files: UK tax officials under fire for allowing payment amnesty, 1 May 2015

¹⁹ Martin Robinson, Daily Mail: Anger over 'dirty deal' which saw 1,100 UK holders of HSBC Swiss accounts dodge prosecution and how the bank's boss walked into a top Government job, 10 February 2015

²⁰ Author interview March 2016

cross border operation that made it so successful.”

Was there anything about the content of Swiss Leaks that enraged the public?

“A whistleblower had provided documents from inside, which appealed to the public in a broader social psychology. It deals with the have and have-nots, the one percent and the 99 percent. I think that is the reason why it created an outcry, a uniform public response in very many countries,” Barber said.

5. Panama Papers

“(I leaked the documents) simply because I understood enough about their contents to realize the scale of the injustices they described”

John Doe – pseudonym of the anonymous whistleblower behind the Panama Papers

The Panama Papers – released on 3 April 2016 – was another leak of documents, with a twist. Again one single newspaper was approached, again the volume of the data was too big to handle, and again the ICIJ took the lead. But the amount, scale and scope was unprecedented and the whistleblower chose to stay anonymous, even to the journalists in *Süddeutsche Zeitung*. They were told: My life is in danger.

This time it was not only multinationals and wealthy individuals. 11.5 million documents leaked from the law firm Mossack Fonseca revealed that 140 politicians, their associates, and public officials from around the world were the owners of secret offshore companies. They included five current and seven former global leaders. The prime minister of Iceland and the king of Saudi Arabia; the presidents of Argentina and Ukraine; the former leaders of Georgia, Iraq, Jordan, Qatar and Sudan; the industry minister of Spain; children of the president of Azerbaijan and the prime minister of Pakistan. They were all named. So were people close to the Russian president, the father of the British prime minister, and many more.²¹ The magnitude of the leak was a serious wake-up call to the world at large.

Moreover, according to the ICIJ, the U.S. Government had blacklisted at least 33 people and companies among Mossack Fonseca’s clients: They had done business with drug lords, terrorist organizations and nations like North Korea and Iran. Also there was evidence that one of the shell companies supplied the Syrian government with the fuel they use to bomb its own people.²²

²¹ ICIJ, Giant Leak of Offshore Financial Records Exposes Global Array of Crime and Corruption, 3 April 2016

²² Will Fitzgibbon and Martha M. Hamilton, ICIJ: Law Firm’s Files Include Dozens of Companies and People Blacklisted by U.S. Authorities,

More than 400 reporters across the globe worked in secret for more than a year before the information went public. Many of them knew that they were going to cause a political scandal. One of them was a journalist from Iceland. A Swedish documentary showed his nerve-wracking investigation, being voluntarily isolated in a house with blinded windows, so no one could peak in. His work proved to be dynamite: many Icelanders poured onto the streets and rallied for the prime minister's departure, making sure he was to become the first casualty of the Panama Papers.

The Panama Papers created a greater public awareness that tax havens are central to the shady side of finance. Nicholas Shaxon, who has written the book 'Treasure islands – Tax havens and the men who stole the world' – says:

*"Ten years ago, tax havens were a side interest of some journalists. There was no real portrayal of the global offshore world. Yes, there were some stories, but they were strange, some kind of oddities. Tax havens were a topic only discussed by a few journalists, policy makers and academics. But now people are beginning to wake up to the fact that this is right at the centre of the global economy."*²³

Why do you think that the general public and some politicians engage so strongly in the stories about tax havens?

"One reason is the financial crisis and its aftermath; governments need to find new sources of revenue. But also the growing inequality has created anger with the elites. All of this helped put fire under the tax haven stories."

Shaxon continues:

"Also, we have seen a new phase of activism from civil society, in particular the NGOs. I would particularly single out the work of the Tax Justice Network, as putting together a story of the significance of tax havens. It has created a framework, a political and economic context from which to understand what's going on."

²³ Author interview, April 2016

One of the features the three leaks have in common is that the whistleblowers gave the data to journalists, not to the police, politicians or tax authorities. What do you think is the reason for that?

“If you go to governments and share your data, they are heavily beholden to the wealthy elites that use tax havens. You can’t trust the government to crack down effectively. In Britain there have been almost no prosecutions, even though they had the information. You can’t trust them to do the right thing. Public exposure is much more powerful way. The governments will have the information, but also the pressure to act. That is what democracy is about.”

6. The risk of whistleblowing

“The sad reality of today’s policies is that going to the inspector general with evidence of truly serious wrongdoing is often a mistake. Going to the press involves serious risks, but at least you’ve got a chance.”

Edward Snowden to the Guardian 23th May 2016

Despite grand speeches that call for a crackdown on tax avoidance and evasion, corruption and money laundering, authorities do little to protect those who blow the whistle. Rather we see the opposite: No matter the gravity of crimes, whistleblowers tend to be punished.

The Panama Papers have raised public awareness and triggered proposals for new legislature in the western world. Although the information is censored in China and dismissed in Russia as “Putinphobia”²⁴, it is fair to say it has had a great impact. The anonymous whistleblower John Doe saw his action as an important one, and wrote in the German newspaper *Süddeutsche Zeitung*:

“... Although shell companies are not illegal by definition, they are used to carry out a wide array of serious crimes that go beyond evading taxes. I decided to expose Mossack Fonseca because I thought its founders, employees and clients should have to answer for their roles in these crimes, only some of which have come to light thus far. It will take years, possibly decades, for the full extent of the firm’s sordid acts to become known.”²⁵

Despite all the wrongdoings he or she exposed, there is a manhunt for John Doe. |In a move to catch the perpetrator, the Geneva office of Mossack Fonseca filed a complaint against an information technology employee for illegal removal of data and violating the confidentiality of the law firm.²⁶ In mid-June he was arrested. By July 2016 it was still not clear whether this was “John Doe”.

²⁴ Foreign Policy Association, 28 April 2016

²⁵ *Süddeutsche Zeitung*, John Doe’s Manifesto, 6 May 2016

²⁶ Alexis Favre, *Le Temps*: Un informaticien de Mossack Fonseca arrêté à Genève, 15 June 2016

The former PwC auditor Antoine Deltour says he triggered Lux Leaks because he wanted to expose that Luxembourg helped companies to "escape" the tax authorities.²⁷ Even though his information sparked widespread outrage and proposals for change in European tax regulations, Deltour could face ten years in prison.

Deltour and another colleague in PwC – who leaked later – went on trial in April 2016, accused of robbery, professional confidentiality violations and fraudulent access to a database. There is no doubt what the authorities in The Grand Duchy think about the leak. The country's finance minister Pierre Gramegna has called Lux Leaks "the worst attack Luxembourg has experienced in its history".²⁸ At the end of June 2016 Deltour received a 12-month suspended sentence and was fined £1,200.

Hervé Falciani, the man behind the Swiss Leaks, has already been sentenced in absentia to five years in prison by a Swiss court. (He did not turn up in court) Falciani's motive for taking the documents has been debated, as he allegedly tried to sell them in Lebanon before going to the authorities. However, it is beyond doubt that Falciani prompted investigations into the financial affairs of thousands of the bank's clients, and a criminal charge against a former Greek finance minister.

The French president Francois Hollande has been under pressure to show where he stands after his budget minister resigned over an undeclared Swiss bank account in 2013.²⁹ However, as France has recovered millions of euros in lost taxes after Lux Leaks and Swiss leaks, they appear to take a high moral position. The French finance minister said to his parliament that Antoine Deltour was "defending the general interest"³⁰, and Falciani has been able to seek refuge in the country. But the French whistleblower Stephanie Gibaud is not impressed, and calls her own government "hypocritical".

²⁷ Luxemburger Wort, Luxleaks trial to begin April 26, 16 January 2016

²⁸ Simon Bowry, The Guardian: World unites to decry prosecution of source behind Lux Leaks tax scandal, 23 December 2014

²⁹ Lionel Laurent, Reuters: French lawmakers quiz ex-HSBC employee who leaked client data, 2 July 2013

³⁰ BBC: France backs defendant as Lux Leaks trial starts, 26 April 2016

Gibaud used to work for the Swiss bank UBS, liaising with wealthy clients. When UBS came under police investigation in 2008 she was asked to delete the content of her hard drive and toss away her paper archives. Gibaud refused, and that was the end of her career. In the aftermath she has received a small compensation from the bank for harassment, written the book *La Femme qui en savait vraiment trop* (the woman who knew too much), and been nominated for the Sakharov Prize. She says: ³¹

“There are no laws to protect us, prosecution is the only thing governments can do. The information we release is so sensitive, that the authorities wish to send the message that whistleblowers are thieves and traitors. Look at Assange and Snowden, they have been hiding for four years. We are prosecuted because we bother about democracy; but there is none, it is just an illusion.”

Allegedly, UBS wealth managers helped French taxpayers hide their assets in offshore accounts to evade taxes. Gibaud did not steal any information, or break any laws. She only refused to delete records meant to protect the bank from being caught red handed. It came to a conflict between Gibaud and UBS, and that’s when she went to the French authorities.

“I was depressed, but rather than helping me, the authorities wanted me to provide more information. They used me as an agent and put me at risk. First my participation was kept secret, but in 2013 – when the bank was indicted – my name came out. At least they could have protected me, but they didn’t. I was abused. The big banks are extremely powerful, and very close to politicians and people owning companies. Now it is impossible for me to find a job. I feel like I am being killed slowly.”

According to Gibaud, France has recovered 12 billion euros in unpaid taxes. In the US the UBS whistleblower – who triggered the investigation in France – was sentenced to prison for 40 months. However, he was also given a percentage of what was paid into the US coffers, meaning he received US\$104 million. Gibaud has not received anything. What does she think of the legal system?

³¹ Author interview 20 June

“Our government say they want to protect whistleblowers, but they don’t. At the same time none of those who did wrong have been punished. The tax evaders made an agreement with the finance minister to bring back the money, that’s it. Whereas I am not able to make a living anymore.”

Would you do it again?

“I am inspired by De Gaulle’s famous speech from 1940: Honour, common sense, and the interests of the country require that all free Frenchmen, wherever they be, should continue the fight as best they may. Either we have principles and values, or we shut up and close our eyes – which means that we support the system. But it’s wrong. Ordinary citizens pay more and more taxes, while the wealthy don’t pay their share. There is a growing awareness of this. I will not give up.”

7. Attempts to gag journalists

“Greece’s elected leaders need to pay more attention to investigating possible financial crimes and less to prosecuting journalists.”

New York Times, 29 October 2012

The leaks may be considered extremely successful, as they have exposed the shady financial dealings in tax havens. Nonetheless, they have also shown a less savory side: In many countries there have been sinister attempts to crack down on journalism, also in democracies. For instance: In the Lux Leaks court case the French journalist Edouard Perrin, who first broke the story, was accused of complicity in violating the Grand Duchy’s secrecy laws. He had to endure a trial before he was acquitted.

In the aftermath of Swiss Leaks, the former French finance minister Christine Lagarde made a list – that carry her surname – and passed it on to a different governments. The idea was to help them crack down on tax evasion. However, in Greece the Lagarde list disappeared before it was publicly known. When it finally came to surface, three names had been removed. When the Greek journalist and editor Kostas Vaxevanis retrieved the original and published it, he was first arrested. Later he had to fight for his innocence in two trials. According to Vaxevanis, three different Greek governments tried to keep the Lagarde list secret, because many friends of leading politicians were named. He said:

“It is absurd: A majority of Greeks are being squeezed by austerity measures while the elite are bunkering their money abroad”.³²

In UK the HSBC bank was a big advertiser in The Telegraph and the owners feared that critical articles might have jeopardized their revenues. The commentator Peter Osborne resigned because his editors did not allow proper reporting on HSBC. Osborne wrote in Open democracy:

³² Vaxevanis quoted in Der Speigel 6 November 2012

“The Telegraphs’ recent coverage of HSBC amounts to a form of fraud on its readers. It has been placing what it perceives to be the interests of a major international bank above its duty to bring the news to Telegraph readers.”³³

Given that tax havens are used by moneyed individuals and companies, it is relatively easy for them to buy into media suffering financial hardship. The Guardian writes:

“The reason that people own newspapers, especially loss-making newspapers, is all about having influence over editorial content. And one key part of that influence is to ensure that their mates, the wealthy elite, are protected from scrutiny.”³⁴

In France we saw Mathieu Pigasse the owner of the newspaper Le Monde attack his own paper’s work on Swiss Leaks, claiming it was “fiscal Mc Carthyism”. Similarly the co-owner, Pierre Berge, accused the paper of “acting like informers and throwing people to the wolves”.³⁵

With regard to the Panama Papers, in China, the names of relatives of several top leaders were exposed but most citizens will never hear of the news, as they are censored. Internet searches for “Panama” are responded to with the message: “Sorry, searches for ‘Panama’ came up with no relevant results.”³⁶

According to China Digital Times, a notice meant to stop reporting on the Panama Papers was distributed to editors. It said: “If material from foreign media attacking China is found on any website, it will be dealt with severely.”³⁷

In Ecuador the president made public photos, names and social media accounts of the

³³ Peter Osborne, Open democracy, 17 February 2015

³⁴ Owen Jones, The Guardian: Peter Osborne’s resignation shows that the media shouldn’t just serve the rich, 20 February 2015

³⁵ John Lichfield, Independent: HSBC leaks: Le Monde owners attack paper’s ‘Swissleaks’ coverage in tax row, 12 February 2015

³⁶ Michael Forsythe and Austin Ramzy, New York Times: China Censors Mentions of ‘Panama Papers’ Leaks, 5 April 2016

³⁷ China Digital Times, 4 April 2016

Ecuadorean journalists who collaborated in the "Panama Papers" investigation. Claudio Paolillo, a campaigner for freedom of the press, declared:

"We hold President Correa responsible for the physical integrity of journalists and for his constant policy of intimidation".³⁸

Paolillo, editor of the Montevideo, Uruguay, weekly *Búsqueda*, said in the same fashion:

"This is a very dangerous situation and it puts at great risk journalists who in an underhand fashion are held to be 'guilty' of a situation of which they are only the messengers."³⁹

In Venezuela reporting on the documents that mention former or current officials has been politicized. One of the journalists, Ewald Sharfenberg, said:

"The government has only been able to say that we belong to the CIA."⁴⁰

In Finland, the national broadcaster YLE, was told by the tax authorities to hand over information related to the Panama Papers, or face warrants for its newsroom and its journalists' homes. YLE fought the request as it could put a stop to future investigative projects of the same kind. Ville Vilén, the creative director of the Broadcaster, said:

"...(Such) actions would jeopardize the chances of Finnish journalists participating in international investigative networks. Who would involve a journalist from a country where there is a risk that officials can demand – and receive – confidential information?"⁴¹

In Russia the consequences of writing about the enormous amounts of money being hidden by people close to president Putin can be dangerous. The newspaper *Novaya Gazeta* is known for critical and investigative coverage of Russian political and social affairs, but that has come at a price: Six journalists have been murdered since 2001 in connection with their

³⁸ The Inter American Press Association, Panama Papers: Harassment of journalists in Ecuador and Venezuela must end, 22 April 2016

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Marina Koren, *The Atlantic*: The Battle Between Reporters and Tax Officials in Finland, 2 May 2016

work.

In the UK it is the Guardian journalist Luke Harding who has reported on the Panama Papers. Formerly he was correspondent in Russia for four years, until he was denied entry into the country and deported to UK. Later on he wrote the book *Mafia State*, which is about politics and the economy in the former super-power. Harding says about his Russian colleagues⁴²:

“They are very brave journalists; they were key to the investigation even though they understood the consequences. The Russian authorities are angry and upset about the articles. So far there hasn’t been any threats, but the problem is that you don’t know what’s going to happen. There are many methods of punishment, from shooting – on one extreme – to the closing of newsrooms or Kremlin-friendly oligarchs taking over the newspaper.”

Have you received any threats yourself?

“No. Being out of Russia makes it less dangerous; those who are killed are looked upon as traitors, which mean people living and working in Russia. Whereas they consider foreign journalists – especially British and American ones – as a spy. That means that they only tell lies about us.”

The most common attempt by governments to take control over the Panama Papers has been to require full access to the documents. Harding says that it was necessary to adopt a policy on the response.

“Some of the newspapers and TV-channels have been threatened with seizures and legal actions. ICIJ has decided not to comply. “

The success factor in bringing out the stories has been cross-border cooperation. The fact that 380 journalists from all corners of the world worked and published together, made it impossible for any government to completely kill any story. The father of UK Prime Minister Cameron was seen in the Panama Papers, but Harding has not seen any governmental

⁴² Author interview June 2015

harassment of journalists here. However, there hasn't been any enthusiasm to crack down on the possible wrongdoings either. Harding says:

"Mossack Fonseca has a major office in London. If British authorities wanted they could raid the premises and interview staff, but as far as we know there hasn't been any of that."

8. Power players and hidden agendas

“The battle against corruption will not be won overnight. It will take time, courage and determination to deliver the reforms that are necessary.”

David Cameron, BBC 8 May 2016

In the Panama Papers we find billionaires, celebrities and 143 politicians with families, friends and associates. In an interview with Financial Times, Ramón Fonseca described his company as a big player in a highly competitive niche industry but that his global market share was only 5 per cent – a figure which suggests even the information contained in the 11.5 million files is the tip of a very large iceberg.⁴³

Ronen Palan, professor in political economy at City University, has investigated the world of tax havens for many years, gaining a reputation as one of the leading experts in the world. However, an interview with him demonstrates that offshore banking is prevalent in the upper echelons of society and that it is difficult to speak about the facts – no matter who you are.⁴⁴

“I was asked to comment on the Swiss Leaks in a TV-documentary, but the bank involved, HSBC, is a big employer of graduates from our business school. So I was asked by my university not to go on television. Another complicating factor was the fact that Lord Green – who was head of the HSBC before the scandal broke - also is an alumnus of City University.”

Later on Ronen Palan acted as a consultant on a BBC documentary on the Cayman Islands. Again it triggered an unexpected response.

“At the university we have a press officer. She put a notice on the City University website, informing that I had worked on the TV-program. But someone from the foreign office made a phone call, saying they were not happy with something I said on the press release. We had to

⁴³ Jude Webber, Financial Times: Mossack Fonseca founder dismisses Panama Papers as ‘witch hunt’, 5 April 2016

⁴⁴ Author interview, May 2016

remove it from our website for 48 hours, until I provided the documentation of what I had said. I find that quite extraordinary.”

Palan maintains that his experience is not unique. There are several ways that academics are intimidated in order to stop them talking about their findings.

“A researcher into finance was given some data by a bank. However, from the data he was able to gather that they were guilty of the following malpractices: taking advantage of their clients, transgressing the law and making money in amoral ways. When he wanted to write that, the bank said they would sue him personally and the journal where he wanted to publish. The result was that the academic kept quiet. It is very difficult if one of the largest banks in the world is taking an individual to court. It requires financial muscles to hire lawyers. The cost can easily be up to £70,000, and a middle sized university – where he works – cannot take up that kind of fight. “

I asked him if not only the banking industry but also the authorities in UK try to suppress information about tax havens. Is that the reason why the whistleblowers in the tax haven leaks go to journalists rather than to the people in charge?

“Yes. In most countries the politicians will try to bury the information.”

Why do they want to bury it?

“I believe it is because that their friends, supporters and themselves are being named. Therefore the media is a key element in tax evasion and avoidance. Without the media you will not get anywhere.”

One month after the Panama Papers made headlines in large parts of the world, UK Prime Minister Cameron hosted an international anti-corruption conference in London. One of his main points was to expose corruption so that there was no place to hide.⁴⁵ One may ask about the Prime Ministers motivations, as this came *after* the Panama Papers revealed that Cameron’s wealthy father had used tax havens, and that the prime minister had benefited

⁴⁵ Laura Hughes, The Telegraph, 12 May 2016

from offshore trusts. *Before* this was known, Cameron personally intervened to weaken an EU drive to reveal the beneficiaries of trusts.⁴⁶ Palan says:

“We have seen some attempts for change after each of the leaks. The countries and politicians that respond tend to be those mostly on fire, trying to save their seat.”

What do you mean?

“David Cameron’s father was in the Panama Papers. Then, all of sudden of Cameron is introducing all kind of rules and regulations, basically trying to appease the public!”

Palan says that Cameron’s government has made it easier to use tax havens and in some respects the UK has become a tax haven itself.

“With regard to the asset management industry, which is worth around 6 trillion dollars, the government removed all taxation. Through an obscure technique called Agency Company you can create a company, transfer its funds offshore, and avoid paying tax. It is a British front for an offshore operation.”

The UK government has now decided that the foreign companies owning around 100,000 properties in England and Wales will be required to disclose their ownership. Do you think that it will make a real change?

“The new law will cool down the housing market if applied. However, it remains to be seen if non-compliance will be investigated.”

At the anti-corruption conference there was also a proposal to publish registers of who really owns companies in their territories, a so-called register of beneficial ownership. Six countries said yes, including Britain, Afghanistan, Kenya, France, the Netherlands and Nigeria. What do you think about that?

⁴⁶ Jim Brunsten, Georg Parker, Vanessa Houlder: Financial Times: David Cameron’s EU intervention on trusts set up tax loophole, 6 April 2016

"It is a move in the right direction. I am much more optimistic now than I was ten years ago."

The US said no to open their registers. Why?

"Partly because the US is not a good multilateral country. Historically the US did not join the League of Nations, and international trade organisations. When it comes to their sovereignty, the US is resistant. Also, the states have a high degree of autonomy. Obama cannot tell Nevada to change the rules. Moreover, the Republicans will do nothing about tax havens, and they have the majority in the Congress and Senate at the moment. "

Do you think that we will ever get rid of secrecy jurisdictions?

"Nobody thinks that we will get rid of it altogether. If some big tax havens opens up it will help, but the big money will move elsewhere. This is a constantly changing game, and we have to keep on fighting."

9. Conclusion

The world of tax havens and offshore finance is covered in layers of secrecy. The lawyers, bankers and clerks involved in the dealings are bound by confidentiality clauses. In this impermeable environment it is impossible to link bank accounts to subjects and trace flows of money, unless you have a person on the inside willing to talk or leak information.

Lux Leaks, Swiss Leaks and Panama Papers are all based on leaks, called theft and violation of confidentiality in tax havens. So far this has been the only way to document shady practices.

The persecution of the whistleblowers in the three cases has contributed to a rise in public interest. One reason is that the leaks stay in the media for a long time, and the other is that people rally together in order to defend this important act. Antoine Deltour – who was behind Lux Leaks – has received particularly broad support. He was nominated for the Sakharov price for Freedom and Thought in 2015, and was awarded the European Citizen's Prize the same year. Also, prominent European intellectuals have signed a petition to stop the court case which may sentence Deltour to prison.

Timing is of critical importance. The three leaks have come at a time where large parts of the world are recovering from the financial crisis, in which many members of the public are suffering from austerity measures. Given the enormous profits amassed by large companies, it seems unfair that they pay less tax than their smaller competitors. As inequality has been growing, more people feel left out. Many can't find appropriate jobs for their skills or a home that are centrally located. The fact that people on ordinary salaries have to pay for public services, whereas the super-rich don't, has created anger with the system.

The leaks have shown that some of the wealthiest people in cities like London, Paris and New York, come from the poorest countries in the world. It links in with fraud, corruption

and crime – and gives fuel to the many citizens and organizations that try and fight it.

The journalists have played a critical role in gathering information, analyzing its significance and making it relevant for a large audience. The attempts to crack down on press freedom have backfired.

“The role of journalism is trimmed and those who defend it are being targeted. Silence and concealment is one issue. The second is that an effort is being made to criminalize the investigation of the truth in opposition to the public’s right to transparent and accountable journalism.”⁴⁷

Vaxevanis’ words and his two trials have shattered the image of politicians from Greece – the cradle of democracy. Moreover, the persecution has been widely covered across the world, and has stirred up interest in financial crime in tax havens.

Given the secrecy, prosecution of whistleblowers, known attempts to silence journalists and the lesser known silencing of academics, the public cannot know who is hiding what. But it seems to be commonly accepted that many political proposals are more useful for satisfying citizens’ need for action, rather than tackling the fundamental problems. Prem Sikka writes:

“The government’s tax avoidance promises are an important part of their impression management, but have rarely delivered... Government deliberately sidesteps effective tax avoidance strategies.”⁴⁸

Censorship, coercion and control vary from place to place and from time to time. Lux Leaks, Swiss Leaks and Panama Papers have made a big impact because journalists have cooperated across borders. Even though some governments have suppressed information in their home countries, it has not been possible for any of them to stop articles coming out

⁴⁷ Costas Vaxevanis, Open Democracy: Corruption, fear and silence – the state of Greek media today, 9 April 2013

⁴⁸ Prem Sikka, Leftfoot: Smoke and Mirrors, 19 April 2016

in other places. It has alerted the general public to a dangerous development that privileges a few, and leaves a lot of people behind. It counters democracy, and two of its main features: Transparency and equality before the law.

In the end it's the significance of the topic that makes it part of a global discussion. More knowledge creates more awareness. People working in the offshore finance sector, journalists and citizens are more easily alerted to signs of wrongdoing, which in turn may trigger further leaks and investigations. Lux Leaks, Swiss Leaks and Panama Papers have demonstrated the importance of collaborative journalistic efforts. In order to cover global crime, it is clear that journalists too must become a global force.

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