



PANA

Committee of Inquiry into Money laundering, tax avoidance and tax evasion

Delegation to London, UK 9-10 February 2017





1. PROGRAMME

9 February

16:30-18:30 Working session with Academia and NGOs :

with Meg Hillier MP, Chair of the House of Commons' Public Accounts Committee,
and Caroline Flint MP, Members of the Public Accounts Committee

- 16:30-17:30 Academia:
 - Prof. Prem Sikka, Professor of Accounting, Essex Business School, University of Essex
 - Prof. Sol Picciotto, Emeritus Professor Lancaster University, Senior Fellow, International Centre for Tax & Development
 - Prof. Rita de la Feria, University of Leeds
- 17:30-18:30 NGOs:
 - Murray Worthy, Anti-corruption organisation Global Witness, working on money laundering.
 - Rachel Davies, Senior Advocacy Manager, Transparency International UK
 - Richard Murphy, chartered accountant and political economist, Tax Justice Network and Professor of Practice in International Political Economy at City University London
 - Oliver Pearce, Policy Manager for tax and inequality, Oxfam

10 February

09.00 - 10.30 Joint Panama Taskforce session

(with representatives from HM Revenue & Customs, National Crime Agency (NCA),
Financial Conduct Authority (FCA))

10.30 - 11.15 UKFIU session, led by the National Crime Agency (NCA), as UK Financial
Intelligence Unit (UKFIU)

11.15 - 12.00 Meeting with Financial Conduct Authority (FCA), as UK Banking Supervisor

13.00 - 13.30 Meeting with Peter Dempsey, lawyer

Financial institutions

- 13.30 – 14.30 Meeting with HSBC
 - Douglas Flint, Group Chairman
 - Paul Rankin, Managing Director Group Government Affairs



- Iain McKinnon, Group Head of Tax
- Paul Kelly, Head of Tax Transparency
- Hank Cole, Global Head of Operational Intelligence
- Barbara Patow, Global Head of Strategic Initiatives, AML
- David Rowe-Francis, UK Head of AML
- Will Morgan, Group Government Affairs, Financial System Integrity

Law firms

- 14.30 - 15.00 Meeting with UK Law profession regulators

- Ian Messer, Law Society of Scotland
- Representative of Solicitors Regulation Authority (SRA)

- 15.00 -16.00 Meeting with Law Society of England and Wales (LSEW)

- John Riches, Chair, Society of Trust and Estate Practitioners (STEP) Public Policy Committee
- Sandy Bhogal, member of the LSEW Tax Law Committee (chair of International Tax Law)
- Edward Craft, member of the LSEW Company Law Committee
- Amy Bell, Chair of the LSEW AML Task Force

Accountants

- 16:00 -17:00 Meeting with Institute of Chartered Accountants in England and Wales (ICAEW)

- Robert Hodgkinson, Executive Director, Technical, ICAEW
- Frank Haskew, Head of Tax, ICAEW
- Ian Young, International Tax Manager, ICAEW
- Simon Tosserams, EU Affairs Executive, ICAEW



2. LIST OF PARTICIPANTS

MEMBERS

Werner LANGEN, Chair	PPE
Fabio DE MASI, Vice Chair	GUE
Eva JOLY, Vice Chair	Verts/ALE
Jeppe KOFOD, co-rapporteur	S&D
Petr JEZEK, co-rapporteur	ALDE
José Manuel FERNANDES	PPE
Ludek NIEDERMAYER	PPE
Juan Fernando LOPEZ AGUILAR	S&D

ACCOMPANYING MEMBERS

Molly SCOTT CATO	Verts/ALE
Anneliese DODDS	S&D
Neena GILL	S&D



3. KEYS MESSAGES

KEY FINDINGS FROM DELEGATION VISIT:

Main issues discussed:

- Relevant people from Treasury and HMRC did not attend the meeting. Officials from HMRC could not reply questions on OST nor Crown Dependencies, nor any political questions.
- (lack of) public transparency - need for public beneficial ownership registers (BORs)
- Relationship UK with its overseas territories (OSTs) - possibility for UK to regulate/ supervise its OSTs and enforce international standards
- Trusts: regulation, oversight, transparency; legitimate reasons to set up trusts (mostly tax-neutral, used to avoid fragmentation of ownership, e.g. in cases of inheritance), but trusts also can play a role in tax evasion, usually used together with other tools
- improving international framework for transparency and exchange of information (OECD's Common reporting Standard/ CRS, FATCA, CbCR within BEPS recommendations)
- fragmented AML supervision in UK and EU (28 AML supervisors in the UK)
- Increasingly stronger customer due diligence (CDD)/ know your customer (KYC) provisions in EU and national legislation for obliged entities (OEs)
- off-shore companies - legitimate vs. illegitimate reasons
- (lack of) adequate resources for regulators, supervisors and law enforcement
- (lack of) definition of tax havens, need for EU black list
- (need for) prohibitive sanctions for tax evasion and ML cases
- legal professional privilege (LPP) is not to protect lawyers, but to protect clients; and is strictly/ narrowly defined. LPP can't be relied upon when communication is used to facilitate a crime

KEY RECOMMENDATIONS:

- need for a European FIU
- Principle of KYC: if you do not know your customer, you shouldn't do business

- Meeting with academia and NGOs

Key messages from Prof Sikka

- There is a general lack of enforcement of applicable tax law, due to lack of resources and capacity of tax administrations in the UK and EU
- lack of EU coordination and of a coherent legal framework, and of willingness and capability to cooperate and to exchange information



- lack of regulation of notably accountants and Big Four, code of ethics not enough
- privacy and data protection laws should not be a hindrance to counter unlawful/ anti-social behaviour
- there should be a fully transparent Beneficial ownership register (BOR), also including trusts, without minimum threshold
- tax havens are characterised by high secrecy/ low transparency, low taxes , and weak law enforcement - hence UK should be considered a tax haven

Key messages from Prof Picciotto

- with regard to tax treaty shopping with non-compliant jurisdictions, tax evasion and tax avoidance overlap
- systemic problem of lack of cooperation and coordination on different regulation/legislation with regard to tax evasion, tax avoidance and money-laundering
- UK threat to become a tax haven post Brexit should be countered by EU determination to comply with EU standards, or to lose access to EU Single Market

Key messages from Prof de la Feria

- general confusion of definitions of tax evasion, tax fraud, tax avoidance and ML
- tax evasion usually linked to concealing (taxable) income
- tax fraud usually organised crime at large scale, notably in the area of VAT fraud
- risk on VAT reform on some MS due to problems with reverse charge
- too much focus on the quantitative size of tax fraud/ evasion/ avoidance, need to look at qualitative effects:
 - distortion of competition (notably between SMEs vs. MNEs)
 - tax fraud & ML linked to organised crime (child/ drugs/ arms traffic)
 - taxpayer inequity -> lack of fairness -> overall weakening of belief in fair functioning of our society
- "hypocrisy" on tax havens; built in the system of many tax systems as tax subsidy for MNEs
- each country may become a tax haven for another country when it offers tax benefits to investors (Bahamas recently accused the UK of being a tax haven)

Members asked questions with regard to the assessment of progress already made (Common Reporting Standard/ CRS, US FATCA, BEPS, AML international standards and legislation etc.), the statute of UK overseas territories (OSTs) and the capacity of the UK to legislate in OSTs & enforce tax laws, the issue if trust and a possible definition of 'business-like trusts', the need for a global tax body at UN level, and UK tax policy post Brexit.

**Key messages from Oliver Pearce, Oxfam**

- UK is 2nd most involved country for intermediaries involved in the Panama Papers
- UK taken together with its network of OSTs can be considered biggest tax haven in the world
- last years have seen an increase of regulation, but at the same time a decline of corporate income tax (CIT) rates
- Developing countries (DCs) receive less revenues from MNEs, and have little capacity and resources to tackle complex cases of tax avoidance and tax evasion
- UK was leader on transparency at global level in the past, but no longer the case

Key messages from Murray Worthy, Global Witness

- UK involved in many cases of money-laundering (ML), as it is a global financial centre, with good infrastructure and strong links with OSTs
- fines for ML are relatively low in UK, compared to US; stronger ML fines and law enforcement required, not much accountability for individual bankers not respecting their obligations.

Key messages from Rachel Davies, Transparency International

- UK property market as a channel for ML (result of T.I. study)
- possibility to buy real estate in UK anonymously via anonymous shell companies
- real estate agents in the UK are only obliged to conduct Know your customer (KYC) procedures with the seller, not with the buyer
- lawyers are supposed to conduct KYC procedures with the buyer
- 2.2 sq miles of real estate in London is owned by anonymous shell companies
- UK has a fragmented system of 14 different AML regulators/ supervisors But 12 supervising accountancy bodies in the UK which both regulate and represent their firms

Key messages from Richard Murphy, Tax Justice Network

- lack of proper regulation and supervision of accountants in the UK
- lack of accurate corporate registers
Only 80.4% of companies provide a tax return in the UK. every single tax return submitted to authorities by a tax accountant un-declare the tax liability by 15%.
- public country-by-country reporting (pCbCR) would increase corporate transparency and reduce practices of tax avoidance and evasion. The biggest reason why the UK can't have it is because the big 4 don't want it.
- International Financial Reporting Standards (IFRS) do not endorse pCbCR
- CbCR was never a tax disclosure standard. It is an accounting standard.
- pCbCR is in public interest as well as in investors' interest; pension funds should therefore support pCbCR in their own interest



Meeting with HM Revenue & Customs and Joint Panama Taskforce

- Simon York (Co-Chair of the Panama Taskforce, and HMRC Director of Fraud Investigation Service).
- Donald Toon (Co-Chair of the Panama Taskforce, and Director of Prosperity at the NCA).
- David Little (Head of Money Laundering Threat Desk and Joint Financial Analysis Centre at the NCA).
- Alan Hislop (Head of the UKFIU at the NCA).
- Jamie Symington (Director of Wholesale, Unauthorised Business and Intelligence at the FCA)
- Jane Attwood (Head of Intelligence, Strategy, Policy, International & Intelligence Department at the FCA)
- Jeremy Tizard (Financial Crime Specialist – FCA)
- Florence Pritchard, HMRC, Office of HMRC Director of Fraud Investigation Service

Key messages from HMRC

- Panama papers (PP) task force was created in April 2016, with £10m (additional) budget, several hundred staff members from HMRC, NCA, FCA, and Serious Fraud Office
- £2.5m additional tax revenues collected related to PP
- over 1000 criminal off-shore cases, 120 persons under investigations, 22 criminal arrests to date
- new Criminal Finance Act foresees stronger sanctions, higher penalty fees, public naming, better cooperation and information-sharing between agencies/ competent authorities
- PP led to a new public campaign for self-disclosure, new methods of working, better cooperation between agencies, and additional capacities / resources

Concept of client-attorney privilege is an essential concept but can sometimes makes the task of those trying to prove criminal intent harder to prove (when investigating law firms).

Meeting with National Crime Agency (as UK FIU)

- Donald Toon (Co-Chair of the Panama Taskforce, and Director of Prosperity at the NCA).
- David Little (Head of Money Laundering Threat Desk and Joint Financial Analysis Centre at the NCA).
- Alan Hislop (Head of the UKFIU at the NCA)

NCA has no information on the number of freezed assets related to terrorist finance and referred to HRMC to obtain this information.



Key messages from NCA

- 420000 suspicious transaction reports received (Sept 2015-Sept 2016), mostly from banks. Large data set available to all relevant authorities in the UK who could need this information.
- PP is only one data source (of many), not more; did not deliver new proof/ evidence of serious financial crime, but helped to identify enablers (intermediaries) of potential financial crime
- PP provided information for risk-assessment, and helped for ongoing investigations
- Anti-corruption summit last year with UK OSTs led to increased, better and earlier exchange of information (EOI) with OSTs, and OSTs commitment to create company beneficial owners registers (BORs)
- administrative sanctions are easier to apply than criminal sanctions, but require proof of intent
- NCA has no information on the number of freezed assets related to terrorist finance and referred to HRMC to obtain this information.

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Meeting with Financial Conduct Authority (FCA), as UK Banking Supervisor

- Rob Gruppeta, (Head of Department, Financial Crime and Intelligence Department – FCA)
- Jeremy Tizard (Financial Crime Specialist).
- Mike Deveney (Manager, European Affairs Team/EU and Global Department – FCA)

Key messages from FCA

- as London is an internat. financial centre, FCA oversight competences go beyond UK supervision, also includes supervision of overseas branches/ subsidiaries of UK banks, requiring also targeted visit to overseas branches/ subsidiaries
- cooperation with other international regulators/ supervisors is necessary and useful, also via FATF
- FCA is not law enforcement, checks and ensures that banks have adequate AML defence mechanisms and procedures in place
- Deutsche Bank and Barclays cases show international dimension of their oversight, sanctions were in response to lack of adequate AML procedures in place
- Penalties for not complying with standards are made according to a public policy, taking into account the revenue (related to the misconduct) and the attitude of the



bank during the investigations. Withdrawing licences is a possible option, but has not been done as it can only be done with proof that it acted with intention

- FCA coordinators with NCA whether administrative or criminal procedures are launched

Strong whistleblowers support policies

- They received EBA's survey on the Panama Papers in December

Meeting with Peter Dempsey, lawyer

Mr. Dempsey presented the case, on which Members find more detailed information in their dossier. Mr. Dempsey agreed to keep Members posted on further developments on this case, and is open to discuss further with members bilaterally.

Meeting with HSBC

- Douglas Flint, Group Chairman
- Paul Rankin, Managing Director Group Government Affairs
- Iain McKinnon, Group Head of Tax
- Paul Kelly, Head of Tax Transparency
- Hank Cole, Global Head of Operational Intelligence
- Barbara Patow, Global Head of Strategic Initiatives, AML
- David Rowe-Francis, UK Head of AML
- Will Morgan, Group Government Affairs, Financial System Integrity

Key messages from HSBC

- HSBC has reacted to the revelations of misconduct in past years; PP mostly contained cases from 2000-2005, which have already been addressed, and HSBC no longer has client relationships with these cases
- regulatory framework has been strengthened over past years, with FATCA, Common Reporting Standard (CRS) as game-changers
- need for all countries to participate in automatic exchange of information (US still not adopted CRS)
- HSBC fully committed to compliance; nevertheless need of proportionality of costs vs. results
- mechanisms of AML: KYC procedures, screening (of politically exposed persons (PEPs), sanctions, media screening), post-event monitoring
- complex AML procedures in place to filter a high amount of transactions to potentially problematic transactions ("noise-reduction" to identify true risks)
- need for use of new technologies to identify serious cases of financial crime



- need for unique digital identities
- need for public-private partnerships to monitor financial transactions and to share information
- support for public BORs
- On revolving doors, they stressed strong ties with the public sector, and fended off any criticism on conflict of interest.

Meeting with UK Law profession regulators

- Ian Messer, Law Society of Scotland
- Representative of Solicitors Regulation Authority (SRA)

Key messages from SRA

SRA

- is part of law society, but act as independent regulator, and so may miss out on some information as in capacity of regulator
- on PP, SRA had access to same information as the rest of the public, and started investigation on this base immediately
- SRA eventually was contacted by the UK regulator, but only after two weeks
- SRA questioned seven firms, majority led to no concerns, but a few made SRA concerned
- SRA makes the public aware of risks for the public and consumers
- SRA keeps closely monitoring 25 firms, and gave them guidance on how to deal with the situation
- ML often only one aspect of SRA's focus
- 3 ongoing cases on PP
- SRA can fine law service providers £250m but law firms only £2,000

Meeting with Law Society of England and Wales (LSEW)

- John Riches, Chair, Society of Trust and Estate Practitioners (STEP) Public Policy Committee
- Sandy Bhogal, member of the LSEW Tax Law Committee (chair of International Tax Law)
- Edward Craft, member of the LSEW Company Law Committee
- Amy Bell, Chair of the LSEW AML Task Force

Key messages from LSEW

- law firms are already in scope of AMLD as obliged entities since 2007 (3AMLD)
- HM Treasury appoints AML supervisors (currently 28)
- Law Society published a "practice note" on AML, which is recognised/ approved by the supervisors



- on trusts: most cases in the PP do not involve trusts, or date from before 2000
- trusts are common vehicles in Common law, mostly a tax-neutral event, often used to avoid fragmentation of ownership, e.g. in cases of inheritance, not tax-related, increasingly highly regulated
- in Australia, trusts commonly used to set up companies
- lawyers always obliged to verify origins of funds used to set up trusts
- legal professional privilege (LPP) is not to protect lawyers, but to protect clients; and is strictly/ narrowly defined. LPP can't be relied upon when communication is used to facilitate a crime
- Client confidentiality = principle that an institution/ individual shall not reveal info about their clients without its consent; can be broken in certain cases (not only law enforcement). If it is confidential then it needs to be disclosed. If it is legal professional privilege it can only be disclosed in a court case. There is a narrow line between both.

Meeting with Institute of Chartered Accountants in England and Wales (ICAEW)

- Robert Hodgkinson, Executive Director, Technical, ICAEW
- Frank Haskew, Head of Tax, ICAEW
- Ian Young, International Tax Manager, ICAEW
- Simon Tosserams, EU Affairs Executive, ICAEW

Key messages from ICAEW

- ICAEW is aware there has been unethical behaviour in the accountancy sector
- tax evasion is clearly illegal and accountancies/ ICAEW members shall never be involved in tax evasion
- in 2013 ICAEW attempted to define the gap between acceptable non unacceptable tax planning
- in March 2017 a new, revised version will come into force as some chapters on tax advice were unclear: The facilitation on tax avoidance and behaviour on this has been clarified
- ICAEW is aware of public concerns, but does not have the means to address them, needs to be practical/ pragmatic about what can be done.
- there have been few complaints in comparison to the general negative perception in the general public
- no punishment/ sanction possible without proper information on cases of misconduct
- on pCbCR: ICAEW is aware of the need to respond to request to transparency, but need to know how this information will be used, and for what purpose



PANA

Committee of Inquiry into Money laundering, tax avoidance and tax evasion

Report drafted by the secretariat of PANA committee, with contributions of political advisers.