



The United Kingdom Ambivalence on Preservation of British Virgin Islands Status Quo as Tax Havens 2016

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Abstract

2016 was highlighted as the year of the biggest and scandalous tax havens report in all over the world: the Panama Papers. This report contributes into country initiation in tax contribution and tax evasion criminalization. It highlights and offers new concept of tax havens by providing the new definition in offshore utilization as a part of tax havens scheme. Hence this thesis focuses on UK and BVI (British Virgin Islands) relations on how they form mutual relations in tax havens network and give a detrimental effect toward tax contribution. United Kingdom and British Virgin Islands form an umbilical relations as overseas territory and part of their financial services, hence their presence as part of United Kingdom tax havens assesses as part of United Kingdom contrary and ambivalence. Therefore this research focuses on how hegemonic country preserved their relations with their former colony into one affiliation, and aims on how harmful London curbs their former colony as a part of their offshore nexus in tax havens.

Keywords: *Offshore, tax havens, United Kingdom, Panama Papers*

Introduction

A massive leak of confidential data and documents in reporting tax avoidance that initiated by rogue corporate, head of state and celebrity sparked the global respond on global array of corruption in financial system essentially in create a more stable and transparent tax collection in all over the country. These leakage of data support by USA investigation body called ICIJ (The International Consortium of Investigative Journalist) as part of investigation on tax avoidance in tax havens support by offshore utilization or anonymous company in tax havens region. Their report became popular since their investigation reported and highlited on political person or PEP who worked behind financial regulations in utilized and stashed their money in tax havens area through offshore or shadow company for their own benefits while maintaining their reputation behind this slick scheme.

ICIJ estimated the number of documents under this secretive investigation approximately contained 11,5 million datas and records about how a global industry of law firms and big banks selling their secrecy to politicians and other influential people as part of protection or shield to hide their illegal practice in tax havens area. The investigation started in 2013 and popular during 2016, where certain area reported as popular jurisdiction including British Virgin Islands which belong to United Kingdom autonomy.

Tax assesses as a part of corporate resposibility or individual responsibility that contribute into national revenue or GDP in sustain country infrastructure domestically. To some extent tax harm the actual number of profits or salary that individual get, thus this problematic aspect contribute in create the notion or spurred the activity of tax havens as a

form of tax exemption from those individual who wants to get some privilege from lenient regulations or stashing their money outside the area or jurisdiction from getting imposed by the actual tax rate from the origin country. This was inspired the illegal practice on tax exemption or tax deduction in tax evasion and create a blurry definition on legal practice in tax legal methods in modify individual tax code or rate in tax avoidance. Tax evasion constituted other classification of financial crime and this type of crime, consolidated under one concept of white-collar crime. White-collar crime is a non-violent crime for financial gain and it committed by means of deception by a person whose occupational status is professional or semi-professional entrepreneurs. Moreover, it could be committed by those who own distinctive technical and professional knowledge of business and government, irrespective of the person's occupation (Adang, 2013).

Individual and corporation have a long connection and relationship in engaging the financial crime, primarily in the preservation of tax havens and tax avoidance. Therefore, this aspect could support this research in fulfilling the research question of why British Virgin Island emerged as one of tax havens prominence with the support and involvement of United Kingdom. Tax havens and tax avoidance works by forming a special structure in conducting modus operandi of tax havens area. As well as involving The British Virgin Islands, the making and strengthening of the policy need an expert in business or law or professional in manipulating government laws. Therefore individual has a vital role in this research of tax havens in support the comprehensive research of United Kingdom ambivalence in preservation of British Virgin Islands as tax havens as individual or professional entrepreneurs contribute in tax evasion in offshore utilization at British Virgin Islands tax havens.

Discussions

The British Virgin Islands has a long connectivity with their mother states, the United Kingdom before they began to declare themselves as an independent country, where there was a long history progress in turning them into a modern state with autonomy. Started in 1672 when England colonized BVI at the outbreak of the Third Anglo governed by Willem Hunthum and entered the peace situation by signing the Treaty of Westminster in 1674, this treaty was made for the mutual restoration of all territorial conquest (Islands 2017). Their main economic sector is mainly oriented to tourism and financial industry and it generated over 60% of the government revenue (Office 2012). The financial industry sector and the specialty in international business company management undermined their economy area and it becomes their main revenue. Thus they became vital stake of United Kingdom in economy sector as part of United Kingdom in financial services.

Geographically, British Virgin Islands is part of the Caribbean Sea Islands that is included into overseas territory of the United Kingdom's. This island is described as a famous tourist attraction and part of United Kingdom's legal financial service. The British Virgin Islands lies between Bermuda territory and North America Area, and is included into five Caribbean territories: Anguilla, Cayman Islands, Montserrat, and the Turks and Caicos Islands. The Virgin Islands comprises over 60 islands situated in the North-Easter Area of the Caribbean archipelago covering a geographical area of 152 km², about 97 km from Puerto Rico (The Overseas Territory 2012). According to the report released by Foreign and Commonwealth Office, British Virgin Islands runs several functions in represents the legitimation of the United Kingdom including their function as a financial service center. One of the functions, in order to make them a reliable, transparent and eligible financial service, is reputational benefits, which covers strong partnership and technical support for the British Virgin Islands. In tax havens context and offshore service they began to formed the tax havens scheme when a group of five lawyers, Butler Riegels,

Westwood and General Lewis Hunte as attorney, from a ring-fenced system in offshore regulation, therefore they could attract investor to invest in BVI, the result was International Business Act, a radical new libertarian, lax and permissive corporate regime that becomes the law on 15 August 1984, with almost no interference from London (Network 2013). International Business Company Act or IBC is a foundation in British Virgin Islands financial services where IBC works as a legal platform in enabling financial service activity in BVI including offshore activity in tax havens area. British Virgin Islands heavily rely on financial service as their main domestic revenue beside tourism or any other sector, therefore in perform and exhibit this area as reliable and reputable area for investment or offshore facility for tax British Virgin Islands under United Kingdom autonomy and assistance signed several protocol in regulating tax and offshore activity. They claims that they comply with International Financial Center member by signed US-FACTA Aggrement on Tax Compliance as part of Foreign Account Tax Compliance and part of largest International Tax Force in financial sector FATF, thus they respect the rule of law and has zero tolerance on unethical activity in financialy service.

British Virgin Islands and United Kingdom form and umbilical relations in several sector including financial services. This was supported by their historical background as a former colony and former member of coalition government of Leeward Federation under United Kingdom authority during 1672 until Post Word War II as part of affiliation and partnership assistance. In financial sector The relationship of United Kingdom and British Virgin Islands, under British Overseas Territory framework, will continue to influence British Virgin Islands in economy, political and law. In financial sector the cooperation focus on how British could affect the regulation establishment and judicial court on tax and financial service affairs under commercial court in promoting them as reliable partner in financial service.

In maintain their reputable position in financial service British Virgin Islands and United Kingdom had accomplished their role in financial regulation in improving their financial system in financial service, nevertheless after the Panama Papers released their report, as one of popular jurisdictions for tax havens sponsored by offshore internediary, they were criticized in performed a harmful act in taxation regulation primarily by its connection with United Kingdom as highest authority in regulating British Virgin Islands. Therefore their ambivalence or their contrary roles in financial regulation primarily in taxation, triggered global respond in solved this particular problems since tax assessed as vital contribution in country for better infrastructure and good governance aspect for citizens.

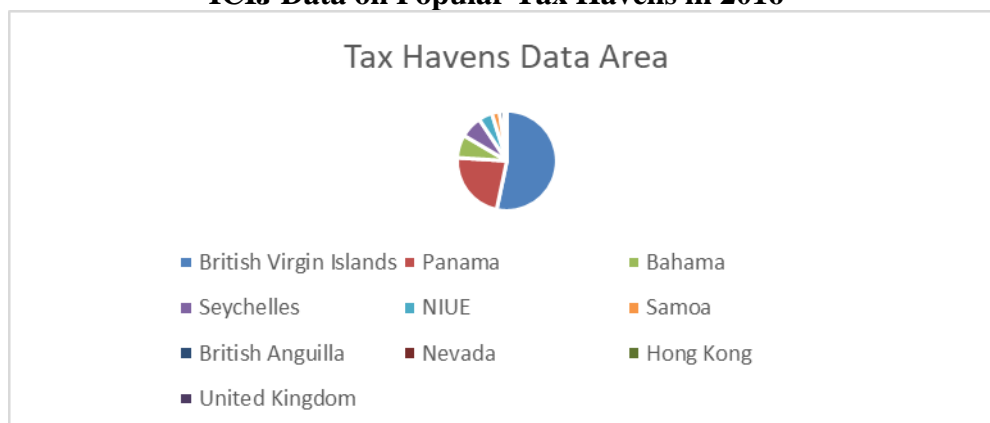
Every dispute in financial sector would be regulate further by British Virgin Islands Commercial Court at very highest level, according to English Common Law as form of showing excellent reputation (British Virgin Islands 2014). British influence affected the British Virgins Islands financial services activity under United Kingdom and they claimed they have unlimited power over British Virgin Islands as part of overseas area according to section 2 of the Colonial Laws (Validity) Act 1865, the limitation of the United Kingdom over territories gave some privileges over parliament toward local territory legislation and this becomes the answer why UK is not imposing large authority and power when it comes regulate and resolve the issues in BOT, yet United Kingdom refused to impose their authority directly toward overseas territory due to certain limitation.

First there is no obvious position where monarchy lies in regulating and managing the Caribbean territories. The United Kingdom preserved and assessed overseas territories as its strategic area with reputational benefit, therefore in forming constitutional relations. In 1991 and early 1992, there are several revisions over bill and constitutions regarding domestic issues and financial regulations proposed the joint agreement on country policy

over each Caribbean territories until 1993 (Clegg, Rozenberg Quarterly The Magazine n.d.). Second The balancing of power between monarchy, governments, and the islands' governments comprises complex aspect and broader connectivity in forming their relations between their mother states. Independence for poor Caribbean territories require a large amount of financial support and complexity in forming new autonomous and independence government, hence the United Kingdom works as shield country for those poor Caribbean countries. In managing stability on Caribbean Territories without a clear picture of autonomy and privileges, there would be consequences in preserving the stability among Caribbean members. Third when it comes to the conflict between territory and monarchy, London tends to withdraw itself and prevailing non-intervention principle over the territory. The balance of power and influence between the UK government, the Governors, and the islands administrations, is complex and sometimes confusing.

This obscure position support the UK position toward BVI on their status quo as tax havens, where this research potrays UK support on BVI described as part of sovereignty or jurisdiction commercialization with several evidence as support under Ronan Palan arguments in his research There is evidence on major state supporting tax havens activity through their extensions member of their microstates by several points (Palan 2003) 1.minimal or no personal or corporate taxation; effective bank secrecy laws; preferably no restrictions or regulations concerning financial transactions and protected secrecy transactions 2. they possess political and economic stability hence some of the better-known tax havens are dependent from large prosperous stable states 3. they are supported by large multinational financial market or equipped with sophisticated information exchange facilities and are easy to reach on a major financial center, 4.they are not touched by scandal (ex: money laundering or drug money), and 5. they have agreements with major countries in order to avoid double taxation and regulations. And this support under United Kingdom ambivalence placed them as one of popular jurisdiction according to ICIJ in Panama Papers 2016.

ICIJ Data on Popular Tax Havens in 2016



Panama papers summarized and reported how offshore companies incorporate beneficial owner who wishes to open an account in the name his or her shell company, the process continue into appointed nominee or nominee directors act as the company official representatives and the real owner hides behind this façade (Obermaier, 2017, p. 15). This investigation revealed and criticized how United Kingdom connection with British Virgin Islands can provide a facility for tax evasion and utilized by high profile individual such as politician or familiarly known as PEP. This can be an interesting story for ICIJ on how Europe fighting on tax havens and offshore companies, yet they also show their hypocrisy toward their own regulation and policy framework on tax. Panama papers become a

‘wake-up call’ for United Kingdom in 2016 in urged the United Kingdom authorities on their responsibility over their jurisdiction in British Overseas Territory and Crown Dependencies on their position as tax havens. David Cameron prime minister of United Kingdom dealt with urgent call on United Kingdom as the heart of shadow activity in tax havens and getting lot of critics where United Kingdom provide the facility for those super rich individuals to hide their wealth (Cooper and Armitage 2016).

The controversial aspect in these case, which highlighted in Panama Papers in reporting United Kingdom ambivalence on British Virgin Islands preservation is where British Virgin Islands serve United Kingdom by distributed or channeled their profits into United Kingdom under UK secrecy or British Connection to halt the investigation in revealing United Kingdom modus operandi in encouraged BVI as tax havens for their own benefits. Each of the network works by their own jurisdictions under a legal autonomy and one constitution. By forming this ring-fenced, British Connection United Kingdom could gain 17% profits from global market in offshore financial services. The UK, The Overseas Territories and the Crown Dependencies form one undivided Realm, which is distinct from the other states of which her majesty The Queen is monarch. Each Territory has its own constitution, government and local laws. As a matter of constitutional law the UK Parliament has unlimited power to legislate for the Territories (Ending The Era of Tax Havens 2016). In support United Kingdom on tax havens country with their neighborhood British Overseas Territory, UK also impose low tax rate as part of their potential for those clients to stashed or invest their money in United Kingdom under United Kingdom tax havens network, where British Overseas Territory also involved in the creation of British spider web tax havens.

Table 1.

Country	Last	Previous	Highest	Lowest
United States	38,50	38,9	39,3	38,9
Brazil	34,00	34	37	25
France	33,30	33,3	50	33,3
Japan	30,86	30,86	52,4	30,86
Australia	30,00	30	49	30
India	30,00	34,61	38,95	30
Mexico	30,00	30	42	28
Germany	29,72	29,65	56,8	29,4
Italy	27,90	31,4	53,2	27,9
Canada	26,50	26,5	50,9	26,1
China	25,00	25	33	25
Indonesia	25,00	25	39	25
Netherlands	25,00	25	48	25
Spain	25,00	25	35	25
Switzerland	24,41	17,92	25	17,92
South Korea	22,00	22	40	22
Russia	20,00	22	40	22
Turkey	20,00	20	33	20
United Kingdom	19,00	20	52	19

Source: tradingeconomics.com

It shows how the government inconsistency could creating the sophisticated form of tax havens facility. The root of why this problem cannot be prosecuted in the first place, is

because the combination of secrecy jurisdiction and British Connection in shielding this slick scheme. Secrecy can be defined into three parts of characterization: first secrecy jurisdictions are places that intentionally create regulation for the primary benefit and use of those non-resident in their geographical domain; second they deliberately design the regulation for people who do not live in their territories, so that it undermines the legislation or regulation of another jurisdiction; and the last they create deliberate, legally backed veil of secrecy that ensures that those activity in the jurisdiction cannot be identified (Research Briefing Secrecy Jurisdictions 2010). These secrecy jurisdiction characteristics support the notion of British Overseas Territory runs by Britain’s network secrecy jurisdictions where they get support from British Common Law and have a legal bedrock support from London that underpins their offshore industries.

The OFC tax havens of UK involve hedge funds, trust, and corporate as the core idea of privateers in pursuing profits and enrich themselves. This Anglo-Saxon system was popular in England in 30th century where they used private vessels of the Cinque port and this was a popular system in protecting private vessels from pirates. Privateering flourished in Britain as considerable addition to the economy and military, but after the Industry Revolution, the growth of private company and privateers started to declined and in 1856 UK signed Paris treaty as their consideration to outlaw the privateers activity in pursue the profits primarily those private commerce who pursued the profits by using violence (Fihctner, 2014, p.4). From the historical root in privateering on tax havens in assist evasion of tax, there are several consequences cause by tax evasion, one of which is tormenting the public sector. Tax avoidance in United Kingdom under British offshore nexus not only hamper global economy by jurisdiction but also torment United Kingdom domestically on their public sector as explained in table below.

Tabel 2. HMRC Report on Tax Avoidance Prosecutions in United Kingdom Public Sector

Tax/benefit	Prosecution per £1bn of fraud
Direct taxes (e.g. income tax)	5
Indirect taxes (e.g. custom duties)	50
Tax credits (child and working family)	140
Benefits (e.g. unemployment, disability)	9000

Source: Brooks (2017)

Table shows the hierarchy of tolerance in tax havens in United Kingdom where wealthy people avoiding tax, especially the indirect taxes where wealthy individual corporation stakeholder avoid pay to United Kingdom authority and stash them into secrecy jurisdiction. This is considered as omission and not included into crime and resulted several prejudice into wealthy individual who avoid tax in United Kingdom including secretly stashing their money into offshore tax havens. Tax havens activities hamper the public sector services and government attempt to provide better public infrastructure and increasing their revenue. States dodge tax havens in Britain forms in 1958 and grew into a global concern when entrepreneurs intervene into creating area to conceal their money and their profits outside jurisdictions.

Conclusion

United Kingdom and British Virgin Islands should develop and form new better regulation and formal body in financial regulation to manage and monitoring area from illegal and illicit activity like tax havens, second since United Kingdom and British Virgin Islands both legally bind with same historical background they have to recognize their

position and show their sincere intention in countering tax havens problems together, third they have to reform their policy and report any illicit activity around their overseas area and report any suspicious large transactions in each territories, United Kingdom should feel obligated to sign the treaty on Report Large Transactions because many large transactions in overseas territories remain unreported and lead to tax havens utilization by offshore facility.

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