Editorial

The appeal of tax!

The 34th Cambridge International Symposium on Economic Crime took place from September 4 to 11 at Jesus College in the University of Cambridge. This year's theme was "Economic Crime – where does the buck stop? Who is responsible - facilitators, controllers and or their advisers?". The symposium attracted well over 1,600 participants from nearly 100 countries. Although the deliberations ranged across a spectrum of issues, one that assumed significance was the enforcement of tax law. A tax plenary session titled "The criminalization of tax avoidance" drew wide variety of discussants, including the OECD, US Department of Justice, Texas A&M Law School and a University of Cambridge-based network of academics in the field of sociology, law and economics. The overarching discussion surrounded Richard Gordon and Andrew Morriss' journal article "Moving Money-International Financial Flows, Taxes, and Money Laundering" (Journal: *Hastings International and Comparative Law Review*, 2014). The paper served as central stimulus in which a series of discussion papers was produced by each one of the contributors in the Cambridge tax group and invited discussants. Plenary presenters focussed on specific aspects of the paper and drew from their various professional, technical and research backgrounds in responding to the intensifying debate surround tax avoidance and tax evasion.

The context of the economic crime symposium allowed plenary members to have a series of very focussed discussions on taxation, its relation to the theme of the economic crime symposium and ancillary effects on tax administrations, economic crime enforcement agencies, compliance industries and international bodies such as the OECD and EU. Professor Andrew Morris, Dean of Law at Texas A&M, began his presentation with a discussion on the actual cost of compliance and enforcement activities relating to tax evasion. Based on the costs and benefits, how freely should we allow money to move? At the moment, the ease of flows of money is hindered by wasteful and inefficient regulation which is what currently challenges the efficacy of international financial systems. Gordon and Morriss' paper describe the current system's approach to regulation as "control first". "Control first" places the compliance burden on the facilitator of the financial flow such as financial institutions and sees the movement of money as a problem unless subject to control, much like the approach to the war on drugs (Gordon and Morriss, p. 5). The problem with the "control first" approach is that it relies on third-party intermediaries such as financial institutions to carry the burden of policing capital flows and the costs of such implementation including anti-money laundering protocols. The experience of these protocols, with some mention to the Financial Action Task Force 40 was that it was largely imposed by small group of powerful jurisdictions on to rest of world (Gordon and Morriss, p. 45). This transferred the burden of compliance costs to smaller jurisdictions and financial institutions while providing unequal benefit in favour of powerful jurisdictions.

What this raised was the largely absent public conversation regarding the real costs and benefits of tax enforcement schemes in relation to adopting "control first" style protocols in tax administration. Policy analysts and academics have explored

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issues regarding what we lose when we cut taxes [see book entitled *Tax is not a four-letter word* by Himelfarb and Himelfarb (2013)]; however, the net cost and benefit of enforcement schemes in tax administrations have been under-researched. In other words, what is the material return-on-investment in adopting this particular style of tax administration compared to others? Gordon and Morriss propose other approaches in their article which other discussants developed further.

Economist Alfred Duncan, Lecturer at the University of Kent, then proceeded to discuss the use of offshore and non-offshore tax shields. His analysis produced results that indicated similar taxable outcomes between offshore and non-offshore tax shields but with wildly varying economic consequences. These consequences had wider reaching socio-economic effects that further necessitated the need for focus on the real costs of tax compliance and enforcement relating to the use of offshore. Would enforcement and compliance activities targeted to offshore financial centres yield higher tax receipts for tax administrations? Chris Jenkins, of Cambridge, discussed the use of tax avoidance cases by tax authorities to project a tax agenda that was not only low-cost but also media-driven to the detriment of middle-class professionals. Based on his analysis of the New Zealand tax authorities, tax administrations had and could continue to manipulate public perception of legal avoidance schemes to advance particular tax agendas. What may result, as I understood it, would be a continued blurring of distinction of avoidance and evasion by the general public.

The result of these topics stimulates a debate on the extent to which tax officials can persuade the public, their government administrations and criminal enforcement agencies that avoidance schemes – a legal activity – can be evasion schemes; therefore, casting a wider net on access to tax collection powers only afforded to tax evasion – an illegal activity. Could tax authorities arbitrarily categorize avoidance as evasion to provide themselves more legislative powers and international cooperation in collecting taxes owed? Once tax avoidance falls in to the realm of tax evasion, the illegal evasion of taxes, then law enforcement officials can take jurisdiction and access a series of international agreements that facilitate cooperation from other authorities who may not otherwise assist with an avoidance scheme. The temptation for re-categorization from avoidance to evasion then challenges us to debate the costs and benefits of establishing such access to wider jurisdictional powers in a tax authority. Furthermore, if criminal enforcement agencies can draw on the legal tools of a tax authority to address money laundering, should, and if so to what extent, tax authorities draw on the tools of enforcement agencies to advance or widen their tax collection efforts?

During Morriss' presentation, he observed a conflict arising in another session in the symposium. This was regarding the use of company law being fit for purpose. There was a divide by participants who championed for the use of company law to be more aggressive in the curbing of money laundering. But there was another group who were opposed to this, who determined that the intent of company law was being taken out of context and being used for something it was not intended for, which was the settlement of disputes. What then might be the future of using laws intended for one thing, to advance the needs of another thing? William Byrnes, Professor of Law and Dean of Special Projects at Texas A&M University, provided an alternative measure. He proposed the case for controlled access to taxpayer information between jurisdictions, particularly corrupt "black hat" jurisdictions who may use that information to extort, criminalize or blackmail its citizens. This avenue

could then eliminate the need to distort the intention of say company law from its original purpose. The wide-reaching discussion of this particular session proved to be particularly useful in re-thinking jurisdictional authorities in curbing tax evasion, particularly as it relates to the politics of co-opting tax avoidance in its efforts.

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Reference

Himelfarb, A. and Himelfarb, J. (2013), *Tax is not A Four-Letter Word,* Wilfrid Laurier, Waterloo, ON.

Further reading

Gordon, R.K. and Morriss, A.P. (2013), "Moving money: international financial flows, taxes, & money laundering", *Hastings International Comparative Law Review*, Vol. 37, No. 1, available at: http://ssrn.com/abstract=2348144 (accessed 25 May 2015).