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OFFSHORE TAX HAVENS:
THE BORDERLANDS OF GLOBAL CAPITALISM

by

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Tax havens (or offshore financial centers) are often cited as evidence of the ‘borderless world’ of contemporary capitalism—where, for example, millions or even billions of dollars are transferred instantaneously from metropolitan states such as China to offshore tax havens such as the British Virgin Islands in the Caribbean or Samoa in the Pacific. Yet the existence of tax havens and their usefulness for capital depend on their being able to pass laws and hold assets within the jurisdiction of their borders and their ability to defend these borders against taxation and regulation by metropolitan states.
This chapter explores the following themes—

- The nature offshore financial centers (OFCs) as borderlands
- How the actions of onshore governments toward OFCs may be more expressive than instrumentally effective and how the aggressive rhetoric of onshore tax agencies against tax havens in border skirmishes is often hypocritical and ignores class-based realities
- How the transnational capitalist class (TCC) in the emerging Asia-Pacific, especially in China, has developed symbiotic relationships with tax haven borderlands, increasing their vitality
- How the factions of the TCC diverge sharply in their approaches to tax havens and borders, producing relative incoherence in practical policies toward offshore borderlands

**TAX HAVENS AS BORDERLANDS**

Globalization transforms the meanings of borders by increasing the volume and speed of transactions across them. It also widens the range of choices over which sovereign states will provide the laws and regulatory systems that govern these transactions.
Borders define property rights and legal obligations. They create and justify forms of class inequality in ways that may seem natural, inescapable or largely unconscious. From 1940 to 1972 a dramatic rise in left-wing programs and social democracy, financed by progressive taxation, accompanied strong economic growth and decreasing internal class inequality within states around the world, as labor organized effectively at the national level. From 1973 capital’s counter-offensive involved changing the unit of production, finance and contestation from the nation-state, where it had been increasingly out-maneuvered, to the world, where its transnational corporations had immense and relatively uncontested powers of action. The capitalist class is increasingly organizing on a global scale (Robinson and Harris 2000), although national and even local capitalists sometimes still have considerable power. There may be a reversal of the globalization of wealth, especially in a period of crisis, such as the Global Financial Crisis in 2008, although this was temporary and short-lived (van Fossen 2012a).

Even when this transnationalization of capitalism proceeds smoothly, this does not mean that we are entering a borderless world. Indeed, globalized capitalism is being formed to the degree that the world’s rich can use borders to favor their interests. This globalization is filled with turbulence—producing an ever greater volume of competing
jurisdictional claims and conflicting national laws defining the nature, scope and variety of property rights.

Borders and their meanings change as new class situations and conflicts arise. Reterritorialization, with new significant geopolitical and conceptual borderlands, and with new conflictual, contradictory, and paradoxical legal boundaries, is not the ‘end of geography’ or a ‘borderless world’.

Power relations determine where borders descend. ‘National borders are...imagined projections of territorial power’ (Baud and van Schendel 1997: 211). They are the legal limits of sovereignty, establishing tax and regulatory differentials that lawyers are busy exploiting for their clients’ advantage. As McBarnet (2004) has demonstrated, lawyers’ close and ingenious attention to re-labelling, non-labelling and de-labelling play a very important part in a large number of tax haven schemes, so that perpetrators may be presented as law-abiding citizens rather than criminals. Examples of these labelling processes came in recent legislative hearings in the United States and United Kingdom, that focused mass media attention on the use of OFCs by transnational corporations such as Apple, Amazon, Google and Starbucks. Through cross-border transfer pricing they had paid minimal taxes on their enormous profits, creating public outrage, but the companies responded that their actions were perfectly lawful. There is increasing
profit-driven pressure on transnational corporations to transform their business models so that they are centralized around intangible property (including brands, patents, copyrights, and trademarks), treasury and service functions that ideally have homes (or at least legal domiciles) in tax havens. Non-core activities, often including real manufacturing, are to be pushed on to contractors and sub-contractors operating along the global commodity chain (Euromoney 2012b).

Borders are crucial in sheltering wealth. Placing the assets and income of the wealthy behind the jurisdictional borders of offshore havens is an act of legal imagination, separating them from onshore taxation and regulation—creating separate onshore and offshore realms. The beach scenes that so often featured in Pacific and Caribbean Islands tax haven brochures dramatize this—the haven’s idyllic island sand and palm tree landscapes divided from the onshore metropole by the ocean border. These beach scenes may make the offshore tax haven seem harmless, inoffensive or unproblematical—not really being dangerous or violating any boundaries. Here the ocean is the fuzzy boundary between onshore and offshore. In other cases, the international border may be less obvious, but nonetheless crucial.

Tax havens or OFCs depend on the onshore/offshore border for their existence. Activity that is permitted on one side of the offshore/onshore border may be prohibited on the other side. Patients’
medical malpractice litigation may be successful in gaining large monetary settlements in United States courts, but statute-barred in the Cook Islands where the physicians’ wealth is held in asset protection trusts. Asian clients and their advisors have pioneered offshore private interest foundations that minimize their domestic taxes, but provide them with more control over their wealth than if they had placed it in domestic trusts. OFCs provide specialized services for non-residents who consider onshore laws to be restrictive or inimical.

The OFC is a borderland—a transition zone apart from the onshore country from which the funds are received. The assets are usually sharply separated (or ringfenced) by special OFC laws and regulations from the offshore country’s internal economy. As with their industrial cousins Export Processing Zones (also known as Special Economic Zones, Free Trade Zones, or Free Economic Zones), OFCs’ ringfencing creates borders within their home state (Diener and Hagen 2012: 73). An offshore insurance company registered in Vanuatu’s OFC cannot issue policies in Vanuatu; the Marshall Islands flag of convenience (with its laissez-faire tax, labor, environmental, and general regulatory rules) cannot fly above ships that operate commercially in the Marshall Islands. The OFC is in the most urban area(s) of the offshore country—for example, concentrated in Vanuatu’s capital of Port Vila or the Cook Islands capital of Avarua (van Fossen 2008, 2012b), with no
presence on the many other islands of the country. Likewise, the OFC’s clients are disproportionately likely to come from a headquarters city for global capitalist enterprise, which masters the space and distances of the world—a global city (Sassen 2001) that can only in a very superficial and misleading sense be seen as a mere arm of the sovereign nation-state in which it is located.

OFCS are borderlands, regions where legal, economic and political differences are negotiated between separate sovereign systems. OFCs are shifting and tractable borderlands, indeterminate areas where the rich prosper.

While borders ideally divide one jurisdiction from another and mark the limits of the exclusive sovereign power of each, borderlands are hybrid spaces close to either side of the border, created by two or more legal, political, economic and social systems. Borderlands are disorderly places of multiple, overlapping and uncertain jurisdiction.

Offshore financial centers are borderlands that facilitate global financial flows and privilege wealth—they are open to flows of funds, but closed to attempts to tax and regulate them. As hybrids, OFCs combine assets that are physically onshore but governed by offshore laws. The offshore sector of the tax haven country is more integrated into onshore economies than into that country’s own economy. The
OFC is like a magic mirror that allows the wealthy to pass into another world, more to their liking.

**BORDER DISPUTES, HYPOCRISY AND ASIA-PACIFIC TRANSNATIONAL CLASS FORMATION**

Some border skirmishes between OFCs and onshore governments may be resolved in a rather mechanical, legalistic and institutional manner (Hudson 1996, 1998). Yet very important border disputes are at least as likely to be in constant flux—strongly affected by the uncertainties of media representations, social constructions, moral panics and dynamics of class conflicts and power politics (van Fossen 2012b: 267-331).

Conflicts between offshore financial centers and onshore governments may take on the character of border disputes. In Liechtenstein the strongest recent displays of (relatively rare) national patriotism came in relation to its OFC. There was widespread indignation against German intelligence agents who bribed a former employee of its LGT Bank in February 2008 to give them the names of about 1,400 foreigners who held accounts there. This led to popular denunciations of Germany’s cross-border espionage as illegal, immoral and reminiscent of past German aggression, although the accounts were an insignificant share of the bank’s total offshore business (Ostergren 2010: 146-8).
The world media presented this Liechtenstein case, piercing the borders of offshore banking there, as a major threat to tax havens—a border dispute that would provide enormous opportunities for metropolitan tax offices around the world to pursue the offenders named in the stolen documents. This episode is just a recent instalment of a series that has been broadcast for many decades to the public-at-large by metropolitan media and government officials—about the imminent demise of OFCs.

Onshore tax agencies’ sabre-rattling rhetoric about havens and how they will act to ensure full tax compliance (which sounds confident and decisive) augment these organizations’ legitimacy (making them seem like sources of justice). Yet this strong rhetoric is often hypocritical (Brunsson 2002) and inconsistent with their actions and class-based realities. Tax administration of offshore business is often weak, ineffective and unaccountable, in a situation where it is frequently very difficult to take effective actions against offshore tax haven arrangements. The Canadian Revenue Agency, for example, uses aggressive language against tax havens and Canadians who are judged to use them improperly, but only intense parliamentary pressure forced it to admit in 2013 that of the 106 Canadians revealed in the LGT case to hold more than C$100m in Liechtenstein accounts, not one had been or would be charged. Of more than C$10m in unpaid taxes and
interest that had been discovered, as of 25 April 2012, less than C$3m had actually been collected (Maher 2013).

Double-talk by governments and tax offices with respect to OFCs is especially likely when budgets are tight. Taxation offices are under political pressure to increase tax revenues, while at the same time constraining or even reducing their budgets. Governments in the Global North (such as the UK, Canada and Australia) have pledged to crack down on tax haven arrangements, while simultaneously severely cutting staff positions in their taxation offices (McFarland and Curry 2013).

Hypocrisy is inevitable. Offshore problems are so important and so difficult to solve that tax offices cannot escape discrepancies between their stated values and their actions. Maintaining the value of tax compliance and making ritualized statements about the dangers of non-compliance increase political support, lift employee morale and strengthen public confidence. These may be more important to tax offices than their actual successes in relation to OFCs. While OFCs tend to act in secrecy behind their borders, their opponents seek to penetrate the offshore border of secrecy and expose OFCs’ activities to prosecution, public debate and ethical condemnation. However, leaks from OFCs have been relatively rare.
Onshore tax authorities’ and regulators’ ideas about controlling OFCs may develop more rapidly and very differently than the onshore actions that are necessary to control OFCs effectively. Their ideas may not translate into actions or may not even be capable of translation. They may state values, ambitions and wishful thinking rather than views that are likely to be implemented. Statements by onshore authorities about OFCs may be simple and vague. While these proclamations gather popular support, they may not provide clear guidelines for the very difficult and time-consuming actions of discovering and dealing with the well-hidden, extremely ambiguous, and labyrinthine offshore legal structures for holding property or channelling income flows. Even if the onshore authorities have extensive information about an offshore structure, the gaps in their knowledge are often difficult to fill—making effective enforcement difficult. OFC structures are often extremely complicated and difficult to simplify.

In the Global South the challenges of tax collection in the face of OFCs are even greater than in the Global North. Tax havens, as defined by the International Monetary Fund (IMF), receive about 44% of all illicit international financial flows from developing countries. This represents illicit flows into offshore tax havens from 2001 to 2010 of approximately $2.68 trillion from all developing countries, of which
$1.57 trillion were from developing countries in the Asia-Pacific. Total illicit flows (to both havens and non-havens) were $5.86 trillion globally, of which $3.57 trillion was from the Asia-Pacific (See Tables I and II).

Illicit flows tend to be highly transnationalizing. They come principally from elites in the Global South (who had generally been nationalistic until the mid-1970s). They flow mainly to the Global North (Naylor 2004)—creating ever more similar investment portfolios and common interests for capitalists around the world.

China was, by far, the greatest source of illicit international financial flows—both to tax havens and to other destinations—but not all of the flows from China to offshore tax havens were illicit. Between 2005 and 2011 China sent $1.103 trillion to OFCs—54% ($596 billion) in illicit flows and 46% ($507 billion) in licit flows (Table III). China’s firms are likely to incorporate their global production operations in OFCs and to raise capital for global expansion through OFC entities (Ning and Sutherland 2012, Sutherland and Ning 2011).

The business elite in China manipulates border crossings for its own benefit—turning the country’s vast international trade into immense cross-border flows of capital, despite capital controls that limit each Chinese citizen to taking a maximum of $50,000 a year out of the country. Cross-border transfer pricing is virtually unbridled; trade is
mis-invoiced—under-invoicing exports and over-invoicing imports. There are massive gulfs between China’s stated exports and what the rest of the world reports that it has imported from China, although these should be equal. This situation suggests enormous illicit international financial flows—averaging 9.5% of the country’s Gross Domestic Product, with a further 1.6% of GDP in illicit cross-border flows from China’s balance of payments, for a total of $3.75 trillion between 2000 and 2011. This situation facilitates tax evasion, money laundering and the secret procurement of vast foreign assets, as well as the ability to ‘roundtrip’ by repatriating capital (usually from tax havens) to take advantage of the preferential conditions that China offers to ‘foreign’ investmentvi (Kar and Freitas 2012a; cf. Tables IV, V, VI).

Furthermore, these offshore arrangements benefit the transnational capitalist class. Members of the TCC are disproportionately likely to use OFCs. Indeed, they are the principal clients of OFCs and they are unlikely to be caught or, if caught, punished harshly for tax evasion.

In rapidly growing countries of the Global South, such as China, resources and personnel at tax agencies may be increasing, but they are still often understaffed and their success against OFC arrangements is limited. China’s tax agencies boast that tax revenue from cross-border transfer pricing investigation have risen from $56 million in 2005 to
more than $370 million in 2011, but these figures are infinitesimal compared to the size of the problem, as we saw above. And while Chinese tax authorities proclaimed that they recovered $14.78 billion from 212,000 tax investigations and prosecutions, this amount was less than in the 2008 financial crisis. Cross-border transfer pricing is a formidable challenge for China’s national tax authority, a greater problem for the 34 provincial level tax authorities below it, and an even more perplexing issue for the lower tier of multiple local tax authorities. Between these levels there may be acrimonious conflicts over cross-border transfer pricing issues, aggravated in many cases by the enterprises themselves and their connections to foreign countries and investors (not least from OFCs). Furthermore, tax authorities in China have been unable to stop the Hong Kong government from further enhancing the attractiveness of its OFC (Euromoney 2012a, 2013b).

Hong Kong is not just a tax haven. It is a bridge to a labyrinth of other OFCs, especially for the capitalists of China. Most companies listed on the Hong Kong Stock Exchange are, for example, incorporated (nominally headquartered) in Bermuda, the Cayman Islands, the British Virgin Islands, and other OFCs. A very high proportion of the subsidiaries of Hong Kong listed companies are incorporated in OFCs (Anonymous 2013a). Many Chinese firms are listed on the stock
exchange of the tax haven of Singapore and these are also usually registered in OFCs--Bermuda, Luxembourg, the Cayman Islands and the British Virgin Islands being the most prominent (Anonymous 2013b).

The situation in China with respect to OFCs conforms to the country’s general pattern of escalating corporate and white-collar crime since the late 1970s. This has been hidden by official secrecy, since the elite does not want publicity about rampant law-breaking among its members. The agencies responsible for detecting violations are poorly staffed and over-worked, and relationships between relevant agencies are loose and uncoordinated. Whistle-blowers are not adequately protected. Sanctions are generally weak and punishment is light, with ritualized crackdowns and ‘audit storms’ ensnaring only the unsophisticated and those without political protection—therefore being unlikely to serve as a long-term deterrent. The secretiveness and complexity of most OFC arrangements make law enforcement even more difficult. China’s regulatory and law enforcement system has limited capacity. Corporate and white-collar crimes are generally seen as non-issues in China, with the government unwilling to tackle them effectively, despite rhetoric about future deterrence strategies (Gahzi-Tehrani et al. 2013).
In relation to tax haven issues, hypocrisy in China and elsewhere operates by redirecting attention from past and present performance and difficulties (which may be hidden from public view) to well-publicized proclamations of an imagined future. This new era is often seen as resulting from tax and administrative reforms to improve effectiveness—thereby providing hope and allaying doubts. Continual onshore legal and administrative reforms in relation to countermeasures against OFCs offer promises that progress will bring offshore finance under greater (or even total) onshore regulatory control.

Although there is a conventional view that China is becoming more assertively nationalistic, this obscures the reality that most of its capitalists are rapidly transnationalizing and increasingly looking for a way to escape overseas. Tax havens play a crucial role in holding their overseas assets to facilitate their border crossings. In 2012 56% of China’s 700,000 High Net Worth Individuals (HNWIs), with investable assets of $1.6 million or more, had either finalized investment-based emigration, applied for it, or were considering it. Of those who stated that they did not want to emigrate, 11% said that their child had either emigrated or was considering doing so. China’s Ultra High Net Worth Individuals (UHNWIs), with investable assets of over $16 million,
were even more inclined to emigrate. The most favored destination was the United States (China Merchants Bank and Bain 2011, 2013).

HNWIs in China and India (like other countries in the developing Asia-Pacific, such as Indonesia) are far more transnational and oriented toward OFCs than HNWIs in developed Japan. In many respects they are polar opposites of Japan. The rich in Japan invest very heavily in their own country and are generally unwilling to pay more for customized offshore services (only 12.7% of them expressing willingness in a 2013 survey). On the other hand, HNWIs in China and India have extensive global investments and are eager to pay more for customized OFC services—50% of HNWIs in China and 51.5% in India, as compared to 25.5% of the rich outside the Asia-Pacific, according to the same 2013 survey (Capgemini and Royal Bank of Canada 2013a). China’s policies (led by its TCC) are based on ‘outward bound’ (Harris 2012) world-wide integration—constantly transforming its institutions to seize global opportunities for profit, the polar opposite of Maoist self-reliance.

China’s capitalist class is highly transnational. This is revealed by three inter-related processes—

(1) It emerged during the globalizing era in world history, with the spectacular growth of offshore financial centers since the early 1970s
(2) It holds a high proportion of its wealth in OFCs

(3) It has a strikingly low commitment to continuing to live in China and it sends funds offshore to facilitate emigration

FACTIONS OF THE TRANSNATIONAL CAPITALIST CLASS

How borders are defined in relation to taxation and expenditure shapes the developing transnational political system and TCC. A deep problem for the emerging transnational political system is its limited capacity to finance itself. Factions of the TCC diverge sharply in their policies concerning the taxing and spending powers of the transnational political system—and in their approaches to tax havens and borders.

There are three influential factions of the TCC delineated by Robinson and Harris (2000), and each corresponds to a distinctive policy in relation to tax havens (van Fossen 2012a) and borders. The groups are libertarians, structuralists, and regulationists. Most of the transnational state operates at the political-ideological level and the disputes between the three factions tend to follow a right (libertarian)-center (structuralist)-left (regulationist) pattern—each faction with a distinctive view of tax haven borderlands. The factions of the TCC
bargain between themselves and others over how to deal with tax haven borderlands (van Fossen 2012a).

Libertarians

Libertarians (for example, at the Cato and Heritage Foundations and the American Enterprise Institute in Washington) support offshore tax havens and often present them as testing grounds for their ideas, harbingers of onshore metropolitan deregulation and low taxes. They see OFCs as creating new experiments in legal forms and moving individuals and organizations toward beneficent non-governmental self-regulation, including private standard-setting and adjudication.

Libertarians support freedom of choice in a decentralized international system. They endorse a new international localism, as small states and localities become more important units for global competition. Libertarians have invoked the tax havens of Singapore, Hong Kong, Switzerland, Ireland (for the decade before its GFC crash), and Iceland (for a few bubble years before its financial catastrophe) as models for the rest of the world to build free market ideals. In the libertarian scenario, over the longer term, tax havens could even serve as an increasingly important catalyst for neo-medievalism (Cerny 1995)—helping to generate new feudal conceptions of sovereignty that essentially privatize government.
Libertarians define the world largely in terms of international territorialism. They contend that greater international competition between sovereign territorial entities will create laws that facilitate economic freedom, efficiency, individual choice, corporate autonomy, and mutually beneficial cross-border market-based transactions. They emphasize the value of open borders for capital, with easy exit from a jurisdiction that is no longer meeting the needs of an individual or organization. The libertarian faction of the TCC was weakened by the 11 September 2001 terrorist attacks and the Global Financial Crisis, particularly in the Global North.

Structuralists

The 11 September 2001 terrorist attacks and GFC strengthened structuralists (who control organizations such as the IMF, the World Bank, and the Bank for International Settlements) and their efforts to manage globalization and lightly regulate tax havens. In the structuralist perspective, OFCs are too often geopolitical units with inferior standards. Structuralists contend that OFCs have network effects, too frequently damaging those outside their borders without their consent. Structuralists fear that tax havens can create a ‘race to the bottom’, creating financial instability and even collapse.
Structuralists believe that borders should have checkpoints and remain under constant surveillance.

Structuralists support ‘smart borders’, protected by surveillance and profiling to provide stricter control and law enforcement. In contrast to libertarians who see the internet and other new information technologies as facilitating laissez-faire access to OFCs, structuralists emphasize that new border control technologies protect the legitimate global economy of smooth financial flows by screening out money laundering, the financing of terror, blatant tax evasion, and other threats. This surveillance is seen as creating huge databases of financial intelligence data, with computerized technologies for collecting, tracking, and coordinating information on criminal activities and law enforcement transnationally. The emphasis is on defining ‘high risk’ activities that are particularly likely to involve OFCs.

Structuralists contend that autonomous, independent actions by each onshore state against OFCs have proven costly and largely ineffective. In this view, onshore states can only reassert appropriate control over the offshore borderlands by cooperating with other onshore states through international institutions such as the OECD, the Financial Action Task Force Against Money Laundering (FATF), Financial Stability Board (FSB) and IMF—rather than merely operating alone.
against OFCs (Raustiala 2003). Structuralism moves in the direction of global standardization of laws and regulations. This is the ‘structural isomorphism’ (Meyer 2010) of states, where they are less autonomous actors than enactors of global scripts, so that they increasingly resemble each other.

Structuralists contend that model (best practice) laws, regulations, procedures, and international regulatory cooperation should increasingly replace the current international patchwork and be diffused to ensure proper governance of the world’s financial system. Structuralists predict that this isomorphism will increase as similar institutions and ways of thinking and acting evolve. In their view, standards will become professionalized, as evidenced in the creation of Financial Intelligence Units (FIUs) in almost every country and the great increase in the number of Anti-Money Laundering (AML) compliance officials over the past two decades. Structuralists contend that, if necessary, there should be sanctions against non-cooperative jurisdictions and organizations. In this process, according to structuralists, borders are maintained, but rules are detached from a particular location in physical space. These rules are diffused across borders and governed by some minimal common norms—while building a transnational consensus.
In the structuralist view, the classic sovereign territorial nation-state is disaggregating into separate parts, but these various parts of the declining state are forming emerging transnational networks. While nation-states are still the principal tax collectors and regulators, according to structuralists, tax enforcement and regulatory administration are increasingly transgovernmental—between sub-units of nation-states that are not controlled or even closely channelled by cabinets or chief executives of those nation-states.

This involves deepening of peer-to-peer networks of cooperation among national regulators and administrators—already the dominant area of transgovernmental activity (Picciotto 1996-7; Slaughter 2004). Structuralists see this international ‘harmonization’ creating global uniformity without overt centralization of power. In Slaughter’s (2004: 4) words—‘Best of all, they [networked institutions] can perform many of the functions of a world government—legislation, administration, and adjudication—without the form.’

The structuralist world is defined largely in terms of transnational cosmopolitanism. According to structuralists, there should be harmonious transnational ground rules, norms, duties and obligations in a community of nation-states based on democratic self-governance. The FATF (which has been particularly active in setting AML standards for OFCs) is typical. It is closely tied to the OECD
(although formally separated) and was created by rich G7 countries (led by the US) at the end of the Cold War, in 1989, as a network—part of the wider movement from ‘government’ to ‘governance’. It was designed to diffuse AML norms across territorial boundaries. Structuralists see new rules as shaping and even constituting how nation-states and financial institutions (down to low-level bureaucrats and bank employees) see their long-term self-interest, defining ethics and actions of key players in everyday life.

Initiatives against tax havens since the late 1990s have come from core states in the Global North and the international organizations that they dominate. Structuralist policies favor glocalization and the local approval of global rules as a way of establishing local membership in the global club, while maintaining nominal local autonomy.

The effectiveness of their structuralist standard-setting, however, has been challenged by the movement of wealth and power to elites in the Global South, who are increasingly the clients of OFCs (Sharman 2012). The Chinese government has been notable at the G20 for weakening common transnational structuralist measures against OFCs. China’s resistance to the G20’s moves against tax havens comes because they are centered on the anti-OFC campaign of the OECD, which does not include China as a member, and they threaten to blacklist Macau and Hong Kong, China’s major source and destination
of foreign direct investment (see tables V and VI). There is also lingering resistance from financial institutions around the world, as these structuralist measures have led to substantially raising compliance costs (Capgemini and Royal Bank of Canada 2013b, Sharman 2011).

Furthermore, risks are very difficult to calculate and the structuralist risk-reduction strategies may be relatively incoherent. Formal rules are one thing; practices are another. The success of the structuralist project in terms of taxation and money laundering seems to be modest (Sharman 2006, 2011). We still know very little about when compliance actually occurs or about actual enforcement patterns. Even when offences are discovered, authorities have great discretion in terms of law enforcement and prosecution—with relatively little accountability. We may question the degree to which these rules are actually delivered or applied in daily life by those agencies and people who have the discretion to do so.

There may be enormous disparities between structuralist claims and reality. An example of the problem is the Asia-Pacific regional FATF’s favorable review of Vanuatu that ignored the real (and relatively high) incidence of money laundering there (van Fossen 2012b). In another illustrative case, an Indian man introduced himself in 2013 to dozens of bankers—admitting that he wanted to launder money for a corrupt
politician. Almost all of the Indian bankers offered their services, with many proposing to use OFCs. The man was really an undercover journalist, using a hidden camera. After his revelations, a deputy governor of the Reserve Bank claimed that the country’s AML system was ‘perfect’ and the FATF gave such a high evaluation of India’s AML system that it no longer required to submit to regular re-evaluation (Hudson 2013). Even onshore, in OECD countries, in the US (Goodhart et al. 1998) and Australia AML laws have been under-enforced against the powerful (the clients of tax havens) and over-enforced against the powerless who do not have access to OFCs (e.g., a very high proportion of ‘money laundering’ offences in Australia being detected among poor people claiming and receiving supposedly excessive unemployment benefits).

Structuralist policies in relation to OFCs have been dogged by problems of implementation. They are still often perceived (particularly by libertarians and nationalists) as continuing impositions by the US and its allies in the G7 and the OECD. The US may even be seen as hypocritical in relation to international law—for example, in the World Trade Organization (WTO) dispute between the United States and the tax haven of Antigua and Barbuda over the Caribbean country’s internet gambling operations. Despite the success of the structuralist project toward tax havens in getting a coherent series of
laws and regulations formally approved around the world, there is
great variation in true support and compliance (Jakobi 2013) and there
is doubt about whether most states are deeply committed to this
structuralist project. In fact, substantial proportions of the TCC may
be closet libertarians on this issue of tax havens.

Regulationists

*Regulation* is the favored TCC strategy in the bureaucracies of the
United Nations and some powerful groups in the European Union. The
ultimate goal of regulation is the enactment of global law and
movement toward global regulation and taxation, leading to a severe
curtailment or even elimination of tax havens. The regulationist world
is defined largely in terms of global universalism. Regulationists are
inclined to see people as moving toward being citizens of the world
(with new regional identities, e.g., as Europeans, being initial
precursors of this). In this regulationist scenario, relevant political-
economic processes, new rules and regulations, are increasingly settled
at the global level, and many borders disappear or weaken
dramatically.

The influence of the regulationist approach has waxed and waned,
primarily in accordance with the global power of the left and the
successes and failures of European integration. Switzerland has been
the prime target, test case and barometer for the European Union’s
offensive against OFCs—events in relation to Switzerland’s OFC being followed closely by regulationists around the world. While Switzerland is the world’s biggest tax haven and remains an attractive OFC for many companies and HNWIs, the EU has diminished its tax advantages, while other havens (for example, Singapore or Luxembourg and Ireland, which, unlike Switzerland, are EU members) have become more competitive OFCs (Euromoney 2013a).

CONCLUSION

Conflicts between the three different factions of the TCC produce relative incoherence in practical policies toward offshore borderlands. The actions of onshore governments toward OFCs may be more expressive (creating images of law enforcement against offshore threats in theatrical situations), rather than being instrumentally effective in actually reducing the general, overall importance of OFCs in the global economy.

Tax havens are the borderlands of global capitalism that promote transnational capitalist class formation. New and powerful entrants to the TCC in the Asia-Pacific, such as most of China’s elite, have formed symbiotic relationships with offshore tax havens. They have provided tax havens with new clients and subverted Global Northern attempts to restrict them.
Table I

ASIA-PACIFIC AND ALL DEVELOPING COUNTRIES’ ILLICIT FINANCIAL FLOWS, 2001-2010

(in billions of nominal US dollars)

<table>
<thead>
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<th>YEAR</th>
<th>ASIA-PACIFIC</th>
<th>ALL DEVELOPING COUNTRIES</th>
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<td>2001</td>
<td>177.8</td>
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<td>669.9</td>
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<td>TOTAL</td>
<td>3,568.8</td>
<td>5,859.2</td>
</tr>
</tbody>
</table>

Source: Kar and Freitas 2012b
## TABLE II

ASIA-PACIFIC COUNTRY RANKINGS, BY LARGEST ESTIMATED ILLICIT FINANCIAL FLOWS FROM DEVELOPING COUNTRIES, 2001-2010

(in billions of nominal US dollars)

<table>
<thead>
<tr>
<th>International Rank (out of 143 developing countries)</th>
<th>Country</th>
<th>Illicit Financial Flows</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>China</td>
<td>2,741.7</td>
</tr>
<tr>
<td>3</td>
<td>Malaysia</td>
<td>285.2</td>
</tr>
<tr>
<td>6</td>
<td>Philippines</td>
<td>137.8</td>
</tr>
<tr>
<td>8</td>
<td>India</td>
<td>123.3</td>
</tr>
<tr>
<td>9</td>
<td>Indonesia</td>
<td>108.9</td>
</tr>
<tr>
<td>13</td>
<td>Thailand</td>
<td>64.3</td>
</tr>
<tr>
<td>20</td>
<td>Brunei Darussalam</td>
<td>37.0</td>
</tr>
<tr>
<td>31</td>
<td>Kazakhstan</td>
<td>19.2</td>
</tr>
<tr>
<td>33</td>
<td>Vietnam</td>
<td>17.5</td>
</tr>
<tr>
<td>44</td>
<td>Bangladesh</td>
<td>14.1</td>
</tr>
<tr>
<td>58</td>
<td>Nepal</td>
<td>8.0</td>
</tr>
<tr>
<td>62</td>
<td>Myanmar</td>
<td>7.3</td>
</tr>
<tr>
<td>68</td>
<td>Turkmenistan</td>
<td>6.6</td>
</tr>
<tr>
<td>71</td>
<td>Armenia</td>
<td>5.3</td>
</tr>
<tr>
<td>72</td>
<td>Cambodia</td>
<td>5.0</td>
</tr>
<tr>
<td>74</td>
<td>Georgia</td>
<td>4.8</td>
</tr>
<tr>
<td>79</td>
<td>Azerbaijan</td>
<td>4.3</td>
</tr>
<tr>
<td>85</td>
<td>Laos</td>
<td>3.4</td>
</tr>
<tr>
<td>92</td>
<td>Fiji</td>
<td>2.7</td>
</tr>
<tr>
<td>94</td>
<td>Pakistan</td>
<td>2.5</td>
</tr>
<tr>
<td>97</td>
<td>Afghanistan</td>
<td>2.4</td>
</tr>
<tr>
<td></td>
<td>Country</td>
<td>Value</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>99</td>
<td>Papua New Guinea</td>
<td>2.0</td>
</tr>
<tr>
<td>107</td>
<td>Samoa</td>
<td>1.3</td>
</tr>
<tr>
<td>111</td>
<td>Mongolia</td>
<td>1.1</td>
</tr>
<tr>
<td>114</td>
<td>Solomon Islands</td>
<td>0.9</td>
</tr>
<tr>
<td>115</td>
<td>Tajikistan</td>
<td>0.9</td>
</tr>
<tr>
<td>119</td>
<td>Kyrgyz Republic</td>
<td>0.7</td>
</tr>
<tr>
<td>124</td>
<td>Maldives</td>
<td>0.5</td>
</tr>
<tr>
<td>129</td>
<td>Bhutan</td>
<td>0.3</td>
</tr>
<tr>
<td>130</td>
<td>Tonga</td>
<td>0.3</td>
</tr>
<tr>
<td>135</td>
<td>Vanuatu</td>
<td>0.1</td>
</tr>
<tr>
<td>139</td>
<td>Timor-Leste</td>
<td>0.1</td>
</tr>
</tbody>
</table>

Source: Kar and Freitas 2012b
<table>
<thead>
<tr>
<th>Year</th>
<th>Chinese Illicit OFC Flows</th>
<th>Chinese Licit OFC Flows</th>
<th>Total Chinese OFC Flows</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>61.6</td>
<td>38.3</td>
<td>100.0</td>
</tr>
<tr>
<td>2006</td>
<td>80.7</td>
<td>93.3</td>
<td>174.0</td>
</tr>
<tr>
<td>2007</td>
<td>86.1</td>
<td>114.1</td>
<td>200.1</td>
</tr>
<tr>
<td>2008</td>
<td>86.6</td>
<td>53.5</td>
<td>140.1</td>
</tr>
<tr>
<td>2009</td>
<td>62.1</td>
<td>-3.0</td>
<td>59.1</td>
</tr>
<tr>
<td>2010</td>
<td>91.7</td>
<td>97.2</td>
<td>189.0</td>
</tr>
<tr>
<td>2011</td>
<td>127.0</td>
<td>113.4</td>
<td>240.4</td>
</tr>
<tr>
<td>Cumulative, 2005-2011</td>
<td>595.8</td>
<td>506.8</td>
<td>1,102.6</td>
</tr>
</tbody>
</table>

Source: Kar and Freitas 2012a
Table IV

CHINA: ILLICIT FINANCIAL FLOWS, 2000-2011

(in billions of nominal US dollars and as a percentage of Gross Domestic Product)

<table>
<thead>
<tr>
<th>Year</th>
<th>Illicit Financial Flows (‘Net’) (billions of nominal US dollars)</th>
<th>Illicit Financial Flows as a Percentage of Gross domestic Product</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>172.6</td>
<td>14.4%</td>
</tr>
<tr>
<td>2001</td>
<td>183.2</td>
<td>13.8%</td>
</tr>
<tr>
<td>2002</td>
<td>161.9</td>
<td>11.1%</td>
</tr>
<tr>
<td>2003</td>
<td>191.6</td>
<td>11.7%</td>
</tr>
<tr>
<td>2004</td>
<td>229.7</td>
<td>13.0%</td>
</tr>
<tr>
<td>2005</td>
<td>292.7</td>
<td>13.0%</td>
</tr>
<tr>
<td>2006</td>
<td>383.1</td>
<td>14.1%</td>
</tr>
<tr>
<td>2007</td>
<td>408.6</td>
<td>11.7%</td>
</tr>
<tr>
<td>2008</td>
<td>410.0</td>
<td>9.1%</td>
</tr>
<tr>
<td>2009</td>
<td>277.2</td>
<td>5.9%</td>
</tr>
<tr>
<td>2010</td>
<td>435.6</td>
<td>7.3%</td>
</tr>
<tr>
<td>2011</td>
<td>602.9</td>
<td>8.3%</td>
</tr>
<tr>
<td>Average</td>
<td>312.5</td>
<td>11.1%</td>
</tr>
<tr>
<td>Total</td>
<td>3,750.0</td>
<td></td>
</tr>
</tbody>
</table>

Source: Kar and Freitas 2012a
Table V

CHINA: INWARD DIRECT INVESTMENT POSITIONS, 2010
(in billions of 2010 US dollars)

<table>
<thead>
<tr>
<th>Investment from:</th>
<th>Billions of US dollars</th>
<th>Percent of World</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong (tax haven)</td>
<td>710.9</td>
<td>45.3%</td>
</tr>
<tr>
<td>British Virgin Islands (tax haven)</td>
<td>213.7</td>
<td>13.6%</td>
</tr>
<tr>
<td>Japan</td>
<td>106.3</td>
<td>6.8%</td>
</tr>
<tr>
<td>Not Specified</td>
<td>98.5</td>
<td>6.3%</td>
</tr>
<tr>
<td>United States</td>
<td>63.5</td>
<td>4.0%</td>
</tr>
<tr>
<td>Singapore (tax haven)</td>
<td>62.5</td>
<td>4.0%</td>
</tr>
<tr>
<td>South Korea</td>
<td>40.3</td>
<td>2.6%</td>
</tr>
<tr>
<td>Cayman Islands (tax haven)</td>
<td>32.3</td>
<td>2.1%</td>
</tr>
<tr>
<td>Germany</td>
<td>28.7</td>
<td>1.8%</td>
</tr>
<tr>
<td>Taiwan</td>
<td>23.4</td>
<td>1.5%</td>
</tr>
<tr>
<td>Other</td>
<td>189.5</td>
<td>12.1%</td>
</tr>
<tr>
<td>World</td>
<td>1,569.6</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Source: Kar and Freitas 2012a
### Table VI

**CHINA: OUTWARD DIRECT INVESTMENT POSITIONS, 2010**

*(in billions of 2010 US dollars)*

<table>
<thead>
<tr>
<th>Investment TO:</th>
<th>Billions of US dollars</th>
<th>Percent of World</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong (tax haven)</td>
<td>366.5</td>
<td>81.2%</td>
</tr>
<tr>
<td>Canada</td>
<td>14.0</td>
<td>3.1%</td>
</tr>
<tr>
<td>Singapore (tax haven)</td>
<td>13.8</td>
<td>3.1%</td>
</tr>
<tr>
<td>Australia</td>
<td>13.0</td>
<td>2.9%</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>9.0</td>
<td>2.0%</td>
</tr>
<tr>
<td>South Africa</td>
<td>5.6</td>
<td>1.2%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>3.4</td>
<td>0.8%</td>
</tr>
<tr>
<td>Luxembourg (tax haven)</td>
<td>3.4</td>
<td>0.7%</td>
</tr>
<tr>
<td>United States</td>
<td>3.2</td>
<td>0.7%</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>2.6</td>
<td>0.6%</td>
</tr>
<tr>
<td>Other</td>
<td>17.0</td>
<td>1.8%</td>
</tr>
<tr>
<td>World</td>
<td>451.5</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

*Source: Kar and Freitas 2012a*
REFERENCES


van Fossen, Anthony (2012b), Tax Havens and Sovereignty in the Pacific Islands, St. Lucia: University of Queensland Press.


An earlier version of this chapter was delivered as a paper at the Global Capitalism in Asia and Oceania conference at Griffith University, South Bank, Brisbane, Australia, June 28-29, 2013.

Transfer prices are the prices at which a transnational corporation transfers goods, services and intangibles to another part of the corporation in another country.

‘Extra-territorial disputes...are settled, and competing jurisdictional claims evaluated, through specific institutional mechanisms.’ (Hudson 1998: 102)

In this paper, the countries in the Asia-Pacific are defined as the members of the Asian Development Bank.

Even when counted as licit, China’s foreign investments through OFCs may be unpopular. OFCs are very useful in disguising the source of China’s investment where anti-Chinese sentiment is strong, for example, in Vietnam, Indonesia, and Malaysia, or where its investments are internationally disreputable, for example, in Sudan and Zimbabwe (Vlcek 2010).

Although the national government of China terminated preferential national tax treatment for foreign investment in 2008, preferences may still exist at the sub-national level.

In 2013 Bermuda companies constituted 32% of the listings on the Stock Exchange of the tax haven of Hong Kong, with companies domiciled in the Cayman Islands only slightly behind Bermuda (Cheuk 2013).

In 2013 the WTO repeated its 2007 decision that Antigua and Barbuda had the right to suspend US patents and copyrights (to the value of up to $21 million a year) to retaliate against America’s illegal restrictions on the island tax haven’s online gambling sites. Washington, which has ignored the WTO’s rulings on the issue,
threatened strong measures if the Caribbean country became a ‘piracy hub’ (Anonymous 2013c).