J Bus Ethics (2012) 110:1–14
DOI 10.1007/s10551-012-1456-6

Responsibility in Paradise? The Adoption of CSR Tools by Companies Domiciled in Tax Havens

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Received: 20 February 2009 / Accepted: 11 August 2012 / Published online: 5 September 2012

Abstract In contrast to the recent rise to economic importance of offshore finance centres (OFCs), the topic of taxation has so far created little interest among scholars of corporate social responsibility (CSR). This paper makes two contributions to addressing this lacuna. Applying a range of influential normative theories of ethics, it first offers an ethical evaluation of tax havens. Second, the paper examines what use large firms that are headquartered in two OFCs—Bermuda and the Cayman Islands—make of formal CSR tools. The emerging duplicity in tax haven-based companies professing social responsibility highlights once more the political nature of CSR, where at least some firms and/or industries can successfully limit government power to enact regulation as well as shape the discourse around CSR. The study of CSR in OFC-based firms thus calls into question the usefulness of the often quoted definition of CSR as going beyond the law.

Keywords Tax havens · Offshore finance centres · Bermuda · Cayman Islands · Corporate social responsibility · Business ethics · Codes of conduct

Introduction

One of the major aspects of globalisation is the growth in cross-border investment, with global foreign direct investment (FDI) inflows having reached USD 1.83 trillion in 2007 (UNCTAD 2008). One particular group of benefactors of such financial flows are tax havens or offshore finance centres (OFCs), countries which attract the transfer of business activities and reported profits through low, often nominal or zero tax rates. Already by the early 1980s, the OFC affiliates of US corporations accounted for more than 20 % of US FDI (Hines and Rice 1994). Today the stock of wealth that is held offshore is estimated at USD 5 trillion, which is equivalent to almost one-third of total global GDP (Oxfam 2000; Hampton and Christensen 2002; Sikka 2003). Taxation rules even by relatively small countries thus have the power to influence where corporations report their income for tax purposes (GAO 2008).

Until the late 1990s national governments undertook only sporadic attempts to deal with this issue. However, the last decade has seen a host of major international initiatives against tax havens by the Organisation for Economic Co-operation and Development (OECD 1998, 2001a, no date; for a review of this initiative see Webb 2004), the Group of Eight (FATF 2005) or the United Nations Office for Drug Control and Crime Prevention (UNODC 1998). The former director of the Fiscal Affairs Department of the International Monetary Fund (IMF), Vito Tanzi, even argued that making national tax systems consistent with the public interest of the whole world rather than that of individual governments would require the establishment of a World Tax Organisation (Tanzi 1999). In the US, senators Carl Levin, Norm Coleman and Barack Obama presented a bill to congress on 17 February 2007 that was entitled 'Stop Tax Haven Abuse Act'.

Against this flurry of recent activity, it is astonishing that tax evasion has played little role so far in the corporate social responsibility (CSR) literature (Christensen and Murphy 2004). As contributions to closing this gap in the CSR literature, this paper will first deliver, through applying a range of major ethical theories, an ethical evaluation of the operation of OFCs. Second, it will assess how corporations that are domiciled in OFCs approach

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CSR. If there is little pressure on a company to fulfil the full range of its economic responsibilities—after all the fundamental layer of Carroll's (1979) pyramid of CSR—what are the chances that the company will meet further reaching responsibilities? This research question will be examined through a study into the adoption of major CSR tools—codes of conduct, social and environmental reporting and CSR standards—in multi-national enterprises (MNEs) that are headquartered in two OFCs, namely Bermuda and the Cayman Islands.

Defining a Tax Haven

Despite the small size of many OFCs, their economic impact is significant. The stock of global wealth held offshore amounts to at least an estimated USD 5 trillion, with over half of the entire global monetary stock passing through them (Errico and Musalem 1999; Hampton and Christensen 2002). Corporations and wealthy individuals from the US deposited some USD 800 billion in the Cayman Islands alone, which represents nearly 20 % of all American bank deposits (Sikka 2003). Offshore tax havens may cost the US Treasury as much as USD 100 billion each year (Levin 2007). Tax havens thus represent a pervasive economic activity and are squarely part of globalised capitalism (Errico and Musalem 1999; Sikka 2003; Christensen and Murphy 2004).

However, defining a tax haven is not straightforward, as a competitive reduction in corporate taxation was, for example, already practiced in the late 19th century by the US states of New Jersey and Delaware (Palan 2002). Within the European Union, Ireland has pursued a successful policy throughout the last two decades of attracting FDI. Its statutory corporate tax rate stood at 13 % in 2005, as compared with an OECD average of 31.7 % (Haufler et al. 2008). Acknowledging that countries have a right to determine their own tax rates, the OECD (1998) introduced a distinction between (1) countries that charge a generally applicable tax rate that is lower than the ones levied in other countries, (2) countries where the tax system has preferential features that lead to no or low taxation for some companies or industries and (3) countries that impose no or only a nominal tax on income. It is the latter that shall be called tax havens here.

In addition to low or nominal taxation, tax havens typically offer secrecy to protect investors against scrutiny by outside authorities (Palan 2002; Sikka 2003; Levin et al. 2007). In this respect, the OECD places great emphasis on the exchange of information between the respective authorities with regard to a specific tax enquiry, which should be provided on an 'upon request' basis (OECD 2001a). Hence the OECD started publishing a list of uncooperative tax havens. Of the original 47 contenders, the last three—Andorra, Liechtenstein and Monaco—were removed in May 2009 in the light of improvements in their commitments to transparency and information exchange (OECD 1998, 2001a, No date). Similarly, the Financial Action Task Force, created in 1989 by the G7 (now G8), designated 23 jurisdictions as non-cooperative in 2000/01. By 2005 only three remained, namely Myanmar, Nauru and Nigeria and even these were attested progress (FATF 2005; for a critique of these approaches see Oxfam 2000).

Furthermore, many tax havens stipulate that corporate activities to be undertaken within their jurisdiction need not be substantial; indeed the advantageous tax regime may only be applicable to earnings derived from outside the country. For example, companies wishing to trade in Bermuda must be 60 % owned by Bermudians, while companies incorporated by non-Bermudians for the purpose of conducting business outside the country—Bermuda Exempted Companies or Bermuda International Companies—may not trade nor hold any real estate there but enjoy a tax rate on offshore earnings of zero (BMA 2008). The OECD thus suggested four key factors that identify a country as a tax haven (OECD 1998, p. 23; see also OECD, 2004):

(a) No or only nominal taxes
(b) Lack of effective exchange of information
(c) Lack of transparency
(d) No substantial activities

An Ethical Evaluation of Tax Havens

The operation of tax havens rests on their ability to offer companies and individuals a 'legal' residence without a need to move physically. In effect granting citizenship, tax havens have undertaken 'the conversion of sovereign rights into a marketable product' (Palan 2002, p. 164). Since these newly acquired individual and corporate 'citizens' are rarely ever present, they are not expected to undertake the duties and responsibilities that are normally associated with citizenship (Conklin and Robertson 1999). In addition to attracting capital escaping territorial jurisdiction with regard to taxation, many OFCs also offer a safe haven for proceeds from the illicit trade in drugs, arms or conflict diamonds (UNODC 1998; Johnson and Holub 2003). OFCs have also been criticised for supporting authoritarian regimes by offering shelter for funds transferred overseas by corrupt political leaders (Oxfam 2000). Last but not least, OFCs are accused of having aggravated recent episodes of financial turmoil as the risks from offshore activities easily transmit onshore (Errico and Musalem 1999). These issues are analysed in the following from the perspective of three particularly influential normative ethical theories, namely utilitarianism, deontology and virtue ethics (Robin and Reidenbach 1987; Koehn 1995; Whetstone 2001; see also Preuss 2012).

From a utilitarian perspective—according to which an action is morally justified if it creates more utility for all affected parties than alternatives (Bentham 1996; Mill 1998)—a range of winners of this arrangement can be identified. There is first and foremost the significant cost savings MNEs experience, which they are able to pass to shareholders as increased dividends. There is some evidence that firms that benefit from reduced costs through utilising OFCs actually respond in part by expanding their activities in nearby high-tax countries (Desai et al. 2006a). The OFC country itself can raise additional income, for example through corporate registration fees, which enables it to improve local welfare and infrastructure (Sikka 2003). At an international level, the argument has been presented that tax havens may serve as a safeguard against a predisposition of national governments to abuse their monopoly position when designing tax regimes (Hufbauer 1992).

Since the use of OFCs alters the relative rates of return between domestic and foreign investments (Conklin and Robertson 1999), it also creates parties that lose in utility. First and foremost, they deprive the elected governments of the countries where companies and individuals otherwise would have to pay their taxes of funds to provide services (Sikka 2003). At the level of the global economy, OFCs can lead to profound market distortions to the degree that investment decisions are taken on the basis of tax and regulatory concessions rather than a comparative advantage in the factors of production (Christensen and Murphy 2004). Through more lenient regulatory requirements, e.g. in terms of information disclosure or capital adequacy for banks, OFCs typically grant greater leeway in balance sheet management, which may make companies more prone to insolvency and other risks (Errico and Musalem 1999; Sikka 2003) without shareholders necessarily being able to judge the additional risk (Conklin and Robertson 1999).[1] Hence some institutional shareholders are not allowed, under their statutes, to invest in foreign entities; these sources of finance are lost to companies incorporated in OFCs (Johnson and Holub 2003). Last but not least, many OFCs have themselves experienced profound economic disadvantages. In addition to comparative disadvantages in terms of limited natural resources, small labour markets or high transportation costs, many OFCs have become heavily dependent on financial activities, with extreme examples such as UK Crown Dependency Jersey generating over 90 % of its government revenues from finance sector activities (Hampton and Christensen 2002). It is thus likely that a utilitarian evaluation of tax havens uncovers disbenefits from their operations that are of such a magnitude that they outweigh their benefits.

Moving on to deontology, one influential test here is the Categorical Imperative developed by Kant (1996, p. 73), which requires that 'I ought never to act except in such a way that I could also will that my maxim should become a universal law'. The test is to be operationalised in two stages through:

- a consistency principle: whether the maxim, i.e. the principle upon which a person is to act, can be imagined without contradiction, and
- a human dignity principle: whether a moral agent would want to live in the resulting world.

As a negative test, the Categorical Imperative hence states that an action can only claim moral quality if both tests are met. As far as OFCs are concerned, the human dignity principle is difficult to operationalise, as a maxim requiring every person or legal entity to always strive to avoid as much tax payment as possible would clearly undermine the ability of a society to provide welfare and infrastructure benefits on which not least corporations themselves depend (Conklin and Robertson 1999; Sikka 2003).

The consistency principle runs into difficulties too, since not all economic actors are able to utilise the preferential conditions offered by tax havens. It is in particular large, international firms with extensive intra-firm trade that are most likely to use OFCs (Desai et al. 2006b), whereas companies with local markets or low intra-firm trade compete on an uneven field, irrespective of how efficient or innovative they are (Sikka 2003). Inequalities with respect to OFCs also exist at government level. While economically dominant nations, like the United States, are able to develop elements of its foreign tax regime independently (Conklin and Robertson 1999), other nations, in particular developing ones, find it much more difficult to fight the erosion of their tax base, which can aggravate problems of national debt and deteriorating terms of trade (Christensen and Murphy 2004). Oxfam (2000) estimated that revenue losses for developing countries due to tax evasion amount to least USD 50 billion a year, which is roughly equivalent to the annual aid flow these countries receive. Since the universalisation of the maxim to use OFCs cannot be logically carried out, so Kant, acting on the maxim cannot claim any moral quality.

A prominent strand of virtue ethics builds on the emphasis by Aristotle on moderation and the avoidance of excesses (Aristotle 1985). Virtues can only be acquired through experience and habituation, 'none of the virtues of

[1] Enron, for example, applied an elaborate tax avoidance strategy through a total of 881 offshore subsidiaries, of which 692 were incorporated in the Cayman Islands (Christensen and Murphy 2004).

character arises in us naturally' (Aristotle 1985, column 1103a, line 18; see also Solomon 1992; Weaver 2006). A virtue ethics-based approach to business thus stresses that people become what they are through being a member of a community, where their working environment is one such community. Virtue ethics also stresses that it does, in most cases, matter to people that they can make a valuable contribution to their community or society (Koehn 1995). Such an emphasis on situational learning and character development is out of step with a moral disconnect surrounding the use of OFCs: companies may claim to be ethical in one area of their business conduct, perhaps in engagement in local communities, but act otherwise in another area, as in taxation (Christensen and Murphy 2004).

Virtue ethicists would also be highly sceptical of the fundamental challenges tax havens pose to democracy. While citizens may vote for a government that seeks to finance a higher investment in social welfare through higher taxation of corporations and wealthy individuals, these have the power to circumvent the preferences of the majority of the population through avoiding their share of taxes (Sikka 2003). Such actions hardly serve as a role model to inspire moral imagination in other circumstances. Thus an evaluation of tax havens on the basis of virtue ethics is likely to be critical of their operation too. One could apply several other theories—tax havens are very likely also a violation of the social contract between business and society (Donaldson and Dunfee 1994, 1999)—but it should suffice here to say that all three major normative ethical theories identified serious to insurmountable concerns over the operation of tax havens (see also Preuss 2012). If it makes a difference, from an ethical point of view, whether a business is located in an OFC, then the question arises whether this locational factor impacts on its CSR strategy and performance.

Tax Havens and Corporate Social Responsibility

The ethical evaluation above has lead to the conclusion that—from a normative perspective—there is a conceptual flaw in any suggestion that a company that uses tax havens might be socially responsible. Distinct from this, however, is the empirical question whether such companies do make claims to be socially responsible. On the one end of the spectrum, a company could follow Friedman's (1970) position on CSR and argue that it is free to arrange its tax affairs as it chooses as long as it acts within the law. This position received legal support in the UK from the 1936 judgement of Lord Tomlin (in IRC v Duke of Westminster) that: 'Every man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be' (quoted in Angell 1938; who also refers to similar US rulings). This view would allow tax professionals to rationalise the use of aggressive tax avoidance strategies, if not perceiving it as their duty to employ these to the fullest extent compatible with the letter of the law (Johnson and Holub 2003; Shafer and Simmons 2008).

On the opposite end of the spectrum, there is the view that business exists to serve a range of stakeholders, including government (Carroll 1979; Freeman 1984). From this perspective, tax should not be seen as a cost to the business but as part of the economic contribution of business to society (Sikka 2003). In the words of Christensen and Murphy (2004, p. 37), tax revenues are 'the lifeblood of democratic government [as they are] vital to the development and maintenance of physical infrastructure and to the sustenance of the infrastructure of justice that underpins liberty and the market economy'. Taxation of corporations has furthermore been justified as a way for a liberal democratic state to limit excessive accumulations of power in the hands of corporate management (Avi-Yonah 2004). From this perspective, aggressive tax avoidance is not only a violation of a corporation's social obligations, but may also constitute a threat to its longer term survival (Shafer and Simmons 2008). Hence reincorporations in OFCs have been condemned by parliamentarians as immoral, unconscionable, dishonest and even unpatriotic (Johnson and Holub, 2003; here referring to comments by US parliamentarians on US firms).

Taxation highlights a further aspect of CSR: namely the question whether CSR presupposes, or at least implies, consistency. As already highlighted from a virtue ethics perspective, it is questionable whether a firm can make a valid claim to be responsible when its responsible actions only cover selected stakeholders or selected aspects of its overall impact on society. Here Christensen and Murphy (2004, p. 39) are adamant: 'It is not possible to be ethical in one area of business conduct and to act otherwise in another area'. Rather, the authors go on to argue that such claims reveal a major disconnect in the core values of the company. These conflicting views on the place of taxation in CSR debate and practice shall in the following guide the empirical examination into how companies that are incorporated in tax havens approach CSR.

Research Method

Prior research into the adoption of CSR tools indicated that these are predominantly found in large corporations (Kaptein 2004; Singh 2006), hence the paper sought to study large firms that are headquartered in a range of tax havens. However, identifying company indices for tax havens was not straightforward. For example, the Russell Global 10,000 Index covers some 10,000 companies from 63 countries, which constitute 98 % of the investable universe available to US investors (Russell Investments 2008). However, it does re-assign companies that use 'Benefit-Driven Incorporation' to either the country of their headquarters or to the country where the primary stock exchange for the firm's shares is located. Hence this article used the much smaller Forbes Global 2000 Index, which applies four measures—sales, market value, assets and profits—to generate a composite measure of company size.

Following Hines and Rice (1994) and Desai et al. (2006b), OFCs are split into two categories, larger countries with populations exceeding one million, and OFCs where little employment and capital are located. It is the latter category that shall be analysed here. Of the 34 countries that were identified by the US Internal Revenue Service as tax havens (Levin et al. 2007), Hong Kong, Latvia, Liberia, Luxemburg, Panama, Singapore and Switzerland were thus disregarded. For the remaining countries, the Forbes Global 2000 Index of 2008 contained 24 companies for Bermuda, 4 companies for the Cayman Island and 1 company for the Channel Islands. The latter was discarded as possible outlier. The list for Bermuda contains two companies—Tyco International Limited and Tyco Electronics Limited—that are parent and subsidiary to each other and were hence only included once. Thus the paper analysed a combined list of 27 companies from Bermuda and the Cayman Islands.[2] The smallest of these—Bermuda insurance company Allied World Assurance—still has an annual turnover of USD 1.45 billion.

Given the sensitivity of the topic, a survey of corporate CSR practices (as for example used by Murphy 2005; or Singh 2006) was deemed to be prone to bias. Hence the article analysed CSR tools as displayed on the websites of the 27 companies, which were checked during autumn 2008 for a presence of a range of CSR tools. According to Perrini et al. (2007), the main such tools currently in use are: codes of conduct, CSR standards and social and environmental reports (see also Graafland et al. 2003). Codes of conduct were only included where they cover all employees; codes that apply only to directors as induced by the Sarbanes–Oxley Act of 2002 were disregarded.

The code content was analysed by counting the frequency of an item being mentioned rather than attempting to measure the degree to which it is discussed. As Wood (2000, p. 288) stated, some concepts are more difficult to express concisely than others, hence the amount of space given to an issue may not correlate with the importance ascribed to it by the code issuing company. Company websites were also searched for the following CSR standards: the environmental management standard ISO 14001, health and safety standard OHSAS 18001, labour conditions standard SA 8000 and sustainability assurance standard AA 1000. Corporate websites were finally searched for CSR reports, including information on whether the company subscribes to the Reporting Framework of the Global Reporting Initiative (GRI), and the United Nations Global Compact. However, due to space limitations these reports could not be analysed in any great detail here.

Using only information on CSR tools that is available on corporate websites may have introduced some bias into the study. However, a prior study into adoption rates of codes of conduct combined contacting the firm's CSR department with examining its website and found that codes that were not displayed on the web accounted only for 3 % of all documents (Preuss 2010). Hence the bias from relying on web-based material seems to be acceptable. This is the more the case since the sensitive nature of the research question rules out more frequently adopted research methods, such as surveys and interviews.

CSR Tool Adoption

A first result of this study into the adoption of CSR tools among OFC-based companies is that all except one (i.e. 96 %) of the sample firms have a code of conduct in place (see Table 1). The documents are far from insubstantial, as they contain an average of 20 pages and range from four pages at agricultural company Bunge and insurance company Endurance Specialty, both Bermuda-headquartered, to 72 pages at Bermudian insurance company ACE.

Table 1 Prevalence of selected CSR tools among OFC-based companies

CSR tool	Bermuda/Cayman (n = 27)
Code of conduct	96 %
Average length	20.2 pages
CSR report	30 %
Average length	24.4 pages
GRI references	15 %
ISO 14001	41 %
OHSAS	19 %
SA 8000	0 %
AA 1000	0 %
UN Global Compact	7 %

[2] Note that neither Bermuda nor the Cayman Islands were included in the OECD project to eliminate harmful tax practices, since both countries had undertaken measures to comply with its requirements (OECD 2001a). The Cayman Islands were listed by the G8 as non-cooperative in 2000, but were delisted in 2001 (FATF 2005). However, both countries still meet the OECD criterion of imposing no or only nominal taxes.

In addition to stipulations for employees and company commitments in relation to stakeholders many codes also contain quality-enhancing features, such as vignette-style examples, references to further information, contact details for an ethics helpline/ombudsperson or introductory letters from the CEO.

In comparison with codes of conduct, CSR reports were more scarce among the OFC sample firms, as only 8 of the 27 companies (i.e. 30 %) display such a report (3 Corporate Citizenship Reports, 2 Sustainability Reports, 1 Environmental Report, 1 CSR Report and 1 Environment, Health and Safety Report). The average length of these reports is 24 pages, with a range from 11 to 44 pages. References to GRI were only made in 4 cases: agricultural company Bunge uses 'selected GRI indicators', diversified engineering firm Ingersoll-Rand 'follows GRI', the report by electronics company Tyco Electronics contains a GRI Reference Table, while electrical products firm Cooper Industries commits itself to C level application of GRI. Oil and gas operator Noble, headquartered on the Cayman Islands, is the only company that has some kind of track record, having produced sustainability reports since 2002.

References to CSR standards show a mixed picture too. ISO 140001 is applied by 11 companies (i.e. 41 % of the sample), while only 5 (i.e. 19 %) use OHSAS and none refer to SA 8000 or AA 1000. Only two companies—Bermuda-headquartered business services firm Accenture and Cayman-based electronics hardware company Seagate Technology—subscribe to the UN Global Compact.[3] The sample companies also adopted a number of additional CSR tools, such as Environment/Sustainability Policies (at least seven companies), a Guide to Supplier Ethical Conduct, a Mission and Values Statement, membership of the Dow Jones Sustainability Index or offsetting carbon emissions (at least one each). Due to space limitations, these additional tools could not be systematically covered here.

The sample firms headquartered in the two OFC jurisdictions—Bermuda and Cayman Islands—showed significant activity regarding the adoption of CSR tools, which is particularly noticeable as far as codes of conduct are concerned. A code adoption rate of 96 % among the sample seems to indicate that firms in tax havens cannot isolate themselves completely from the mimetic pressures that surround the global spread of CSR tools. At the same time, the adoption of CSR tools proceeded in a selective fashion. Considering the significant sums required for a certification to ISO 14001 or the data gathering for a CSR report, an emphasis on the low-hanging fruit prevails among the sample firms. Viewed differently, an internal focus dominates: while CSR reports are geared towards the information requirements of external stakeholders, the more frequently adopted codes of conduct predominantly address internal ones. In order to generate a more finely grained picture of CSR tool adoption among OFC-based companies, the next section will present an analysis of the content of the codes of conduct.

Code of Conduct Content

A code of conduct can be defined as a formal written policy document that lays down the conduct the company expects of its employees and the responsibilities a company adopts vis-à-vis its stakeholders (Molander 1987; Kaptein 2004). In terms of the former, codes give guidance on how to deal with a range of ethical challenges, such as conflicts of interest or dealings with government officials (Kaptein 2004; Singh 2006). Concerning the latter, previous research into code content identified a number of themes codes can address, such as environmental stewardship, labour relations, disclosure of information, competition, bribery and corruption, science and technology and consumer protection (OECD 2001b; Kaptein 2004). Hence the code content analysis will cover two distinct areas: (1) internal employee conduct and (2) responsibilities to stakeholders. The results are compared with a study by Kaptein (2004) into codes among the world's largest 200 companies all of which are from OECD member states.[4]

The regulation of employee conduct in the codes from Bermuda and the Cayman Islands is rather comprehensive (see Table 2). All of the documents require the application of sound financial accounting principles and the protection of company equipment and assets, they all prohibit passing on confidential information and using insider knowledge and they all impose restrictions on giving and receiving gifts. A number of further requirements are expressed by more than half of all companies. Stipulations on favouring family and friends were specifically analysed with regard to employment; when other conflicts of interest are added, the figure for these is close to 100 % too. Comparing the OFC results with the study into codes of conduct among OECD member country firms by Kaptein (2004), it is noticeable that inclusion rates for Bermuda and Cayman are higher in all instances. Even if the proliferation of codes since the time of the OECD study has increased, and with this the regularity with which ethical challenges are addressed (World Bank 2003), one has to conclude that Bermuda and Cayman Islands codes are comprehensive by

[3] Note that the Global Compact contains a commitment—added in 2004 to the original 9 principles—that business should work against corruption in all its forms.

[4] The list of countries studied by Kaptein (2004) does not include any of the countries identified as tax havens in the 'Stop Tax Haven Abuse Act'.

Table 2 Regulating employee conduct in OFC firm codes (in %)

	Bermuda/Cayman ($n = 26$)	OECD ($n = 105$)
I. Corporate funds		
Sound financial accounting principles	100	46
No fraud	76.9	45
No diversion of funds/embezzlement	53.8	19
Handling of expenses	50	8
II. Corporate equipment		
Proper use of equipment/assets	96.2	29
Protection of equipment/assets	100	18
Private use of means of communication	61.6	14
III. Corporate information		
No leakage of confidential information	100	50
Improper use of insider information	100	44
IV. Authorities		
Avoid conflicts of interests	100	52
No corruption or bribery	76.9	46
Restriction on acceptance of gifts	100	47
No favouring of family in recruitment	11.6	34
V. Corporate time		
No alcohol and drug use	61.6	17

international standards as far as the regulation of employee conduct is concerned.

Corporate commitments to stakeholders also show a wide coverage in the Bermuda and Cayman Islands codes (see Table 3). Concerning their employees, 84.6 % of companies commit themselves to maintaining a work environment that is free of discrimination and harassment, 73.1 % of companies stress health and safety at work, while 61.6 % commit themselves to showing dignity and respect to their employees. Similarly, suppliers are promised fair treatment in 92.3 % of the documents, while the same fair treatment is extended to competitors in 80.8 % of the codes. As far as the relationship with society is concerned, the observance of laws and regulations is included in all codes. The natural environment fares rather less well, as only 42.3 % of codes express a commitment to its protection. One should bear in mind, though, that just under half of the sample are financial services firms, where the opportunities for environmental improvements are less obvious than in other industries.

However, when it comes to more detailed commitments vis-à-vis stakeholders, the Bermuda and Cayman Islands codes look rather less impressive. From an employee perspective, the two arguably most important benefits are a decent salary and secure employment, which are addressed, respectively, in 3.8 % and not a single code. For suppliers, important concrete issues receive little attention too, if they are included at all. A mutually beneficial long-term relationship is offered in 3.8 % of codes, while not a single code commits the buying company to paying competitive prices in a timely manner. Similarly neglected are shareholders, as only 19.2 % of codes promise a maximum or even satisfactory return. As far as society is concerned, the only firm that makes some kind of commitment to complying with tax rules is Bermuda-based insurance company XL Capital:

> XL companies operate in a number of different jurisdictions throughout the world and are subject to oversight by various tax regulatory bodies. Accordingly, the Company has established a worldwide tax department, which as part of its duties, ensures compliance with tax rules and procedures.

The relative lack of detail in stakeholder commitments becomes even more pronounced when the Bermuda and Cayman Island data are compared with the OECD study by Kaptein (2004). A first striking difference concerns a corporate commitment to supplying a quality product or service, which was expressed by 67 % of OECD firms but only 30.8 % of the Bermuda and Cayman Island ones. Shareholders also seem to fare better with OECD member firms, as there 41 % of codes promise a satisfactory or maximum return as compared with 19.2 % of Bermuda and Cayman Island ones. In terms of a corporate commitment to society, one of the most established forms of CSR, corporate philanthropy (Carroll 1979; Fry et al. 1982; Porter and Kramer 2002), is supported by 36 % of OECD member firms but only by 7.7 % of Bermuda and Cayman Island ones. All environmental indicators receive wide coverage by OECD member firms too, where a commitment to more efficient

Table 3 Commitments to stakeholders in OFC Firm Codes (in %)

	Bermuda/Cayman ($n = 26$)	OECD ($n = 105$)
I. Customers		
Supplying quality products and services	30.8	67
Consumer health and safety	11.5	35
Reasonable/competitive prices	0	34
Continually improving products and services	19.2	28
Preventing misuse/abuse of products	0	3
II. Capital providers		
Maximum/satisfactory return	19.2	41
Protecting investor assets	3.8	9
III. Employees		
Personal development	23.1	40
Dignity/respect	61.6	39
Diversity/equal opportunity/non-discrimination	84.6	44
No harassment	84.6	43
Offering enriching/rewarding work environment	23.1	23
Offering good/competitive compensation	3.8	12
Providing stable and secure job opportunities	0	9
Health and safety	73.1	49
Refraining from child labour 0	7.7	4
Life-work balance	3.8	2
IV. Suppliers		
Ensuring equal opportunity/fair treatment	92.3	14
Seeking mutually beneficial/long-term relation	3.8	12
Paying competitive prices in timely manner	0	6
Making reasonable demands only	0	3
V. Society		
Observing laws and regulations	100	57
Philanthropy, charitable donations, etc.	7.7	36
Enhancing the quality of life for local community	23.1	18
Respecting human rights/dignity of stakeholders	19.2	11
Supporting public policies for development	0	8
Recognising government's obligation to society	0	6
Timely payment of taxes	3.8	1
VI. Competitors		
No misuse of competitor assets/information	19.2	21
Fair dealing	80.8	Not included
No misleading claims about competitors	19.2	2
VII. Natural environment		
Preserving/restoring the natural environment	42.3	56
Eliminating/preventing pollution	15.4	31
Efficient energy use	3.8	20
Development of greener products/services	3.8	10
Developing environmental technologies	0	7
Animal welfare	0	2

energy use in 20 % of OECD member codes compares with only 3.8 % for Bermuda and the Cayman Islands. In order to conclude this section, the codes of conduct adopted by the sample of OFC-based firms appeared at first glance to be rather comprehensive, in particular in their coverage of employee conduct. However, this contrasts with a less systematic coverage when it comes to detailed commitments to stakeholders.

Table 4 Mimetic pressure in OFC firm statements on fair competition

Company	Industry	Jurisdiction	Text
NYSE	*Equities trading*	*United States*	*Each employee, officer and director should endeavour to deal fairly with the company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice*
Allied World Assurance	Insurance	Bermuda	We must endeavour to deal fairly with all of our policyholders, producers, prospects, suppliers, competitors and employees. No one should take unfair advantage of anyone through manipulation, concealment, abuse of privileged or confidential information, misrepresentation of material facts, fraud or any other unfair practice
Arch Capital Group	Insurance	Bermuda	Employees must endeavour to deal honestly, ethically and fairly with the Company's customers, suppliers, competitors and Employees. No Employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice
Aspen Insurance Holdings	Insurance	Bermuda	Employees, officers and directors should not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair-dealing practice
Axis Capital Holdings	Insurance	Bermuda	Employees, officers and directors of the Company are expected to deal fairly with customers, suppliers, competitors and colleagues. Employees, officers and directors should not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair-dealing practice
Endurance Specialty Holdings	Insurance	Bermuda	Each Endurance employee shall endeavour to deal fairly and in good faith with Endurance's customers, shareholders, employees, suppliers, regulators, business partners, competitors and others. No Endurance employee shall take unfair advantage of anyone through manipulation, concealment, abuse of privileged or confidential information, misrepresentation, fraudulent behaviour or any other unfair-dealing practice
Everest Re Group	Insurance	Bermuda	Each director, officer and employee should endeavour to deal fairly with the Company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair-dealing practice
Invesco	Asset management	Bermuda	Covered Persons shall deal fairly and honestly with Invesco's shareholders, customers, suppliers, competitors and employees. Covered Persons shall behave in an ethical manner and shall not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair-dealing practice
MF Global	Investment brokerage	Bermuda	Each director, officer and employee should endeavour to deal fairly with the Company's customers, service providers, suppliers, competitors, joint-venture parties and employees. No director, officer or employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any unfair-dealing practice
Noble Corporation	Oil & gas operations	Cayman Islands	Each employee should endeavour to respect the rights of and deal fairly with the Company's customers, vendors, competitors and employees. No employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other intentional unfair-dealing practice
Partner Re	Insurance	Bermuda	Each employee should endeavour to deal fairly with PartnerRe's customers, suppliers, competitors and employees. No employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair-dealing practice
Seagate Technology	Technology hardware	Cayman Islands	Each Employee and Director shall endeavour to deal fairly with the Company's shareholders, competitors, customers, suppliers and employees. No Employee or Director shall take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair practice
Transocean	Oil and gas Operations	Cayman Islands	The Company's core values mandate that we deal fairly with our customers, suppliers, competitors and employees. In that connection, directors, officers and employees must not take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts or any other unfair-dealing practice

Mimetic Pressure in OFC Firm Codes

The imbalance in the Bermuda and Cayman Islands codes between a comprehensive discussion of employee responsibilities towards the firm and a rather less detailed treatment of company responsibilities towards major stakeholders can be explained by two related phenomena. Many of the codes display a striking legal influence, which is a reflection of a growing impact of regulation on codes of conduct. For example, Section 406 of the Sarbanes–Oxley Act of 2002 requires all public companies to disclose whether or not—and if not, explain why not—the company has adopted a code of ethics for its senior financial officers. The New York Stock Exchange (NYSE) goes further and requires, in its Listed Company Manual, that listed companies adopt and disclose a code not just for directors but for all officers and employees. The manual furthermore lists the most important topics codes should address, like conflicts of interest, corporate opportunities, confidentiality, fair dealing, protection and proper use of company assets, compliance with laws, rules and regulations and encouraging the reporting of illegal or unethical behaviour. These requirements have clearly left traces in the sample company documents. For example, the code of insurance company Everest Re consists of a section on employee requirements (11 pages) followed by an 'Index of Significant Compliance Policies and Procedures' (10 pages).

Linked to a strong legal codification aspect of code content are mimetic pressures (Meyer and Rowan 1977; DiMaggio and Powell 1983), where companies model themselves on other influential reference organisations, whether regulators or peer companies. As an example, the NYSE gives definitions, in section 303A.10 of its Listed Company Manual, of various ethical challenges. Rather than being a source of inspiration, its definition of what constitutes fair dealing has been copied more or less verbatim by no fewer than 12 companies in the sample, mainly but not exclusively Bermuda-headquartered insurance firms (see Table 4). As an example of inter-firm mimetic behaviour, the codes of Covidien, a medical instruments and supplies company, and Tyco, a diversified electronics company, bear a striking resemblance to each other, not only in terms of the issues that are addressed but also the vignettes that are given to illustrate common ethical

Table 5 Mimetic behaviour in OFC-based firms

Covidien, a medical instruments and supplies company
'Having a safe workplace is one of the most important benefits we offer to our employees and their families. At Covidien, we are committed to ensuring a safe working environment for all employees. We do this by following strict safety and health rules and practices, including:
Prohibiting the possession of weapons and other dangerous devices by Covidien employees, contractors, vendors and visitors at all times on the Company's or customers' property;
Not tolerating any threats of harm—either direct or indirect—or any conduct that harasses, disrupts or interferes with another employee's work or performance or that creates an intimidating, hostile work environment;
Rigorously adhering to the established safety procedures, following safety practices and avoiding shortcuts; and
Requiring every Covidien business to have an active safety program that is strongly supported by its management team
While compliance with all applicable laws, regulations and record-keeping requirements is mandatory, Covidien seeks to exceed the minimum legal standards. It is our intent to avoid all injuries and to be recognized as an industry leader in safety
A Word About Our Environment
Covidien conducts its worldwide operations in a manner that both conserves and protects natural resources and environments. All Covidien entities conduct their operations in compliance with applicable environmental laws and regulations in the jurisdictions where we do business.
Tyco, a diversified electronics company
'Having a safe workplace is one of the most important benefits we offer to our employees and their families. We are committed to ensuring a safe working environment for all employees. We do this by following strict safety and health rules and practices, including:
Prohibiting the possession of weapons and other dangerous devices by Tyco employees, contractors, vendors, and visitors at all times on the company's or customers' property;
Not tolerating any threats of harm—either direct or indirect—or any conduct that harasses, disrupts, or interferes with another employee's work or performance or creates an intimidating, hostile work environment;
Rigorously adhering to the established safety procedures, following safety practices and avoiding short cuts;
Requiring every Tyco business to have an active safety program that is strongly supported by its management team
While compliance with all applicable laws, regulations, and record-keeping requirements is mandatory, Tyco seeks to exceed the minimum legal standards. It is our intent to avoid all injuries and to be recognized as an industry leader in safety
A Word About Our Environment
Tyco conducts its worldwide operations in a manner that conserves and protects natural resources and environments. All Tyco entities conduct their operations in compliance with applicable environmental laws and regulations in the jurisdictions where we do business'

dilemmas (see Table 5 for the two companies' descriptions of their commitment to health, safety and environmental protection).

Mimetic pressure in codes of conduct is, of course, not the prerogative of firms in OFCs. For example, surveying 192 firms of the Forbes 500 Index of 2003, Murphy (2005, p. 188) noted that "much of the material in codes is 'boilerplate'", while Forster et al. (2009) found substantial levels of common sentences in the codes of conduct of the firms in the Standard & Poor 500 Index, with some documents having been more or less completely duplicated. Nonetheless, the degree of commonality in OFC codes casts doubt over the extent to which the documents have been the result of genuine reflection and stakeholder consultation in the sample firms. Wholesale borrowing also reduces the benefits, such as greater organizational efficiency or a more conducive work climate, a company can generate from having a code in place (Kaptein and Schwartz 2008). It is furthermore water to the mills of those who suggest that codes provide little more than superficial answers to complex issues (Warren 1993; Pater and Van Gils 2003).

In a nutshell, the codes of the OFC-based firms showed a significant degree of mimetic behaviour, as firms borrowed verbatim from each other and from guidance documents by regulators. Such a practice may have some merit for the composition of legal documents, yet it is likely to impact on the quality of ethical guidance a code of conduct can deliver. While commonality in code content is not limited to OFC-based firms, its presence would nonetheless seem to indicate that ethical reflection within the sample firms has been more limited than it appeared at first glance.

Conclusions

In its theoretical part, the paper undertook an ethical evaluation of OFCs. From a utilitarian perspective, OFCs are undoubtedly able to create wealth for the companies located there, for their shareholders as well as for OFC governments. However, this has to be balanced against a loss of utility for the governments where the corporate taxpayers would have otherwise resided, against a distortion of global FDI flows, a greater risk for shareholders as well as a path dependency for the OFCs themselves. A deontologist would see major obstacles to universalisation under Kant's Categorical Imperative, as the resulting world would not be attractive for most inhabitants. The inability of many corporate tax payers, such as small businesses or firms with domestic markets, to participate in tax avoidance does also violate the universalisation principle. From a virtue ethics point of view, the effects on individual character of a moral disconnect between the various corporate activities and the ability of OFCs to undermine democratically elected governments appear particularly troublesome. In other words, from the perspective of all three ethical theories tax avoidance through OFCs was judged to be a morally dubious activity.

The empirical part of the paper offered evidence that even OFC-headquartered companies cannot isolate themselves completely from the mimetic pressures that surround the global spread of CSR tools. This was illustrated by the fact that 96 % of the tax haven sample firms adopted a code of conduct. At a closer look, however, a rather selective application of CSR tools becomes apparent. Tools that require greater investment, such as certification to environmental and social standards, were reported rather less frequently, while tools that offer accountability to external stakeholders are particularly underrepresented in the OFC sample. Note here that the average length of CSR reports—24 pages—is only marginally greater than the average length of codes of conduct—20 pages. The sample companies also impose much more detailed prescriptions on their employees than they are prepared to accept in their commitments to stakeholders. In other words, companies headquartered in tax havens see much more value in the control function that CSR tools offer than in the role they can play in promoting corporate accountability.

The duplicity inherent in a tax haven-based company professing social responsibility throws open a range of challenges regarding the conceptualisation of CSR. In particular, the often used definition of CSR as going beyond the law (e.g. EC, 2001; McWilliams and Siegel 2001) becomes problematic when companies can altogether avoid regulation, at least certain aspects of it. Authors writing about the intersection of CSR and development have for some time now pointed out that defining CSR as activities that go beyond the law has little meaning in contexts where law enforcement capabilities of governments are weak (Fox 2004; Blowfield and Frynas 2005). Their criticism has mainly been made in relation to developing countries, yet studying CSR in OFC-based firms shows that the problem is much more pervasive, as even governments of leading industrialised nations either struggle or are unwilling to make full use of their legal powers.

The discussion of CSR in OFCs highlights the territorial basis of taxation, which was established alongside the growth of the nation state under the so-called Westphalian order (Caporaso 2000). As Webb (2004, p. 820) noted: 'Taxation is viewed as closer to the core of sovereignty than almost any other kind of economic policy, and this made states reluctant to consider international measures similar to those that are commonplace in sectors like trade' (see also Tanzi 1999). Witness for example the lack of progress in tax harmonisation the European Commission has been able to achieve, in particular when compared with its success in establishing the Single European Market. The debate over CSR in OFCs is thus a particularly potent reminder of the limitations which transnational approaches to governing the role of business in society experience.

International cooperation could undoubtedly help governments regulate "globally 'footloose' firms" (Windsor 2009). However, the study of CSR in OFC-based firms showed that such cooperation is embedded in transnational political processes in which firms themselves are powerful actors. With regard to the OECD initiative on curbing tax haven abuse, Webb (2004, p. 821) concluded: 'Transnational business acted in an informal coalition with tax havens, and their support gave greater weight to the normative arguments made by the havens'. This study into the adoption of CSR tools in OFCs thus pointed once more to the political nature of CSR, where at least some businesses and industries can successfully limit government power to enact regulation as well as shape the discourse regarding what counts as legitimate expectations of business and what does not.

Within the firm, the study highlighted that claims to engage in CSR can hide a great deal of inconsistency in a company's approach to CSR. MNEs are of course complex organisations as their operations are subject to great diversity in legal systems and institutional pressures across national boundaries (Windsor 2009). However, a decision to reincorporate in an OFC goes beyond internal complexity; it is a deliberate decision to suppress one important aspect of its responsibilities to society, whatever else the firm may claim in relation to other impacts on society. Claims by OFC-based firms to engage in CSR thus not only reveal a major disconnect in the core values of the company (Christensen and Murphy 2004) but also invite the question to what extent CSR generally is about window-dressing rather than substance.

A number of limitations of this study need to be stated. These arise first and foremost from the sensitive nature of the research question. Due to the difficulty of defining a tax haven and finding reliable lists of companies registered there, the sample of companies for the study was on the small side and included only two countries. These limitations could be addressed in future studies in a number of ways. Response bias could be reduced through the randomised response technique (RRT), where a respondent is asked to answer one of two questions, either the sensitive research question or an unrelated innocuous one. Which question the respondent is to answer is determined by a randomising device, such as the last digit of the respondent's home telephone number. Since researchers do not have access to this information, they cannot know which of the two questions the respondent answered. Hence respondent privacy and anonymity are maintained, while the results can still be statistically analysed (Dalton and Metzger 1992; Warner 1965; for an application, see Robertson and Rymon 2001).

A larger sample size could be generated through using membership lists of industry associations. For example, the Association of Bermuda International Companies has more than 130 members. However, the quality of their web-based provision of information on CSR tools varies considerably more than that of the Forbes 2000 firms. For a wider range of countries, the full range of the 34 countries that were identified by the US Internal Revenue Service as tax havens could be studied. In particular, such research could investigate whether the distinction between functional OFCs, larger territories with a degree of actual financial activity, and notional OFCs, where little employment and capital are located (Hines and Rice 1994; Hampton and Christensen 2002; Desai et al. 2006a) yields significant differences it terms of the adoption of CSR tools. However, it is hoped that the data presented here make a contribution to our understanding of the global spread of CSR tool to countries where the power of international civil society is weak if not altogether absent.

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