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**The Tax Avoidance Industry: Accountancy Firms on the Make**

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## **Abstract**

The focus of the paper is upon the financial sector and, more specifically the involvement of global accountancy firms in devising and selling tax avoidance schemes euphemistically marketed as 'tax planning'. Commenting upon some of the 'entrepreneurial' activities of these firms, Perrow (2010) observes that 'they knew what they were doing was fraudulent' (ibid: 314) as he notes that Greenwood and Suddaby's (2006) widely referenced study excludes consideration of how partners in these firms were complicit in embracing the 'alternative logics pressed upon them by their large corporate clients' (ibid: 314). An example is so-called 'alternative logics' is the construction and promotion of elaborate tax avoidance schemes by big accounting firms (Sikka and Hampton, 2005) which, we show, has become so deeply normalized within the Big Firms as to cast doubt upon their 'alternative' status.

**Keywords:** Tax avoidance, Accounting firms, Financial crisis, Structure and agency.

## 1.0 Introduction

In a discussion of the financial crisis of 2007- and explanations of it, Perrow (2010) argues that “there is a danger that deliberate actions of executives will be attributed to institutional and cultural conditions” (ibid: 313). He acknowledges that “ideologies and norms motivate behaviours but challenges the view that actions such as lobbying for reduced regulation can be adequately explained as an expression of “a sincere belief that existing regulations interfere with a free market” (ibid: 314). Instead, he argues that such apparently sincere expressions of belief are often knowing (that is, cynical or self-serving) justifications of “institutional entrepreneurs” (Greenwood and Suddaby, 2006) who embrace ideologies to “promote their interests” (Perrow, 2010: 314). Such actors, Perrow contends, are not the “victims” of market ideologies. Rather, he submits, they “have fostered and constructed these ideologies, or at least chose to embrace them, to serve their own interests, which include wealth, prestige, and the exercise of power over others” (ibid: 314).

In this paper, our focus is the financial sector and, in common with Greenwood and Suddaby’s (2006) study, our attention is directed to the biggest global accountancy firms. Commenting upon some of the ‘entrepreneurial’ activities of these firms, Perrow (2010) observes that ‘they knew what they were doing was fraudulent’ (ibid: 314). He also notes that Greenwood and Suddaby’s study excludes consideration of “the effort to establish such [“alternative logics”] which he associates with firms becoming more “open” to the alternative logics pressed upon them by their large corporate clients” (ibid: 314). An example of the application of so called ‘alternative logics’ is the construction of elaborate tax avoidance schemes by big accounting firms (Sikka and Hampton, 2005), although, in this case, the creation and promotion of such schemes has become so deeply entrenched within the Big Firms as to normalize its ‘alternative’ status.

A recent report ‘The Price of Offshore Revisited’ published by the Tax Justice Network (Henry, 2012) drew attention to \$21 trillion (£13 trillion) hoarded by wealthy elites in secretive offshore jurisdictions to avoid taxes in their home countries. It explained that the offshore hoard is “protected by a highly-paid, industrious bevy of professional enablers in the private banking, legal, *accounting*, and investment industries ... (our emphasis)” (Henry, 2012: 9). The recognition of this

`industriousness' echoes Perrow's (2010) insistence that `interests and power', and not only `institutional and cultural traditions' (ibid: 311), are involved. The pursuit of wealth, prestige and the exercise of power by concocting tax avoidance schemes have consequences for others, in the form of a lack of resources for expenditure on public goods to enhance or preserve hard won social rights. The General Secretary of the Trades Union Congress (TUC) makes the link between the missing tax revenues with the scale of deficits arising from the financial bubble and meltdown:

`Closing down the tax loopholes exploited by multinationals...to avoid paying their fair share will reduce the deficit. This way the government can focus on stimulating the economy, rather than squeezing the life out of it with cuts and tax rises for the 99% of people who aren't rich enough to avoid paying their taxes' (Stewart, 2012: 40).

Where these loopholes are ineffectively closed or authorities lack the resources to challenge tax avoidance schemes, the burden falls upon those who cannot escape paying taxes, or it results in the erosion of public services often through backdoor privatization facilitated by the very accounting firms that concoct tax avoidance schemes. Following the post-1970s rise of neoliberalism and the accompanying pressures to introduce light(er)-touch regulation, the state has been rolled-back and hollowed-out to fuel the growth of multinational corporations and accelerate the accumulation of private wealth. In this process, powers and resources lost to the state and people have been transferred to the private sector, including the big firms of accountants. Along with bankers and lawyers, the partners of the big accountancy firms have become new masters of the universe - a mastery that is manifest *inter alia* in their advisory activities with respect to tax avoidance as well as diverse forms of privatization (Sikka, 2008).

As key players of the construction of post-1970s neo-liberalism, the Big Four accounting firms (PricewaterhouseCoopers, Deloitte and Touche, KPMG and Ernst & Young) have been major beneficiaries of financial expansion. They are all multinational and have devised ownership structures to frustrate scrutiny of their own affairs (Sikka, 2002), but play a central role in the construction and operation regulatory arrangements for corporations and global financial markets through governance arrangements, such as those relating to accounting and auditing (Arnold, 2009). As advisors to governments, the big accountancy firms are effectively

the standard setters who develop ways of maximizing corporate earnings and profit related executive rewards by selling creative tax avoidance schemes. Such schemes erode the revenues required for public investment, social interests and long term survival, and fail to develop a more accountable architecture of corporate governance (Humphrey, Loft and Woods, 2009).

The Big Four accounting firms are central to the global tax avoidance trade which may have been responsible for the death of some 5.6 million children (Christian-Aid, 2008). Employees and partners of the accounting firms do not directly kill people but they form part of a financial mafia that routinely participates in equally deadly activities by eroding public revenues which deprive people of jobs, healthcare, education, pensions, security and public goods or facilitate a race-to-the-bottom in which public services become degraded. Lord Haskel, a former chief executive of Perrotts Group plc, told the UK House of Lords that

“There are armies of bankers, lawyers and accountants who ensure that even though the letter of the law is respected, increasingly immoral ways are found of perverting the spirit of the law to ensure that tax is avoided. To hide its true purpose, the tax avoidance industry adopts the language of real business, so technical innovation and reinventing your business model do not mean finding new products, services and markets, and new ways of supplying them. No, they mean registering your business in a tax haven and becoming a non dom to avoid tax while still enjoying the, admittedly decreasing, benefits and services which make this country the civilised place that it is<sup>1</sup>”.

In the US, the Senate Permanent Subcommittee on Investigations has examined the development, marketing and implementation of abusive tax shelters marketed by the Big Four accountancy firms (US Senate Permanent Subcommittee on Investigations, 2003, 2005) and found that they created a complex architecture of transactions to enable corporations and rich individuals to obtain tax benefits that were (probably) not directly intended by those responsible for passing the relevant legislation. In introducing a new Bill to combat organised tax avoidance the Subcommittee chairman Senator Carl Levin added that

“many abusive tax shelters are not dreamed up by the taxpayers who use them. Instead, most are devised by tax professionals, such as accountants ... who then sell the tax shelter to clients for a fee ... we found a large number of tax advisors cooking up one complex scheme after another, packaging them

up as generic tax products with boiler-plate legal and tax opinion letters, and then undertaking elaborate marketing schemes to peddle these products to literally thousands of persons across the country. In return, these tax shelter promoters were getting hundreds of millions of dollars in fees, while diverting billions of dollars in tax revenues from the U.S. Treasury each year<sup>2</sup>.

The UK tax authorities have referred to Ernst & Young as "probably the most aggressive, creative, abusive provider" of avoidance schemes<sup>3</sup> and courts have ruled that a PricewaterhouseCoopers (PwC) scheme was a "circular, self-cancelling scheme designed with no purpose other than to avoid tax<sup>4</sup>". In the words of a former Commissioner of the US Internal Revenue Service (IRS): "Companies (and wealthy individuals) pay handsomely for tax professionals not just to find the lines, but to push them ever outward" (Everson, 2011). The Commissioner then adds that a low point came when the IRS discovered that a senior tax partner at KPMG had written to those in charge of tax practice and instructed them to "make a "business/strategic decision" to ignore a particular set of I.R.S. disclosure rules. The reasoning was that the I.R.S. was unlikely to discover the underlying transactions, and that even if it did, any penalties assessed could be absorbed as a cost of doing business".

As the financial and political clout of big accountancy firms has increased (see below), democracy, law and welfare with regard to their (ever-widening) spheres of activity have been compromised and weakened, not least as a consequence of the cosy and mutually advantageous relationships fostered between senior partners of the big firms, politicians and civil servants. We return to this 'conspiracy' of elites in the Discussion section. As a consequence of the neo-liberal economic experiment over which these elites have presided, there has been less of a promised trickle-down of wealth to pull the most disadvantaged out of poverty than there has been a flood of untaxed wealth offshore. Living standards have been eroded and hard won social rights – pensions, education, healthcare - have being trimmed in part as a consequence of the tax avoidance schemes adopted by multinational corporations as well as wealthy elites.

This paper consists of four further sections. In the first section, we take a closer look at the biggest, most global and influential of the accountancy firms. We then identify the impact of tax avoidance on state revenues and the role of the Big Four

accounting firms in eroding them. The second section provides brief examples of some of the tax avoidance schemes developed and marketed by these firms. In many cases the schemes are not devised in response to specific demands from clients, but are created to meet the demands of the neoliberal system in which private interests are routinely prioritized over wider social interests. The third section argues that the normalization of tax avoidance is deeply embedded within the business models of big accounting firms and is sheltered by a symbiotic relationship with political elites. In the fourth and final section, we return to Perrow's thesis on the financial crisis and comment upon the relevance of our paper to understanding complexities of structure and agential responsibilities.

## 2.0. Multinational Accounting Firms, Avaricious Clients and Lost Tax Revenues

The state guaranteed monopoly of external auditing, in the UK and elsewhere, provides a springboard for the growth and influence of accounting firms. It gives them easy access to corporate clients and the sale of lucrative non-auditing services, including tax avoidance. Despite the banking crash and the ensuing economic recession, the annual revenues of the Big Four firms have continued to swell (Table 1) and currently stand at approximately US\$106 billion, bigger than the GDP of many countries.

<b><u>Firm</u></b>	<b><u>ACCOUNTANCY FIRM INCOME AND SIZE – 2011/12</u></b>			
	<b><u>Global Fees US\$bn</u></b>	<b><u>Employees</u></b>	<b><u>Countries</u></b>	<b><u>Offices</u></b>
Deloitte & Touche	31.3.	193,000	153	670
PricewaterhouseCoopers	29.2	169,000	158	771
Ernst & Young	22.9	152,000	140	695
KPMG	22.7	138,000	153	717
BDO	5.6	38,922	135	1,082
Grant Thornton	3.8	31,000	107	521

**Source:** Annual reviews published by the firms

The Big Four operate from hundreds countries and of cities, including over 80 offices in offshore tax havens<sup>5</sup> which do not levy income/corporate taxes or require

companies to file audited accounts. Around US\$11bn (£7.36bn) of their global comes from the UK operations, which includes £4.6bn from consultancy services, including sale of tax avoidance schemes (Financial Reporting Council, 2012). The firms do not reveal the revenues generated through the sale of tax avoidance schemes, but a 2005 internal study<sup>6</sup> by UK's tax authority, Her Majesty's Revenue and Customs (HMRC), concluded that the Big Four accounting firms generated around £1 billion in fees each year from "commercial tax planning" and "artificial avoidance schemes".

The explosion of tax avoidance schemes finally led to an investigation by the US Senate Permanent Subcommittee and the resulting report highlighted the role of accounting firms (see Box 1).

**BOX 1**  
**The Tax Avoidance Business**

“The sale of potentially abusive and illegal tax shelters is a lucrative business ... accounting firms ... have been major participants in the development, mass marketing, and implementation of generic tax products sold to multiple clients. ... tax shelter industry was no longer focused primarily on providing individualized tax advice to persons who initiate contact with a tax advisor. Instead, the industry focus has expanded to developing a steady supply of generic “tax products” that can be aggressively marketed to multiple clients. In short, the tax shelter industry had moved from providing one-on-one tax advice in response to tax inquiries to also initiating, designing, and mass marketing tax shelter products ... dubious tax shelter sales were no longer the province of shady, fly-by-night companies with limited resources. They had become big business, assigned to talented professionals at the top of their fields and able to draw upon the vast resources and reputations of the country's largest accounting firms ...”

**Source:** US Senate Permanent Subcommittee on Investigations (2005), *The Role of Professional Firms in the US Tax Shelter Industry*, Washington DC: USGPO, p. 6 and 9.

The Subcommittee received documentation (emails, memos, letters), subpoenaed witnesses and held public hearings to peer below the veneer of professional respectability and found an industry mired in dubious and even illegal practices. The Subcommittee's finding exposed the sham of professional ethics (see Box 2):



**BOX 2**  
**Accountancy Firms and Tax Avoidance**

KPMG devoted substantial resources and maintained an extensive infrastructure to produce a continuing supply of generic tax products to sell to clients, using a process which pressured its tax professionals to generate new ideas, move them quickly through the development process, and approve, at times, illegal or potentially abusive tax shelters.

Ernst & Young sold generic tax products to multiple clients despite evidence that some, such as CDS and COBRA<sup>7</sup>, were potentially abusive or illegal tax shelters

PricewaterhouseCoopers sold generic tax products to multiple clients, despite evidence that some, such as FLIP, CDS, and BOSS, were potentially abusive or illegal tax shelters.

**Source:** US Senate Permanent Subcommittee on Investigations (2005). The Role of Professional Firms in the US Tax Shelter Industry, Washington DC: USGPO, pp. 6-7

The US legislators are concerned about the leakage of tax revenues as the amounts are large and could be used to support public services or pay off the deficit incurred by bailing out financial institutions. The official statistics focus on what is known as the “tax gap”, which is the difference between the amount that should be collected and the amounts actually collected. Tax gap primarily consists of tax arrears, tax avoidance and evasion. The estimates depend on models and various assumptions. The calculations are incomplete because little is known about the shadow or underground economy, which probably escapes various forms of taxes. The position is further complicated by the shifting of corporate profits to more favourable jurisdictions through transfer pricing practices (Sikka and Willmott, 2010). The US Treasury estimates the annual tax gap to be \$345 billion<sup>8</sup> though an alternative study puts the amounts at around \$500 billion (Feige and Cebula, 2011). Some \$100 billion of this may be due to schemes operating through offshore jurisdictions (US Senate Permanent Subcommittee on Investigations (2006, 2008). For 1998-2005, nearly 66% of the US domestic and 68% of foreign corporations did not pay any federal corporate taxes. In 2005, 28% of large foreign companies, generated gross revenues of \$372 billion, but paid no federal corporate taxes (US Government Accountability Office, 2008).

The European Union (EU) has estimated the shadow economy to be “nearly one fifth of GDP on average across Member States, representing nearly €2 trillion [around £1.6 trillion, or US\$2.5 trillion] in total” and favourably cites the estimate that “the level of tax evasion and avoidance in Europe to be around €1 trillion [£830 billion or US\$1.25 trillion]” (European Commission, 2012). With a GDP of approximately €1.7 trillion, the UK is the third largest economy (surpassed by Germany and France) in the EU, and the government admits to a tax gap of £40 billion (HMRC, 2010), later reduced to £35 billion (HMRC, 2011), and claims that 4% of it relates to tax avoidance (HMRC, 2012a). This compares to leaked government papers suggesting that the tax gap may be between £97 billion and £150 billion<sup>9</sup>, an economic model producing £100 billion (Lyssioutou, Pashardes and Stengos, 2004) and another report claimed it to be £120 billion (Murphy, 2010). Tax arrears, a component of the tax gap, cannot be relied upon to be collected. In 2011-12, the UK wrote-off nearly £5 billion of tax liabilities, which included £1,989 of Value Added Tax (VAT), £635 million in corporation taxes and £823 million of National Insurance Contributions (NIC) payable by employers (HMRC, 2012b). In his 2011 budget speech UK Chancellor George Osborne told parliament that “Some of the richest people in this country have been able to pay less tax than the people who clean for them”<sup>10</sup>. A UK government report showed that for the year 2005-2006, 220 of the 700 biggest companies paid no corporation tax and a further 210 companies paid less than £10 million each and 12 of the UK's largest companies extinguished all liabilities in 2005-2006 while scores more claimed tax losses (National Audit Office, (2007). The UK's top 20 companies operate over 1,000 subsidiaries from secretive tax havens<sup>11</sup>, often formed with advice from accountancy firms to create opportunities to craft tax avoidance schemes.

Developing countries, often some of the poorest, receive around \$120 billion in foreign-aid<sup>12</sup> from G20 countries, but they may be losing up to \$1 trillion through illicit financial outflows each year, mainly to western countries (Kar and Cartwright-Smith, 2008). Around \$500 billion is estimated to be lost through a variety of tax avoidance schemes (Baker, 2005), of which some \$365 billion is attributed to transfer pricing practices that shift profits from developing to developed countries (Christian-Aid, 2009). An OECD official has estimated that Africa alone may be losing between 7% and 8% of its GDP, or \$250 billion each year, through tax avoidance schemes<sup>13</sup>.

Such resources could be used to provide, sanitation, security, clean water, education, healthcare, pensions and social infrastructure to improve the quality of life for millions of people.

Developing countries may lack the resources to combat the tax avoidance industry, but the UK appears to be soft-touch compared to the US where the Department of Justice has at least prosecuted and fined a number of accountancy firms and sent their partners to prison (see below), though its scale and severity has clearly been insufficient to curb their predatory ways of doing business. The firms simply treat the penalties as another cost of doing business. As public exposure of sleaze and scandals has increased, the UK government departments and regulators have shown little sign of emulating the US<sup>14</sup>. There has been no investigation of the tax avoidance industry, and no accountant or accountancy firm has been disciplined by any professional body for peddling tax avoidance, even after a court declared its schemes to be unlawful. The timidity of the UK institutions emboldened an accounting firm partner to declare<sup>15</sup>, “No matter what legislation is in place, the accountants and lawyers will find a way around it. Rules are rules, but rules are meant to be broken”. The suggestion that “rules are meant to be broken” may have a popular resonance as it appeals to an individualistic antipathy towards collective responsibility. But its effects are plain enough in the recklessness driven by competition and venality that preceded the 2007- financial crisis, the social consequences of which are becoming clear through austerity programmes, unemployment and erosion of pensions, wages and welfare rights. However, as we will see, tax avoidance is accomplished not so much by breaking the letter of the rules as by deploying rules for purposes for which they were not (probably) intended.

### **3.0 Big Four on the Make**

In this section, we focus upon the evidence of the extensive involvement of Big Four accountancy firms in crafting ingenious tax avoidance schemes. In doing so, we seek to underscore Perrow’s (2010) thesis that the development and use of tax avoidance schemes, like the financial innovations associated with the scale and depth of the financial crisis, comprise a significant agential component. The notion of ‘tax planning’ is an example of the ‘ideology’ to which Perrow refers when,

effectively, it is a euphemism for tax avoidance, if not tax evasion. As Perrow puts it, such ideologies serve to 'mask or justify narrow interests' (ibid: 326). In this case, it is the 'narrow interests' of the shareholders and executives of multinational corporations and wealthy individuals as well as the partners of the big accountancy firms that are advanced to the detriment of the 99% who rely upon public services paid for from taxation revenues.

In the following subsections, we illustrate the diverse tax avoidance schemes operated by the Big Four. Our purpose here is to counteract the overwhelming number of studies of accounting and its big firms that primarily focus on auditing and accounting and pay little attention to their role in tax avoidance. Many of the studies are too easily seduced by claims of professional ethics and uncritically reflect exactly the impression that the firms seek to convey – of being upstanding and reputable servants of good corporate governance. Our exposition is primarily descriptive as we present a series of concrete examples in support of our contention that accounting firms are predatory and should be treated with contempt rather than respect. Only by providing such examples is it possible to challenge and debunk the conventional wisdom that these firms are honourable in their intentions and are staffed by upstanding individuals.

### **3.1 Ernst & Young: Gold Bars, Trusts and Credit Cards**

Ernst & Young designed schemes to enable directors of Phones 4u (part of the Dextra Group of Companies) to avoid UK National Insurance Contributions (NIC) by paying themselves in gold bars, fine wine, and platinum sponge<sup>16</sup>. No sooner had legislation been passed to outlaw that scheme than Ernst & Young had devised another scheme. This enabled higher paid employees and directors of Phones 4U (and other companies) to avoid NIC and income taxes by securing payments through an offshore employee benefit trust (EBT) in Jersey. In such schemes companies paid money into the trusts which is then 'lent' to employees. As long as the transaction looks like a loan - for example, by carrying interest - then tax is avoided by the company and the employee.

The legal challenge revealed some interesting aspects. Firstly, it shed some light on networks of creative compliance. The court transcript noted that

“Various schemes were investigated on the advice of Ernst & Young leading ultimately to the establishment ... of the Caudwell Holdings Limited International Employee Trust (the EBT) by a deed between Caudwell Holdings Limited (as Settlor) and Regent Capital Trust Corporation Limited (Regent), a Jersey company (as Trustee)”. Regent was owned by the partners of a Jersey law firm, Bedell & Cristin. Ernst & Young’s trust company in Jersey, Ernst & Young Trust Company (Jersey) Limited (E&Y TC), could not act as trustee because Ernst & Young were the auditors of the Caudwell group. Regent was used only for Ernst & Young clients and there was an arrangement that in the event of the ownership of E&Y TC changing so that it was no longer owned by the auditing firm, or if the regulatory rules changed so that the audit relationship was no longer a bar, E&Y TC could acquire Regent. There was also an arrangement that E&Y TC ... would do all administrative work in relation to trusts of which Regent was the trustee, leaving the decisions to Regent.” (para 1 and 2, *Dextra Accessories Ltd & Ors v Inspector Of Taxes* [2002] UKSC SPC00331).

Secondly, the firms knowingly are engaged in aggressive practices. The initial letter from Ernst & Young stated,

"Obviously the aim of the arrangements is to provide income tax and NIC deferral for you three [this is a reference to directors] for bonuses which would otherwise be paid directly into your hands .... the implementation of tax planning points ... will be viewed by the Inland Revenue as aggressive and therefore contain an element of risk".

The scheme involved complex transactions and Ernst & Young subsequently advised the clients that "The ultimate success of the proposed arrangement depends upon the EBT having substance and commercial purpose". This was taken to mean that other employees could be added to enhance the scheme’s legality, but subsequent records noted, "I stated that if John, Brian and Craig [all directors] were to participate in sub-trusts then it was necessary for other individuals to participate with sub-trusts as well on the same terms. There should be no deviation from this." The court’s interpretation of the documentation was that the directors were setting up a scheme for themselves and being advised that others should be included to make it look genuine. Some seven years after its design, the scheme was thrown out by the House of Lords judgment in *HM Inspector of Taxes v Dextra Accessories Ltd* [2005] UKHL 47 (07 July 2005).

Another of Ernst & Young's avoidance schemes was designed to enable Debenhams and ninety major UK high street retailers to avoid paying Value Added Tax (VAT) collected from customers to the tax authorities and increase their profits (see Box 3). The key idea was to exploit exemptions built into the UK and European Union legislation and awareness that enacting counter legislation would be time-consuming.

**BOX 3**  
**FIDDLING VALUE ADDED TAX**

"Until 1 October 2000 DR [Debenhams Retail], a 100% subsidiary of Debenhams Plc, used to sell goods whose price tag showed, for example, £100 ("the ticket price"). Where the customer used a credit card, a debit card or a store card to pay, DR then paid the credit or debit card handling company, or the company behind the store card arrangements, an amount of, say, £1.00 for its exempt card-handling supply. The result was a supply by DR of the goods for £100; and because the amount paid by DR to the card-handling company (the £1.00) was in return for an exempt supply, no VAT relief was obtained for that expenditure.

From 1 October 2000 onwards an arrangement was put in place. The arrangement was designed to change the terms on which "the Debenhams Group accepts credit cards in order to produce a position whereby less VAT is paid than was paid previously and for no other reason". Those words are taken from a letter dated 17 March 2003 written by Ernst & Young (E&Y), the architects of the scheme who have represented Debenhams in the hearing before this Tribunal. The changed arrangements were designed to make the card-paying customer enter into two purported contracts at the point of sale. One was with DR for the sale of the goods (ticket price £100) for £97.50. The other was with another company called Debenhams Card Handling Services Ltd ("DCHS"). DCHS is a wholly owned subsidiary of DR, but is not a member of the same VAT group as DR. Under the latter purported contract 2.5% of the total ticket price was said to be payable to DCHS for exempt card-handling services. The arrangement, if successful, results in DR making a supply of the goods for a consideration of £97.50, i.e. 97.5% of the ticket price."

**Source:** Debenhams Retail PLC v Customs and Excise [2003] UKVAT V18169 (03 June 2003).

According to a letter cited by the tribunal, Ernst & Young explained that the arrangement was designed to change the terms on which "the Debenhams Group accepts credit cards in order to produce a position whereby less VAT is paid than was paid previously and for no other reason" (paragraph 5, Debenhams Retail PLC v

Customs and Excise [2003] UKVAT V18169). The outward sign of this scheme was a statement printed on customers' credit card receipts. It read "I agree that 2.5% of the above value is payable to Debenhams Card Handling Services Ltd (DCHS) for card handling services. The total amount I pay remains the same." Of course, the price paid by the credit card customer was the same as for a cash sale. As financial services were exempt from VAT, Ernst & Young advised its clients to claim that 2.5% of the proceeds were not subject to VAT, and therefore the output tax payable to the Treasury would be less. In correspondence presented to the court, Ernst & Young referred to the £4 million VAT saving for Debenhams as "a very lucrative tax planning opportunity... an ongoing opportunity "unless legislated against by Customs" ...counteracting measures would take "a number of years" to enact. ...Due to the level of potential profit opportunity available there is a desire to introduce the scheme as quickly as possible". Ernst & Young informed Debenhams of a strong "counsel's opinion that Customs would need a legislative change to stop this". The tax tribunal concluded that the transactions in the scheme

"were carried out solely for the purpose of avoiding tax. Other than tax avoidance there were no commercial or economic reasons ... The arrangement was wholly artificial. The artificiality is driven home by the facts that the arrangements were administratively burdensome and a contingency plan was in place to "pull" them should they actually cause harm to DR's ordinary trading activities" (paragraph 117, *Debenhams Retail PLC v Customs and Excise* [2003] UKVAT V18169).

The judgment also had implications for other retailers who bought the scheme and the matter went to the High Court (see *Debenhams Retail Plc v Commissioners of Customs and Excise* (2004) EWHC 1540 (Ch)), which ruled in Debenhams' favour. HMRC then took the case to the Court of Appeal (*Debenhams Retail Plc* [2005] EWCA Civ 892) which outlawed the scheme, and the presiding judge referred to the scheme as "Tweedledum in Alice in Wonderland: I know what you're thinking about, but it isn't so, no how". This scheme alone could have deprived the treasury of some £300 million to £500 million of tax revenues a year. A treasury spokesperson said, "This was one of the most blatantly abusive avoidance scams of recent years"<sup>17</sup>.

Ernst & Young's predatory practices have been scrutinised in the US (US Senate Permanent Subcommittee on Investigations, 2005) and a number of, what under these circumstances always become former, partners and employees have been

sent to prison<sup>18</sup> for facilitating tax evasion. However, Ernst & Young have continued to design and market tax avoidance schemes as evidenced by cases such Wal-Mart Stores East v Reginald S. Hinton, Case No 06-CVS-3928, 31 December 2007, North Carolina Wake County, Superior Court Division and Prudential Plc v Revenue & Customs [2007] UKSPC SPC00636.

### **3.2 PriceWaterhouseCoopers (PwC): Beer, Propaganda and Losses out of Thin Air**

SABMiller is the world's second largest beer company with brands that include Pilsner Urquell, Peroni Nastro Azzurro, Miller Genuine Draft, Grolsch, Aguila, Castle, Miller Lite and Tyskie amongst many others. Its accounts for the year to 31 March 2011 showed sales revenues of US\$19408 million (2010 \$18,020million), pre-tax profits of US\$3,626 million (2010 \$2,929 million) and tax-paid US \$885 million (\$620 million), which approximates an effective tax rate of 24% (2010 21%). Its 65 tax haven subsidiaries exceed the number of breweries and bottling plants in Africa. In 2011, PwC received fees of \$20 million, including \$3 million for advice on taxation and another \$5 million for "other services". The company is audited by PwC which continues to give it a clean bill of health.

Action-Aid (2010) alleged that SABMiller may be avoiding around £20 million in taxes each year in India and Africa through complex financial transactions, transfer pricing techniques and shuffling profits to subsidiaries in tax havens. The report noted that SABMiller's brewery in Ghana, Accra Brewery, has sales of £29 million, but in the last two years declared a loss and has paid local corporation tax in only one of the four years from 2007-2010. The report showed that one woman selling beer outside SABMiller's brewery in Ghana paid more income tax than the multi-million pound brewery. The Action-Aid report also showed that SABMiller companies in India and Africa paid some £47 million a year in management services fees to Swiss subsidiaries of the Group. These fees count as expenses for the Indian and African operations and deprive the local governments of some £9.5 million of tax revenues. SABMiller denied the allegations and claimed that

"In the year ended 31 March 2010, the group reported US\$2,929 million in pre-tax profit and group revenue of US\$26,350 million. During the same period our total tax contribution remitted to governments, including corporate



tax, excise tax, VAT and employee taxes, was just under US\$7,000 million. Seven times that paid to shareholders. This amount is split between developed countries (23%) and developing countries (77%). In both Colombia and South Africa, we contributed over US\$1,000 million in taxation to each respective government's revenues.”<sup>19</sup>

The blatant implausibility of SABMiller's claim is noteworthy. The company had a profit of \$2,929 million but made tax payments of \$7,000 million! The tax payments are fantasy figures manufactured by PwC, all for a fee of course. They are an example of what PwC sells as a product called “Total Tax Contribution” (TTC)<sup>20</sup>. McIntyre (2006) observes that this calculation is to enable “corporations to pretend their tax bills are bigger than they really are, by counting not just their actual taxes, but also taxes they don't pay, such as those paid by their customers, workers, suppliers, and so forth”.

Corporations are eagerly embracing PwC's TTC propaganda. In the US, ExxonMobil with profits of \$36 billion claims to have paid taxes of \$99 billion (McIntyre, 2006). In the UK, government reports show that major companies are avoiding taxes (National Audit Office, 2007); and others say that in 2009 only 33.6% of the UK companies actually paid corporate tax (Murphy, 2011). In contrast, a PwC report claimed that in 2010 UK's largest 100 companies made a total tax contribution of £56.8bn, which is 11.9% of government receipts from all taxes (PricewaterhouseCoopers, 2011). The PwC calculations include £39.2 billion which is not borne by companies. In fact, as income tax, VAT, NIC and fuel duty is remitted in arrears to government, companies are actually receiving a huge interest free loan from the taxpayer, even though they pass on the cost of acting as tax collectors to the consumer through prices.

In a report prepared by PwC for the US Business Roundtable the impressive claim is made that major US corporations have an effective tax rate of 27.7% (US Business Roundtable, 2011). This figure has been scrutinised by Floyd Norris, a veteran journalist at New York Times, who put a number of questions to Andrew Lyon (a former assistant Treasury secretary under George W. Bush), the author of the PwC report. His questions included: “how much do these companies *actually* pay in taxes to Uncle Sam? How much do they *actually* pay to state and loan authorities? How

much do they *actually* pay to foreign governments? The commendably frank response was: “We have not looked at that data” (Norris, 2011).

Floyd Norris notes that in the 1960s, corporate taxes amounted to about 22 percent of overall tax receipts. This figure averaged 3.9 percent of gross domestic product. In the most recent decade, the figures are about 12 percent of total taxes and 2.2 percent of G.D.P. In other words, the corporate tax burden is roughly half what it was. In the US, corporate tax payments as a percentage of pre-tax income are lower than at any time since World War II. Of course, not all this reduction in tax paid by corporation is attributable to avoidance and evasion as they have been busy lobbying to shift their contribution to the public purse onto individual citizens. But PwC propaganda mimics the vocabulary of transparency whilst providing no information about its role in tax avoidance, the schemes that it manufactures, the amount of tax that major corporations should have paid, or even the fees that the firm charges for such spin and whitewash. Norris concludes that the PwC report was “blatantly misleading”.

PwC is no stranger to controversy and spin. A 2005 report published by the US Senate Permanent Subcommittee on Investigations concluded that the firm

“sold general tax products to multiple clients, despite evidence that some, such as FLIP, CDS, and BOSS<sup>21</sup>, were abusive or potentially illegal tax shelters ... Each of these tax products has been identified by the IRS as an abusive tax shelter. PwC’s handling of the FLIP tax product demonstrates the firm’s flawed process for developing, marketing, and implementing potentially abusive or illegal tax shelters. ... PwC issued opinion letters to its clients, stating that it was “more likely than not” that FLIP would be upheld, if challenged by the IRS. PwC apparently continued to issue these favorable opinion letters even after learning that the FLIP transactions were the subject of federal legislation ...” (US Senate Permanent Subcommittee on Investigations, 2005: 7, 93, 96)

The schemes were sold to wealthy clients through banks. One of the tax avoidance schemes known as Foreign Leveraged Investment Program (FLIP) migrated from KPMG to PwC after a KPMG partner joined the firm. Faced with possibility of retribution, the firm explained its predatory culture by stating that “In the 1990’s there was increasing pressure in the marketplace for firms to develop aggressive tax shelters that could be marketed to large numbers of taxpayers. This had not been a

traditional part of our tax practice, but regrettably our firm became involved in three types of these transactions. ..." (US Senate Permanent Subcommittee on Investigations, 2005: 94). At the Senate Subcommittee's hearings PricewaterhouseCoopers personnel claimed that the firm has learnt from its past mistakes and has turned over a new leaf. It settled the cases with the US tax authorities by making a \$10 million payment and handing over certain client lists to the IRS. It also permitted the IRS to review the firm's quality control procedures and examine 130 schemes intended for sale to multiple clients. However, PwC has remained addicted to tax avoidance schemes. For example, in the US case of *Enbridge Energy Co. and Enbridge Midcoast Energy LP v United States*, 10 November 2009, the presiding judge referred to a PwC designed scheme as

"a sham conduit transaction ... the transaction was designed solely for the purpose of avoiding taxes, and Midcoast has offered no adequate non-tax reasons for using a conduit entity ... the uncontroverted evidence shows that the arrangement at issue in this case had the sole purpose of avoiding federal income tax." (pages 9, 11 and 13 of the judgment).

PwC's alchemy is practiced in the UK too to enable clients to manufacture losses to avoid capital gains tax (CGT). In the case of *Schofield v Revenue & Customs* (Rev 1) [2010] UKFTT 196 (TC), a taxpayer sold his business, making a profit of about £10 million. For a fee of £200,000, he bought a PwC tax avoidance scheme to create an artificial loss so that he wouldn't have to pay tax on the profit he made when he sold his business. The loss was created by using complex financial instruments (such as options, derivatives, gilts) in a series of circular transactions. The financial manoeuvres also involved Kleinwort Benson, a merchant bank. In selling the scheme, PwC told the client that:

"The intention, as you know, is to create a capital loss of £11.8 million which can be set against the capital gain you have made on the redemption of your loan notes. ... although we believe this planning has an excellent chance of being successful, nothing can be guaranteed. ... Our fees for this were agreed at 1 per cent of the loss i.e. £118,000 (the normal fee is 2 per cent for PwC and 2 per cent for Kleinwort Benson but you will recall that I agreed with them that as the gain would have been chargeable at only 14 per cent we would both discount our fees by one half). These are billable 50 per cent on implementation and 50 per cent when the loss is realised". (para 16, *Schofield v Revenue & Customs* (Rev 1) [2010] UKFTT 196 (TC)).

The tax tribunal concluded that the loss claimed by the taxpayer was not allowable because there was no real loss. The case eventually went to the Court of Appeal and was declared unlawful because

“Under the scheme as a whole, the options were created merely to be destroyed. They were self cancelling. Thus, for capital gains purposes, there was no asset and no disposal” (para 43, *Schofield v HM Revenue and Customs* [2012] EWCA Civ 927).

The scheme was also sold to a number of other wealthy individuals and HMRC claimed<sup>22</sup> that PwC’s defeat had saved the taxpayer at least £90 million, approximately equivalent to the cost of restoring eyesight for 90,000 cataract patients.

### **3.3 Deloitte and Touche: Banks, Telecoms and Traders**

Deloitte & Touche (hereafter Deloitte) is caught up in tax avoidance by the Royal Bank of Scotland (RBS). The bank was bailed out by the UK taxpayer, but is accused of avoiding £500 million of taxes through complex avoidance schemes<sup>23</sup>. The schemes involved the movement of large amounts of cash, often through offshore places like the Cayman Islands. In 2000, when Deloitte were first hired by RBS, the firm took £9 million in fees, including £4 million in consultancy fees. By 2008, Deloitte were collecting £38.6 million in audit and £20.1 million for other fees. RBS received its customary clean bill of health from its auditors, and there is no mention of any tax avoidance scheme in its accounts.

In 2004, Deloitte designed a scheme for the London office of Deutsche Bank (DB), advisors to the UK government on the sell-off of Northern Rock, to enable it to avoid income tax and National Insurance Contributions (NIC) on bonuses adding up to £92 million. More than 300 bankers participated in the scheme which operated through a Cayman Islands-registered investment vehicle called Dark Blue Investment (DBI), managed by Investec. The key idea was summed up by a Tax Tribunal:

“DB arranged for certain bonus sums that were to be payable to identified individual DB employees to be paid into the vehicle created for the Scheme and not directly to any employee. Those sums were used to purchase shares in DBI which were allocated to individual employees. DB employees were given rights to sell their shares and withdraw sums from the Scheme over a

period, up to the amount of the individual bonus of the employee subject to any fluctuation in the value of the shares during the period. If this right was used the employee received a cash sum. The Scheme was wound up at the end of a specified period, and sums paid to employees who had not previously received sums from the Scheme” (para 9, Deutsche Bank Group Services (UK) Ltd v Revenue & Customs [2011] UKFTT 66 (TC))

Deutsche Bank argued that the employees received nothing taxable when the sums were paid into the Scheme. They received shares, but no income tax or NIC contribution liability arose in respect of the receipt of those shares as they were “restricted securities” exempted from liability by section 425 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). Employees disposed of their shares by sale at various times, but there was no income tax liability or NIC contribution liability by reason of the sale.

The Tribunal judge concluded that the avoidance scheme was put together by Deloitte on the basis of a more general proposal initially presented to Deutsche Bank. Deloitte continued throughout to play a central role in designing and delivering the Scheme. The firm developed a draft timetable and action plan for the Scheme. An email assured clients that

“each time an action changes in time, delay or advancement, Deloitte will review the whole process to ensure any knock-on effects are dealt with effectively. The timetable will be published to all involved every 2/3 days, including an early Monday morning edition focussing on action for the week in strict order” (para 23, Deutsche Bank Group Services (UK) Ltd v Revenue & Customs [2011] UKFTT 66 (TC))

The Tribunal rejected the scheme<sup>24</sup>, the assessment of the judge being that “the Scheme as a whole, and each aspect of it, was created and coordinated purely for tax avoidance purposes” (para 112, Deutsche Bank Group Services (UK) Ltd v Revenue & Customs [2011] UKFTT 66 (TC))

In another Deloitte tax avoiding scheme, the firm was embroiled in the acquisition of the German telecoms operator Mannesman by London-based Vodafone, the world’s largest mobile telecommunications company. The acquisition was financed by a €35bn debt parked in Vodafone’s Luxembourg subsidiary, VIL Sarl. Under the deal Mannesmann paid interest on debt to VIL Sarl and thereby reduced its taxable profits

and tax bill in Germany. The interest received by VIL Sarl avoided tax. These transactions fell foul of the UK Controlled Foreign Companies legislation as the tax authorities argued that the financing deal was "wholly artificial". Some estimated that the UK authorities calculated that a staggering £6 billion of tax was unpaid by Vodafone, although the details have never been made public. Vodafone's accounts audited by Deloitte contained a provision of £2.2 billion to meet the expected tax liability. Coincidentally, Deloitte showered hospitality upon HMRC boss Dave Hartnett<sup>25</sup>. According to *Private Eye* (21 June 2011), since 2006 Dave Hartnett had no less than 48 meetings with Deloitte UK chairman David Cruickshank. As if by magic, Vodafone's tax liability shrank. The £2.2bn provision suggests that the company was preparing to settle for £2.2 billion, but the actual settlement was a lump sum of £800,000 and a further £450,000 spread over five years.

The commodity trader Glencore International has subsidiaries in Bermuda, Luxembourg, Jersey and the British Virgin Islands, and in May 2011 was floated on the London stock market. The flotation fees of some US\$435 million were shared by various underwriters, bankers, lawyers and accountants. Deloitte and Touche provided accountancy services for an unspecified sum. For the year to 31 December 2010, Glencore reported sales revenues of US\$145 billion and pre-tax profits of US\$4,340 million. The total worldwide tax-paid was just US\$323 million, an effective rate of 7.44%. The company does not say how much tax it paid to each country. Deloitte audited the Group's accounts for the year to 31 December 2010 and gave them a clean bill of health. However, Glencore's stock market debut was marred by allegations of tax avoidance by the Zambian government. These were based upon a report<sup>26</sup>, prepared by Grant Thornton, another accountancy firm, that had been commissioned by the government in which Glencore's trading relationship with its Zambian subsidiary Mopani Copper Mines Plc was examined. The report alleges that an accounting technique (transfer pricing) enabled the company to shift profits from Zambia. More specifically, it alleges that Mopani may be selling Zambia's copper to Glencore at less than the prevailing market prices so as to reduce the profits booked in Zambia and thereby deny the government about £100 million in tax revenue. Glencore denies the allegations<sup>27</sup> and as part of its defence produced a statement from Deloitte, Mopani's auditors, which claimed that Grant Thornton's report was flawed<sup>28</sup>. The Zambian government has asked the OECD to intervene.

### **3.4 KPMG – General Electric, Royalty Programmes and Offshore Fictions**

In March 2011, General Electric (GE), the largest corporation in the US, hit the headlines for its tax avoidance strategies. It also has operations in the UK. The company reported worldwide profits of US\$14.2 billion, including US\$5.1 billion from its operations in the US. Its US corporate tax bill was zero. The company used a series of complex transactions and accounting gimmicks to make its tax liability disappear<sup>29</sup>. The auditors could have highlighted the unusual transactions to reassure stakeholders, especially as in 2009 GE paid US\$50 million penalty to settle accounting charges by SEC<sup>30</sup>. KPMG has been auditing GE since 1909 and for 2009 and 2010 it received \$219 million in fees, including \$17 million for advice on tax. GE received a clean bill of health from KPMG.

KPMG is no stranger to negative public exposure. It received considerable exposure from the collapse of WorldCom, a giant US communications corporation. For a fee of US\$9.2 million KPMG advised WorldCom to increase its profits by adopting an intangible asset transfer pricing program. Under this, the company created the asset “management foresight”, a previously unknown intangible asset. Management foresight is little more than providing various bundles of services. The asset was registered to a subsidiary in a low-tax jurisdiction, which in turn licensed it to other companies in the group for annual royalty payments. The paying subsidiaries treated royalty charges as an expense that qualified for tax relief, whilst the income in the hands of the receiving company attracted tax at a low rate. In effect, no cash went outside the corporate group, but this transfer pricing arrangement may have saved the company between US\$100 million and US\$350 million in taxes. WorldCom’s insolvency examiner (United States Bankruptcy Court Southern District of New York, 2004) found that in some cases the royalty charges exceeded the company’s consolidated net income in each of the years 1998-2001. In other cases, they represented 80 to 90 percent of a subsidiary’s net income. Over a four year period covering 1998-2001, more than US\$20 billion was accrued in royalty fees for use of the company’s intangible assets and most of the fees resulted from the licensing of “management foresight”.

Another KPMG scheme (see RAL (Channel Islands) Ltd v Customs and Excise [2002] UKVAT V17914) used an offshore fiction to attack VAT revenues in the UK. The normal position is that traders charge VAT to customers and collect what is known as “output” tax. Thus a sale of £100 is accompanied by VAT at the current rate of 20% and the trader collects £100 plus VAT of £20, i.e. a total of £120 from the customer. The trader incurs VAT on its eligible purchases. This is known as “input” tax. If the trader bought the item for say £40, and the VAT rate was 20%, then s/he would incur “input” tax of £8 and pay a sum of £48 to its supplier. Periodically, traders pay the difference between “input” and “output” to the tax authorities. For the above example, the trader would be required to pay £12 (£20 - £8) to the tax authorities. An accountancy firm could concoct a scheme under which the trader is somehow no longer liable to account for “output” tax. In which case, the trader would not collect output tax on sales to be paid to the tax authorities, though s/he might still sell the product for £120. In addition, if the trader is registered for VAT then s/he is also entitled to a refund of the input tax (£8 above) from the tax authorities. The upshot is that the trader’s profits improve dramatically. This was the basic logic of a VAT avoidance scheme marketed by KPMG.

The scheme was not developed in response to any request from the company. KPMG cold-called on the company. Its presentations were subject to a confidentiality undertaking being given. The visual presentations referred to the scheme as "KPMG's VAT Mitigation Proposals for Gaming and Amusement Machines". Under the scheme gaming machines in 127 amusement arcades in the UK were leased to a newly formed Channel Islands subsidiary company, which was granted licences by a group company in the UK to use the arcades. Another UK subsidiary contracted with the Channel Islands company to provide the staff at the arcades. The basis of the scheme was that the place of supply of gaming machine services to customers would be in Guernsey and that the Channel Islands company would be entitled to repayment of input tax on supplies made to it without being liable to any output tax. Such a view was based on an interpretation of the European’ Union’s Thirteenth VAT Directive which enables businesses not established in the EU to recover VAT on business expenditure incurred in member states.



Before the KPMG scheme, a single UK subsidiary made the supplies and output tax was paid. RAL owned or leased the arcades and employed staff. Output tax was paid to the tax authorities. Following the introduction of the KPMG scheme there was no change of the business. Slot machines remained where they were, but their ownership was now assigned to a Channel Islands company. KPMG listed over 80 steps that the company had to undertake to make the scheme work. These included attention to control of companies and appointment of skeletal staff in the Channel Islands to satisfy the letter of the law about control and ownership of companies. KPMG predicted that the avoidance scheme would boost RAL's annual profits by £4.2 million. KPMG would charge £75,000 plus VAT for an evaluation report and counsel's opinion and a fee of 25 per cent of the first year's VAT savings, 15 per cent of the second and 5 per cent of the next three year's savings. KPMG anticipated that the UK tax authorities would regard the scheme as 'unacceptable tax avoidance' and would challenge the arrangements, but still commended its purchase. It sought to reassure clients by stating that

“... a similar concept for telecommunications ran for nearly four years in most Member States of the EU before the UK, French and German Governments secured the unanimous agreement of all 15 Member States to amend the primary legislation and stop the concept. Since at the moment we are not aware of any widespread use of these planning arrangements, and the fact (*sic*) that some EU Member States do not charge VAT on gaming machine income, unanimous agreement to amend the EC legislation could be difficult to achieve. ... It should be possible to unwind the arrangements if the idea is subsequently blocked or successfully challenged by Customs” (para 22, RAL (Channel Islands) Ltd v Customs and Excise [2002] UKVAT V17914).

The UK authorities challenged the scheme and a tax tribunal decided that there was no real change to the substance of the business and that the Channel Islands company, trading in the UK was liable to output tax on the Gaming Supplies and consequently liable to register for VAT. It determined that RAL was not entitled to VAT refunds. The case was then taken to the High Court and eventually the European Court of Justice (RAL (Channel Islands) EA (Taxation) [2005] EUECJ C-452/03), which stated that the economic activity took place in the UK – the contract arose at the moment at which the customer placed a coin in the slot machine. The slot machines were physically in the UK and therefore the contracts were performed entirely within the UK, and so the scheme was assessed to be unlawful.

Only rarely do authorities examine tax avoidance as a central, institutionalized element of the 'business model' of big accounting firms, rather than targeting its grossest or most readily curtailable manifestations. In 2002, the US Justice Department filed a suit compelling KPMG firm to disclose information about tax avoidance schemes marketed by the firm since 1998. KPMG grudgingly complied, but withheld a substantial number of documents. This lack of co-operation persuaded the US Senate Permanent Subcommittee on Investigations to examine KPMG more closely and to open up its organisational culture. To this end, the Senate Committee scrutinised (US Senate Permanent Subcommittee on Investigations, 2003) four (only) of the firm's five hundred "active tax products". Three of the schemes manufactured paper losses to enable clients to reduce their income tax. The fourth used a "charitable contribution strategy" to reduce the tax bills of companies. KPMG received around \$124 million in fees for these schemes.

The most significant finding of the Senate investigation was that KPMG had an extensive organisational structure for developing and marketing tax avoidance schemes. Notably, it had a "Tax Innovation Center", with income generating targets whose sole function was to hatch new schemes. Staff were incentivised to submit ideas for new schemes. In addition, the firm had a market research department, a Sales Opportunity Centre that worked on "marketing strategies" and telemarketing centre staffed with people trained to make cold calls and find buyers. Staff were coached in sales patter. Thousands of corporations and individuals were contacted to sell the products. Enormous pressure was put on those working in the firm's tax unit to sell avoidance schemes and meet revenue generating targets. Staff were encouraged to make misleading statements to potential buyers, such as claiming that a scheme was no longer available for sale, even though it was, apparently hoping that reverse psychology would persuade the client to buy the product. In folklore, accountancy firms claim that they operate "Chinese Walls" that somehow avoid conflicts of interest – for example by separating the consultancy and audit arms. But KPMG tax professionals were directed to contact existing clients about the product, including KPMG's own audit clients. Sceptical buyers were told that the schemes had been examined by leading law firms and that they could buy insurance to protect themselves. They were also given soothing opinions by friendly lawyers working with KPMG and in many case the firm itself drafted the lawyers' letters.

Fearing a regulatory backlash and also the possible loss of competitive advantage, KPMG presentations to potential clients were made on chalkboards and erasable whiteboards. Written materials were retrieved from clients before the salesman left meetings. Potential clients had to sign “non-disclosure” agreements. Staff were instructed to delete revealing documentation from their files in order to limit detection of the firm’s activities. Major banks, including Deutsche Bank, HVB, UBS, and NatWest provided loans for millions of dollars essential to the orchestrated transactions. KPMG did not disclose the existence of any of its 500 schemes to the IRS. Senior personnel were aware of its legal obligations but chose to flout them. Extracts from internal correspondence (see Appendix 1) provide an indication of the firm’s business culture. On one occasion, a KPMG tax specialist voiced concern that the tax authorities would object to an avoidance scheme. In response, a senior partner who was becoming concerned about the delay in marketing the product wrote to tax partners and told them “I do believe the time has come to shit and get off the pot” (US Senate Permanent Subcommittee on Investigations, 2005: 20). The senior partner was aware of the risks of litigation but was focused on the fees and adds that “My own recommendation is that we should be paid a lot of money here for our opinion since the transaction is clearly one that the IRS would view as falling squarely within the tax shelter orbit.” The deputy head of the tax practice responded by saying “I think it’s shit OR get off the pot. I vote for shit.” (ibid: 21)

The Senate Committee investigation was followed by criminal charges and on 29 August 2005, the US Department of Justice announced<sup>31</sup>:

“KPMG LLP (KPMG) has admitted to criminal wrongdoing and agreed to pay \$456 million in fines, restitution, and penalties as part of an agreement to defer prosecution of the firm ... nine individuals-including six former KPMG partners and the former deputy chairman of the firm-are being criminally prosecuted in relation to the multi-billion dollar criminal tax fraud conspiracy.”

The statement continues:

“In the largest criminal tax case ever filed, KPMG has admitted that it engaged in a fraud that generated at least \$11 billion dollars in phony tax losses ... cost the United States at least \$2.5 billion dollars in evaded taxes.... KPMG also admitted that its personnel took specific deliberate steps to conceal the existence of the shelters from the IRS by, among other things, failing to

register the shelters with the IRS as required by law; fraudulently concealing the shelter losses and income on tax returns; and attempting to hide the shelters using sham attorney-client privilege claims... the opinion letters issued for the FLIP, OPIS, BLIPS and SOS shelters were false and fraudulent in numerous respects ...<sup>32</sup>

KPMG' predatory culture came under the spotlight because of determined action by US Senators and regulators. The same culture operates in the UK too, but only comes to light when occasionally, after years of expensive litigation, the schemes are struck down by the courts. It is impossible to determine how much remains undetected. The fines and related imprisonment of some personnel did not curb predatory practices. KPMG continues to peddle tax avoidance schemes, as evidenced by the cases of *J Astall & Anor v Revenue & Customs Rev 1 [2007] UKSPC SPC00628*, *Drummond v HM Revenue & Customs [2009] EWCA Civ 608* and *Reed Employment Plc & Ors v Revenue & Customs [2012] UKFTT 28 (TC)*.

#### **4.0 Discussion: Institutionalized Corruption**

The previous section offered brief glimpses of the predatory practices of accounting firms. Behind a disarming wall of prestige and secrecy, they operate factories devoted to manufacturing schemes to enable wealthy clients and multinational corporations to avoid direct and indirect taxes. No social value is created, but the firms make millions on fees. As a consequence, citizens are required to forego hard won social rights or to pay disproportionately higher taxes. Lost tax revenues result in increased government borrowing and debts.

The big accounting firms camouflage their practices with ethical codes and glossy corporate social responsibility reports. Their claim is to be advising clients on 'tax planning' – a euphemism for tax avoidance and evasion. Schemes of the kind illustrated in the previous section masquerade as forms of 'tax avoidance' that are deemed to be legitimate until they are challenged and found to be unlawful. Such schemes invariably involve complex transactions that have little or no other purpose or justification than contriving to escape the payment of tax. If the political will and adequate resources were made available to expose the spuriousness of so much 'tax planning', it may be possible to estimate how many other similar schemes would be found unlawful<sup>33</sup>. When the schemes are left unchallenged, the firms rake in fees as the public purse is robbed. When thwarted, the response is to invent more

ingenious schemes, leaving taxpayers to pick up the substantial legal and administrative costs of challenging their legality.

We have shown how accounting firms are at the centre of a huge tax avoidance industry. But it is salutary to appreciate that these firms form an integral part of a network of banks, law firms and other professionals. To return to 'The Price of Offshore Revisited' study mentioned at the beginning of this paper, Henry (2012) notes how tax avoidance through the use of tax havens and other schemes is

'a very lucrative global industry...This industry has basically been designed and operated for decades, not by shady no name banks located in island paradises, but by the world's largest private banks, as well as leading law firms and accounting firms. All of these institutions are based, not in island paradises, but in major First World capitals like New York, London, Geneva, Frankfurt, and Singapore' (ibid: 43).

In accountancy firms, tax departments function as profit centres and are assigned revenue generating targets. Their 'tax planning' schemes are not only manufactured in response to 'large corporate clients' who 'press' such demands upon them, as Perrow (2010: 312 ) assumes. Firms also produce off-the-shelf schemes which are mass marketed. Staff are trained in sales talk and encouraged to be persistent. Where activities are known to be vulnerable to challenge, firms take a business risk as they know that tax authorities lack the financial and administrative resources to pursue more than a small number of schemes. In some cases, firms have calculated that they stand to make more money from illegal activities, even after paying financial penalties.

Individuals who are found to fiddle their taxes but lack the resources to hire scheming accountants and lawyers face the wrath of the tax authorities. In contrast, large corporations<sup>34</sup> and accountancy firms do deals. In the US, KPMG admitted "criminal wrongdoing" but the firm was able to deploy its political and financial resources to negotiate a fine of \$456 million as a means of its survival. In 2004, the UK Chancellor called in senior partners from Deloitte and Touche, Ernst and Young, KPMG and PricewaterhouseCoopers to warn them<sup>35</sup> that the Government was concerned about the "rising scale, seriousness and aggression" of tax avoidance

marketing. He told them that it was wrong for firms to market loopholes when they knew that the Revenue would close them down as soon as they could. Such appeals clearly fell upon deaf ears, which is hardly surprising when successive UK governments have neither sought to recover the legal and administrative costs of fighting the firms nor investigated their predatory practices. In good times, when economic growth and debt financing ensured an expansion of public services, citizens and regulators seemed prepared to turn a blind eye. But citizens are now showing their anger with the financial sector and with the tax avoidance industry more specifically. Notably, the direct action group UKUncut has taken to the streets to draw attention the damage done to the social fabric by the financial sector, including the big accountancy firms<sup>36</sup>.

Nonetheless, such is the hold of the big accountancy firms on the officials of the state, for reasons that we explore briefly below, that these firms continue to act as advisers to government department and receive government contracts, all paid by the taxpayers. Their dominance exerts a corrosive effect upon the state's capacity to challenge and discipline their activities. How has this state of affairs come to pass? In the UK (and possibly elsewhere too), one significant development has been the closeness of relations between politicians, civil servants and the Big Four firms. For example, before the 2010 general election, the Big Four firms gave £3.5 million to the Conservative Party and provided advisers and consultants to shape party policies. Coincidentally, the firms stand to gain a £100 million a year windfall as the incoming coalition government has abolished the Audit Commission and passed the local authority audit work to accountancy firms. The Big Four firms are not, however, 'party political' as they have also lubricated the Labour Party in previous elections, notably when the polls have suggested a high probability of victory.

Institutionalized cosiness-cum-corruption – made embarrassingly visible by the revelations of the Leveson inquiry<sup>37</sup> which has exposed the chummy relationship between successive administrations and the media, especially the Murdoch empire – is evident in accountancy industry's 'wining and dining' of Britain's top civil servants<sup>38</sup>. Here, again, there is evidence of actors – including the partners of the Big Four firms – purposefully courting politicians and civil servants (and vice-versa). Most active in this sphere is KPMG closely followed by PricewaterhouseCoopers,

Deloitte and Ernst & Young. It is doubtful that the dinners set up by these firms were to discuss how their predatory practices might be curbed. Rather their function is to lubricate firms' colonisation and hollowing out of the state and to hedge against unwelcome forms of state oversight or intrusion into their business practices. The dividends associated with such investments are high. In 2007, soon after KPMG admitted "criminal wrongdoing" for tax dodging and paid the highest fine ever levied by the US government (see above), the UK government did not investigate the firm. Instead it bestowed a knighthood upon KPMG International chairman (2002 to 2007), Michael Rake, for services to the accountancy profession. In October 2010, Sir Michael Rake became an advisor to Prime Minister David Cameron. Nick Gibb MP, a former KPMG staffer, has held senior positions in the Conservative Party and in 2010 he became the Minister of State for Schools. In June 2012, KPMG UK chairman John Griffith-Jones was appointed non-executive chair of the UK's new banking regulator the Financial Conduct Authority. In July 2012, Ian Barlow, a former KPMG senior partner, a tax specialist and a member of the Institute of Chartered Accountants in England & Wales (ICAEW) became the Lead Non-Executive Director and chair of at HMRC Board. This cosiness with the state is not new. Just over a decade earlier, in 1999, KPMG chairman Colin Sharman was elevated to the House of Lords by Liberal Democrats. Another KPMG partner and former ICAEW President, Sheila Masters, became a life peer in 2000 and Conservative Party's Treasury spokesperson.

The above examples are not isolated. Former PricewaterhouseCoopers staffer Mark Hoban is the current UK Treasury Minister responsible for oversight of tax laws. In May 2010, another PwC alumnus Justine Greening became Economic Secretary to the Treasury, followed (October 2011) by Secretary of State for Transport and then (September 2012) Secretary of State for International Development. The Private Finance Initiative is a huge money spinner for accountancy firms. A PwC partner, Richard Abadie, has been the head of PFI policy at the UK Treasury and has been accompanied by 10 or more colleagues<sup>39</sup>. In June 2009, former PwC partner Amyas Morse was appointed UK Comptroller and Auditor General and became responsible for directing the National Audit Office (NAO). There he is accompanied by another former PwC partner, Dame Mary Keegan, who previously was chairperson of the UK Accounting Standards Board and subsequently an adviser to the UK Treasury. In

2008, PwC tax partner John Whiting, an architect of the “Total Tax Contribution” (see above) was awarded an OBE for public service. In June 2011, he became the Director of the newly established Office of Tax Simplification (OTS), advising the government on simplification of tax laws<sup>40</sup>.

A further instance of the closeness of relations between the big firms of accountants and key departments of state is the appointment of Chris Tailby, one time tax partner at PricewaterhouseCoopers, as Head (until 2009) of Anti-Avoidance at HMRC. In September 2004, Sir Nicholas Montagu, the former chairman of the Inland Revenue (now HMRC) became an advisor to PricewaterhouseCoopers. In July 2010, partners from KPMG, Ernst & Young, Grant Thornton and BDO became members of the government appointed Tax Professionals Forum<sup>41</sup> which shapes the UK tax law - a classic case of foxes guarding the henhouse. Following disquiet about the loss of personal data of UK taxpayers, the Prime Minister turned, in 2007, to PricewaterhouseCoopers partner Kieran Poynter (who earns £3m per year) to write a report. In January 2008, UK Prime Minister Gordon Brown was accompanied on his visit to China by Ernst & Young chief Mark Otty, KPMG chairman John Griffith Jones, Deloitte senior partner John Connolly<sup>42</sup> (who earns £5.1 m per year). For the five years to 2010, the National Health Service paid out £487 million to external advisers and consultants, paying £1,000 a day to personnel from PricewaterhouseCoopers, Ernst & Young and Deloitte. Then in July 2009 former Labour Health Minister Lord Norman Warner of Brockley became a strategic adviser to Deloitte’s public sector practice.

There are numerous other examples. Prior to the 1997 general election, Sir Stuart Bell MP was Labour’s spokesperson on trade and industry where he became a strong advocate of liability concessions for auditing firms. After the general election victory, he failed to secure a cabinet position and soon became an adviser to Ernst & Young. Former Labour Business Secretary Lord Peter Mandelson resigned from government in 1998, but was soon hired by Ernst & Young. He subsequently returned for two more stints as Business Secretary and Labour quietly dropped its 1997 business manifesto commitment to have independent regulation of the world of accountancy. Since 1999, former Conservative Minister Sir Malcolm Rifkind has been an adviser to PricewaterhouseCoopers. In June 2011, former Labour Home



Secretary Jacqui Smith became a consultant for KPMG, the firm that advised Libyan dictator Colonel Qaddafi on managing his wealth<sup>43</sup>. In an earlier incarnation as a trade minister, Ms Smith piloted auditor liability 'cap' through parliament, all without demanding any quid pro quo from accountancy firms. No doubt, all these politicians are eager to serve the public interest, but their conception of 'public interest' is also probably influenced by their wealth and their business interests.

We have provided some detail of the links between the big accounting firms, politicians and civil servants in order to substantiate claims that are otherwise airily dismissed as 'fanciful' and 'conspiratorial', or are explained away as functionally necessary for government that is 'in touch' with business (and vice-versa). We have focused upon normal, institutionalized corruption within the UK but, of course, the big accounting firms are multinationals and they have colonised international structures. They hire lobbyists for the EU and are present in force at the OECD and other meetings. Knowing where their fees come from, they frustrate development of accounting standards that can expose corporate tax avoidance. An example of this is their collective resistance to a proposal to adopt a country-by-country approach to financial accounting as this would force corporations to publish information showing their assets, liabilities, profits, losses, sales, costs, staff, etc. in each country. The effect would be to show how, for example, companies have a huge trade in the UK but pay virtually no corporate taxes. Unsurprisingly, the Big Four firms are opposed to this proposal, as is the International Accounting Standards Board (IASB) - a private London based limited company that issues international accounting standards dealing with disclosures by corporations. It is the Big Four firms that fund the IASB and their personnel dominate its proceedings. The IASB does not ask companies to publish anything about profit shifting through transfer pricing and other accounting practices.

The Big Four also effectively control the formulation of auditing standards at home through the Financial Reporting Council and globally through the International Federation of Accountants (IFAC). Despite thousands of pages of auditing standards, not one line is devoted to accounting firm accountability, responsibility or even asking firms to come clean about how they help companies to dodge taxes. Despite losses of billions of pounds of tax revenues, the UK government has failed to

investigate the tax avoidance industry, or prosecute any of its key players. The anti-social practices of accountancy firms are routinely camouflaged by claims to professionalism, ethical conduct and technical competence that apparently disarm journalists, legislators and critics. Disarmament is occasioned by giving priority to the development of impression management gimmicks. For example, in April 2011 PricewaterhouseCoopers appointed its first head of reputation<sup>44</sup> which is perhaps best likened to presiding over the Ministry of Love in George Orwell's 1984.

Much consultancy practice is, of course, dedicated to enabling clients to dodge health and safety, food hygiene, building, immigration, transport or other laws. But there is only one organised industry devoted to tax avoidance. Accountancy firms employ and train thousands of people for the sole purpose of minimizing tax revenues by creating ingenious forms of 'tax planning', thereby undermining elected governments and depriving millions of people of much needed healthcare, education, pensions, security and other essentials. Occasionally, schemes marketed by these firms as found be 'unacceptable' by being tested in the courts. But UK governments have not followed up such malpractice by prosecuting the firms or closing them down. Instead, partners of these firms are courted by politicians and civil servants and receive public contracts as well as honours in recognition of their contribution to enhancing corporate profitability.

## **5.0 Conclusion**

We have shown how 'tax planning', often a euphemism for tax avoidance and evasion schemes, is not the preserve of a single firm but, rather, is institutionalized in all of the Big Four firms. The active promotion of schemes that have no other justification than to escape payment of taxes, and thereby deprive the 99% of revenues required to maintain public services such as education, health and pensions, casts doubt upon the 'business culture' that has become established in these firms. These firms have developed tax avoidance for corporate and private clients on an industrial scale that act to shift taxes away from giant corporations and wealthy elites to labour, consumption and savings, depressing ordinary people's purchasing power and contributing to economic and social crises.

In the financial sector, and in the Big Four accountancy firms in particular, the devising of tax avoidance schemes demonstrates how self-interest and shady practices have become normalized. The commercial priority of making money has seemingly triumphed over any concern about social welfare and obligations to citizens. The big firms have repeatedly demonstrated a preparedness to do almost anything to swell their revenue streams and thereby increase personal rewards. Partners in these firms are the promoters and beneficiaries of a business culture in which 'bending the rules' to make profits at almost any cost is considered to be a 'competitive necessity', and celebrated as a manifestation of exceptional entrepreneurial skill that, of course, justifies the payment of a correspondingly exceptional fees and salaries running into multiple millions. Employees of major firms are inculcated into prioritising the commercial interests of the firm as a means of enriching its partners, and staff are left in no doubt that their employment and career progression depends on delivering this commitment, or at least managing the impression of this delivery. What, in the early 1990s might have been received as the unguarded bragging of senior partner who openly declared, "a firm like ours is a commercial organization and the bottom line is that ... the individual must contribute to the profitability of the business ... essentially profitability is based upon the ability to serve existing clients well" (Hanlon, 1994: 121) has become, normalised as 'how business is', as if partners have no responsibility for contributing to the development of this state of affairs..

A definition of a rotten business culture is arguably one in which the "emphasis is very firmly on being commercial...rather than on being public spirited on behalf of either the public or the state" (Hanlon, 1994: 150). In this respect, and as Perrow (2010) stresses, there is a danger that 'deliberate actions of executives' [e.g. who prioritize 'commercial' over 'public' concerns] 'will be attributed to institutional and cultural traditions'. We have sought to counteract this emphasis by showing how partners of accounting firms have actively and shamelessly promoted tax avoidance, often portrayed as 'tax planning', as a lucrative segment of their business that has enabled them to amass huge personal fortunes. We have noted that demands for such schemes were not always 'pressed upon them by their large corporate clients' (Perrow, 2010: 312) as they were initiated by departments within the firms dedicated to developing schemes that could be mass marketed to their clients. That said, we

take issue with Perrow when he counterposes 'agential' against 'structural' explanation of practice, such as the practice(s) comprising the diverse tax avoidance schemes.

Here we return to the broad theoretical issues raised in the introduction to the paper. In our view, so-called 'agency' is formed through 'structure' in ways that are irreducible to it. With regard to the tax avoidance schemes explored in the paper, we suggest that their development is plausibly understood as the production of agents whose 'interests' are largely constructed within the structural media of neo-liberal business practice. This interpretation acknowledges the 'embeddedness' of agency but it also attends to how agency is formed through an engagement with structures that pre-exist its emergence and actions. In effect, the context of neo-liberalism presents opportunities for partners to exercise their agency in developing or overseeing 'tax planning' schemes.

When preparing schemes of tax avoidance, agents (e.g. Big Firm partners and specialists charged with the devising the schemes) operate in a structural milieu where neo-liberal thinking has become institutionalized as common sense. As Greenwood and Suddaby (2006) note in their study of the Big Five accountancy firms (as they were prior to the demise of Arthur Andersen), the existence of an 'established (e.g. neo-liberal) 'logic' does not rule out the possibility of agents, as 'institutional entrepreneurs', developing and commending 'alternative logics'. However, and as Perrow (2010) himself concedes, the articulation of such logics is often excluded or suppressed through the exercise of power. Taking the example of the Challenger 'accident', Perrow notes how managers were eager to launch as they were under pressure from the White House following previous delays. They overruled the engineers who knew that the O-rings were vulnerable in exceptionally low temperatures. This over-ruling, we contend, can be interpreted less as an expression of individual or occupational *agency per se* than as an articulation of a complex web of power *relations* that, as Perrow notes, stretched to the White House To pin the blame on agents, as Perrow invites us to do, is to risk overlooking the wider complex of power relations in which self-serving actions are promoted and normalized..

In conclusion, and to return to our opening gambit, a limitation of the agency-structure dualism, in which analysis flip-flops from a structural to an agential orientation, is its disregard of the relational quality of institutionalization processes. When this relational quality is appreciated, reducing agency to the conditioning of structure is implausible, as Perrow (2010) persuasively insists. But it is also important to avoid attributing forms of resistance to a seemingly unconditioned agency that, for example, is able to make a wilful *'choice to embrace'* the ideology of *'tax planning'* in order *'to serve their own interests'* (ibid: 312, emphasis added) - as if the identification of these interests is self-evident, or is accomplished independently of participation in the prevailing practices and associated belief systems. In order to challenge and remove the practices of tax avoidance that have no other justification than the escape of tax payments and the resultant degradation of public welfare and amenities, it is important to insist upon agential responsibility for devising, promoting and operating such schemes. It is also necessary to recognise that the removal of such schemes depends upon making the connection between their appeal to their architects and purchasers, and participation in the institutions of neo-liberal capitalism that fosters and normalizes this appeal.

## APPENDIX 1

### KPMG BUSINESS CULTURE

**First, the financial exposure to the Firm is minimal.** Based upon our analysis of the applicable penalty sections, we conclude that the penalties would be no greater than \$14,000 per \$100,000 in KPMG fees. ... For example, our average deal would result in KPMG fees of \$360,000 with a maximum penalty exposure of only \$31,000.

This further assumes that KPMG would bear 100 percent of the penalty. In fact ... the penalty is *joint and several* with respect to anyone involved in the product who was required to register. Given that ... our share of the penalties could be viewed as being only one-half of the amounts noted above. If other OPIS participants ... were also found to be promoters subject to the registration requirements, KPMG's exposure would be further minimized. Finally, any ultimate exposure to the penalties are abatable if it can be shown that we had reasonable cause. .. To my knowledge, the Firm has never registered a product under section 6111 ....

**Third, the tax community at large continues to avoid registration of all products.** Based upon my knowledge, ... *there are no tax products marketed to individuals by our competitors which are registered.* This includes income conversion strategies, loss generation techniques, and other related strategies.

Should KPMG decide to begin to register its tax products, I believe that it will position us with a severe competitive disadvantage in light of industry norms to such degree that we will not be able to compete in the tax advantaged products market.

**Fourth, there has been (and, apparently, continues to be) a lack of enthusiasm on the part of the Service to enforce section 6111.** In speaking with KPMG individuals who were at the Service ... the Service has apparently *purposefully* ignored enforcement efforts related to section 6111. In informal discussions with individuals currently at the Service, ... confirmed that there are not many registration applications submitted and they do not have the resources to dedicate to this area.

**Finally, the guidance from Congress, the Treasury, and the Service is minimal, unclear, and extremely difficult to interpret when attempting to apply it to 'tax planning products.** ...

I believe the rewards of a successful marketing of the OPIS product ... far exceed the financial exposure to penalties that may arise”.

**Source:** US Senate Permanent Subcommittee on Investigations, (2005), op cit, p. 60.

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<sup>1</sup> Hansard, House of Lords Debates, 17 March 2011, col. 375.

<sup>2</sup> Press Release, 'Statement of Senator Carl Levin on Introducing the Stop Tax Haven Abuse Act, Part II', 2 March 2009;  
<http://www.levin.senate.gov/newsroom/press/release/?id=ff259b44-052e-4ef7-b4f2-7d563212f023>; accessed 5 September 2012.

<sup>3</sup> The Guardian, Gilt-edged profits for profession's 'big four' 7 February 2009;  
<http://www.guardian.co.uk/business/2009/feb/07/tax-gap-avoidance-schemes>;  
accessed 15 September 2012.

<sup>4</sup> Daily Telegraph, Tax avoidance: HMRC could gain billions as court rules against 'artificial' scheme, 18 July 2012;  
<http://www.telegraph.co.uk/finance/personalfinance/consumertips/tax/9409219/Tax-avoidance-HMRC-could-gain-billions-as-court-rules-against-artificial-scheme.html>;  
accessed 16 September 2012.

<sup>5</sup> Mail on Sunday, Big four auditors 'embedded in tax haven world', 29 January 2011;  
<http://www.dailymail.co.uk/money/article-1351703/Big-auditors-embedded-tax-haven-world.html>; 30 August 2012.

<sup>6</sup> The Guardian, Gilt-edged profits for profession's 'big four', 7 February 2009;  
<http://www.guardian.co.uk/business/2009/feb/07/tax-gap-avoidance-schemes>;  
accessed 15 September 2012.

<sup>7</sup> CDS, COBRA, FLIP, BOSS, etc., are acronyms for tax avoidance schemes.

<sup>8</sup> Press release, IRS Releases New Tax Gap Estimates; Compliance Rates Remain Statistically Unchanged From Previous Study, 6 January 2012  
(<http://www.irs.gov/uac/IRS-Releases-New-Tax-Gap-Estimates;-Compliance-Rates-Remain-Statistically-Unchanged-From-Previous-Study>).

<sup>9</sup> Sunday Times, Brown targets celebrities' tax perk, 4 June 2006.

<sup>10</sup> See [http://www.hm-treasury.gov.uk/junebudget\\_speech.htm](http://www.hm-treasury.gov.uk/junebudget_speech.htm)

<sup>11</sup> Daily Mail, Revealed: Tax havens of the top 20 UK companies, 24 January 2011,  
<http://www.thisismoney.co.uk/money/news/article-1711339/Revealed-Tax-havens-of-the-top-20-UK-companies.html>, accessed 29 August 2012.

<sup>12</sup> <http://www.oecd.org/dataoecd/48/34/42459170.pdf>.

<sup>13</sup> Interview with Jeffrey Owens (Director of the Centre for Tax Policy Administration at the OECD) on 28 November 2008; available at  
<http://www.reuters.com/article/latestCrisis/idUSLS349361>

<sup>14</sup> This is despite between 30% - 40% of the UK Finance Bill (the Budget) being directed at abusive schemes designed by the tax avoidance industry. A backlog of

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some 22,100 tax disputes is awaiting hearing (The Daily Telegraph, Record number of taxpayers take HMRC to tribunal, 6 June 2012) and the tax affairs of some 4,000 companies (about 2.8 million limited liability companies are registered in the UK) under investigation (Financial Times, tax officials reveal scale of probe, 27 June, 2012). In 2004, the government introduced the “Disclosure of Tax Avoidance Schemes” (DOTAS) rules, modelled on the US law, and required promoters of avoidance schemes to disclose the main elements of the schemes to Her Majesty’s Revenue and Customs (HMRC). The UK government claims that the regime enabled it to introduce 49 anti-avoidance measures during the first five years and close-off over £12 billion in avoidance opportunities. At the time of writing it is considering introducing a General Anti-Avoidance Rule (GAAR), a measure which would focus on the economic substance rather the legal form of the avoidance schemes. We are unable to explore the related issues in this paper.

<sup>15</sup> The Guardian, 'Be fair' plea as tax loopholes targeted, 18 March 2004; <http://www.guardian.co.uk/business/2004/mar/18/budget2004.budget2004>, 27 August 2012.

<sup>16</sup> Mail on Sunday, £6m tax threat to Phones4U founder, 15 February 2004; <http://www.thisismoney.co.uk/money/news/article-1514887/1636m-tax-threat-to-Phones4U-founder.html>, 27 August 2012.

<sup>17</sup> The Daily Telegraph, Debenhams lose VAT case, 19 July 2005. <http://www.telegraph.co.uk/finance/2919204/Debenhams-loses-VAT-case.html>, accessed 26 August 2012.

<sup>18</sup> For example see, US Department of Justice press release, 14 June 2007, 7 May 2009, 11 September 2009, 21 and 22 January 2010.

<sup>19</sup> SABMiller press release, 26 November 2010.

<sup>20</sup> According to PwC, TTC “looks at all the taxes that companies pay and not just corporate income tax ... It makes a distinction between taxes borne and taxes collected. Taxes borne are the company’s own cost and will impact their results, e.g. property taxes will form part of the property costs. Taxes collected are those that the company administers on behalf of government and collects from others, e.g. employee income taxes deducted through the payroll. Taxes collected will have an administrative cost for the company and will also have an impact on the company’s business, e.g. employment taxes impact the cost of labour” (PricewaterhouseCoopers, 2010)

<sup>21</sup> FLIP, CDS, BOSS, etc. are acronyms for tax avoidance schemes.

<sup>22</sup> HMRC press release, HMRC has won three key court decisions against tax avoidance schemes during July, 20 August 2012; available at <http://hmrc.presscentre.com/Press-Releases/Tax-avoidance-hat-trick-delivers-gold-67ee7.aspx>; accessed 15 September 2012.



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<sup>23</sup> The Guardian, RBS avoided £500m of tax in global deals, 13 March 2009; <http://www.guardian.co.uk/business/2009/mar/13/rbs-tax-avoidance>, accessed 1 September 2012

<sup>24</sup> To save its Treasury contracts Deutsche said that “This was a one-off arrangement from seven years ago and hasn’t been repeated”. It did not say what other avoidance schemes it is using. Deloitte are also silent on the number of other schemes that it has marketed. See The Daily Telegraph, ‘Deutsche Bank fights tax ruling on £92m bonus Pool’, 2 April 2011; <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/8423769/Deutsche-Bank-fights-tax-ruling-on-92m-bonus-pool.html>, accessed 29 August 2012.

<sup>25</sup> Daily Mail, Revenue boss entertained by Vodafone accountants weeks before £6bn tax deal, 27 March 2011; <http://www.dailymail.co.uk/news/article-1370365/Revenue-boss-entertained-Vodafone-accountants-weeks-6bn-tax-deal.html>, accessed 27 August 2012.

<sup>26</sup> [http://www.amisdelaterre.org/IMG/pdf/report\\_audit\\_mopani-2.pdf](http://www.amisdelaterre.org/IMG/pdf/report_audit_mopani-2.pdf)

<sup>27</sup> The Guardian, 7 June 2011.

<sup>28</sup> [http://www.glencore.com/documents/Letter\\_From\\_Mopanis\\_%20Auditors.pdf](http://www.glencore.com/documents/Letter_From_Mopanis_%20Auditors.pdf)

<sup>29</sup> New York Times, G.E.’s Strategies Let It Avoid Taxes Altogether, 24 March 2011; <http://www.nytimes.com/2011/03/25/business/economy/25tax.html>, accessed 2 September 2012.

<sup>30</sup> US Securities Exchange Commission press release, 4 August 2009.

<sup>31</sup> Press release, KPMG to Pay \$456 Million for Criminal Violations in Relation to Largest-Ever Tax Shelter Fraud Case ([http://www.justice.gov/opa/pr/2005/August/05\\_ag\\_433.html](http://www.justice.gov/opa/pr/2005/August/05_ag_433.html)).

<sup>32</sup> US Department of Justice, press release, 29 August 2005.

<sup>33</sup> In 2004, the UK government introduced the Disclosure of Tax Avoidance Schemes (DOTAS) regime which requires the promoter to disclose the main elements of the scheme to HMRC. This law is modelled on the US and may be a useful weapon, but as the paper shows KPMG chose to flaunt it.

<sup>34</sup> Following public exposure of some sweetheart deal that enabled corporations to settle tax disputes for considerably less, a government report condoned the deals but added that There should have been independent review of large settlements, and separation of roles in negotiating and approving settlements. ... the Department did not always keep notes of key meetings, including meetings at which settlement terms were agreed in principle with taxpayer” (National Audit Office, 2012: 9).

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<sup>35</sup> The Times, Brown hits at 'aggressive' tax avoidance advice, 12 March 2004.

<sup>36</sup> In 2012 UK Uncut took their campaign from the street to the Courts where, in June, they won permission from the High Courts to have a judicial review of the legality of a "sweetheart" deal made between the tax authorities, HMRC, and the global investment bank Goldman Sachs in which the bank was let off a £10m interest bill. The presiding Judge rejected the government's claim that judicial review was inappropriate on the grounds that the case involved matters of confidentiality between the Revenue and taxpayers. A representative of UK Uncut said that: "The public have a right to know why a multibillion pound investment bank appears to have been let off the tax they owe while vital public services are being cut... The government is making a political choice in making ordinary people pay for the economic crisis with their jobs and pensions, rather than clamping down on billions of pounds worth of tax avoidance by big business." (Malik, 2012)

<sup>37</sup> See <http://www.levesoninquiry.org.uk/>

<sup>38</sup> Accountancy Age, 13 February 2009.

<sup>39</sup> House of Commons Treasury Committee (2011), op cit.

<sup>40</sup> Caroline Turnbull-Hall, another PwC tax manager is on the OTS, and so two of three people (re)designing the UK tax system come from PwC

<sup>41</sup> See [http://www.hm-treasury.gov.uk/tax\\_forums\\_tax\\_professionals.htm](http://www.hm-treasury.gov.uk/tax_forums_tax_professionals.htm)

<sup>42</sup> The Guardian, Gilt-edged profits for profession's 'big four' 7 February 2009; <http://www.guardian.co.uk/business/2009/feb/07/tax-gap-avoidance-schemes>; accessed 15 September 2012.

<sup>43</sup> New York Times, Qaddafi Reportedly Stashes Billions in Western Institutions, 26 May 2011; <http://www.nytimes.com/2011/05/27/world/africa/27qaddafi.html>, accessed 25 August 2012.

<sup>44</sup> The Daily Telegraph, PricewaterhouseCoopers creates new role to boost its public image, 23 April 2011; <http://www.telegraph.co.uk/finance/newsbysector/supportservices/8470074/PricewaterhouseCoopers-creates-new-role-to-boost-its-public-image.html>, accessed 26 August 2012.

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