Britain: Barclays gains gagging order against Guardian over tax avoidance claims

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The web site of the *Guardian* newspaper was subject in the early hours of Tuesday morning to a court injunction, forcing it to withdraw documents said to reveal extensive tax avoidance by Barclays Bank.

The seven memos reportedly showed how the bank created companies so as to avoid paying hundreds of millions of pounds in tax. Justice Ouseley granted Barclays a gagging order after it complained the documents had been leaked to Liberal Democrat Vince Cable by a whistleblower at the bank.

The whistleblower's allegations had first been aired in the *Sunday Times* on March 15. The correspondence claimed that the bank had created a special team dedicated solely to tax avoidance, said to be worth £1 billion a year.

The whistleblower claims to work for the Structured Capital Markets (SCM) division at Barclays Capital. SCM, the correspondence states, is "[H]idden away on the top floor of 5 The North Colonnade," in central London. Here, "[A] team of some 110 people with the sole purpose of structuring tax-aggressive transactions to avoid tax not only for Barclays but also for banks and companies across the world. Once upon a time the story was about the avoidance of UK tax. This rapidly expanded into the avoidance of US tax too but now the business has grown to encompass Europe, Brazil, the Middle East, South Africa and other emerging markets."

The various schemes involve a complex and elaborate international web of offshore companies, temporary trading bodies and currency swaps. Project Valiha, for example, was alleged to have been structured so as to enable Barclays to save £99 million by creating a financial loss, thus reducing its tax bill.

The *Times* cited forensic tax accountant Richard Murphy, stating Project Valiha was "designed so the money goes round in a big circle and comes back to Barclays so that they make £99m in tax savings without taking any risk at all. The whole thing takes three days."

Other schemes appear to be aimed at obtaining double tax reliefs in several countries. The documents also name Project Knight and Project Brontos, which, according to the whistleblower, generated £100 million and £55 million.

Murphy described the transactions listed in the memos as "almost entirely artificial." "They work on the basis of exploiting tax regulations and the laws of different countries. They don't generate any real profit for anyone, but they do save vast amounts of tax that they would otherwise pay," he said.

Barclays has insisted that none of the measures break tax laws and that all its transactions had been agreed by Her Majesty's Revenue & Customs (HMRC). A spokesman said that the SCM did not exist primarily for tax avoidance schemes and that the estimates were the result of "uninformed guesswork."

The *Guardian* described the frantic efforts made by the bank to get the newspaper web site to remove the documents.

"Barclays's lawyers, Freshfields, worked into the early hours to force the Guardian to remove the documents from the website. They argued that the documents were the property of Barclays and could only have been leaked by someone who acquired them wrongfully and in breach of confidentiality agreements.

"The Guardian's solicitor, Geraldine Proudler, was woken by the judge at 2am and asked to argue the Guardian's case by telephone. Around 2.31am, Mr Justice Ouseley issued an order for the documents to be removed from the Guardian's website."

The looting of social wealth

The whistleblower appears to be motivated by chagrin. "The last year has seen the global taxpayer having to rescue the global financial system," he writes. Tax avoidance measures have "made many in the industry feel uncomfortable especially when this means less hospitals and less schools being built" during a recession.

He complains that "SCM has huge amounts of resources, the best minds rewarded by millions of pounds. Compare this with HMRC recently advertising for a tax and accounting expert with the pay at £45,000."

This is "just one example of why HMRC will never, in its current state, be up to the job of combating this business."

Liberal Democrat Treasury spokesman, Matthew Oakeshott, compared HMRC efforts to detect bank tax avoidance with "a fat policeman chasing a speeding Ferrari."

The *Guardian* said it would appeal the order: "Tax avoidance is a matter of high public and political interest. These documents showed for the first time how major banks set up artificial schemes with the aim of earning hundreds of millions in tax-free money, which is why the Barclays whistleblower leaked them.... It is not right for a judge to prevent daylight from shining on the few documents ever to have emerged which graphically demonstrate what HMRC is up against."

The newspaper's decision to publish the memos was timed to coincide with Chancellor Alistair Darling's announcement that he had asked HMRC to publish a draft code on taxation practice for banks so that they "comply not just with the letter of the law but the spirit of the law."

Barclays is not the first bank accused of profiting from tax avoidance. The *Times* reported that Royal Bank of Scotland has some 238 offshore companies, including 66 in the Cayman Islands, while Lloyds has more than 125. Royal Bank of Scotland, now 70 percent owned by the government, reportedly avoided paying more than £500 million in tax in the UK and US over five years, although it says it has now disbanded the department responsible.

More generally, tax avoidance by companies and the super-rich is estimated to cost up to £25 billion a year—almost 1 percent of GDP. According to the National Audit Office, in 2006 nearly one third of Britain's 700 largest companies paid no tax at all, and 60 percent of the remainder paid less than £10 million.

Disclosures of widespread tax avoidance come as hundreds of billions of pounds have been handed out in public monies to support Britain's major banks. In addition, the government has now agreed that taxpayers will insure their toxic assets for some £400 billion. Although Barclays has managed to avoid government assistance to date, it has been in talks with the Treasury over financial help.

These massive handouts, when millions face job losses, pay cuts and heightened economic insecurity, have generated enormous public anger. In a nod to popular sentiment, Darling said of his proposed draft code, "The public would expect that, if it is supporting the bank system, then those banks are prepared to abide by that code."

The *Guardian* editorialised that Darling "should not give Barclays any support unless executives come clean about all their tax avoidance schemes—and stop them immediately."

Moreover, it insisted, "the damage done by the abuse of tax havens", should be a major item at the forthcoming G20 meeting in London. The "summit must strike an international deal that stipulates full and automatic information-sharing between tax jurisdictions. Anything less will be a failure," it argued.

But as the *Guardian* and others are well aware, the massive swindling now being revealed by the global economic crisis is not an aberration. Nor is it simply the result of a handful of corrupt individuals, although they indeed play their part. It is the outcome of a deliberate agenda pursued by the British bourgeoisie for more than 30 years, in the face of deep-seated contradictions within the capitalist profit system itself.

In response to declining profit rates, which began in the 1970s and accelerated subsequently, the ruling elite in Britain and their counterparts internationally turned increasingly to speculation and fraud as its means of capital accumulation. But this accumulation, rather than creating wealth, involved a massive transfer of already existing wealth away from working people to the super-rich. This orgy of parasitism, therefore, was wholly dependent upon, and in turn deepened, social inequality.

Government, the financial institutions and supervisory bodies were not helpless bystanders in this process—they actively encouraged it. International finance was attracted to the UK by the so-called "light touch" regulation—a euphemism for "get rich quick"—and the enormous returns it offered.

The economic and social catastrophe that is resulting cannot be resolved by a few policy changes here and there, as the *Guardian* implies. The restoring of the wealth looted from society by the financial oligarchy and their political defenders demands more fundamental, root and branch measures against an economic order that subordinates social needs to the accumulation of profit and the personal enrichment of a select few.