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SMOKE AND MIRRORS: CORPORATE SOCIAL RESPONSIBILITY AND TAX AVOIDANCE

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April, 2010

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Abstract

The bourgeoning corporate social responsibility literature has paid little attention to organised tax avoidance by companies even though it has real consequences for the life chances of millions of people. Companies legitimise their social credentials by making promises of responsible and ethical conduct, but organisational culture and practices have not necessarily been aligned with publicly espoused claims. This paper draws attention to the gaps between corporate talk, decisions and action, or what may be characterised as organised hypocrisy. Its persistence can become a liability and threaten the welfare of the company, its employees and its executives. The paper provides examples to show how companies, including major accountancy firms, make promises of responsible conduct, but indulge in tax avoidance and evasion. It also shows that the exposure of contradictions between talk and action has yielded negative outcomes.

Keywords: Tax Avoidance, Corporate Social Responsibility, Hypocrisy

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1. Introduction

Recent years have seen a considerable increase in the variety and volume of literature on corporate social responsibility (CSR) (for example, see Cooper, 2004; Demirag, 2005; Frederick, 2006; Hawkins, 2006; Henderson, 2001; Solomon, 2007; Vogel, 2005; Werther Jr. and Chandler, 2005). This literature is informed by a variety of theoretical perspectives and seeks to address issues about governance, economics, accountability, ethics, futures of capitalism, sustainability and ultimately the survival of the planet and the human race. As a result, we have a richer appreciation of the possibilities and limitations of addressing ecological, employment, investment, power, politics, gender and a variety of social problems.

The concept of CSR is broader than simple compliance with law. Social history is littered with laws which permitted slavery, discrimination, abuse of women, children and workers, but their shortcomings have been contested on moral, ethical, accountability, human rights and other grounds. In the same traditions CSR is frequently associated with promises of ethical and socially responsible conduct by businesses and its scope is increasingly being broadened. Sustainability, a non-governmental organisation (NGO) notes that

> "Tax is the latest issue to emerge as part of a more thorough review of the economic impacts that companies have. It has become the subject of greater attention with a variety of stakeholder groups actively reviewing the approach that companies take to their tax policies and planning. … With the growing involvement of governments, the media, non-governmental organisations (NGOs) and even religious groups, the issue is being transformed from a narrow technical discussion for specialists to one which is directly relevant to corporate responsibility" (Sustainability, 2006, p. 2).

Increasingly, pressure groups and non-governmental organisations are highlighting the disparities between corporate claims of social responsibility

and their practice of avoiding taxes[1] which disable the capacity of governments to provide education, healthcare, security, pensions, clean water, or redistribute wealth to eradicate poverty, and provide a peaceful and equitable society (Oxfam, 2000; Christian-Aid, 2004, 2005, 2008a, 2008b. 2009; Action-Aid, 2008, 2009). However, comparatively little scholarly attention is paid to the payment of democratically agreed taxes (Christensen and Murphy, 2004); even though the payment of taxes is central to any notion of responsible citizenship and claims of social responsibility are part of the politics that enable the dominant class to advance its hegemony through consent rather than brute force. The links between CSR and tax avoidance may be neglected possibly because other than the standardised accounting information[2] "companies rarely volunteer any detailed responses on tax issues … [there is] paucity of information released by companies on their taxation plans …" (Citigroup, 2006, p. 4 and 20), and "it is rare for big business to see the payment of taxes as an explicit social duty" (The Guardian[3], 14 February 2009).

Major corporations increasingly produce brochures and reports containing promises of socially responsible conduct, but this has also been accompanied by large scale tax avoidance and evasion. The revenues lost are large and capable of making a difference to the quality of life for millions of people The US Treasury estimates that it may be losing over $345 billion each year due to

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[1] There are perennial debates about the meaning and significance of 'tax avoidance' and 'tax evasion'. Generally, tax avoidance is considered to be lawful and tax evasion is used to describe practices that contravene the law. However, in practice the distinction is no so clear-cut. The promoters of some strategies have described their schemes are 'avoidance', but when subsequently scrutinised and challenged in the courts they have been found to be 'evasion'. On occasions, companies have structured transactions which have little or no economic substance, but enable them to reduce their tax liabilities. On moral and ethical grounds, such schemes have been considered to be unacceptable (Christian-Aid, 2008a, 2008b, 2009), especially as the loss of tax revenues has negative effect on the provision of public goods, security, alleviation of poverty and social stability.

[2] This is required by law (e.g. UK Companies Act 2006) and accounting standards (e.g. IAS 12).

[3] http://www.guardian.co.uk/business/2009/feb/14/tax-avoidance; accessed 17 Mar 2009.

a variety of tax avoidance/evasion schemes (US Treasury, 2009). A US government report estimated that nearly 66% of the domestic and 68% of foreign corporations did not pay any federal corporate taxes during the period 1998 to 2005 (US Government Accountability Office, 2008). In 2005, 28% of large foreign companies, with sales in excess of $50 million and assets over $250 million, generated gross revenues of $372 billion, but paid no federal corporate taxes. The same study noted that 25% of the largest US companies had gross sales of over $1.1 trillion but paid no corporate taxes.

The UK corporation tax rate has been reduced from 52% (prior to 1983) to 30% in 1999 and further down to 28% in 2008, but tax avoidance remains rampant. A UK government report estimates that some £40 billion of tax revenue is lost each year (HM Revenue and Customs, 2010) though other models and leaked government papers estimate it to be over £100 billion (Sunday Times, 4 June 2006; Lyssiotou et al., 2004). 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 (National Audit Office, 2007) and 12 of the UK's largest companies extinguished all liabilities in 2005-2006 and scores more claimed tax losses (The Guardian, 31 January 2009).

Developing countries, often some of the poorest, receive around $120 billion in foreign-aid (The Guardian 30 March 2009) from G20 countries, but are estimated to be losing between $858 billion and $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; Cobham, 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[4] has estimated that Africa alone may be losing amounts equivalent to between

[4] A statement by Jeffrey Owens (director of the Centre for Tax Policy Administration at the Organisation for Economic Cooperation and Development) on 28 November 2008; available at http://www.reuters.com/article/latestCrisis/idUSLS349361; accessed 20 March 2009.

7% and 8% of its GDP, around $250 billion each year, through tax avoidance schemes. Such resources could be used to improve social infrastructure and quality of life for millions of people.

Arguably, the payment of taxes provide a litmus test for corporate claims of social responsibility as it involves transfers of wealth and contrived avoidance cannot easily be reconciled with claims of ethical business conduct. It highlights tensions between corporate objective of maximising profits for shareholders and meeting their obligations to pay democratically agreed taxes. The persistence of tax avoidance and evasion draws attention to organised hypocrisy which may be understood as the gaps between the corporate talk, decisions and action (Brunsson, 1989, 2003). In a conflict environment, companies and their executives appease diverse audiences by adopting double standards, or say one thing but do something entirely different. Hypocrisy is not the unintentional outcome of corporate culture. Rather it is actively produced within particular social and organisational contexts and reflects tensions between publicly espoused goals to meet social expectations and the failure to align organisational values, norms and practices with the espoused aims and goals (Weaver, 2008). Consequently, "two organizational structures evolve. One is the formal organization, which obeys the institutional norms and which can easily be adapted to new fashions or law, literally by a few strokes of a pen ... second type is generally referred to as an "informal" organization. … Organizations can also produce double standards or double talk; i.e. keep different ideologies for external and internal use. The way management presents the organization and its goals to the outside world need not agree with the signals conveyed to the workforce" (Brunsson, 1989, p. 7). Thus companies may excel at talking about social responsibility, but at the same time devise schemes to avoid/evade taxes.

This paper encourages research into the taxation aspects of corporate social responsibility because the revenues can make a difference to the quality of life of millions of people. It shows that there are considerable disparities between corporate claims of responsible and ethical conduct and their practices of avoiding and evading taxes. It shows that corporate hypocrisy is

the outcome of systemic and organisational pressures to maximise profits and financial rewards for company executives. This paper is organised into three further sections. The next section offers a framework for exploring the systemic, social and organisational pressures that result in the production of soothing statements on social responsibility alongside internal practices, rituals and routines that deviate from the claims presented to external audiences. The second section provides extracts from a number of corporate responsibility statements and contrasts them with their practice of avoiding taxes. The final section reflects upon the evidence and its calls for research which could help to align corporate practices with social expectations.

2. A Perspective on CSR and Taxation

In the contemporary world, taxes are generally levied on profits, wages and investment income, which largely depend upon the activities of the private sector. All creation of wealth requires co-operation of a variety of competing capitals. Shareholders provide finance capital, employees provide human capital and the state on behalf of society provides social capital in the shape of education, healthcare, transport, security, legal system, subsidies and support for corporations, and public goods. Each capital expects to receive the requisite return on its investment. Shareholders receive return in the form of dividends, employees in the form of wages and salaries, and the state[5] collects return on social capital in the form of taxes to enable it to finance a particular kind of social order. However, in societies marked by class, age, gender, income, wealth and other antagonisms, the allocation of returns is highly contested. Markets exert pressure on companies to generate ever increasing profits and returns as capitalism does not provide any guide to upper limits of accumulation. Companies can generate returns for finance capital, or add shareholder value, not only through competitive advantage on products and services, but also by diluting the returns available to other forms

[5] Since the state is the creator of corporations and grantor of all their privileges, it has every right, on behalf of the wider society, to impose obligations on companies, including the obligation to pay taxes.

of capital. In this context, finding ways of reducing tax payments has become a fair game, even if that erodes the state's capacity to provide social stability conducive to smoother accumulation of economic surpluses. Company directors enjoy considerable autonomy to appropriate economic surpluses for shareholders. They are expected to create "systems designed to ensure that the corporation obeys applicable laws, including tax …" (OECD, 2004, p. 58), but their discretion to pay democratically agreed taxes and maximise social welfare, is severely constrained by ideologies that preclude corporations from voluntarily embracing policies which subordinate shareholder interests to the advancement of collective social welfare (Friedman, 1962). Such priorities are often legitimised by legislation. For example, Section 172 of the UK Companies Act 2006 requires directors to promote the long-term success of the company for the good of the shareholders as a whole, and in that process have regard for the interests of other stakeholders (e.g. the environment, customers, suppliers, employees, community).

Since some are inclined to endorse tax avoidance with the claims that company directors' prime legal responsibility is to promote the success of the company for the benefit of the shareholders and their interests must somehow override the interests of other stakeholders (Henderson, 2001; KPMG, 2007), it is appropriate to scrutinise such claims. There are no laws which require directors to specifically increase profits by avoiding taxes, or by eroding return on the investment of social capital. Indeed, directors' discretion is constrained by many laws (e.g. health and safety, minimum wage, environment) and social norms though they have considerable choices about the manner in which profits might be increased. They are not bound by any shareholder mandate and expected to exercise independent judgement, use reasonable care, skill and diligence in pursuit of corporate objectives (Section 173 and 174 of the UK Companies Act 2006). Company directors are appointed and removed by shareholders, but do not owe a 'duty of care' to any individual shareholder[6]. Their 'duty of care' is to the company as a whole and applies to shareholders, only to the extent of investment held in the company, i.e. it is a

[6] This position was established by the UK House of Lords judgement in *Caparo Industries plc v Dickman* [1990] 2 AC 605.

relationship with capital rather than with any individual per se. Shareholders can pass resolutions at annual general meetings to constrain directors, but such resolutions are advisory only and are not necessarily binding on company directors (for further discussion see Wild and Weinstein, 2009). Shareholder wealth maximisation is an idealised standard of conduct for company directors rather than a legal mandate[7]. Thus directors have considerable autonomy from interference by individual shareholders in the day-to-day operations, unless specifically constrained by law or the constitution of company. Directors can use their discretion to make investment and other decisions, ranging from purchase of private executive jets, corporate hospitality, locating production in low cost countries and using complex tax avoidance schemes to increase corporate earnings. For the long-term success of the company, directors "are expected to take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers and local communities" (OECD, 2004, p. 58). The pursuit of profits requires directors to balance the interests of a variety of stakeholders, including obligation to pay taxes to the state and society. The use of strategies for tax avoidance/evasion is primarily a matter of executive discretion rather than any legal or moral compulsion. This discretion may also be used to enrich directors since their remuneration is influenced by the level of profits and returns to shareholders (Bender, 2004). Thus they have economic incentives to increase profits even if that entails reducing the payment of taxes. The successful executives are rewarded with status, social accolades, higher salaries, bonuses and share options. In this context, shareholder may even welcome a high degree of compliance with tax laws as vigilance by the state guards against malfeasance by directors and the possibility that some irregular activities may be discovered.

Corporate discretion on increasing profits through tax avoidance has been enhanced by intensification of globalisation. In integrated markets,

[7]The US case of *Dodge v. Ford Motor Company*, 204 Mich. 459, 170 N.W. 668. (Mich.1919) is "often misread or mistaught as setting a legal rule of shareholder wealth maximization. This was not and is not the law" (Henderson, 2007, p. 34).

corporations do not have to uproot and relocate their operations to take advantage of taxation arbitrage as most countries have accepted the principle that “legal persons could reside concomitantly in a number of jurisdictions” (Palan, 2002, p. 172). The universal acceptance of this principle has enabled businesses to shop for the best bundles of tax obligations that they can find[8]. Such a search is not constrained by public claims of social responsibility because ultimately corporations have “no intrinsic commitment to product, to place, to country, or to type of economic activity. The commitment is to the accumulation of capital. Therefore, the capitalist will shift locus of economic engagement (product, place, country, type of activity) as shifts occur in the opportunities to maximize revenues from undertaking” (Wallerstein, 1996, p. 89). Many companies have extended their options by establishing residences in microstates[9] (often known as tax havens) and so as to take advantage of the diverse menu of taxation choices. One survey estimated that 99% of the European quoted companies have operations in tax havens, which levy low taxes and offer secrecy to enable corporations to avoid taxes in other jurisdictions (Tax Justice Network, 2009).

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[8] A number of low/no tax jurisdictions (often known as tax havens) offering secrecy and low regulation have sprung up. These often lack natural, human, military and technical resources and are at the periphery of global economy. Some have used their sovereignty to offer favourable laws and entice capital to create employment and economic activity (Sikka, 2003).

[9] An International Business Company/Corporation (IBC) is often the preferred vehicle for this. It is established in accordance with the laws of offshore jurisdictions, such as Bahamas, Belize, British Virgin Islands, Gibraltar, Jersey and Seychelles. Typically, by paying annual registration fees, an IBC enables the company (which could a global multinational company) to secure exemption from local corporate taxes on the profits booked there as long as the company does not engage in any local business. Belize sells its facilities by stating that a “Belize IBC is a tax-free and exchange control-free Limited Liability Company, incorporated under the laws of Belize. However all its profit-earning activities must be conducted outside Belize … Because there are no minimum capital requirements, no need for audited accounts, no annual returns, no requirement for a local director or secretary and no requirement for an annual general meeting, the costs of maintaining a Belize IBC are kept to a minimum” (http://www.offshorepedia.com/some-basic-characteristics-of-an-international-business-company-ibc-in-belize; accessed 16 May 2010). In recent years, the concept of IBC has received considerable scrutiny from the European Union and the Organisation for Economic Co-operation and Development.

Tax avoidance is generally pursued away from the glare of public scrutiny and company financial reports are mostly silent on the issues. An open declaration to avoid taxes amounts to a direct challenge to the authority of the state and the social bargain struck by parliament to levy taxes. Under the weight of public expectations the state could respond by punitive actions and rigorous enforcement. A declared intention to avoid taxes also risks alienating citizens who dutifully pay their taxes. Such alienation and the surrounding media publicity and scrutiny by non-governmental organisations (NGOs) could lead to loss of public legitimacy and damage a company's ability to accumulate profits. Companies manage environmental turbulence and threats to their reputation by publishing CSR statements and codes of conduct that promise ethical behaviour, improvement of economic and social infrastructure and quality of life of all stakeholders[10] (Phillips, 2003). With increasing commodification of life, ethics too have become a big business activity and battalions of consultants and public relations experts are available to advise businesses on ways of putting gloss on their policies and image (Neimark, 1995). The CSR statements may symbolically satisfy the diverse demands from a critical external environment, but rarely empower stakeholders to shape corporate decisions or provide means of monitoring compliance with the promised policies. More crucially, the talk of ethical conduct does not stymie the systemic pressures to produce ever rising profits and the executive quest for higher financial rewards. Even if one organisation restrains itself, the superior profits of a competitor exert pressure to explore ways of matching or exceeding that. Thus the tendency to increase profits through avoidance of taxes remains embedded within the social system.

The development of performance related pay has been accompanied by the intensification of an industry that advises businesses on strategies for avoiding taxes. Accountants, lawyers and financial services experts not only provide novel interpretations of law and technical skills to enable some to

[10] There is some evidence to suggest that companies in the eye of a public storm are more likely to make grander promises of responsible conduct (Salterbaxter, 2008).

avoid taxes, they also legitimise vocabularies and discourses that seek to normalise avoidance of taxes. For example, in traditional accounting literature returns to providers of financial capital (e.g. dividends) are portrayed as rewards, and something that must be maximised. In contrast, returns to social capital (e.g. taxation) are assigned to negative spaces and defined as 'costs', or burdens, and the contemporary economic logic dictates that they should be reduced or even eliminated. As an Ernst & Young partner put it, "Companies are constantly looking to save costs, and tax is a major cost" (New York Times[11], 7 April 2009). This ideology portrays tax as a transfer from shareholders to the state rather than a return to society on the investment of social capital and thus regards avoidance of taxes as a normal and commonsensical business practice.

Accounting firms are also capitalist enterprises in their own right and cannot buck the systemic pressures to increase their own profits and must, therefore, constantly develop new tax avoidance schemes and find new clients (Sikka and Hampton, 2005; Sikka, 2008). Within accounting firms the organisational culture socialises employees "on being commercial and on performing a service for the customer rather than on being public spirited on behalf of either the public or the state" (Hanlon, 1994, p. 150). Through appeals to professional codes of ethics accountants may disarm critics, but the talk is not easily translated into action. For example, following its investigation into the marketing of tax avoidance schemes the US Senate Committee on Permanent Investigations concluded that

> "respected professional firms are spending substantial resources, forming alliances, and developing the internal and external infrastructure necessary to design, market, and implement hundreds of complex tax shelters, some of which are illegal … They are now 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, law firms, investment advisory firms, and banks" (US Senate Permanent Subcommittee on Investigations, 2003, pp. 1-2 and 5).

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[11]http://www.nytimes.com/2009/04/08/business/global/08tax.html?pagewanted=1&_r=1&sq=tax&st=nyt&scp=2; accessed 7 April 2009.

The above highlights the inconsistencies or decoupling of organisational talk, decisions and action which manifests itself in hypocrisy. It emphasises the gaps between the promises to act responsibly, the promises which implicitly also apply to pay democratically agreed taxes, and deliberate corporate practices to avoid taxes. Since talk and action may not easily be reconciled corporations develop dual strategies to manage conflict. Codes of conduct and statements of responsible and ethical behaviour are used as strategic resources to mould public opinion and shield the business from a hostile external environment. Such codes symbolise conformity with public expectations and create a buffer and enable the internal organisation to function with comparatively few obstacles. The responses to external pressures may, however, be inappropriate for accomplishing daily routines and technical tasks (Meyer and Rowan, 1977). To accomplish tasks, organisations may be decentralised and staff may not share the ideals of the executives and thus high sounding statements may not be acted upon. Companies may also be divided into departments, divisions and sub units and each may be assigned production or revenue generating targets, which conflict with the publicly espoused goals. Similarly companies may draw upon the dominant organisational ideas of the time and create tax departments and the efficiency of employees within these units may be measured by reductions in corporate tax liability. Specialist tax departments not only facilitate compliance with the law, but also develop or purchase strategies for reducing tax payments. Employees are trained to pursue organisational targets and their performance is regularly assessed through internal reports. The successful ones are rewarded with career advancement. In time, certain habits and practices become normalised and tax avoidance becomes just another part of daily organisational life. Since internal routines cannot easily be reconciled with external pressures, organisations adopt decoupled responses. As the responses are decoupled they do not interfere with each other. Companies can continue to publish high sounding statements of social responsibility whilst at the same time internal routines are geared to tax avoidance. The hypocrisy is not an accidental or unintentional outcome, but rather it is the intentional outcome of policies deliberately chosen and implemented by corporate executives.

The persistence of organised hypocrisy is a double-edged sword and can become a liability. Its maintenance requires constant resources to bolster the appearance of responsiveness through revised codes of conduct, media interventions and nods to increasingly vigilant NGOs (Weaver, 2008). This reinforces expectations that corporations will deliver the promised conduct, but management may be constrained by systemic pressures, or may make little effort to align organisational routines and culture with external expectations. The tensions may remain hidden, but there is always the possibility that disgruntled employees, NGOs, investigative journalists, whistleblowers and powers of the state may expose the contradictions and provide negative publicity leading to loss of legitimacy and revenue earning opportunities. At this point, rather than a resource for social legitimacy, hypocrisy becomes a liability and can threaten the survival and welfare of the company and its executives. Management may respond by aligning corporate culture, goals, practices and mindsets of staff and executives with social expectations through investment of financial, human, political, psychological and ideological resources. Such initiatives may be thwarted by organisational politics and entrenched interests, as well as systemic pressures to report higher profits, and management may once again devote resources to constructing hypocrisy, albeit in a revised form.

3. Corporate Social Responsibility and Taxation Practices

This section draws attention to a number of cases where the organisations concerned had pledged to behave ethically and in a socially responsible way, but simultaneously indulged in tax avoidance, and in some cases tax evasion. The cases relate to major organisations from the field of energy, telecommunications, finance, mining and retail trade. Major accountancy firms are also included because as significant capitalist enterprises they too are subject to pressures to increase profits and have chosen to do so by facilitating tax avoidance. All of the entities discussed in this section claim to be observing the highest standards of ethics and responsibility, and there is no reason to doubt the applicability of these claims to the payment of taxes.

This section does not rely on a statistical sample in any positivistic sense because companies rarely provide information about their tax avoidance and evasion strategies and therefore the size of the appropriate populations cannot be determined in any meaningful way. Rather it uses cases to illustrate the gaps and contradictions between corporate talk, decisions and action to problematise the claims of social responsibility. It relies on episodes that have been brought to public attention by parliamentary committees, courts, regulators, and investigative journalists, all of which are ascribed a certain kind of hardness by contemporary standards of evidence.

The demise of Enron drew attention to the gap between corporate talk, decisions and action. Enron, the largest US energy company and ranked seventh on the Fortune 500 list of the country's largest companies for 2001, boasted a 64 page Code of Ethics which stated that

> "We are dedicated to conducting business according to all applicable local and international laws and regulations, including, but not limited to, the US Foreign Corrupt Practices Act, and with the highest professional and ethical standards. …officers and employees of the company are responsible for conducting the business affairs of the Company in accordance with all applicable laws and in a moral and honest manner. … Employees of Enron Corp, its subsidiaries and its affiliated companies [collectively the Company] are charged with conducting their business affairs in accordance with the highest ethical standards … " (Werther Jr. and Chandler, 2005, p. 70, 92).

The company's talk enabled it to win a number of awards, including Financial Times' "Boldest Successful Investment Decision" award in 2000 and Fortune magazine's "America's Most Innovative Company" award for six consecutive years from1996 to 2001.

In late 2001, under the weight of frauds by senior management, Enron collapsed and the gaps between its talk and action came to public attention (Powers Jr., Troubh and Winokur Jr., 2002). An investigation by the US Senate Joint Committee on Taxation tried to pick through Enron's tax affairs and stated that for the period 1996 to 1999 the company reported net income of $2.3 billion, but it claimed tax losses of $3 billion. For year 2000, Enron

reported financial statement net income of $1.0 billion and taxable income of $3.1 billion, subject to utilisation of tax losses brought forward (US Senate Joint Committee on Taxation, 2003). Between 1996 and 2000, despite profits Enron received US federal tax rebates (Financial Times, 19 March 2002). In 2000 alone, Enron's top five executives received remuneration of $282.7 million (Forbes, 22 March 2002). Despite a code of ethics, Enron's financial statements made no mention of any of its tax avoidance schemes.

The US Senate report found that with advice from Arthur Andersen, Citigroup, Deloitte & Touche, Chase Manhattan, Deutsche Bank, JP Morgan Chase, Merrill Lynch, Bankers Trust and several major law firms Enron operated through a labyrinth of domestic and foreign subsidiaries and affiliates to structure transactions and avoid taxes at home and abroad (US Senate Joint Committee on Taxation, 2003). This included entities in Cayman Islands[12], a tax haven that did not levy corporate taxes. Many of Enron's transactions had no economic substance and were designed to solely improve reported profits. Enron's tax department not only managed tax liabilities, but also "became a source for financial statement earnings, thereby making it a profit center for the company" abroad (US Senate Joint Committee on Taxation, 2003, p. 8). In common with other profit centres it was assigned revenue targets and its operations were monitored. Within the tax department an independent unit, the "structured transactions group" was formed and its focus was to synthesize tax, finance, legal, and accounting principles to enhance Enron profits. The group was responsible for managing a structured transaction from its inception to its final execution. It handled all aspects of the entities involved in a structured transaction, including the bookkeeping, financial reporting, tax reporting, investor reporting, dividend payments, and corporate governance responsibilities (US Senate Joint Committee on Taxation, 2003). Some of the transactions were designed to duplicate losses to enable the company to deduct the same tax loss twice. Many projects were designed to avoid/evade taxes in the future and challenged the resources that the tax authorities could devote to unravel them. Indeed, the Senate Committee's report and

[12] Many of these were believed to be inactive shells and were not associated with any ongoing business.

accompanying schedules and appendices run to nearly 10,000 pages and then only provide an ‘introduction’ to Enron’s tax avoidance schemes. Amongst other places Enron had operations in India[13], Indonesia, Poland, Turkey, China, the Philippines, Burma, Brazil, Argentina and Hungary and these were often routed through tax havens and the company paid no domestic or foreign taxes. The Senate Committee concluded that Enron deliberately and aggressively engaged in transactions that had little or no business purpose in order to obtain favourable tax and accounting treatment (US Senate Joint Committee on Taxation, 2003, p.9).

Another US Senate report investigated Enron’s fledgling electronic trading business in the pulp and paper industry, which it developed with the support of major banks. It examined four major transactions from this trade and concluded that each “involved deceptive financial structures utilizing multiple SPEs [Special Purpose Entities] or joint ventures, asset or stock transfers, and exotic forms of financing. All relied on a major financial institution to provide funding, complex funds transfers, and intricate structured finance deals. In the end, all four transactions appear to have had no business purpose other than to enable Enron to engage in deceptive accounting and tax strategies to inflate its financial results or deceptively reduce its tax obligations” (US Senate Permanent Subcommittee on Investigations, 2002, p. 4). Amongst the various prosecutions, four ex Merrill Lynch officials have been convicted of fraud and sent to prison (Washington Post, 4 November 2004); JP Morgan Chase has paid $2.2 billion to settle a class-action lawsuit (Washington Post, 15 June 2005); Citigroup paid $1.66 billion to settle claims of helping Enron to deceive investors (New York Times, 27 March, 2008); and a host of lawsuits are still outstanding.

Organised hypocrisy also became a liability at WorldCom, a US telecommunications company, which collapsed amidst allegations of fraud in 2002. The company had made extensive use of tax avoidance schemes to increase its accounting earnings. WorldCom’s senior management had a

[13] Enron Oil & Gas India Ltd had oil and gas operations in India, but was registered in Grand Cayman.

disdain for a formal Code of Ethics (Beresford, Katzenbach and Rogers Jr., 2003), but nevertheless claimed to be encouraging ethical business conduct (Werther Jr. and Chandler, 2005). Its policies stated that "fraud and dishonesty would not be tolerated" (Beresford, Katzenbach and Rogers Jr., 2003, p. 289). The insolvency examiner's report drew attention to internal decisions for boosting profits through tax avoidance (US Bankruptcy Court Southern District of New York, 2004). In the normal course, such decision and practices remain hidden from public view.

WorldCom was approached by KPMG about the possibility of providing tax consulting services and reducing WorldCom taxes. It secured a contract after performing an initial feasibility study at no obligation to the company. Management concerns were soothed by the engagement letter in which KPMG agreed to indemnify WorldCom for claims or assessments arising out of the firm's negligence or from incorrect conclusions. KPMG were hired in 1997 for an initial fee of $3 million and also recouped a $500,000 fee for its feasibility study. The firm went on to earn performance bonuses totalling an additional $2.5 million. KPMG's services became part of the company's "tax minimization programs" and mostly related to the use of transfer pricing to shift profits to low tax jurisdictions and reduce taxes and boost accounting profits (US Bankruptcy Court Southern District of New York, 2004). A major component of the programs, designed by KPMG, was the classification of the "foresight of top management[14]" as an intangible asset, which the parent company licensed to the subsidiaries in return for royalty charges. Under the programs, for the years 1998-2001, royalties came to over $20 billion, which far exceeded WorldCom's consolidated net income during that period. The royalty charges often represented a huge percentage, in some cases as much as 80 to 90 percent, of some subsidiaries' net income. The WorldCom tax department treated the royalty programs like "paper" transactions and even

[14]"Management foresight" appears to encompass the plan or strategy of the Company's former senior Management to provide end-to-end bundled services (voice, data, Internet, international) to customers over a global network (US Bankruptcy Court Southern District of New York, 2004, p. 28)

increased the royalty charges in 2001 without seeking any corporate approvals (p. 13).

The royalty programs substantially reduced the company's tax obligations because the subsidiaries deducted the royalty charges as necessary business expenses and the royalty income was shifted into jurisdictions where a substantial portion of the royalty income was not subject to tax. The royalty programmes alone may have enabled WorldCom to avoid taxes ranging from $100 million to $350 million (US Bankruptcy Court Southern District of New York, 2004, p. 34). The Insolvency Examiner concluded that the royalty programs "were not well conceived or implemented, and are vulnerable to challenge by various states. …The Examiner does not believe that "management foresight" is an intangible asset. … KPMG provided this advice despite a lack of persuasive legal authority to support it. … KPMG rendered flawed advice. …KPMG apparently failed to explain the true nature of the Royalty Programs to the taxing authorities" (US Bankruptcy Court Southern District of New York, 2004, p. 28, 38, 41). Company profits helped to swell executive remuneration. Its regulatory filing in May 2000 showed that for the year 1999 its chief executive received a performance related remuneration package of $142 million ($935,000 salary+$7.5 million bonus+$133.6 million in stock options). A number of US states are considering taking legal action against WorldCom and its advisers for the loss of tax revenues (Los Angeles Times, 20 August 2005).

The above two examples draw attention to the role of accountancy firms in facilitating tax avoidance. The firms generally shelter under claims of professionalism and codes of ethics. In the case of KPMG, the firm's 2005 annual reported stated that

> "the quality and integrity of our people and our work is paramount to everything we do at KPMG. Above all, we recognize that we operate in the public interest and we must be open and transparent in our operations and policies … We believe quality and integrity start with culture. That's why we place so much emphasis on bringing our shared values alive within member firms … Independence, integrity, ethics, and objectivity—these are all vital to the way we work … It is the

> responsibility of each person working within a member firm to maintain their integrity and objectivity … Their actions are guided and monitored through a set of consistent standards, processes and procedures …" (KPMG 2005, pp. 50-51).

The firm adds that "Our network of member firms in over 140 countries worldwide share the same values[15]". Such statements may help to mould public opinion, but they were also economical about organisational culture and practices.

With global revenues of US$22.69 billion[16], KPMG is one of the world's Big Four accounting firms. A considerable amount of its revenues ($4.73 billion in 2008) are devised from the sale of taxation services. In the US alone it employed 10,300 tax professionals in 122 offices. The inconsistencies between its talk of ethical and responsible conduct and organisational practices geared to increase profits were highlighted in an investigation by a US Senate Committee (US Senate Permanent Subcommittee on Investigations, 2003, 2005). The internal documents available to the Senate Committee showed that KPMG had developed an elaborate organisational structure for selling taxation services. The firm aspired to be a global leader and maintained an inventory of 500 off-the-shelf tax avoidance schemes, which were internally described as "tax products", for sale to multiple clients. The expansion of taxation services was partly a response to the success of competitors in increasing their revenues and market share. The organisational structure included a "Tax Innovation Center" which functioned as a profit centre and was solely dedicated to developing new products. This was accompanied by a Sales Opportunity Center that developed marketing strategies for the tax products, and a telemarketing centre staffed with people trained to make cold calls to find buyers for specific tax products. Accountants and lawyers working for the firm were pressurised to sell the firm's generic tax products. The Senate report noted that KPMG excavated confidential client

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[15] http://www.kpmg.com/Global/WhoWeAre/Pages/default.aspx; accessed 13 April 2009.

[16] KPMG's 2008 annual review available at http://www.kpmg.com/SiteCollectionDocuments/IAR2008a.pdf; accessed 10 April 2009.

data from its internal databases to identify potential targets for its tax products. Staff were assigned revenue targets and directed to approach existing tax and audit client clients. KPMG advised its employees, in some cases, to make misleading statements to potential buyers, such as claiming that a product was no longer available for sale, even though it was, apparently hoping that reverse psychology would then cause the client to want to buy the product.

KPMG were also concerned about disclosures to authorities and loss of competitive advantage. Consequently, several client presentations were made on chalkboards or erasable whiteboards and written material was retrieved from clients before leaving a meeting. Potential purchasers were asked to sign a "nondisclosure" agreement. Staff engaged in the sale of tax products were advised not to keep revealing information in their files. KPMG developed and marketed its schemes through a network of law firms, banks, investment advisory firms and charitable organisations and also made use of offshore tax havens to structure transactions. The Senate Committee noted that Major banks, such as Deutsche Bank, HVB, UBS, and NatWest, provided "purported loans for tens of millions of dollars essential to the orchestrated transactions … and facilitated potentially abusive or illegal tax shelters …" (US Senate Permanent Subcommittee on Investigations, 2005, p. 7). The firm used opinion letters (for a fee) from friendly lawyers[17] to convince sceptical clients that the product would withstand any challenge from the tax authorities and was virtually risk free. The Senate Committee found that in many cases "KPMG had drafted its own prototype tax opinion letter supporting the product and used this prototype as a template for the letters it actually sent to its clients" (US Senate Permanent Subcommittee on Investigations, 2003, p. 11).

The US federal law requires sellers of tax avoidance schemes to register their products with the tax authorities, but KPMG chose not to register any of its 500 tax products. In defence KPMG claimed that it is not a tax promoter and does not sell any tax products that have to be registered under the law.

[17]Sidley Austin Brown, a law firm, issued more than 600 legal opinion letters supporting 13 KPMG tax products.

However, the Senate Committee found that a senior KPMG tax professional advocated that, for business reasons, the firm should not register some of its products even if required by the law. In an email to colleagues s/he claimed that the tax authorities were not vigorously enforcing the registration requirements and that the penalties for non-compliance were much less than the potential profits from selling the tax product (US Senate Permanent Subcommittee on Investigations, 2003, p. 13). The same senior tax professional also warned that compliance with the tax shelter registration requirement would place the firm at a competitive disadvantage. There was some internal disquiet about the failure to register tax products, but concerned employees were overruled by senior officials.

Following the US Senate report, the tax authorities further investigated KPMG practices. In August 2005, the US Department of Justice (press release[18], 29 August 2005) stated that 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[19]. In addition, nine individuals, including six former KPMG partners and the former deputy chairman of the firm, were charged[20] with criminal tax fraud conspiracy relating to design, marketing, and implementation of fraudulent tax shelters. A further ten KPMG personnel were charged on 17 October 2005 (US Justice Department press release[21], 17 October 2005).

In 2006, one of the firm's [former] tax partners told a court that he ""willfully aided and abetted the evasion of taxes" and added that the illegal schemes were "designed and approved by senior partners and leaders at KPMG and

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[18] http://www.usdoj.gov/opa/pr/2005/August/05_ag_433.html; accessed 11 April 2009.

[19] In January 2007, US authorities dropped criminal charges against KPMG as the firm had accepted the imposition of an external monitor until September 2008 (Los Angeles Times, 4 January 2007).

[20] In July 2007, a judge dismissed charges against 13 KPMG defendants because the US authorities had violated the constitutional rights of the defendants when they pressured their former employer KPMG to cut off their legal fees (New York Times, 17 July 2007).

[21]http://www.justice.gov/usao/nys/pressreleases/October05/kpmgsupersedingindictmentpr.pdf; 12 April 2009

other entities to allow wealthy taxpayers to claim phony losses on their tax returns through a series of complicated transactions … so that KPMG and other entities could earn significant fees" (The San Diego Union Tribune, 9 April 2006[22]). In January 2007, a former KPMG tax consultant, pleaded guilty to participating in a conspiracy to defraud the United States Treasury, evade taxes and file false tax returns[23]. In December 2008, two former KPMG executives were convicted of selling illegal tax shelters that helped wealthy clients evade taxes (New York Times, 17 December 2008). They were subsequently fined and given prison sentences (New York Times, 1 April 2009). In March 2010, a former KPMG partner already serving an eight year prison sentence was given a 57 month sentence and fined $1.05 million for participating in a conspiracy to defraud the tax authorities (US Department of Justice press release[24], 3 March 2010). Despite claims of serving the public interest, ethics and integrity, none of the above activities were explained in any KPMG report. Rather they were brought to public attention by a US Senate Committee investigation.

UBS, implicated in the tax shelters marketed by KPMG, is Switzerland's largest bank, second largest bank in Europe and the world's largest private wealth manager. It has extensive operations in many European countries and the US. Its corporate talk promised that

> "UBS upholds the law, respects regulations and behaves in a principled way. UBS is self-aware and has the courage to face the truth. UBS maintains the highest ethical standards" (p 57) … UBS takes its responsibility to preserve the integrity of the financial system … The firm has developed extensive policies intended to prevent, detect and report money laundering, corruption (UBS, 2008, p. 57, 62)

A US Senate report noted that UBS played a key role in the schemes marketed by KPMG by "providing credit lines which, in the aggregate, were in

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[22] http://www.signonsandiego.com/uniontrib/20060409/news_1b9kpmg.html; accessed 11 April 2009.
[23] http://www.usdoj.gov/usao/nys/pressreleases/January07/acostapleapr.pdf; accessed 15 April 2009.
[24] http://www.justice.gov/usao/nys/pressreleases/March10/pfaffrobertsentencingpr.pdf; accessed 5 March 2010.

the range of several billion Swiss franc" (US Senate Permanent Subcommittee on Investigations, 2003, p. 78). In February 1998, one concerned employee wrote a letter to UBS senior management to complain that one of the units "is currently offering an illegal capital gains tax evasion scheme to US tax payers". The letter continued:

> "This scheme is costing the US Internal Revenue Service several hundred million dollars a year. I am concerned that once IRS comes to know about this scheme they will levy huge financial/criminal penalties on UBS for offering tax evasion schemes. … In 1997 several billion dollars of this scheme was sold to high net worth US tax payers, I am told that in 1998 the plan is continu[ing] to market this scheme and to offer several new US tax avoidance schemes involving swaps. My sole objective is to let you know about this scheme, so that you can take some concrete steps to minimise the financial and reputational damage to UBS. … P.S. I am sorry I cannot disclose my identity at this time because I don't know whether this action of mine will be rewarded or punished" (p.87-88; also see US Senate Permanent Subcommittee on Investigations, 2005).

The tax services continued unabated. UBS involvement in tax avoidance was also scrutinised in another report which noted the bank's role in enabling US citizens to avoid taxes (US Senate Permanent Subcommittee on Investigations, 2006).

In February 2009, the US Justice Department announced that

> "UBS … has agreed to immediately provide the United States government with the identities of, and account information for, certain United States customers of UBS's cross-border business. Under the deferred prosecution agreement, UBS has also agreed to expeditiously exit the business of providing banking services to United States clients with undeclared accounts. As part of the deferred prosecution agreement, UBS has further agreed to pay $780 million in fines, penalties, interest and restitution … [US Justice Department] alleges that UBS managers and employees used encrypted laptops and other counter-surveillance techniques to help prevent the detection of their marketing efforts and the identities and offshore assets of their U.S. clients. According to the information, clients of the cross-border business in turn filed false tax returns which omitted the income earned on their Swiss bank accounts and failed to disclose the existence of

> those accounts to the IRS" (US Department of Justice press release[25], 18 February 2009).

The US authorities are demanding details of 52,000 accounts facilitated by UBS (New York Times, 19 February 2009). In August 2009, the bank handed over details of 4,450 accounts containing $18 billion to US tax investigators (The Guardian, 19 August 2009).

A number of UBS executives have also been indicted. In June 2008, a former UBS executive pleaded guilty to assisting "the U.S. clients in concealing their ownership of the assets held offshore by helping these wealthy customers create nominee and sham entities. This was done to prevent the risk of losing the approximately $20 billion of assets under management in the United States undeclared business, which earned the bank approximately $200 million per year in revenues. … managers and bankers at the Swiss bank, and U.S. clients prepared false and misleading IRS forms that claimed that the owners of the accounts were sham off-shore entities' and failed to prepare and file IRS forms that should have identified the true U.S. owner of the accounts" (US Department of Justice press release[26], 19 June 2008).

In November 2008, another UBS executive was charged with aiding 20,000 US citizens to conceal "approximately $20 billion in assets from the IRS. [the executive] allegedly referred to this business as "toxic waste," mandated that Swiss bankers grow the cross-border business, despite knowing that this would cause bankers to violate U.S. law. [Swiss bankers] ravelled to the United States approximately 3,800 times to discuss their clients' Swiss bank accounts. Clients of the cross-border business filed false tax returns which omitted the income earned on their Swiss bank accounts and failed to disclose the existence of those bank accounts to the IRS" (US Department of Justice press release[27], 12 November 2008). In January 2009, the executive

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[25] http://www.usdoj.gov/opa/pr/2009/February/09-tax-136.html; accessed 17 March 2009

[26] http://www.usdoj.gov/tax/txdv08550.htm; accessed 17 March 2009.

[27] http://www.usdoj.gov/tax/txdv081001.htm; accessed 17 March 2009.

left the country and was declared a fugitive by a US court (Bloomberg[28], 14 January 2009). By April 2010, eight former UBS clients in the US admitted to tax evasion and faced fines and prison sentences (US Department of Justice press release[29], 13 April 2010). The US action has persuaded not only UBS clients, but also clients of Credit Suisse, Julius Baer Holdings, HSBC and Bank Leumi Le-Israel to volunteer information to the tax authorities, which in turn may aid scrutiny of these and other organisations (Bloomberg[30], .18 September 2009). The US revelations have also encouraged governments in the UK, Canada, France, Germany, Hong Kong and India to probe UBS's role in organised tax avoidance and prolonged litigation may follow.

UBS is not the only bank to exhibit gaps between its talk, decisions and action. Deutsche Bank is the largest bank in Germany and has extensive operations in Europe and the US. It sponsors a prestigious annual academic prize in financial economics and a number of arts and education programs. Its 2006 corporate responsibility report proclaimed:

> "We are dedicated to transparency in corporate governance and communication. … For us, Corporate Social Responsibility (CSR) means acting responsibly towards shareholders and customers as well as towards our employees and society as a whole …" (Deutsche Bank, 2007, p. 1 and 5).

In 2003, Deutsche Bank was fined €59.3 million by a court in Germany for helping to facilitate tax evasion by thousands of its customers. The bank systematically helped thousands of its customers to avoid composite tax on interest earnings. This was done by opening branches in neighbouring tax havens such as Luxembourg, Switzerland and Liechtenstein, then advising customers to move untaxed earnings into accounts in these offshore braches, thus avoiding German taxes (Tax News[31], 7 April 2003). The Bank also

[28]http://www.bloomberg.com/apps/news?pid=20601087&sid=aSEvhPR7Ok6A&refer=home; accessed 15 April 2009.

[29] http://www.justice.gov/opa/pr/2010/April/10-tax-401.html; accessed 14 April 2010.

[30]http://www.bloomberg.com/apps/news?pid=20601087&sid=aKv3sNBZA6Pc; accessed 19 September 2009.

[31] http://www.tax-news.com/archive/story/Deutsche_Bank_To_Pay_Massive_Fine_For_Facilitating_Tax_Evasion_xxxx11439.html; accessed 16 April 2009.

advised Enron (see above) on its tax avoidance schemes and has been under investigation over its tax shelter work in the US from the late 1990s through 2001 (New York Times, 16 November 2008). Following revelations of the marketing of tax avoidance schemes by KPMG (see above); the bank came under further scrutiny. The US Senate Committee on Permanent Investigations found that “Deutsche Bank … provided billions of dollars in lending critical to transactions which the banks knew were tax motivated, involved little or no credit risk, and facilitated potentially abusive or illegal tax shelters …” (US Senate Permanent Subcommittee on Investigations, 2003, p. 7). The documents examined by the Senate Committee showed that Deutsche knew the nature of the transactions but still chose to participate in it. In an internal memo one official wrote that in “this transaction, reputation risk is tax related and we have been asked by the Tax Department not to create an audit trail in respect of the Bank’s tax affairs …” (p. 113). The Senate Committee found that Deutsche actively participated in many KPMG schemes. It provided $11 billion of credit lines to KPMG clients to enable them to structure the transactions and received $79 million in fees (p. 112). In 2005 the company explained that it reduced its earnings by nearly $300 million to cover legal costs related to its role in creating and selling questionable tax shelters (New York Times, 10 March 2006). In February 2006, US federal prosecutors were said to be investigating the role of the bank in helping wealthy investors to evade taxes (New York Times, 15 February 2006). Inevitably, many clients were concerned about the possible fallout and sought to take action against Deutsche. In February 2007, the bank reached an out-of-court settlement with wealth investors “likely to be at least tens of millions of dollars” (New York Times, 8 February 2007). In June 2009, one of the lawyers associated with tax avoidance schemes promoted by Deutsche was charged with conspiracy and fraud (New York Times, 9 June 2009). Some experts believe that the tax authorities will eventually levy a fine on Deutsche of around $1 billion (Accounting Today[32], 9 February 2007).

The gap between corporate talk, decisions and action is not just confined to the financial sector. It is also to be found in other sectors. Walmart[33] is America’s largest corporation and the largest private sector employer. Its

[32] http://www.webcpa.com/article.cfm?articleid=23345; accessed 21 March 2009.
[33] It has international operations and owns the ASDA supermarket chain in the UK.

2010 annual reports buttresses the company's social responsibility credentials by stating that as

> "Walmart grows, we bring more than jobs to a community … Walmart has unparalleled opportunities to reduce environmental impact … Our passion for serving our local communities is woven into the fabric of Walmart's culture through associate volunteerism and donations … Our company continues to instill in our associates the highest standards of integrity, and we remain committed to accountability if those standards are not met … Our company was founded on the belief that open communications and the highest standards of ethics are necessary to be successful … Walmart has adopted a Statement of Ethics to guide our associates in the continued observance of high ethical standards such as honesty, integrity and compliance with the law in the conduct of Walmart's business. Familiarity and compliance with the Statement of Ethics is required of all associates who are part of management. The company also maintains a separate Code of Ethics for our senior financial officers …" (Walmart, 2010, p. 11, 12, 54).

It is not too unreasonable to argue that the promised standards of serving communities, accountability and transparency would also apply to payment of taxes.

Tax revenues help neighbourhoods and communities too by providing education, healthcare, security, pensions and transport, but Walmart has operated a variety of strategies to avoid taxes. For example, in May 2006, the State of New Mexico Taxation and Revenue Department announced that a tax court has upheld its case against Walmart for "$11,630,226 in corporate income tax against Wal-Mart Stores, Inc. The assessment arose out of Wal-Mart's creation of a holding company in Delaware in 1991 called WMR, Inc. … WMR was created for the primary purpose of reducing state income taxes for Wal-Mart Stores, Inc. Because WMR confined its operations to Delaware, a state which does not tax such income, Wal-Mart Stores, Inc. believed that WMR could shelter Wal-Mart Stores' income from taxation by most states" (State of New Mexico Taxation and Revenue Department press release[34], 3 May 2006).

The above case is part of a long line of revelations relating to schemes under which Walmart avoided taxes in about twenty-five US states (Wall Street

[34] http://www.tax.state.nm.us/News/walmart_Mar06.pdf; accessed 17 April 2009.

Journal[35], 1 February 2007). Ernst & young devised a number of schemes[36] for Walmart and one of these related to the use of Reinvestment Trusts (REITs), which were introduced to encourage small investors to invest in a diversified portfolio of commercial property and spread their risks. The legislation exempted REITs from corporate taxes as long as they paid out 90% of the profits to shareholders. REITs need at least 100 shareholders. To meet the 100-shareholder threshold Walmart distributed a minimal amount of nonvoting stock, to approximately 114 of its employees. Walmart transferred a number of its properties to a specially created subsidiary and turned it into a REIT. These properties were then leased back and the stores continued their trade in the normal way. Under the arrangements, the subsidiary occupying the property paid rent, which was a tax deductible expense and hence reduced its tax liability in the relevant tax jurisdiction. In fact, Walmart was paying rent to itself and the benefit was that the subsidiary receiving the income would be exempt from tax because of the special concessions available to REITs. Over a four-year period, the REIT strategy reduced Walmart's tax bill by around $230 million (Wall Street Journal, 23 October 2007).

Amongst other US states Walmart's tax avoidance scheme was challenged by the North Carolina tax authority and it blocked the $33.5 million tax relief claimed by the company (Bloomberg[37], 6 January 2008). In 2005, a court ruled against Walmart. The company unsuccessfully appealed against the judgement. The judge rejected Wal-mart's claim that it had incurred rental costs and said that the

> "rental arrangement allowed plaintiffs [Walmart] to funnel substantial amount of their gross income through respective REITs and property companies only to have the "rent" return to them in a non-taxable form, prior to the eventual transfer of the funds to the parent Wal-Mart Stores, Inc. There is no evidence in this record of any economic impact (apart from the obvious state tax savings) of the transaction to

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[35] http://online.wsj.com/public/article/SB117027500505994065-WAv3Z4GcXNsXgv1Bi_Xlvadhgpk_20070322.html?mod=msn_free; accessed 14 April 2009.

[36] Available at http://online.wsj.com/public/resources/documents/wsj071023-walmart-tax_reduction.pdf; accessed 21 March 2009.

[37]http://www.bloomberg.com/apps/news?pid=20601103&refer=news&sid=aJEb2qzbDR9k; accessed 13 April 2009.

> plaintiffs, particularly as plaintiffs were rendered no poorer in a material sense by their "payment of "rent" … there is no evidence that the rent transaction, taken as a whole, has any real economic substance …" (North Carolina Wake County Superior Court Division, 2007, p.18, 23; also see Wall Street Journal[38], 5 January 2008).

Walmart fought unsuccessfully to prevent public disclosure of court documents. One of these contained a letter[39], dated 30 April 1996, from Ernst & Young to Walmart and stated that the

> "successful operation of this project will result in substantial state income tax savings to Wal-Mart. While the strategies being implemented are totally within the law, we see no useful purpose being served in broadcasting these changes. Rather we see only potential downside from any external publicity from these changes. We don't think there is much the state taxing authorities can do to mitigate these savings to Wal-Mart, however, some states might attempt something if they had advance notification. We think the best course of action is to keep the project relatively quiet. All our team members of course need to know what we are doing and why. It does not need to be treated as a secret. On the other hand, if a broader group of people are knowledgeable about these strategies, there just seem to be too many opportunities for it to get out to the press or financial community and we all know they are difficult to control, particularly when we are dealing with a client as well-known as Wal-Mart. As a result, we have concluded that the project's long-term success will be enhanced by being discreet in how and where we discuss the project".

In another document, Ernst & Young considered hypothetical questions and then provided answers – "Q: What if the press gets wind of this and portrays us as a 'tax cheat'? A: That's a possibility … If you are concerned about possible negative publicity, you can counter it by reinvesting the savings in the community" (cited in Wall Street Journal[40], 1 February 2007).

The above revelations pose questions about Ernst & Young, another global accounting firm. With operations in 140 countries and 2008 global fee income

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[38] http://online.wsj.com/article/SB119947912201068371.html; accessed 14 Apr 2009.

[39] Available at http://online.wsj.com/public/resources/documents/wsj071023-walmart-tax_project.pdf; accessed 21 March 2009.

[40] http://online.wsj.com/public/article/SB117027500505994065-WAv3Z4GcXNsXgv1Bi_Xlvadhgpk_20070322.html?mod=msn_free; accessed 15 April 2009.

of $24.5 billion[41], Ernst & Young is one of the Big Four accounting firms. Its 'Global Code of Conduct[42]' states that its personnel have a

> "professional commitment to do the right thing. …We are committed to communicating openly and honestly. … We nurture integrity, respect and teaming … No client or external relationship is more important than the ethics, integrity and reputation of Ernst & Young … We commit ourselves, as professionals, to uphold the trust placed in us by others. … We reject unethical or illegal business practices in all circumstances".

Once again the talk of responsible conduct is decoupled from organisational practices and action. Ernst & Young have crafted a number of tax avoidance schemes in the UK and some have been rejected by the courts (Sikka and Hampton, 2005). Rather famously, the firm devised a tax avoidance scheme under which directors of Phones4U, a mobile company in the UK, paid themselves in gold bars, fine wine, and platinum sponge in order to avoid income tax and national insurance contributions. In 1997, the government outlawed such schemes, but soon after the firm devised another scheme that made complex use of trusts to enable company directors to avoid UK income tax (UK Inland Revenue Special Commissioners, 2002). In July 2003, Ernst & Young (E&Y) paid $15 million to US tax authorities to resolve issues for failure to properly register tax shelters and properly maintain lists of people who bought them (US Internal Revenue Service press release[43], 2 July 2003). A subsequent investigation by a US Senate Committee found that the firm sold tax avoidance schemes "to multiple clients despite evidence that some … were potentially abusive or illegal tax shelters" (US Senate Committee Permanent Subcommittee on Investigations, 2005, p. 6). In May 2007, the US Justice Department charged four current and former partners of the firm "with tax fraud conspiracy and related crimes arising out of tax shelters promoted by E&Y … the defendants and their co-conspirators concocted and marketed

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[41] http://www.ey.com/Global_Review_2008/Index.html; accessed 17 April 2009.
[42] http://www.ey.com/global/assets.nsf/International/Ernst_&_Young_Global_Code_of_Conduct/$file/EY_Code_of_Conduct.pdf; accessed 31 March 2009.
[43] http://www.irs.gov/newsroom/article/0,,id=111188,00.html; accessed 7 April 2009.

tax shelter transactions based on false and fraudulent factual scenarios to be used by wealthy individuals with taxable income generally in excess of $10 or $20 million to eliminate or reduce the taxes they would have to pay the IRS" (US Justice Department press release[44], 30 May 2007). The Justice Department explained that Ernst & Young had an elaborate organisational structure, and groups of highly educated individuals specifically devoted to designing, marketing, and implementing high-fee tax strategies for individual clients. These strategies were specifically targeted at high-net-worth clients to enable them to eliminate, reduce or defer taxes on significant amounts of income or gains. The firm developed a network and its staff worked with banks, other financial institutions and law firms to design, market and implement tax strategies. Some staff were designated to be members of the "Quickstrike Team", a nationwide area-based network created to provide greater efficiency in the marketing of schemes.

The US Justice Department[45] argued that to persuade clients to buy tax schemes the firm secured opinion letters from law firms which claimed that "the tax shelter losses or deductions would "more likely than not" survive IRS challenge, or "should" survive IRS challenge. However, the defendants knew those opinions were based upon false and fraudulent statements, and omitted material facts" (paras 15 and 62). The Justice Department argued that firm's personnel feared that the tax authorities would aggressively challenge the schemes and therefore they falsified a number of documents and "directed the destruction of documents which would reveal the true facts surrounding the design, marketing and implementation" of the schemes (para 29). Staff were instructed to ensure that the PowerPoint presentations which laid out the steps necessary for the operations of the schemes transaction were not left with the clients (para 30). An internal email told staff that there "should be no materials in the clients' hands – or even in their memory … a fax of the

[44] http://www.usdoj.gov/usao/nys/pressreleases/May07/eyindictmentpr.pdf; accessed 13 April 2009.
[45] http://visar.csustan.edu/aaba/Ernst&Young2007taxindictment.pdf; accessed 10 April 2009.

materials to certain people in the … government would have calamitous results" (paragraph 39 and 46).

In June 2007, a former Ernst & Young employee pleaded guilty to

> "conspiracy to commit tax fraud" [and] acknowledged that she and others deliberately concealed information from the IRS, and submitted false and fraudulent documentation to the IRS. … that over a period of several years, she and others participated in marketing and implementing shelters called CDS (for "Contingent Deferred Swap") and CDS Add-On. She knew that in order for these tax shelters to succeed in generating the intended tax benefits, it was necessary for the clients to have non-tax business motivations for entering into them, and for carrying out the various steps that generated the tax benefits … that she and her co-conspirators also took steps to disguise the fact that all the steps of the transactions were all pre-planned from the beginning, and that they did so because they knew that fact would harm the clients' tax positions" (US Justice Department press release[46], 14 June 2007).

In September 2008, partner of a law firm associated with Ernst & Young schemes pleaded guilty to criminal tax fraud. He acknowledged that over a period of several years, "he and others, including individuals at E&Y, participated in developing the PICO [acronym for the tax avoidance scheme] shelter and creating a legal opinion that would be used to support it. … admitted he and his co-conspirators knew that the IRS would not allow PICO's tax benefit if the IRS was told that PICO was designed primarily to allow the client to avoid paying taxes and otherwise did not have economic substance" (US Department of Justice press release[47], 11 September 2008).

In January 2009, a promoter of Ernst & Young tax avoidance schemes pleaded guilty and "acknowledged that he agreed with others to deliberately mislead the [US] IRS" (US Department of Justice press release[48], 22 January

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[46] http://www.usdoj.gov/usao/nys/pressreleases/June07/sixpleapr.pdf; accessed 10 April 2009.

[47] http://www.usdoj.gov/usao/nys/pressreleases/September08/cinquegranipleapr.pdf; accessed 20 Mar 2009.

[48] http://www.usdoj.gov/usao/nys/pressreleases/January09/boltoncharlespleapr.pdf; accessed 20 Mar 2009.

2009). In May 2009, after a ten week jury trial, four current and former partners of Ernst & Young were found guilty of conspiracy and tax evasion (US Department of Justice press release[49], 7 May 2009). In January 2010, two further partners given 28 and 20 months prison sentence (US Department of Justice press release[50], 22 January 2010), followed by a variety of sentences for advisors and employees connected with the marketing of tax shelter schemes (Wall street Journal, 13 April 2010; Wall street Journal, 19 April 2010).

Whilst the contradictions between corporate talk, decisions and action may be exposed by media or well resourced government departments in developed countries, the same is very difficult in developing countries as they often lack the required administrative and enforcement resources. Frequently multinational corporations promising responsible behaviour extract tax holidays, subsidies, performance incentives, and low rates of royalties and taxes from investment starved countries even though their demands may deprive millions of people of education, healthcare, clean water, food, etc (Riesco, Lagos and Lima, 2005). Some companies transfer profits through transfer pricing, inter-company loans and a variety of tax avoidance schemes designed by accountants, lawyers, banks and corporations in the western world (Action-Aid, 2009; Christian-Aid, 2008a, p. 8).

Between 2002 and 2006, mining companies exported around US$2.9 billion of gold from Tanzania. During the same period, the government received around US$17.4 million a year in royalties (Action-aid, 2009, p. 29). The Geita gold mine is AngloGold Ashanti's (AGA) only one in Tanzania and is one of Africa's biggest open pit mines. The New York stock exchange listed company's website contains a detailed "Report to Society[51]" with sections on ethics,

[49] http://www.usdoj.gov/tax/usaopress/2009/txdv09_Four_Found_Guiilty_on_Criminal_Tax_Charges.html; accessed 16 September 2009.

[50] http://www.justice.gov/usao/nys/pressreleases/January10/shapirovaughnsentencingpr.pdf; accessed 23 January 2010.

[51] http://www.anglogold.com/subwebs/InformationForInvestors/Reports08/ReportToSociety08/default.htm; accessed 16 Apr 2009.

human rights, health and safety, environment and community welfare. The report is silent on commitment to pay taxes, but states that "We will comply with all laws, regulations, standards and international conventions which apply to our businesses and to our relationships with our stakeholders. Specifically, AngloGold Ashanti supports the Universal Declaration of Human Rights, the Fundamental Rights Conventions of the International Labour Organization (ILO) and those principles and values referred to in the United Nations Global Compact. Should laws and regulations be non-existent or inadequate, we will maintain the highest reasonable regional standard for that location. We will fully, accurately and in a timely and verifiable manner, consistently disclose material information about the company and its performance. This will be done in readily understandable language to appropriate regulators, our stakeholders and the public[52] …" The company's annual reports show that in 2006 it produced 308,000 ounces of gold and made gross profits of US$93m between 2002 and mid-2007. AGA has paid only US$1 million in corporate income tax, and has announced that it will pay further corporate income tax only in 2011, a whole 11 years after starting operations (Action-Aid, 2009, p. 31).

Barrick Gold, the Canadian registered company, is the world's largest pure gold mining company with extensive operations in Tanzania. Its corporate responsibility statement is silent on its tax practices, but states that "We conduct our business around the world in an ethical, honest and accountable manner and in accordance with all applicable laws, rules and regulations. We value and are committed to transparency in our business practices, consistent with good governance and commercial confidentiality[53]".The company reported a net income of US $97 million for the period between 2004 and the first half of 2007 but has not yet started paying corporate income tax (Action-Aid, 2009).

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[52] http://www.anglogold.com/Values/Ethics.htm; accessed 18 April 2009.
[53] http://www.barrick.com/CorporateResponsibility/Ethics/default.aspx; accessed 17 Apr 2009.

In 2003 the Tanzanian government appointed special auditors to examine the production and financial position of major mining companies. The report was not officially published, but in 2006 its leaked contents appeared in a newspaper and said "that four gold mining companies, including Barrick and AGA, over-declared losses by US$502m (AGA US$158m and Barrick US$236m) between 1999 and 2003. This means the government potentially lost tax revenues of US$132m. The audit noted that thousands of documents were missing that would have shown whether royalties of US$25m had been paid" (Christian-Aid, 2008a, p. 12). A 2007 investigation by a Tanzanian Parliamentary Committee estimated that the mining companies had declared losses estimated at US$1.045 billion for the period 1998 and 2005, even though they were making heavy capital investment at the time. The parliamentary report estimated that Tanzania has lost out on "at least US$400m over the past seven years from low royalties and lost taxes from mining companies" (Christian-Aid, 2008a, p.13). Unsurprisingly, NGOs are taking considerable interest in the tax avoidance by multinational corporations in developing countries (Christian-Aid, 2004, 2007, 2008a, 2008b, 2009; Oxfam, 2000; Action-Aid, 2008, 2009).

4. Summary and Discussion

This paper has sought to encourage research into corporate claims of socially responsible conduct by examining their tax practices. Arguably, few companies make any direct reference to payment of taxes in their social responsibility reports, but their claims of ethics, integrity, honesty, transparency and responsibility are meant to apply to all aspect of their operations. Since the payment of democratically agreed taxes in an important part of corporate citizenship this assumed that the declared standards also applied to taxes. The limited number of cases examined in this paper show that there is a considerable gap between corporate talk, decisions and action culminating in organised hypocrisy. Corporations have developed two cultures: one promises ethical conduct to external audiences and this is decoupled from the organisational practices which are geared to improving profits by avoiding and even evading taxes. In essence, companies have

developed elaborate practices to appropriate returns due to society on its investment of social capital. Transfer pricing, royalty programmes, offshore tax havens and carefully structured transactions are just some of the techniques used to avoid taxes. Despite the allusions of transparency and integrity, none of the organisations examined in this paper communicated their tax avoidance practices to stakeholders, or explained the possible social consequences of avoiding taxes. Examples were provided to show how companies developed elaborate daily routines and administrative structures to indulge in tax avoidance. There is no legal or moral compulsion for company directors to indulge in tax evasion or avoidance. Rather it is a choice that they themselves have made in pursuit of higher profits, remuneration, status and media accolades. The contradictions between talk and action have been exposed by whistleblowers, investigators and law enforcement agencies. The implosion of hypocrisy has resulted in fines, imprisonment for some company executives and hostile press coverage. The negative outcomes may have persuaded some to take steps to align corporate culture with publicly espoused claims, but the systemic pressures to maximise profits, share prices and executive financial rewards present considerable barriers to securing long-term cultural change. In common with a number of other writers this paper cautions against too easily accepting corporate claims of social responsibility (Milne and Patten, 2002; Deegan, 2002; Corporate Watch, 2006; Adler, Forbes and Willmott, 2007), especially as they are rarely accompanied by any snippets of organisational practices and culture.

The public exposure of organised hypocrisy challenges corporate claims of social responsibility. By rendering the familiar unfamiliar it opens up the possibilities of wider debates for reforms. There is a need to go beyond the carefully cultivated corporate image and engage with actual corporate practices and consider their impact on the lives of people. Organised tax avoidance has real human consequences even though corporate CSR reports remain silent. Consider the case of developing countries which frequently rely upon foreign-aid and loans for economic development. These often come with strings attached, such as “structural adjustment programs”, and dilute the autonomy of local governments (Pilger, 1998). In contrast tax revenues are

free from external pressures and are non-returnable. They provide the most durable resource to finance social infrastructure and provide much needed economic and social development to improve the quality of life of millions of people.

For example, in mineral rich Tanzania (mentioned above) more than half of its 40 million population lives on less than US$1 a day. The life expectancy is just 51 years. Around 44% of the population is classified as undernourished (Christian-Aid, 2008a, p. 11). Across the world some 969 million people are estimated to survive on less than U$1 a day (Ahmed et al., 2007). Nearly 3 billion people, including over 500 million youths (ages 15 to 24), struggle to survive on less that US$2 a day, considered to be the internationally defined poverty line (United Nations Population Fund, 2005). Whilst the average life expectancy in many western countries is around 80 years, in Swaziland, Botswana and Lesotho it is 33, 34 and 36 years respectively (Population Reference Bureau, 2007). In developing countries, more than 1 billion people do not have access to safe drinking water. About 1.9 million people die every year from diarrheal diseases and around 1.5 million (or 5,000 a day) of the fatalities are children under the age of five (Water Aid, 2007). An estimated 774 million adults lack basic literacy skills (UNESCO, 2007). Due to lack of tax revenues, 34 out of 84 countries decreased the share of gross national product (GNP) devoted to education since 1999. 24 out of 105 countries allocated less than 3% of GNP to education. Such problems could be addressed by holding corporations to account and requiring them to pay taxes so that millions of people can receive healthcare, housing, education and other essentials.

The consequences of organised tax avoidance affect developed countries too and limit the support that the state can provide to the less well-off, the elderly and the vulnerable. For example, the UK state manages poverty through the provision of a variety of tax credits and social security (Sikka, 2008). Despite huge increases in support in recent years, around 13.2 million people, or 22%

of the population, live below the poverty line[54] (Oxfam, 2009). Some 2.9 million children live in poverty households (The Times, 18 February 2009). In a league of 21 industrialised nations, measuring child well-being, the UK came last, marginally behind the USA (UNICEF, 2007). The UK state pension is a major source of income for retired citizens, but it is almost the lowest in Europe. An average earner would receive a pension worth just 17% of their salary, compared with an EU average of 57% (The Guardian, 13 November 2007; Mitchell and Sikka, 2006). The state can only provide support if it collects sufficient tax revenues and corporations live up to their promises of responsible and ethical conduct.

This paper has argued that the payment of democratically agreed taxes represents a litmus test for claims of social responsibility. The possibilities of social responsibility rest on the alignment of corporate culture with the social expectations that companies will honour their publicly espoused goals. In principle, the state could be mobilised to exert pressure on companies by requiring greater disclosures about corporate strategies for avoiding taxes and changing the nature of corporations so that diverse social groups are represented on company boards. This could stimulate public debates and even check some excesses, but is unlikely to shed light on the systemic origins of the tendency to avoid taxes, nor make the tax avoidance industry go away. In any case, within the contemporary neoliberal order, the states compete to attract capital and in that process offer tax holidays, inducements and concession to encourage mobility of capital, which in turn fuels schemes for avoiding taxes. The key issue is the social conflict inherent in the very nature of corporations (Bakan, 2004; Monbiot, 2000) and requires reflections on the social steering mechanisms that prioritise preoccupation with private accumulation of wealth and render human concerns relatively invisible. Money and power seem to have developed their own logic and have become indifferent to human concerns about producing a just, equitable and open society. By scrutinising organised hypocrisy and persuading companies to honour the commitment to pay taxes opens up a research agenda that

[54] This is defined as less than 60% of the median income.

requires detailed considerations of the role of the state, neoliberal ideologies, the law, the nature of democracy, the media, institutional structures and nodes of power that give meaning to everyday practices and (re)production of reflective individuals.

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