

DISTINGUISHING TAX AVOIDANCE AND EVASION: WHY AND HOW

Allison Christians¹

INTRODUCTION

Much public discourse about tax policy conflates tax avoidance and tax evasion as if they were effectively the same phenomenon. Going further, some tax justice activists and even some lawmakers have expressed a base frustration with the distinction between avoidance and evasion, concluding that both involve a violation of moral standards. The conflation and turn to morality might seem unobjectionable or even useful, given that both tax avoidance and tax evasion reduce state revenue which might otherwise be used to fund government functions and social programs. However, they are distinct phenomena. Tax evasion is wholly objectionable (with the exception of taxpayer responses to a wholly unjust tax regime). Tax avoidance describes a range of taxpayer behaviors, not all of which are wholly unobjectionable in the context of an otherwise coherent tax system. Tax avoidance and evasion can and should be distinguished, because they derive from different roots and require distinct regulatory responses.

This does not mean the public must be uninvolved in tax policy discourse surrounding appropriate responses to tax avoidance or evasion, as the case may be; the opposite is clearly true. The public seems uniquely suited to the task of demanding transparency in governance as a mechanism for monitoring lawmaking and addressing tax policy problems, including tax evasion and certain forms of tax avoidance. Transparency is, of course, an imperfect mechanism, but it seems to be the best hope for addressing a wide variety of governance-related failures, including failures in respect of tax (Christians, 2013a). Transparency forms the central core of all contemporary treatments of the problem of governance, and there is no reason why it should not also define the contours of thinking about what behaviors should be acceptable when it comes to taxation. For this reason, this essay concludes that the problem of distinguishing tax avoidance from tax evasion presents a base case for demanding transparency in both tax information and tax lawmaking in the service of pursuing tax justice.

HOW DID WE GET HERE?

The conflation of tax avoidance and tax evasion, and their rhetorical unification in the concept of morality, are by no means new phenomena. Academics, policymakers, lawmakers, and judges have more or less constantly grappled with these ideas over the entire history of taxation². However, to understand the recent resurgence of these ideas and explore why and how they should lead us invariably toward the rule of law, a brief review of the contemporary tax policy landscape is required. Two media-based exposés of international taxation combine to produce the source material for this exploration. The first, involving the “offshore leaks”

¹ H. Heward Stikeman Chair in Taxation, McGill University Faculty of Law. This article is revised and updated from Christians (2014). An updated version was also published in the Routledge Companion to Tax Avoidance Research (Abingdon: Routledge, 2017). See Christians (2017a).

² The literature is vast. For a few representative examples, see, e.g., Angell (1938); Harvey (1970); Shenfield (1968).

databases obtained and reported on by the International Consortium of Investigative Journalists (ICIJ)³, taught the public about an epidemic of tax evasion spreading across the globe. The second, the ongoing media coverage of single-digit effective tax rates paid on a global basis by household brand companies like Google, Apple, Starbucks, and Amazon, taught the public about an epidemic of tax avoidance, often characterized as “aggressive” to move it conceptually closer to the concept of evasion⁴.

THE EVASION STORY

The evasion story is a simple one, involving a clear question of governance failure for which the moral case seems virtually unambiguous⁵. Reporters who have analyzed the ICIJ offshore leaks databases have found that “alongside perfectly legal transactions, the secrecy and lax oversight offered by the offshore world allows fraud, tax dodging and political corruption to thrive” (Ohliser, 2013). Related stories abound, including the ongoing saga between the United States and Switzerland with respect to marketing efforts by UBS to secrecy-seeking American customers,⁶ a similar dispute between Germany and Lichtenstein,⁷ and the “Lagarde list” furnished to Giorgios Papakonstantinou - then the Greek Finance Minister - with the names of some 2,000 Greek residents, many with top government credentials, who were holding cash in secret Swiss bank accounts.⁸ The information contained in this steady stream of leaks produced a flood of media coverage that has moved activists to take issue with how governments manage the financial affairs of high-net-worth individuals.

The question this story clearly raises is why governments cannot or will not prevent this patently illegal and obviously objectionable behavior. One possibility is that governments fundamentally lack the ability to prevent this behavior; the other is that they can do so but choose not to for political reasons or for reasons having to do with corruption. The media coverage itself, and the response of activists in using such coverage to rally for a very specific set of tax policy reforms, suggests that the clear answer to tax evasion is greater public oversight to oversee the efforts (or lack thereof) of governments to fairly enforce their own laws, and to pressure governments to remedy past practices of lax enforcement, if better enforcement is possible.⁹ See Table 1.

³ International Consortium of Investigative Journalists (2013). The release of more than 11.5 million financial and legal records from the database of the Panama-based firm Mossack Fonseca in 2016, dubbed the “Panama Papers,” is among the ICIJ’s most recent revelations of international tax avoidance and evasion schemes. See International Consortium of Investigative Journalists (2016).

⁴ An early standout among such stories is Kocieniewski (2011); see also Duhigg & Kocieniewski (2012); Warman (2012); Patterson (2012); Barford & Holt (2013); BBC News (2012b).

⁵ Leaving aside those for whom all taxation is simplistically viewed as either theft or slavery or both.

⁶ See, e.g., Mathiason (2008).

⁷ See Deutsche Welle (2008). This scandal became so widespread that it became popularly known as the “Liechtenstein tax affair.” See 2008 Liechtenstein Tax Affair (n.d.).

⁸ The story of the Lagarde list was broken by investigative journalist Kostas Vaxevanis, who published the list after learning that the Greek government had altered it to remove key names and was otherwise disinclined to pursue prosecutions based on its contents. See The New York Times (2012b). Vaxevanis was arrested for violating the privacy rights of those named in the list and is currently facing a second trial on the same issue after being acquitted in November 2012. BBC News (2012a); Smith (2012); Smith (2013).

⁹ See, e.g., McIntyre, Gardner & Wilkins (2011); FactCoalition (2011); FactCoalition (n.d.).

TABLE 1: REGULATORY CAUSES OF AND RESPONSES TO TAX EVASION

Cause	Appropriate Response
Administrative failure (corruption/lack of competence)	Build up transparency & accountability mechanisms
Information Asymmetry	Build up disclosure & third party reporting
Insufficient investigative ability	Assign more resources to administration

One place where activists have sought avenues for such oversight is within the architecture of the Organisation for Economic Cooperation and Development (OECD). Formed as part of the reconstruction effort in the post-war era, the OECD is not primarily a source of international law but rather a forum for consensus-building among its member nations, which include the United States, Canada, and EU countries, but not Brazil, China, or India. The OECD is thus a transnational network, and its tax division is a tightly knit epistemic community whose main purpose is to create spaces for government officials to collaborate with business and industry leaders to frame issues of international tax policy, formulate norms, and syndicate these norms globally through domestic lawmaking procedures (Christians, 2010b). This institutional structure has had tremendous consequences for the formation of global tax policy, and serves as a warning about the role of norms, non-state actors, and institutions in tax policy matters more generally.¹⁰

The OECD began addressing the problem of offshore tax evasion in 1996, when it developed an appreciation of how tax havens - many of which are controlled possessions and territories of OECD member countries - were eroding the revenue-raising ability of many of the member countries.¹¹ Two years later, the OECD published a report that developed criteria to identify harmful tax competition and recommended, as a counteractive solution, a proposed blacklist of countries that were to be targeted with various sanctions unless they started sharing tax information with leading OECD countries pursuant to OECD standards.

After extensive lobbying against the project by the United States, Switzerland, and Luxembourg, the OECD ultimately reduced its work to an easily attainable compliance threshold. A country would be removed from tax haven blacklists by having in place at least twelve tax information exchange agreements (TIEAs) pursuant to OECD-drafted model language.¹² These TIEAs arranged actual information exchange among countries in such a way as to continue the status quo unabated; indeed, evasion may have even increased in countries that had not been subjected to OECD scrutiny, such as the United States, the United Kingdom, and Switzerland.¹³

¹⁰ The OECD is capable of exercising centralized coercive authority even if it does not dispense international "law," and many commentators have gone so far as to accept OECD declarations in tax matters as largely equivalent to law in practice. See Christians (2007).

¹¹ For a more thorough review of the OECD's work on tax evasion, see Kerzner & Chodikoff, (2016); Christians (2009).

¹² Sheppard (2009) ("The standard OECD information exchange agreement is nearly worthless."); McIntyre (2009) (outlining why OECD exchange agreements are ineffective and the OECD list of tax havens a "joke").

¹³ See, e.g., Jacobsen (2011); see also Tax Justice Network (2010).

Consequently, despite aspirational declarations by world leaders that the OECD had ended the era of bank secrecy in 2009, in fact, the opposite was true.¹⁴ Yet, because the institution had set the parameters of its own success, little recourse was available. The Tax Justice Network - a nongovernmental organization formed from a coalition of researchers and activists focused on harmful tax practices - together with other NGOs and activists, took on the issue in various ways.

Their constant public criticism, combined with reports on the growing amount of cash believed to be hidden offshore (Henry, 2012), arguably led to major initiatives at the national and international level. Nationally, the United States adopted punishing new rules for tax evaders and the institutions that enable them.¹⁵ Other countries quickly adopted similar legislation (Shaheen, 2012), and the OECD ultimately adopted a “Common Reporting Standard” to replicate the U.S. regime on a global scale, albeit consistent with global tax jurisdiction standards and without the sanctions that characterize the U.S. regime.¹⁶

Activists may view these developments as reasons for optimism, but some glaring deficiencies remain in these regimes. Leading nations, including the United States and the United Kingdom, continue to appear unwilling to curb their own appeal as tax havens to the rest of the world.¹⁷ More recent political developments in these countries appear to threaten some of the gains achieved in the past five years.

One may well wonder if the same governments that produced the circumstances for global tax evasion, and then pronounced its death four years ago after a highly contested global battle that lasted over a decade, can be believed when they say that this time things are different.¹⁸ But perhaps the even more troubling inquiry is what this process says about the possibilities for tax justice or fairness, however it may be articulated. If the rich countries of the world, marshaling their full and ample resources, and with apparently clear will and determination, have so much trouble just confronting - never mind solving - the problem of tax evasion, how much less should be expected when the behavior in question is not so unambiguously objectionable, while potentially being even more valuable to its architects? The rhetoric on tax avoidance demonstrates there are no straightforward answers to this question.

THE AVOIDANCE STORY

The avoidance story is more difficult, and it is here that the problem of ambiguity in the use of morality as a non-legal behavioral control arises. The issue is that the world’s biggest

¹⁴ G20 London Summit (2009) (“We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over.”); McIntyre (2009) at 255 (“Well, it’s not over yet.”).

¹⁵ Foreign Account Tax Compliance Act, Pub. L. No. 111–147, 124 STAT 71 (2010) (codified in scattered sections of 26 U.S.C.) (hereinafter, FATCA).

¹⁶ See OECD (2014). The United States has declined to join the Common Reporting Standard and claims that its administration of FATCA through a worldwide network of intergovernmental agreements should allow countries party to the common reporting standard to deem it to be a participating country. To date, that position appears to have been accepted by other countries despite persistent differences in the two regimes.

¹⁷ See, e.g., Christians (2013b); Edgerton (2012); Islam (2012); Scannell & Houlder (2016) (“After years of threatening Swiss and other foreign banks that helped Americans hide their money, the US stands accused of providing similar services for the rest of the world.... Bruce Zagaris, a Washington-based lawyer at Berliner, Corcoran & Rowe, says the US offshore industry is even bigger than people realise. ‘I think the US is already the world’s largest offshore centre. It has done a real good job disabling competition from Swiss banks.’”).

¹⁸ See, e.g., Sheppard (2013).

multinational conglomerates manage to earn trillions of dollars around the world, yet many seem to pay virtually no tax anywhere. This is framed as a justice issue because it shifts the burden of taxpaying to those who cannot similarly avail themselves of sophisticated tax planning strategies, and it thereby delivers undue advantage to sprawling conglomerates over all other taxpaying members of society. In response to this injustice, tax justice advocates use the concept of morality to move some kinds of tax avoidance into the unambiguously immoral category of evasion, despite the failure of the law to do so.

This attempt confronts a long tradition of tolerance, and even celebration, of tax avoidance behavior by taxpayers that is at once political, cultural, and legal in nature. In the United States, the doctrine is famously stated by Learned Hand in *Helvering v. Gregory*, as follows:

Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury. There is not even a patriotic duty to increase one's taxes.¹⁹

The same sentiment is found in English common law, and has accordingly been adopted in the jurisprudence of other commonwealth countries, including Canada and Australia. Thus, in *IRC v. Duke of Westminster*, Baron Thomas Tomlin wrote:

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. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.²⁰

Accordingly, when GE faced a public outcry over a media exposé of its global tax planning successes (Kocieniewski, 2011), a company representative replied that the company is “committed to complying with tax rules and paying all legally obliged taxes. At the same time, we have a responsibility to our shareholders to legally minimize our costs” (Kocieniewski, 2011). Similarly, when Apple was criticized in the media for going to great lengths to avoid paying millions in taxes (Duhigg & Kocieniewski, 2012), the company responded that, in addition to being a job creator and a contributor to charitable causes, it “has conducted all of its business with the highest of ethical standards, complying with applicable laws and accounting rules” (The New York Times, 2012a). Generating public objection to tax avoidance in the face of a tradition of supportive legal jurisprudence and cultural understandings, including about the nature and the role of the corporation in society, is thus a potentially monumental task.

Making tax avoidance a question of morality is a difficult terrain for activists. It automatically invokes actual tax compliance as a ready defense. However, it also involves the interplay of various legal rules enacted by sovereign (and often democratic) governments, as well as the kind of political malfunction that allows special interest groups to influence and directly author

¹⁹ *Helvering v. Gregory*, 69 F.2d 809, 810 (2d Cir. 1934).

²⁰ See *Duke of Westminster v. IRC*, [1936] 19 D.T.C. 490, 520 (Can.); see also *Ayrshire Pullman Motor Services and Ritchie v. IRC*, [1929] 14 D.T.C. 754, 763 (Can.) (“No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores.”).

the laws that regulate themselves and their clients - at a high cost to broader society.²¹ As a result, linking tax avoidance to morality requires telling a more complicated story about why an activity that is technically legal should nevertheless be publicly excoriated and ultimately punished.

Some have tried to overcome this challenge by categorizing avoidance into “acceptable” and “aggressive” or, alternatively, “intended” and “abusive” forms. It follows that some kinds of avoidance - such as putting money in a tax-deferred retirement savings account - are morally cleared because they are intended by government; but other kinds of tax avoidance - such as assigning low value to intangibles sold to corporate subsidiaries in order to assign profits to low-tax jurisdictions - must be immoral because the behavior was not intended by legislators.²²

This attempt to subcategorize an area of legal but objectionable tax avoidance is precarious. It involves drawing a line that governments themselves have failed to draw adequately, and places blame squarely on the taxpayer for behavior that is later deemed to have fallen on the wrong side of the line based on what the politicians who wrote the law “intended”. This ignores the complex problem of political malfunction (or capture); namely, the outsized influence on tax lawmaking that is wielded by taxpayers who can take advantage of global financial markets and decentralized regulatory schemes to render themselves difficult or impossible to tax.²³

Thus, when Starbucks, GE, Apple, and countless other companies pledge their fidelity to all applicable laws, they fail to mention the many ways in which they influence the direction of tax law reform on a global basis.²⁴ This influence not only includes direct lobbying efforts in national lawmaking processes, but also involves the much more obscure, yet equally important, role that multinational companies play in influencing tax policy through a panoply of other mechanisms (Christians, 2017b). These range from direct and indirect political spending to so-called “native advertising,” pursuant to which promotional marketing is presented as journalism or even academic research. Such influence additionally extends to participation in various international networks - most notably the OECD - where access to lawmakers can be had in informal, mostly unobservable, ways. While direct lobbying and some forms of political spending are increasingly well-documented and subject to public scrutiny as well as systemic

²¹ The outsized influence wielded by business lobbyists is outlined in Alexander, Scholz, & Mazza (2009), which estimates the return on investment in political influence over tax policy matters to be as high as 22,000 percent. Concerning the ability to author laws, professional firms are not always shy about their ability to shape the law when it comes to creating promotional materials. Corporations also partner with lobbyist-think-tank hybrids like the American Legislative Exchange Council (ALEC) to advance their interest through legislative proposals. See, e.g., American Association for Justice (2010); The Center for Media and Democracy (n.d.). For a discussion of political malfunction and its various forms, see Komesar (1981); Luigs (1995).

²² See Murphy (2012). Some commentators argue that the transfer pricing issue is the crux of the problems surrounding the erosion of the corporate tax base. A unitary system of taxation, which would carve up multinational corporation's profits in a more substantively accurate manner, is often cited as the ideal solution to this problem. See, e.g., Picciotto (2012).

²³ See Komesar (1981) (explaining the concept of political malfunction and exploring regulatory responses); Christians (2013a, 72–77) (explaining that under pressures from a globally integrated market economy, sovereign states have engaged in a de facto tranching of taxpayers into distinct pools: the relatively “easy-to-tax,” the relatively “hard-to-tax,” and the virtually “impossible-to-tax.”).

²⁴ More recently, the UK government reprimanded the Big Four accounting firms for initially playing “gatekeeper” by lending assistance to draft anti-avoidance legislation, and then subsequently for being “poachers” by systemically abusing their position by finding ways to do the very things that said legislative provisions were supposed to stop. See Martin (2013).

academic analysis,²⁵ the other forms of political influence are just as pervasive, yet most are rarely acknowledged in scholarship on tax policymaking.²⁶

Because of this expansive influence on the legislative process, framing tax avoidance as a question of morality based on what legislators intend is therefore not only incapable of solving the problem of controlling taxpayer behavior, it is inviting a whole new host of interpretive barriers to designing such a solution. Determining lawmaker intent with respect to tax policy requires a holistic approach that is both pluralistic and globalized in nature. This adds tremendous difficulties to the already extensively documented problem of determining legislative intent in general.

The OECD's own role in articulating tax norms provides one example of the difficulty here. Lee Sheppard has argued that the OECD is principally responsible for at least three of the biggest tax base-eroding regimes in existence globally: the "treaty treatment of remote commerce; tax treatment of related-party financial transactions; [and] transfer pricing, especially separation of income from relevant activity" (Sheppard, 2013). If the lawmaker's intent marks the line between what is objectionable tax avoidance and what is not, these three regimes are problematic to say the least.²⁷

Articulating exactly what a lawmaking body intended in enacting any one of these regimes would be difficult. Taken together, one could rationally conclude that lawmakers in many of the OECD member countries intend not to tax very much of anything that touches international markets at all. If that is true, then much of the tax avoidance sought to be moderated with a moral requirement to abide by an assumed spirit of the law could be perfectly in line with that spirit. Troublingly, this is the case even if the spirit is implied from legislative intentions that go unstated for reasons having to do with the politics of self-preservation. Like native advertising, special interest group protection through favorable legislation is best accomplished when it is not done so overtly.²⁸ Adjudicating taxpayer behavior on this basis provides no answer to the possibility that much tax legislation is, in fact, sponsored content.

The problem of interpreting legislative intent is further thwarted by the crowding-out of alternative policy influences caused by an entrenched policy monopoly. This happens, for example, to the extent that the OECD, self-described as the world's "market leader in tax policy"²⁹, quashes policymaking attempts by rival institutions (Murphy, 2011). Crowding out alternative viewpoints ensures institutional rigidity and adherence to status quo interests. It also ensures ongoing isolation of the issues facing poor countries in the global tax order.³⁰ As Michael Durst, a former IRS official, puts it:

I have frequently observed [lobbying at the OECD] at close hand, and I believe it has been influential. The effectiveness of lobbying efforts has been enhanced, I believe, by the absence of any financially interested constituency that might serve

²⁵ See, e.g., The Center for Responsive Politics (n.d.); Alexander, Mazza, & Scholz (2009).

²⁶ For a discussion of native advertising, see, e.g., Wemple (2013). There appears to be no scholarship to date measuring the extent to which native advertising has been used to influence tax policy, so this is a topic that is ripe for further study. For an overview of the OECD's lobbying activities, in particular with relation to the G20, see Christians (2010c).

²⁷ See, e.g., Spencer (2012); Durst (2011).

²⁸ See, e.g., Warzel (2013).

²⁹ See, e.g., OECD (2012).

³⁰ See, e.g., Horner (2001).

as an effective counterweight and therefore as a political force for changes to current laws (Durst, 2011).

Some activists have begun to point out the crisis for the rule of law on both a national and international level that is presented by this kind of political malfunction. For example, the Tax Justice Network has recently questioned the outsize influence on tax policy exercised by the OECD (Fowler, 2013). As activists tie legal tax avoidance by multinational actors to the connection between the impenetrable forum of international tax lawmaking and the inability of the public to monitor the outcomes of such lawmaking in practice,³¹ they will accordingly seek public accountability in the form of more disclosure of tax governance mechanisms, and more participation in international tax organizations and processes. See Table 2.

TABLE 2: REGULATORY CAUSES OF AND RESPONSES TO TAX AVOIDANCE

Cause	Appropriate Response
Domestic pressure & lobbying	Build up lobbying disclosure & support independent policy research
Tax competition	Build global awareness, pressure global institutions to respond

PLURALISM AND THE SOFT LAW PATH

Because the message of legal tax avoidance is both complex and nuanced, and features behavior that is not obviously objectionable when compared to tax evasion, activists typically combine tax evasion and tax avoidance into a single category when presenting the problem to the public. For example, James Henry - an American tax justice activist who was formerly Director of Economic Research (chief economist) for McKinsey - states:

Both evasion and avoidance have the same impact on the rest of us, which is, our tax burdens are greater because the truly rich are not paying their fair share: they are able to put their money abroad, and are basically able to take advantage of a system that allows double non-taxation. And that's a real problem (Carroll Trust, 2012).

Henry thus combines tax avoidance, which is the product of either intentional or inept (or both) rulemaking and tax administration, with tax evasion, which is the product of taxpayers flouting the rules and governments not stopping them. This allows a single message to permeate the public consciousness; namely, that whether it is avoidance or evasion, taxpayers are misbehaving and they must be stopped.

The intentionally pluralistic character of the last century of tax policy development serves as the basis for arguing that the rule of law must be central in the formulation of any solution to this problem. This pluralistic character is most clearly evidenced in the use by rich countries of non-legal methods to create and maintain the system in existence today, including facilitating the central role played by tax havens in the global financial system (Boise & Morriss, 2009; Christians, 2010b, Eccleston, 2012, Freyer & Morriss, 2013). Because the institutional and regulatory status quo constrains the capacity of governments to respond unilaterally to

³¹ For an anecdotal account of the difficulties related to observing OECD deliberations, see Christians (2013c).

problems involving international taxation, the OECD - as its chief architect - has been criticized for perpetuating a democratic deficit in tax lawmaking, for skewing tax policy to favor its members and their constituencies, and for advancing an agenda that is inconsistent with other global social goals within the safely ensconced parameters of black box policymaking.³²

Since the OECD is not a lawmaking body, but instead deals in “norms” and “standards,” there exist in law no remedies for any of its perceived misdeeds, no matter how far-reaching or damaging. Anyone who disagrees with the OECD’s global grip over tax policy has little choice but to mount a challenge through another institution or mechanism that will inevitably be outmatched in financial and institutional support. Some may even be overtly thwarted in such an effort by those who seek to sustain the primacy of the OECD in preserving its own brand of tax policy against any would-be competitors. The OECD’s continued tax policy domination suggests that its member countries have, to date, been well-served by using these non-legal methods to shape tax practices on the ground around the world.

Given the massive resource difference between tax justice advocates and the OECD member governments, it seems clear the latter will employ their well-resourced and highly motivated supporting constituencies to clear the way for OECD-based policy views to continue to prevail. This power difference must be acknowledged as real, even while it is vigorously protested as a fundamentally unjust way to decide how states can and should exercise taxation, and continuously countered with comprehensively justice-oriented policy alternatives. Starting from the premise that the status quo is a product of decades of soft law, a convincing case can be made that governments can and should contain the mechanisms for controlling inappropriate behavior within the structure of law instead.

USING LAW TO CONSTRAIN TAXPAYER BEHAVIOR

When a government determines how to commandeer resources from the private sector for the public good, it seems important that the rule of law be involved in drawing the line between evasion, which is illegal, and avoidance, which is not. The line between avoidance and evasion, like many line-drawing exercises in tax or otherwise, is fraught with difficulties.³³ However, this is an argument for drawing this line not with soft law, but rather with legal principles, continuously monitored and enforced through compliance with agreed upon rules and standards, backed up by judicial review, to put the taxpayers on notice as to the behavioral expectations applicable to all.

This is not to say that governments are or should be helpless against formalistic or “sophisticated” tax planning.³⁴ Governments are clearly not helpless in this regard: this is the point and purpose of anti-abuse rules. These may be bright-line rules, such as thin capitalization and beneficial ownership, or more flexible regimes that rely on weighing and balancing with judicial oversight as a backstop, such as general and specific anti-avoidance rules, sham and step transaction doctrines, and economic purpose tests.³⁵ All of these are admittedly

³² For a discussion of international constraints on national tax policy, see Christians (2010a).

³³ See, e.g., Weisbach (1998).

³⁴ It is also not to suggest that tax advisors are themselves amoral actors, mere technicians, or automatons of any kind. They clearly are not, and professional standards are regularly set and enforced with respect to their behavior in statutory and administrative rulemaking, as well as private membership association regimes. See Hatfield (2011); Canellos (2001).

³⁵ The literature is vast on this topic. See, e.g., Lederman (2010); Pietruszkiewicz (2009).

cumbersome ways in which to solve complex problems, but they are at least capable of collectively moving the tax system toward more coherence and consistency of application.

In contrast, suggesting that the difference between illegal and legal cannot be established in law posits that, while societies are incapable of articulating the parameters of acceptable conduct within the law, legal sanction will nevertheless be imposed for noncompliance. This implies that punishment can and will be meted out randomly, because judgments about taxpayer behavior will be made outside of the sphere of deliberative lawmaking and, instead, in the court of public opinion.

Bypassing the legislative sphere as the proper place for making and enforcing decisions about civic responsibility shifts the duty of oversight away from governments and toward civil society writ large, which includes not just NGOs, activists, and others who may be interested in promoting tax justice or fairness, but also all of the lobbyists, consultants, paid marketers and promoters, and other political actors who have their own agendas, and many resources and mechanisms by which to advance them.

Assigning the problem of categorizing taxpayer behavior to the public in this manner has pernicious effects. The most troubling of these is that it releases legislators from responsibility too easily, allowing them to continue to benefit from sponsoring legislation that favors their constituencies while purporting to act in the interest of the public. However, it also runs the serious risk of pushing against the path to good governance more systemically, by turning too quickly to soft law without considering how to deal with the political influence problems that will inevitably persist and may even worsen in this scenario. Instead of turning to morality as a soft law backstop to an ongoing tax governance crisis, the better path seems to be the one most tax justice advocates recommend; namely, achieving expansive transparency in lawmaking processes so as to enable public monitoring of what the legal regime produces in terms of actual outcomes for taxpayers.

BASE CASE FOR TRANSPARENCY OF TAX LAWMAKING

Transparency has become a buzzword in international governance in general, so it is perhaps no surprise to see it mobilized by tax justice advocates. Given the technical complexity of the regimes in question, and how those regimes interact across borders to create the related yet distinct issues of evasion and avoidance, seeking transparency in international tax is no small feat. First, it will involve a clear statement of the ills to be remedied - an elusive task, given the tradition of opacity and the prevalence of soft law, as well as non-legal processes and institutions. It must then overcome the institutional hurdles presented by a global tax policy regime that restricts influence from outside the business community.

However, this is precisely where the intractable problem of drawing a line between tax avoidance and tax evasion may be viewed as an opportunity to achieve systemic reform. At least two systemic tax governance traditions could be challenged on the grounds that each leads to the public's inability to distinguish between tax evasion and tax avoidance, and therefore each breaks down the legitimacy of tax law in the court of public opinion, thus furthering a cycle of incoherent and uneven application of tax laws within and across societies.³⁶

³⁶ See Allevi & Celesti (2016); Kirchler, Maciejovsky, & Schneider (2003).

The first of these systemic tax governance traditions is the outsize influence of well-resourced special interest groups over tax lawmaking processes in both domestic and international settings. There is little doubt that tax policy suffers because too much policy influence is wielded by one particular sector; namely, the business community in the influential OECD member countries and their worldwide network of lawyers, accountants, and other advisers who are well paid and therefore highly motivated to serving in this effort.³⁷ Far too much of this influence is being exerted in institutions and processes that are inaccessible to public view. This suggests, at minimum, that governments have accepted, contrary to social policy goals, an inappropriate amount of obscurity around the many ways in which well-resourced actors control the design and maintenance of tax systems across the globe.

Many of the problems for tax policy posed by opacity in political influence are solvable as governance problems through the mechanism of transparency. In this case, the transparency contemplated includes the complete documentation with respect to all government officials - at all levels (national and international included) - of every meeting had with any person not in government, disclosing time spent, issues discussed, and every dollar received in the form of campaign support, issue support, or otherwise.³⁸

This is more or less the working principle of various countries' lobbying registries, as well as open meetings and access to information laws, but it envisions a more thorough public surveillance of interactions between government officials and the public at all levels and in all capacities. This kind of transparency would enable public observation of the connection between political influence and fully compliant yet significantly low-taxed members of society, and therefore provide necessary data points for explaining why full compliance with existing laws is not a benchmark for appropriate taxpayer behavior, but rather a starting point for critical inquiry regarding the accountability of lawmakers to the broader public.

A second systemic tax governance tradition that impedes the ability of the public to distinguish between tax evasion and tax avoidance is the confidentiality accorded to taxpayers' tax information. Taxpayer confidentiality serves important functions in protecting individual rights but, unfortunately, it prevents the public from observing how the law on the books plays out on the ground, and therefore sows the seeds for outrage when the media exposes the tax affairs of yet another high profile member of society.

Transparency may again be a solution, this time in the form of public disclosure of certain kinds of tax information. While there is a case to be made for favoring confidentiality over publicity in the case of individuals (Blank, 2011), the same case has not been made for corporations and other business entities. The tax evasion/avoidance problem could serve as the reason to embrace some reforms with respect to the use of taxpayer information, but caution must be exercised to ensure that fundamental human rights are not sacrificed in ill-considered efforts to expose faults in the tax system to the public.³⁹ A targeted approach, like that developed by the Extractive Industries Transparency Initiative, may serve as a model for future transparency efforts.⁴⁰

³⁷ This issue is analyzed more fully in Christians (2017b).

³⁸ An example of what this type of documentation might entail may be found in the Sunlight Foundation's study of lobbying efforts surrounding transparency regulations that were to be enacted in the United States in connection with legislation enacted in response to the 2008 financial crisis. See Drutman & Chartoff (2013).

³⁹ See, e.g., Cockfield (2010).

⁴⁰ See Extractive Industries Transparency Initiative (2017).

Further bolstering the case for transparency, the uneven reputational risk of naming and shaming based on celebrity status or name brand visibility ought to motivate members of society whose tax affairs tell a different story to bring their governments to account for failing to delineate between tax avoidance and tax evasion in a comprehensive manner. To the extent that the targets of naming and shaming object to the charges of immorality and point to full compliance with all regulatory regimes, they should have no objection to a transparent system of governance that would allow the public to monitor tax policy outcomes on the ground.

CONCLUSION

The failure to coherently delineate between tax evasion and tax avoidance is not the product of legal impossibility but rather of governance failure. The answer to this governance failure is not to turn away from law by articulating a non-legal standard of behavior based in the language of morality and then using this standard as a means to inflict legal sanctions. Instead, the answer is to demand more from the law, which means expecting more accountability in governance. This is not a revelation, but a reminder of governance lessons already learned.

Transparency has always created pressure on governments to solve line-drawing problems; in tax policy, it is the same story. Tax transparency forces lawmakers to expand their engagement with society beyond their immediate sources of sponsorship by improving the feedback loop between lawmaking and policy monitoring. Mechanisms like public disclosure of tax-related data and broad public participation in tax law policymaking - at all levels and in all forms of governance - have the potential to dislodge rhetoric based on conjecture and deliver to the public the data needed for independent study of the tax system as it plays out in practice, rather than as it is suggested by the words placed in statutes by legislators whose intentions are ambiguous at best.

It is precisely within the act of drawing a line between tax avoidance and evasion that the dire need for transparency most reveals itself. The idea that taxpayer behavior must be managed by law, rather than social sanction, rests fundamentally on the premise that tax policy can move toward greater coherence over time if the public persistently demands a means of monitoring law-making. Transparency, therefore, becomes a tool for forcing governments to distinguish between legal and illegal behavior within a regime that is capable of sustained public observation as well as participation that is itself observable - namely, the rule of law. The need for an articulation of the difference between tax avoidance and tax evasion accordingly illustrates why transparency in governance is consistently viewed as an essential requirement for the pursuit of tax justice.

CASES CITED

Helvering v. Gregory, 69 F.2d 809, 810 (2d Cir. 1934).

Duke of Westminster v. IRC, [1936] 19 D.T.C. 490, 520 (Can.)

Ayrshire Pullman Motor Services and Ritchie v. IRC, [1929] 14 D.T.C. 754, 763 (Can.)

LEGISLATION CITED

Foreign Account Tax Compliance Act, Pub. L. No. 111-147, 124 STAT 71 (2010) (codified in scattered sections of 26 U.S.C.). Retrieved from <https://www.gpo.gov/fdsys/pkg/PLAW-111publ147/pdf/PLAW-111publ147.pdf>

REFERENCES

- Alexander, R., Mazza, S.W., & Scholz, S. (2009). Measuring Rates of Return on Lobbying Expenditures: An Empirical Case Study of Tax Breaks for Multinational Corporations. *Journal of Law and Politics*, 25(4), 401-458.
- Allevi, L., & Celesti, C. (2016). Conference Report: 10th GREIT Annual Conference on *EU BEPS; Fiscal Transparency, Protection of Taxpayer Rights and State Aid* and 7th GREIT Summer Course on Tax Evasion, Tax Avoidance, & Aggressive Tax Planning. *Intertax*, 44(1), 70-96.
- American Association for Justice. (2010, May). ALEC: Ghostwriting the Law for Corporate America. Washington D.C.: American Association for Justice. Retrieved from https://www.justice.org/sites/default/files/file-uploads/ALEC_Report.pdf
- Angell, M.B. (1938). Tax Evasion and Tax Avoidance. *Columbia Law Review*, 38(1), 80-97.
- Barford, V. & Holt, G. (2013, May 21). Google, Amazon, Starbucks: The rise of 'tax shaming'. *BBC News*. Retrieved from <http://www.bbc.co.uk/news/magazine-20560359>
- BBC News. (2012a, November 1). Greek bank list editor Costas Vaxevanis acquitted. Retrieved from <http://www.bbc.co.uk/news/world-europe-20172516>
- BBC News. (2012b, December 3). *Tax paid by some global firms in UK 'an insult'*. Retrieved from <http://www.bbc.co.uk/news/business-20559791>
- Blank, J. (2011). In Defense of Individual Tax Privacy. *Emory Law Journal*, 61(2), 265-348.
- Boise, C.M., & Morriss, A.P. (2009). Change, Dependency, and Regime Plasticity in Offshore Financial Intermediation: The Saga of the Netherland Antilles. *Texas International Law Journal*, 45(2), 377-456.
- Canellos, P. (2001). A Tax Practitioner's Perspective on Substance, Form and Business Purpose in Structuring Business Transactions and in Tax Shelters. *SMU Law Review*, 54(1), 47-72.
- Carroll Trust. [Carroll Trust]. (2012, November 14). Gibraltar Offshore Accounts PEMBERTON GREENISH*WITHERS WORLDWIDE*HMRC Biggest Tax Evasion Case. [Video file]. Retrieved from <https://www.youtube.com/watch?v=Cv6d9b9Z9C4>
- Christians, A. (2007). Hard Law & Soft Law in International Taxation. *Wisconsin International Law Journal*, 25(2), 325-333.
- Christians, A. (2009). Sovereignty, Taxation, and Social Contract. *Minnesota Journal of International Law*, 18(1), 99-153.
- Christians, A. (2010a). Global Trends and Constraints on Tax Policy in the Least Developed Countries. *UBC Law Review*, 42(2), 239-274.
- Christians, A. (2010b). Networks, Norms, and National Tax Policy. *Washington University Global Studies Law Review*, 9(1), 1-37.
- Christians, A. (2010c). Taxation in a Time of Crisis: Policy Leadership from the OECD to the G20. *Northwestern Journal of Law and Social Policy*, 5(1), 19-40.
- Christians, A. (2013a). Drawing the Boundaries of Tax Justice. In K. Brooks (Ed.), *The Quest for Tax Reform Continues: The Royal Commission on Taxation Fifty Years Later* (pp.53-79). Toronto: Carswell.

- Christians, A. (2013b). Putting the Reign Back in Sovereign: Advice for the Second Obama Administration. *Pepperdine Law Review*, 40(5), 1373-1414.
- Christians, A. (2013c, February 18). What an OECD "public briefing" teaches about the rule of law. [Blog post]. Retrieved from <http://taxpol.blogspot.co.uk/2013/02/what-oecd-public-briefing-teaches-about.html>
- Christians, A. (2014). Avoidance, Evasion, and Taxpayer Morality. *Washington University Journal of Law & Policy*, 44, 39-59.
- Christians, A. (2017a). Distinguishing tax avoidance and evasion. In N. Hashimzade & Epifantseva, Y. (Eds.), *The Routledge Companion to Tax Avoidance Research* (pp. 417-429). Abingdon: Routledge.
- Christians, A. (2017b). Trust in the Tax System: The Problem of Lobbying. In B. Peeters, H. Gribnau & J. Badisco (Eds.), *Building Trust in Taxation* (pp.151-172). Cambridge: Intersentia.
- Cockfield, A.J. (2010). Protecting Taxpayer Privacy Rights Under Enhanced Cross-Border Tax Information Exchange: Toward a Multilateral Taxpayer Bill of Rights. *University of British Columbia Law Review*, 42(2), 419-471.
- Deutsche Welle. (2008, February 26). *Germans Admit Tax Evasion as Scandal Widens to US, Australia*. Retrieved from <http://www.dw.com/en/germans-admit-tax-evasion-as-scandal-widens-to-us-australia/a-3151265>
- Drutman, L., & Chartoff, B. (2013, July 22). What the banks' three-year war on Dodd-Frank looks like [Blog post]. Retrieved from <https://sunlightfoundation.com/2013/07/22/dodd-frank-3-year/>
- Duhigg, C. & Kocieniewski, D. (2012, April 28). How Apple Sidesteps Billions in Taxes. *The New York Times*. Retrieved from: <http://www.nytimes.com/2012/04/29/business/apples-tax-strategy-aims-at-low-tax-states-and-nations.html>
- Durst, M. C. (2011). The Two Worlds of Transfer Pricing Policymaking. *Tax Notes International*, 61, 439.
- Eccleston, R. (2012). *The Dynamics of Global Governance: The Financial Crisis, the OECD and the Politics of International Tax Cooperation*. Cheltenham, UK: Edward Elgar.
- Edgerton, A. (2012, July 29). Miami's international banking clients move money to protect financial privacy. *Miami Herald*. Retrieved from <http://www.miamiherald.com/latest-news/article1941598.html>
- Extractive Industries Transparency Initiative (2017, February 8). *EITI Progress Report 2017: Ending company anonymity – the key to fighting corruption*. Oslo: Extractive Industries Transparency Initiative. Retrieved from <https://eiti.org/document/eiti-progress-report-2017>
- FACT Coalition. (2011, October). *Tax Reform*. Retrieved from http://tjn-usa.org/storage/documents/FACT_Tax_Policy_101911.pdf
- FACT Coalition. (n.d.) *Inconvenient Realities on Corporate Tax: Loopholes, Tax Breaks and Subsidies Tell the Real Story on the Corporate Tax Rate*. Retrieved from http://tjn-usa.org/storage/documents/FACT_Sheet_CORPTAX_DRAFT.pdf
- Fowler, N. (Producer). (2013, February). Taxcast: Edition 14. [Audio podcast]. Retrieved from <http://www.tackletaxhavens.com/taxcast/>

- Freyer, T.A., & Morriss, A.P. (2013). Creating Cayman as an Offshore Financial Center: Structure & Strategy Since 1960. *Arizona State Law Journal*, 45, 1297-1397.
- G20 London Summit. (2009, April 2). *Closing Statement: Global Plan for Recovery and Reform*. Retrieved from <http://web.archive.org/web/20100310215453/http://www.londonsummit.gov.uk/resources/en/news/15766232/communique-020409>
- Hatfield, M. (2011). *The Ethics of Tax Lawyering* (2nd ed.). Chicago: CALI eLangdell Press.
- Harvey, B.W. (1970). Tax Avoidance – Illegal, Immoral or Fattening? *Northern Ireland Legal Quarterly*, 21(3), 235-253.
- Henry, J. (2012). The Price of Offshore Revisited: New Estimates For "Missing" Global Private Wealth, Income, Inequality, And Lost Taxes. Chesham, UK: Tax Justice Network. Retrieved from http://www.elcorreo.eu.org/IMG/pdf/Price_of_Offshore_Revisited_72612.pdf
- Horner, F.M. (2001). Do We Need an International Tax Organization? *Tax Notes International*, 24, 179.
- International Consortium of Investigative Journalists. (2013) *Secrecy for Sale: Inside the Global Offshore Money Maze*. <http://www.icij.org/offshore>
- International Consortium of Investigative Journalists. (2016). *The Panama Papers: Politicians, Criminals and the Rogue Industry That Hides Their Cash*. <https://panamapapers.icij.org/>
- Islam, F. (2012, February 2). Is the UK serious about tackling tax evasion? *Channel 4 News*. Retrieved from <https://www.channel4.com/news/is-the-uk-serious-about-tackling-tax-evasion>
- Jacobsen, S.K. (2011, April 20). TEIAs: a Norwegian Update [Blog post]. Retrieved from <http://taxjustice.blogspot.co.uk/2011/04/tieas-norwegian-update.html>
- Kerzner, D., & Chodikoff, D.W. (2016). *International Tax Evasion in the Global Information Age* (pp. 47-77). Toronto: Irwin Law
- Kocieniewski, D. (2011, March 24). G.E's Strategies Let It Avoid Taxes Altogether. *The New York Times*. Retrieved from <http://www.nytimes.com/2011/03/25/business/economy/25tax.html>
- Komesar, N. (1981, June). In Search of a General Approach to Legal Analysis: A Comparative Institutional Alternative. *Michigan Law Review*, 79(7), 1350-1392.
- Lederman, L. (2010). W(h)ither Economic Substance? *Iowa Law Review*, 95(2), 389-444.
- Luigs, D. A. (1995, May). Review of Neal K. Komesar, "Imperfect Alternatives: Choosing Institutions in Law, Economics and Public Policy". *Michigan Law Review* 93(6), 1559-1569.
- Martin, J. (2013). U.K. Lawmakers Lambaste Big 4 Accounting Firms. *Tax Notes International*, 69, 518.
- Mathiason, N. (2008, June 29). Tax scandal leaves Swiss giant reeling. *The Observer*. Retrieved from <https://www.theguardian.com/business/2008/jun/29/ubs.banking>
- McIntyre, M.J. (2009, October 26). How to End the Charade of Information Exchange. *Tax Notes International*, 56(4), 255-268.

- McIntyre, R.S., Gardner, M., & Wilkins, R.J. (2011). *Corporate Taxpayers and Corporate Tax Dodgers (2008-10)*. Washington D.C.: Citizens for Tax Justice and the Institute on Taxation and Economic Policy. Retrieved from <https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/paper-mcintyre-et-al.pdf>
- Murphy, R. (2011, November 1). OECD should step aside and let UN tackle tax havens say Tax Justice Network and Action Aid [Blog post]. Retrieved from <http://www.taxresearch.org.uk/Blog/2011/11/01/oecd-should-step-aside-and-let-un-tackle-tax-havens-say-tax-justice-network-and-action-aid/>
- Murphy, R. (2012, November 13). Amazon, Google and Starbucks are struggling to defend their tax avoidance. *The Guardian*. Retrieved from <https://www.theguardian.com/commentisfree/2012/nov/13/amazon-google-starbucks-tax-avoidance>
- OECD. (2012). *OECD's Current Tax Agenda 2012*. Paris: OECD. Retrieved from <https://www.oecd.org/tax/OECDCurrentTaxAgenda2012.pdf>
- OECD. (2014, July 14). *Common Reporting Standard*. Retrieved from <http://www.oecd.org/tax/automatic-exchange/common-reporting-standard/>
- Ohlheiser, A. (2013, April 4). The Secret World of Tax Havens Just Got a Whole Lot Less Secret. *Slate*. Retrieved from http://www.slate.com/blogs/the_slatest/2013/04/04/offshore_leaks_tax_haven_report_over_2_5_million_document_leak_reveals_details.html
- Patterson, C. (2012, November 13). Google, Starbucks, and Amazon...for these multinationals immorality is now standard practice. *The Independent*. Retrieved from <http://www.independent.co.uk/voices/comment/google-starbucks-and-amazon-for-these-multinationals-immorality-is-now-standard-practice-8313038.html>
- Picciotto, S. (2012, December 9). *Towards Unitary Taxation of Transnational Corporations*. Chesham, UK: Tax Justice Network. Retrieved from http://www.taxjustice.net/cms/upload/pdf/Towards_Unitary_Taxation_1-1.pdf
- Pietruszkiewicz, C.M. (2009). Economic Substance and the Standard of Review. *Alabama Law Review*, 60(2), 339-376.
- Scannell, K., & Houlder, V. (2016, May 8). US tax havens: the new Switzerland. *Financial Times*. Retrieved from <https://www.ft.com/content/cc46c644-12dd-11e6-839f-2922947098f0>
- Shaheen, S. (2012, November 23). UK to impose son of FACTA on Crown Dependencies, despite government's denials. *International Tax Review*. Retrieved from <http://www.internationaltaxreview.com/Article/3121964/EXCLUSIVE-UK-to-impose-son-of-FATCA-on-Crown-Dependencies-despite-governments-denials.html>
- Sheppard, L.A. (2009, 30 March). News Analysis: Don't Ask, Don't Tell, Part 4: Ineffectual Information Sharing. *Tax Notes International*, 53(13), 1139-1145.
- Sheppard, L.A. (2013, July 22). News Analysis: OECD Tries to Fix Income Shifting. *Tax Notes International*, 69, 627.
- Shenfield, A.A. (1968). *The Political Economy of Tax Avoidance: A Lecture Delivered to the British Branch of the International Fiscal Association, 16 October 1968*. London: Institute of Economic Affairs.

- Smith, H. (2012, November 16). Greek Editor Kostas Vaxevanis faces retrial over 'Lagarde list' revelation. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2012/nov/16/greek-editor-kostas-vaxevanis-retrial>
- Smith, H. (2013, October 8). Greek journalist's retrial over Lagarde list postponed. Retrieved from <https://www.theguardian.com/world/2013/oct/08/greek-retrial-kostas-vaxevanis-lagarde-list-postponed>
- Spencer, D. (2012, May 24). Transfer Pricing: Will the OECD Adjust to Reality? Chesham, UK: Tax Justice Network. Retrieved from https://www.taxjustice.net/cms/upload/pdf/Spencer_120524_OECD_.pdf
- Tax Justice Network. (2010, September 8). TIEAs: 23 is the magic number [Blog post]. Retrieved from <http://taxjustice.blogspot.co.uk/2010/09/tieas-23-is-magic-number.html>
- The Center for Media and Democracy. (n.d.) *ALEC Exposed*. Retrieved from https://www.alecexposed.org/wiki/ALEC_Exposed
- The Center for Responsive Politics. (n.d.). *Open Secrets*. Retrieved from <http://www.opensecrets.org/>
- The New York Times. (2012a, April 28). *Apple's Response on Its Tax Practices*. Retrieved from http://www.nytimes.com/2012/04/29/business/apples-response-on-its-tax-practices.html?_r=0.
- The New York Times. (2012b, October 29). *Editorial: Greece Arrests the Messenger*. Retrieved from <http://www.nytimes.com/2012/10/30/opinion/greece-arrests-the-messenger.html>
- 2008 Liechtenstein tax affair. (n.d.). In *Wikipedia*. Retrieved October 18, 2017 from https://en.wikipedia.org/wiki/2008_Liechtenstein_tax_affair.
- Warman, M. (2012, August 8). Google pays just £6m UK tax. *The Telegraph*. Retrieved from <http://www.telegraph.co.uk/technology/google/9460950/Google-pays-just-6m-UK-tax.html>
- Warzel, C. (2013, January 15). The Real Problem With The Atlantic's Sponsored Post: Debacle proves that above all else, native ads need to feel native. *Adweek*. Retrieved from <http://www.adweek.com/digital/real-problem-atlantics-sponsored-post-146553/>
- Weisbach, D. (1998, November). Line Drawing, Doctrine, and Efficiency in the Tax Law. *University of Chicago Law School, John M. Olin Law & Economics, Working Paper No. 62*. Retrieved from http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1309&context=law_and_economics
- Wemple, E. (2013, November 20). Politico's Mike Allen, native advertising pioneer. *The Washington Post*. Retrieved from https://www.washingtonpost.com/blogs/erik-wemple/wp/2013/11/20/politicos-mike-allen-native-advertising-pioneer/?utm_term=.0df836756e71