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Anthony Johns*

Not Tax Havens, Havens for Transnational Invisible Trade Enterprise

The odds against the continued profitable existence of tax havens were raised by the onshore competitive financial deregulations and liberalisations of the 1980s and the new regulatory harmonised norms being set by the Bank for International Settlements. They nevertheless prospered. What has been the basis of their continued success?

Within national theatres of economic activity, the existence of divergent government policies either generally, or with respect to particular markets, create cross-national friction differentials. Such territorial differentiation makes the playing-field of international competition uneven for economic actors, be they personal, corporate, or institutional, with transnational operational needs. The component determinants that can inequalise national financial markets include selective foreign exchange regulations and capital controls; barriers to "inward" and "outward" investment in debt instruments; banking laws and other financial regulations; rules and systems of supervision; policy attitudes toward business scope; company incorporation procedures; and the ability to incorporate or establish particular entities such as open-ended investment companies, trusts etc. Additional to these factors are general and specific national fiscal policies that *inter alia* target particular incomes and activities and set the rates to be applied. Such stances demarcate and differentiate one national tax base from another. Furthermore, the degree of "effective reciprocity" of double taxation relief that is offered between any two national tax systems can vary in the extreme, making international tax incoherence a fact of commercial life that will remain in the absence of the establishment of a universally accepted definition of what should constitute both a consolidated multinational company tax base (requiring common depreciation rules, methods of inventory valuation etc.) and an equitable cross-jurisdictional division of the tax base.

At any one time, the combined national friction structures of the central core of major industrial trading nations that embody these features, from which and to which the main global exchange flows emanate and gravitate, constitute an "international friction matrix", the negative properties of which when intensified diminish, and when liberalised enhance, profitable transnational trade activities, affording positive and negative effects on the alternative transnational trading potential in the "external arena" of countries outside the core.

During the 1960s and 1970s, in the wake of telecommunication and computer technology revolutions which permitted global accessing of worldwide market information, a number of tax havens attracted inward direct foreign investment by non-resident financial institutions to establish an offshore banking network. This was a result of the operational needs of the then emergent transnationalising private and corporate sectors, originating from nationalistic, largely anti-competitive, "overregulated" onshore financial markets which frustrated their particular national and external financial intermediation requirements.

Offshore Network

Thus, the IMF's "Annual Report on Exchange Arrangements and Exchange Restrictions" reveals that, as late as 1980, of the total of 111 member countries covered only 23 had no restrictions of any kind on capital flows. Most national regulatory authorities continued to impose unnecessarily restrictive bank regulations which went beyond the needs of minimal measures.¹ These

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unrequited needs were partially met by states prepared to establish pro-active non-interventionist legislative frameworks to attract such activities. As regards monetary regulation, the offshore setting of lower reserve requirements proved attractive to the booking of international loans, especially those denominated in Eurocurrencies. The resultant lower effective costs enabled institutions to offer higher returns to investors and/or apply narrower spreads between lending and deposit rates than was the case if the transactions had been booked onshore, thereby lowering the mounting and servicing costs of Third World debt loans.

Once established offshore, banks could act as intermediary conduits, global transnational structures for on-going activities based on the inward and outward routing and re-routing of business profits and incomes, whether private, corporate or institutional. In the first instance, they enabled the *primary sheltering* of largely onshore-derived money transfers to take place involving "shifting the respective income from the taxpayer to (a) base company (so that) it is no longer covered by the normal taxation of world income to which the taxpayer is subject in most countries".² Such companies could be of various types: "Letterbox"/"brass plate"/"paper" companies set up for the central collection of globally dispersed incomes such as patent royalties or licensing fees; *holding, trading, investment or captive insurance companies* that could be used as financial pivots for broad international business activities; or *trusts* used for the transfer of the ownership of assets and wealth in all its forms and their accumulation and protection from onshore income, capital gains or inheritance taxes. While onshore repatriation of base company income created a tax liability offsetting the original tax advantage (leaving aside any tax deferral advantages), it could be avoided or reduced by *secondary sheltering*, whereby further tax-exempt income could be generated by "mak(ing) use of exemptions provided for under tax treaties or domestic rules in the taxpayer's country of residence or by use of other techniques ... (or) to realise the capital gain which may be exempted or taxed at a lower rate".³

Privacy of operation of the beneficial owners of bank accounts, whether numbered or not, was not only assured by bank/client confidentiality conventions but often explicitly reinforced either by local common law or by constitutional secrecy provisions conferring on such arrangements the "inviolability" of sovereign protection and economic separatism, effectively distancing such activities from any asserted extraterritorial reach of

onshore tax inspectorates. Offshore clientele were usually inspired by any of four prime objectives:

□ *Non-tax motivated transactions.* These include safe haven protection from, for example, high onshore inflation rates or from the consequences of domestic political instability; regulation avoidance; and the pursuit of business freedoms of operation restricted elsewhere.

□ *Tax avoidance/tax minimisation transactions.* While some regard tax avoidance as the use of legal methods to avoid unnecessary taxation, others argue that it may be of two types: "tax planning", which is acceptable and consistent with the letter and spirit of the law; and "aggressive" tax planning, which takes advantage of unintended legal or administrative loopholes and is abusive.

□ *Fraudulent transactions designed to escape legal obligations.* Three main types of motive may be identified here: evasion of tax on incomes which are legally earned; evasion of tax on incomes arising from illegal activities, including crime in general and drug-trafficking and insider-dealing in particular, and their subsequent "laundering"; and protection from onshore judicial confiscation in the event of a court liability judgement against a business or profession exposed to catastrophic financial loss via the use of a foreign *situs* asset protection trust.

□ *A desire to benefit from tax treaty concessions.* Here third-country taxpayers "shop" into the provisions of a double taxation treaty not intended for their benefit via a company strategically located in an advantageous tax treaty country for that purpose.

The offshore network created involved an "old" component of extant regionally oriented tax havens that included Switzerland, Luxembourg, Bermuda and Panama, already providing a comprehensive range of support facilities for external trade activities: and a "new" component of strategically located, predominantly island, states many of which were newly independent and seeking new areas of industrial diversification. A global pattern of satellite clusters emerged compatible with four primary separate main business epicentre time-zones each with a principal global/regional capital market:

□ the Caribbean/Central American basin, servicing the North and South American Continents largely within the New York time-zone longitude;

□ European enclave, coastal enclave, and "independent"

¹ Cf. Group of 30: How Bankers See the World Financial Market, New York 1982, pp. 33-36.

² OECD: International Tax Avoidance, Paris 1987, p. 62.

³ OECD, op. cit., p. 25.

islands within the London and Continental European time-zone longitudes;

- ☐ certain Persian Gulf states servicing Middle Eastern oil-surplus countries; and
- ☐ Hong Kong, Singapore, Vanuatu and Nauru servicing the Asian-Pacific basin and the sub-region of Oceania, largely within the Tokyo time-zone longitude.

The Onshore Threat to Offshore Activities

In both the early and mid 1980s prognostications were made that "tax havens have almost had their day"⁴ and that "the tax haven, whose popularity reached its apex in the 1960s and 1970s is being killed off".⁵ The context in which these assertions were made was that of a collective global liberalised and harmonised reconstruction of the international friction matrix, the previous restrictive and divergent characteristics of which had largely given tax havens their original *raison d'être*. The main qualitative elements of the onshore challenge to offshore invisible trade activities were threefold.

1. Deregulation: the Spread of Liberalised, Externalised Financial Markets

Competitive equality between domestic and foreign banking was now fostered on a reciprocal basis which generalised the process of reform. Previously restriction-ridden economies were forced to re-examine their domestic financial friction structures in the light of the widening on-going internationalisation of financial markets. The leading onshore country was the USA, closely followed by others that included the UK, Canada, Spain, Australia and, to a more limited extent, Japan. A series of financial "big bangs" heralded this watershed of reform, part of which involved the creation of new designated free external markets onshore in direct competition with the offshore centres (New York's International Banking Facilities from December 3rd, 1981; the Canadian international banking cities of Vancouver and Montreal; the Japanese offshore market from 1986; and Dublin's International Financial Services Centre from 1988). International banking merged with domestic banking to form a single, global, wholesale banking market.

Harmonisation

2. Concerted Attempts at Regulatory Harmonisation and Policy Coordination

In the operational context of the above, there was a gathering consensus that global policy harmonisation was needed to prevent the general process of national financial deregulations degenerating, without proper regard to sensible prudential rectitude, into an unacceptable

competitive lowering of supervisory and regulatory standards in the competition for foreign banking business. The development of a harmonised global framework of supervision for the control and surveillance of multinational banking began to be constructed. Thus, the Bank for International Settlements (after the collapse of Bankhaus Herstatt in 1974) set up a *Committee on Banking Regulation and Supervisory Practices*, which produced the 1975 Basle Concordat on *The Supervision of Banks' Foreign Establishments* laying down the first cornerstone of supervisory co-operation between both parent and host regulatory authorities, albeit on a voluntary basis. This was revised in 1982 (after the Banco Ambrosiano SpA crisis) to include two new guidelines under the heading *Principles for the Supervision of Banks' Foreign Establishments*:

- ☐ In the event of a host authority discovering that the parental supervision of a foreign bank operating in its territory was inadequate, it was urged to either prohibit or discourage its continued local operation or impose specific conditions on the conduct of its business by extending its supervision. It was hoped that a global realignment of supervisory standards based on the practices of the most stringently regulated centres would occur, so that "undesirable" foreign banks originating from the generally minor "soft" centres would now find themselves excluded from the generally major "hard" banking centres.

- ☐ Overall bank surveillance was to be strengthened by requiring authorities to supervise risks on the basis of banks' global operations, making the solvency of foreign subsidiaries a joint responsibility of both host and parent authorities, requiring each foreign bank subsidiary to be autonomously financially sound and yet still supervised as an integral part of the group to which it belonged.

This process of regulatory regime convergence exposed those offshore centres that did not follow this path as being politically incorrect and undermined the previously presumed indestructibility of the sovereign economic separatism of those that did. The possibilities for regulatory arbitrage between onshore and offshore regulatory regimes were necessarily narrowing. In 1987 the Anglo-US Accord was signed which established common capital standards within which the competitive commercial risk-taking pressures then being generated by world debt country finance were to be contained. This was

⁴ D. Johnston: Now the Tax Havens Have Almost Had Their Day, in: The Times, London, 11 February 1982, p. 143.

⁵ C. Wolman: Cuts and Vigilance Reduce Appeal of Secret Money, in: International Taxation Supplement, Financial Times, London, 12 June 1987, p. 21.

followed by a new BIS Accord on Capital Adequacy in 1988, which was implemented by the end of 1992. It was emphasised that greater convergence required closer harmonisation of tax, accounting and other practices. With respect to bank secrecy, international banking supervisors drew up a code of conduct in 1988 aimed at stamping out abuses of the banking system for purposes of crime, fraud and tax evasion. In 1991, the Technical Committee of the International Organisation of Securities Commissions (IOSCO), which seeks to develop common principles of securities supervision internationally, had its first meeting with the Basle Committee to discuss the development of a common approach to the regulation of bank and non-bank intermediaries in the financial markets of the world.

Increasing Scrutiny

3. Changes in Fiscal Stance with Respect to Offshore Activities

Taxation of multinational corporations came under increasing scrutiny as onshore governments attempted to preserve and/or extend their national tax bases and generally to plug identified external tax leakages and shelters. The economic benefits of several types of offshore investments became greatly reduced. The spread of "Thatcherite" direct tax reduction policies further eroded the low-tax, price competitive advantages of such centres by the downward convergence of onshore corporate taxes. The OECD Committee on Fiscal Affairs was mandated to pursue a programme of work to facilitate the anti-avoidance and evasion procedures of its Member Countries and improve the means available for international co-operation and exchanges of information. In the USA, the Tax Equity and Fiscal Responsibility Act (TEFRA) compelled the IRS to establish means of limiting the advantages of reduced withholding taxes in new tax treaties exclusively to those entitled to treaty benefits. To that end a certification system was introduced in 1984, under which beneficiaries had to prove and make a declaration on IRS Form 8306 that they were so entitled. Under the US 1984 Deficit Reduction Act, the Domestic International Sales Corporation (DISC) was replaced by the more restrictive Foreign Sales Corporation (FSC). The latter required a qualifying company to have a real foreign presence and not be merely a "filing cabinet" company for the purpose of gaining the concession. FSC qualification required the establishment of an office either in a US possession (the US Virgin Islands, Guam, the Northern Mariana Islands and American Samoa, though not Puerto Rico) or in a foreign country having a tax information exchange agreement with the USA; that the company organisation be restricted to a maximum of 25 individual or corporate shareholders, at least one director being a non-

US resident; that none of the company's preferred stock be outstanding; and that active participation in the foreign sales process occur. The UK also took a more restrictive view of foreign controlled companies in its 1984 Finance Act.

The inviolability of the tax benefits from offshore banking was placed under threat by the OECD and Council for Europe's *Draft Convention on Mutual Assistance on Tax Matters*, otherwise referred to as INTERFIPOL, which was approved by the OECD in 1987 and opened for signature by 28 countries on 25th January, 1988. Under Article 29 (i) "each State shall ... specify the territory or territories to which this Convention shall apply". Thus, nations such as the UK with dependent but self-governing territories could thereby coerce them into the INTERFIPOL net. Moreover, under Article 11 (i) "At the request of the applicant State the requested State shall ... take the necessary steps to recover tax claims of the first-mentioned State as if it were its own tax claims". As yet, no country has signed this Convention.

During the 1980s, unilateral direct onshore action by the USA and the UK was taken to "clean up" a number of Caribbean centres with respect to two main areas of abuse:

- The USA attacked "treaty-shopping" user abuse arising from certain of its preferential double-taxation treaties, whereby interloper non-residents from third countries not party to the treaties derived treaty benefits by channelling investments through company entities set up in one of the treaty jurisdictions expressly for that purpose. The tax treaties between the USA and the UK and the British Virgin Islands were abolished in 1984; and in 1985 the USA abolished that part of its treaty with the Netherlands Antilles under which US investors had been able to incorporate local companies to escape US taxes on a variety of investments, including the Euro-financing of US companies. In 1986, US excise tax concessions on US premiums paid to Bermudian insurance companies were traded for Bermudian assistance with local information concerning tax fraud and related matters.
- The proximity of the Caribbean centres to Miami and to certain Latin American countries made them natural locations for "dummy corporations" and fraudulent banks seeking to launder the proceeds from crime and drug-related activities. In an attempt to curb this, in 1984 the USA signed an agreement with the Cayman Islands which pledged the latter's assistance in the investigation and acquisition of documentary evidence of crime-related activities. Parallel to this, the UK Department of Trade and Industry commissioned "The Gallagher Report" (1990) on the British Dependent Territories of Anguilla, the British

Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos Islands which led to a tightening-up of regulations in all these centres.

Evolution of Niche Markets

Offshore reaction to the global regulatory trends was positive in the case of 15 centres (the Bahamas, Bahrain, Barbados, the Cayman Islands, Cyprus, Gibraltar, Guernsey, Hong Kong, the Isle of Man, Jersey, Lebanon, the Netherlands Antilles, Panama, Singapore and Vanuatu) that set up the Offshore Group of Banking Supervisors in 1980 to promote greater co-operation and participation in the BIS discussions. Most of these centres sought to enhance their reputations by attempting to move up the "quality ladder" of finance centres to retain and expand their areas of financial provision in the new onshore competitive environment by revising their regulatory and supervisory legislative frameworks, embodying *inter alia* the new onshore directive requirements and associating themselves with a new proscriptive legislative attitude *inter alia* towards drug-trafficking, money-laundering and the criminalisation of insider-dealing; depositor protection requirements; and the new regulatory standards necessary to obtain "designated territory" status for permission to openly market onshore offshore insurance and collective investment products (as under S. 87 of the 1986 UK Financial Services Act). During the 1980s they further evolved transnational niche markets for their transnational personal corporate and financial clientele.

The Transnational Personal Sector

The supply of offshore deposits came from two main origins that registered increased global private banking needs in the 1980 boom years:

□ *High net worth onshore individuals with world-wide interests offshore* living in high-tax/exchange-controlled countries vulnerable to political instability seeking a means by which to arrange capital flight. Private "one-stop" offshore banking financial services were developed, including company registration and legal services, for "wealthy" individuals. Citicorp estimated that in 1990 there were globally 8 million people with investible wealth of US\$1 million or more.⁶ Banks such as the US Chase Bank stratified their private banking services on the basis of whether their clients were "very wealthy", with needs equivalent to an institutional client; "wealthy", having at least US\$1 million worth of disposable assets; or "less wealthy" with a basic minimum of US\$100,000 to qualify for separate treatment.⁷ With respect to international equity investments, "global custody" services were additionally offered offshore, involving not just the physical

custody of assets, but the handling of settlement and reporting functions, the centralisation of cross-border purchases and sales of securities, the assessment of investment risks in foreign markets, generally minimising cross-border transaction costs.

□ *Actual or intending internationally mobile onshore expatriates seeking a secure haven for their financial assets prior to, during, or subsequent to periods of work abroad or as retirees.* With respect to the UK alone Lloyds Bank estimated that there were between 3 and 5 million UK nationals in this category of which Abbey National estimated that 35 per cent were in Europe, 27 per cent in the Middle East, 23 per cent in developing countries, and 12 per cent in the Far East, collectively investing over US\$440 million per month or £5 billion per year in financial products and requiring institutional facilities for salary dispersal schemes, currency accounts as well as trustee and other fiduciary services. Some of these workers did not qualify for "home" pension schemes and being in highly paid jobs with a lower retirement age required special customised pensions for their particular circumstances not recognised in onshore regimes.

Both the above groups sought to protect their fortunes by avoiding/evading onshore wealth taxes during life and inheritance taxes/estate duties on death on behalf of themselves and their beneficiaries. For this, the offshore trust vehicle ideally separates legal control from the economic enjoyment of assets, be they money, realty, yachts, racehorses, works of art, shares, a business, etc. This can result in advantages such as the avoidance of income and capital gains taxes; and protection from appropriation, confiscation or enforced repatriation by the authorities in the grantor's domicile. Such assets can be further protected by the insertion of a redomiciliation continuation provision so that on the occurrence of a specified event the offshore forum of incorporation of a company's trustees is automatically transferred elsewhere.

The Transnational Corporate Sector

The Business and Industry Advisory Committee (BIAC) to the OECD's Committee of Fiscal Affairs asserted in 1984 that much of the use of tax havens was not tax-motivated but out of a general economic necessity to reduce costs "to a bearable level in circumstances where the laws of countries are uncoordinated, and even the laws of individual countries are inconsistent, insofar as they relate to the treatment of international business".⁸ Non-tax

⁶ Cf. *Offshore Finance*, September 1990, p. 10.

⁷ Cf. *Offshore Finance*, May 1987, p. 27.

offshore advantages to be derived included: the cash-flow advantage that may be gained from tax deferral; the lower country risk from the financial centre's own political stability; lower costs of operation from the avoidance of costly onshore employment protection legislation, higher onshore manning-scales, social security payments, pension requirements, etc.; and the avoidance of domestic onshore business constraints.

The scope for specific industrial non-resident offshore transnational profit-engineering depended on special legislative provisions made for particular offshore globally-oriented niche industries and activities that have been targeted by the jurisdiction's administrative system such as shipping registers, ship-chartering, aircraft-basing, property development, cross-border equipment leasing, employment companies, mining and oil production and development. Offshore terms and conditions of employment could reduce offshore wage bills by as much as 10 per cent. When combined with separate managing/chartering companies, offshore operational savings may be between 10 and 30 per cent as compared with onshore costs, depending on the tax benefits on offer. Moreover, employee benefits arise from having a tax-free salary, the savings from which can be invested in a low- or zero-tax regime and the tax-free pension arrangements from which are more beneficial offshore than would be the case onshore. A further offshore advantage derives from the covert value of a "low-profile" offshore base to reduce any political risks that might arise if the true nationality of the beneficial owner was known.

The Transnational Financial Sector

There are a number of basic niche areas of financial services development in addition to the international banking services already discussed: investment funds; cash management; pension funds and life assurance; captive insurance companies; and special purpose vehicles for securitisation.

□ *Investment funds.* Offshore laws may be more liberal than onshore laws in a number of respects that give greater flexibility of investment choice to fund managers and their clients and greater freedoms of operation. For instance, contrary to most onshore provisions, offshore investment funds may be allowed to "gear" and borrow money in addition to that subscribed in order to boost their performance for share/unitholders; or many involve real estate, commodities, metals, futures, warrants and options contracts, and high-risk "emerging market" venture capital; and they may allow the issue of "no par

value" or nominee shareholders and bearer shares that provide an almost impenetrable shield against external judicial investigation. With respect to types of fund, offshore centres have often pioneered or further developed particular types of fund, such as money market/managed currency and umbrella funds; and high-risk products that include property funds, commodity funds, futures and options contracts, warrants and guaranteed funds, venture capital funds, and Islamic funds (that restrict investments to those areas that would not break Koranic Law). Offshore funds may be empowered to invest fairly widely in unquoted securities, or be established in such a way as to use innovative investment strategies, incorporate gearing ("leverage") or to indulge more freely in "hedging" operations. They may also be permitted to achieve a high rate of income return, part of which may be at the expense of capital. Other operational freedoms include the possibility of holding a higher percentage of a fund's assets in one company or exercising greater discretion with regard to management and administration costs charges. Furthermore, "feeder funds" can be set up offshore to "legitimately" attract onshore-originating investment funds which are then switched into regionally specialised or geographically diversified funds in order to penetrate particular currency areas for portfolio investment in ways not permitted from their onshore origins due to their particular exchange control policies.

□ *Cash management.* Multinational companies possess cash assets and liabilities in several countries denominated in different currencies so that management of cash flows and "netting" of balances in order to achieve maximum benefit from such liquid resources is a crucial activity. Account has to be taken of the offshore tax treatment of interest paid and received, their multinational onshore treatment, the choice between borrowing at onshore parent company level and seeking interest deductions against parent company profits. A company set up in an offshore centre can build up such net balances in a neutral tax environment.

□ *Pension funds and life assurance.* International executives and skilled workers who are highly mobile are faced with a plethora of currencies, tax structures, exchange control regimes, social security systems, definitions as to right to benefit and specified year of state pensionable age, requirements to preserve accrued pension rights, etc. The complexities involved mean that each combination of individual country(ries) of work/intended country of retirement has to be examined carefully before a policy optimum for that individual can be determined. International pension schemes may include both insured pensions and life assurance arranged through participation in one of the international networks

⁸ Cf. OECD, op. cit., p. 37.

of insurance companies, wherein intra-firm transfers can be effected to suit the geographical changes of country of residence.

□ *Captive insurance.* An important industry for offshore financial services is diversification into insurance-brokerage and reinsurance expertise and specialised risk management services. Conventionally, a "captive" insurance company is a subsidiary self-insurance company created and usually wholly owned by a non-insurance organisation for the purpose of insuring some of the exposures and risks of its parent or the parent's affiliates. In practice a range of different organisational types have evolved. Motives behind captive formation include lower relative insurance cost; wider insurance cover; and enhanced investment income. Of the reported global total of 3035 in 1991, 2269 or 74.8% were located offshore, the remainder being located in the United States in those states offering tax incentives. The main offshore domiciles were Bermuda with 1,275 companies; the Cayman Islands with 375; Barbados with 175; Guernsey with 158; Luxembourg with 110; the Isle of Man with 96; Singapore with 45; and the Bahamas with 35 companies.⁹

□ *Special-purpose vehicles for asset securitisation.* In the search for cheaper and more flexible sources of funds, institutions and corporations have since the mid-1980s resorted to asset securitisation. This enables an institution to remove assets from its balance sheet which are repackaged as debt which is then sold to investors: asset-backed debt is transferred by the originator/issuer institution to a Special Purpose Vehicle, usually another company or a trust, which finances the acquisition by issuing bonds, notes or other certificates passing on the income stream to investors and retaining the deposits as a source of in-house finance. Because there may be a number of onshore obstacles to effecting these arrangements, offshore jurisdictions with their low regulatory compliance costs provide a convenient location for the incorporation of such entities.

Concluding Remarks

While many offshore financial centres were originally "artificial" in the period prior to the 1980s many have since matured as "real" locations in their own right via which the international velocity of onshore financial resources has been enhanced and the capacity of financial service enterprise and expertise extended. They now provide such a global common property financial service resource that it

was reported in 1991 that, "As much as half of the world's stock of money either resides in, or is passing through, tax havens making them an essential catalyst for world trade ... Offshore-based private bank deposits have accumulated perhaps a trillion dollars. And the largely offshore-based mutual-fund industry has a similar amount under management".¹⁰ Thus a remarkable offshore financial services revolution has occurred against the odds. The success of these havens for invisible trade enterprise has matched that of export free processing zones in the Far East and elsewhere in global visible trade. So long as their laws and legal systems remain modern and flexible and their economies politically stable and independent, they can continue to provide features such as safe-haven protection; and locations for the pursuit of business freedoms of operation not permitted or as freely available onshore. Their economic refuge function is nurtured by the fact that financial markets outside the OECD area of 24 industrialised countries have yet to be liberalised (including those of Eastern Europe) and the fact that in almost all countries, private direct investment is still not treated on a fully non-discriminatory basis. Important differences in kind still remain between controls bureaucratically imposed on onshore-resident finance business and those required by offshore regimes in terms of mandatory paperwork; the time taken in the processing of applications for company formation and other business activities; and official recognition of new financial innovations and products. Moreover, future onshore policy reversal cannot be gainsaid, however unlikely it may seem at present. While such centres should not be over-complacent about the inevitability of growth, it is clear that incoherence in national taxation policies is likely to remain "the last major trade barrier", not having yet been put on GATT's trade liberalisation agenda. This does not mean that these centres will not have to further refine and perhaps even redefine their activities in the light of new fiscal policies unilaterally initiated in certain key countries. For example, the US Internal Revenue Service has become concerned that many foreign-owned companies are systematically under-allocating the portion of their worldwide income properly attributable to sales and other activities in the USA and is experimenting with advance pricing agreements, whereby a tax apportionment agreement is negotiated between a specific multinational taxpayer, the IRS, and relevant governments for a minimum period of three years. Should such agreements become general the offshore conduit company potential for international tax avoidance/evasion is likely to be severely reduced.

⁹ Cf. R. A. Johns and C. M. Le Marchant: *Finance Centres: British Isle Offshore Development Since 1979*, Pinter Publications, London and New York 1993, p. 187.

¹⁰ Cf. *Euromoney*, April 1991, p. 73.