SOUTHVIEWS NO. 289

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30 June 2025

Book Review: What Do We Know and What Should We Do About Tax Justice

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The book *What Do We Know and What Should We Do About Tax Justice*, written by Alex Cobham, CEO of the Tax Justice Network, is an excellent summary of the state of knowledge on tax justice and provides a clear direction on what should be the goals of the tax justice movement going forward.

Le livre What Do We Know and What Should We Do About Tax Justice*, écrit par Alex Cobham, PDG du Tax Justice Network, est un excellent résumé de l'état des connaissances sur la justice fiscale et fournit une orientation claire sur ce que devraient être les objectifs du mouvement pour la justice fiscale à l'avenir.*

El libro What Do We Know and What Should We Do About Tax Justice*, escrito por Alex Cobham, Director General de la Tax Justice Network, es un excelente resumen del estado de los conocimientos sobre justicia fiscal y ofrece una orientación clara sobre cuáles deben ser los objetivos del movimiento por la justicia fiscal en el futuro.*

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Introduction

"What Do We Know and What Should We Do About" is a series started by Sage Publications, conceived by Chris Grey who is a Professor of Organization Studies at the University of London. The series aims to convey the latest state of knowledge on a topic of public interest and recommendations on what to do about it, as the title pithily suggests. Two other books in this series are on immigration and inequality, and this one is on tax justice.

It can be clearly said that both objectives are satisfactorily achieved in this book, written by Alex Cobham, the Chief Executive of the Tax Justice Network (TJN). TJN is easily the best known Civil Society Organisation (CSO) in the tax justice movement, and is arguably the movement's progenitor. Cobham himself is undoubtedly one of the leading lights of the tax justice movement, who has greatly shaped for the better the narrative on tax justice.

The book contains an amazing summary of the latest research findings on tax justice. Some of the most important ones are:

- Tax abuse is heavily concentrated in the households with the highest levels of income and wealth and the largest multinational companies.
- There is no evidence that corporate tax cuts stimulate economic growth.
- Globally, corporate profits are taxed far less than labour income, transferring the tax liability from large corporations to average workers.
- For a given level of overall public spending, governments that are more reliant on direct taxes tend to spend a higher share on public health.
- The volume of tax avoidance from Africa means that since 1970 onwards Africa is a net creditor to the world, rather than a debtor, and should be repaid as such.
- Offshore wealth is estimated to be $9.8 trillion, or 11.4% of global gross domestic product (GDP).
- As of 2023, global tax losses due to tax evasion is estimated to be $169 billion, according to the State of Tax Justice report.
- The main country responsible for more than half of global tax evasion is the United Kingdom, and its network of dependent territories such as the Cayman Islands, British Virgin Islands, etc, collectively known as the 'Spider's Web'.
- Developed and upper middle income countries also suffer greatly due to tax evasion and avoidance, losing $433 out of a total of $480 billion in losses. However, while they lose more in absolute terms, low and lower middle income countries lose more in relative terms. The $47 billion lost by these countries is equivalent to 49% of their public health budgets, for example.
- Since the introduction of the Common Reporting Standard (CRS), the major effect was not a drop in cross-border bank deposits, but a redistribution: away from financial centres that signed up, and towards the United States. The US is in open non compliance with the CRS and refuses to share information on a multilateral basis.
- Taxpayers misreport their income by more than half when there is no other source of information available; while the simple existence of alternative information reduces that misreporting by 85%.
- Banks that have to comply with the European Union's public country by country reporting regulations show a significant decline in tax haven use compared to non-disclosing insurance firms.
- Evidence for the UK shows that being audited has dynamic benefits that exceed the immediate return. Individuals who have been audited change their tax behaviour over the following five years (or more), and this explains 60–65% of the overall increase in revenue.
- Tax courts are typically highly secretive: 80% of jurisdictions assessed in the 2022 Financial Secrecy Index received a score of near or total secrecy. Preventing this access stops the public seeing the application of tax law in practice; obstructs empirical research; and leaves open the possibility of sweetheart deals for large taxpayers, or other forms of corruption in the system.

The above research findings provide a sobering picture of the state of tax justice in the world today. In addition, Cobham also provides a great theoretical summary of what tax justice is. He identifies three main perspectives on the issue. To quote, *"The first is primarily domestic, and addresses differences in the tax rates faced by different types of income and people. The second perspective introduces the critical role of 'tax havens' in promoting cross-border abuses of tax and financial regulation, and driving a race to the bottom in tax rates. The third perspective is the most fully global and recognises more prominently the inequalities in taxing rights between different countries, and the international structures that are responsible."*

While the book contains an excellent summary of research findings on the first two elements, it would have been useful to also deal with the third, i.e. the inequalities of taxing rights, for example, by referencing the work of another giant of the tax justice movement, Martin Hearson. Hearson's pioneering and painstaking work on analysing the tax treaties of developing countries to provide invaluable insights into the nature of inequalities in taxing rights, such as the dominance of the principle of residence-based taxation, excessively stringent definitions of Permanent Establishment, low withholding rates, the near-total exclusion of source taxation of shipping, and so on, are all ignored. Other research on the inequality in taxing rights by prominent scholars such as Rasmi Ranjan Das, Vinay Kumar Singh, Muhammad Ashfaq Ahmed, Catherine Mutava, Maimuna Diakite, Veronica Grondona, Tatiana Falcao, Tsilly Dagan and others is also similarly not mentioned.

According to Cobham own's definition, the inequalities in taxing rights are an essential component of international tax justice. This is the key reason why developing countries have fought to shift power away from the Organisation for Economic Co-operation and Development (OECD) towards the United Nations (UN). It is not because of a lack of tax transparency, though that may have contributed. This approach of looking at international taxation primarily from the lens of tax havens leads to a limited understanding of the issue, and there is need for deeper engagement by northern CSOs and scholars with the more fundamental issue of the inequalities in taxing rights and how income is allocated between jurisdictions.

What To Do About Tax Justice

This section of the book lays out domestic and international solutions. In general, Cobham reiterates the now well-known (thanks to TJN's relentless advocacy) 'ABCs' of tax justice, calling for automatic exchange of information to end bank secrecy, beneficial ownership transparency to end anonymous ownership, and public Country by Country Reporting to make multinationals' tax transparent.

On the issue of Country by Country Reporting (CBCR), Cobham highlights the main reason why so few developing countries are able to access this data. This is that instead of allowing countries to directly ask a Multinational Enterprise (MNE) to give them the relevant data, the OECD created a complex system where the MNEs will give it to their headquarter jurisdiction (usually developed countries) which would then in turn give it to the asking country. This has fueled growing calls for public CBCR with countries like Australia and regions like the EU already making some progress in this direction. Certain MNEs like Shell, Rio Tinto and others have also, to their credit, voluntarily shared this information.

Coming to domestic solutions, the author adds a 'DE' to the ABC formulation, with D for Disclosure and E for Enforcement. Disclosure means making public who pays taxes and how much, such as at a household level, racially or ethnically, etc as well as its distributional implications. The idea is to "let people see tax justice being done". To quote, "*Distributional data is also important to contribute to informed public debate on the balance between more and less progressive taxes, and to raise the salience of indirect taxes like VAT that are borne most intensely by lower-income households. Best practice includes a breakdown by income decile and gender for the incidence of each tax, as well as overall statistics on the taxes borne by each. The UK publishes substantial data of this form, providing a model for others, but can go further.*"

There are also calls for more transparency on tax incentives and an analysis of their costs and benefits.

Cobham then raises the neglected and vital issue of Enforcement. The essence of his suggestion is as follows:

"*Tax administration is tax policy, as the saying has it. It is the most false of all false economies to cut the resources of tax authorities in order to 'save' public funds. Reducing audits on the highest earners will have immediate and longer-term revenue costs well in excess of any saving. Those forgone revenues will also covertly reduce the degree of redistribution, making the tax system less progressive without any explicit democratic mandate to do so.*"

The last recommendation, refers to 'Good Taxes' as those which can contribute to another Tax Justice Network formulation, the '5 Rs: revenue, redistribution, repricing, representation and reparations'. Here, Cobham makes the valuable point that the discussion on carbon taxation must be grounded in the reality that the Global South has contributed the least to the climate crisis and bears the brunt, and hence carbon taxes may have a role to play "as part of a reparative effort, rather than a policy approach that deepens historic injustice."

In the face of relentless propaganda by the EU, parroted and amplified by the International Monetary Fund (IMF), World Bank and OECD, and unfortunately even certain CSOs, this is a welcome framing.

Coming to international and institutional measures, there are three recommendations. The first is the creation of a Global Asset Registry, an idea first proposed by Independent Commission for the Reform of International Corporate Taxation (ICRICT) Commissioners Thomas Piketty and Gabriel Zucman and now supported by most of the tax justice movement. The idea is to help countries identify who owns what assets as an essential precondition for more progressive taxation.

The second is to move away from the arm's length principle to what is called 'unitary taxation' which taxes MNEs as single entities, consolidates their profits at the group level and then allocates them to countries according to formulary apportionment. Undoubtedly, the arm's length principle is riddled with problems and in today's intangible-heavy economy has broken down. Even the OECD was forced to overcome its long-standing opposition to formulary apportionment and use it as the basis for profit allocation under Amount A of the OECD Two Pillar Solution after they discovered Base Erosion and Profit Shifting (BEPS) Actions 8-10 were not working and countries were resorting to Digital Service Taxes out of desperation.

The Amount A experience, flawed as it was given that it took place in the OECD, showed that formulary apportionment can nevertheless be an immensely complex method and difficult to implement unilaterally. Further, the risk of double taxation is quite high even if a country decides to go with a unilateral approach. For these reasons an internationally agreed formulary apportionment approach is ideal, but the political appetite for this is quite limited. No country has so far proposed it as a solution within the context of the UN negotiations, nor proposed it as a solution domestically. Cobham does not engage with these concerns and political realities and with a true campaigners' zeal paints a rosy picture that formulary apportionment can generate lots of money and is close at hand. Neither of these appear likely as of today.

Cobham does not address in the book Article 12B of the UN Model Tax Convention. Article 12B's net method uses fractional apportionment, which is a profit allocation method that does not use the arm's length principle. Article 12B was a great achievement of developing countries and built upon the Group of Twenty-four (G-24) proposal of fractional apportionment. It is now enshrined in the UN Model Tax Convention and can be used by any country. Unfortunately, the fight for Article 12B was not in the agenda of most of the tax justice movement, with the honourable exceptions of ICRICT and Eurodad.

Cobham's third solution is to shift global tax rule making power away from the OECD to the UN. Fortunately, this is already underway via the UN Framework Convention on International Tax Cooperation (UN FCITC) being currently negotiated. The Tax Justice Network under Cobham's leadership has played an active role in mobilizing civil society toward this objective. He lays out some of the benefits of this, though in keeping with the overall tone of the book focuses mostly on increased tax transparency and does not deal with taxing rights, which is what developing countries have been mainly fighting for in the ongoing negotiations on the UN FCITC.

All in all, the book is full of informative facts and figures, valuable insights and an incredible review of the literature. It is essential reading for anyone in the tax justice movement, whether they are government officials trying to collect more taxes, civil society activists, academics or just ordinary people trying to understand why they pay more taxes than some billionaires or multinational corporations do.

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