HOUSE OF LORDS

Library Note

Debate on 17 March: Bribery, Tax Avoidance, Corruption and Money Laundering

This Library Note provides background reading for the debate to be held on Thursday 17 March:

"The UK's record on legislation regarding bribery, tax avoidance, corruption and money laundering"

This Library Note provides statistics on bribery, tax avoidance, corruption and money laundering in the UK, provides an overview of legislation and policy in these areas and outlines various perspectives on the UK's record on legislation.

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1. Defining Bribery, Tax Avoidance, Corruption and Money Laundering

According to the *Oxford Dictionary of Modern Legal Usage,* bribery is "the corrupt payment, receipt or solicitation of a private favour for official action" or, in a commercial setting, refers to "the advantage that one competitor secures over other competitors by surreptitious, corrupt dealing with the agents and employees of prospective buyers".

The *New Oxford Companion to Law* defines "tax avoidance" as follows:

> Today's tax lawyers distinguish tax avoidance from tax mitigation and tax evasion... Tax mitigation arises where the taxpayer takes advantage of a tax rule in the tax legislation, and genuinely suffers the economic consequences that Parliament intended to be suffered by those taking advantage of the rule.
>
> Tax avoidance arises where the taxpayer reduces a liability to tax without incurring the economic consequences that Parliament intended to be suffered by someone qualifying for the reduction. Tax evasion is not a lawful activity; it involves illegal circumvention of tax, e.g. by not reporting relevant facts or claiming deductions which are not allowable.

The International Monetary Fund suggests that money laundering is "a process by which the illicit source of assets obtained or generated by criminal activity is concealed to obscure the link between the funds and the original criminal activity" (*The IMF and the Fight Against Money Laundering and the Financing of Terrorism*, September 2010).

Discussing the word "corruption", the *New Oxford Companion to Law* states: "defined as a *quid pro quo* in which private gain is secured at public expense, corruption is a broad term, describing a range of activities". Since the term "corruption" does encompass such a broad range of activities, it will not be possible to cover the full range in this Note. The Note will therefore not discuss corruption as a discrete activity.

2. Statistics on the Extent of Bribery, Money Laundering and Tax Avoidance in the UK

2.1 Bribery

As will be discussed in section 3, bribery is currently an offence in the UK under common law and under the Prevention of Corruption Acts 1889–1916. Statistics are not collected on the common law offence of bribery (Law Commission, *Reforming Bribery*, October 2007). However, in answer to a parliamentary question in 2009, the government provided the following statistics on the number of people in England and Wales who were convicted under the Prevention of Corruption Act 1906 and the Public Bodies

Corrupt Practices Act 1889 between 1998 and 2007:

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Prevention of Corruption Act 1906	11	8	20	11	19	6	4	1	10	12
Public Bodies Corrupt Practices Act 1889	6	3	5	2	—	1	—	—	3	—

(HC *Hansard*, 28 April 2009, col 1254W)

Third sector organisation Transparency International report that in July 2010, UK authorities had brought 10 foreign bribery cases and launched 24 investigations into foreign bribery to date. Details are provided on page 61 of *Progress Report: Enforcement Of The OECD Anti-Bribery Convention 2010* (Transparency International, July 2010).

It has been suggested that the number of convictions for bribery may under-represent the extent of bribery in the UK. Transparency International suggests that the number of convictions for bribery is low compared to other countries. Transparency International argues this does not indicate better behaviour on the part of UK firms and individuals but reflects UK authorities' inability or unwillingness to prosecute for bribery (Transparency International press release, 'Transparency International UK Says The UK's Record On Enforcing Foreign Bribery Rules Is Still Unimpressive', 23 June 2009).

2.2 Tax Avoidance

Statistics on tax avoidance are fiercely contested. This may be partly because the definition of "tax avoidance", as discussed above, is open to interpretation. As stated by the *New Oxford Companion to Law*, in a court room the definition of tax avoidance is "a matter of what the judges think Parliament intended". This may also be true in interpreting statistics, in that some estimates are based on a more stringent view of what constitutes avoidance.

HM Revenue and Customs estimate that, between 2008 and 2009 the total which HMRC lost to avoidance of National Insurance Contributions, income tax and capital gains tax was £1.4 billion, while the total lost to avoidance of corporation tax was £2.9 billion (*Measuring Tax Gaps 2010*, 16 September 2010). HMRC offers an overall estimate of the "tax gap", which they define as follows:

> The tax gap is defined as the difference between tax collected and the tax that should be collected (the theoretical liability). The theoretical tax liability represents the tax that would be paid if all individuals and companies complied with both the letter of the law and HMRC's interpretation of the intention of Parliament in setting law (referred to as the spirit of the law). The tax gap estimate is net of the Department's compliance activities.

For 2008–09 HMRC estimate that the tax gap was £42 billion, which they suggest "equates to around 9 per cent of total tax liability". This represents an increase from 2007–08, when the tax gap was £38 billion (*Measuring Tax Gaps 2010*, 16 September 2010).

Other research has produced much higher estimates of the tax gap and the extent of avoidance. Richard Murphy, Director of consultancy Tax Research LLP, has estimated that the total tax gap in the UK exceeded £120 billion in 2010 (Richard Murphy, *Tax Justice and Jobs: The Business Case for Investing in Staff at HM Revenue & Customs*, March 2010). On tax avoidance specifically, Murphy estimated in 2008 that "£25 billion annually is lost from tax avoidance. This is made up of £13 billion per annum from tax avoidance by individuals and £12 billion per annum from the 700 largest corporations" (TUC, *The Missing Billions: The UK Tax Gap*, 2008).

David Gauke, Exchequer Secretary to the Treasury, addressed this divergence of opinion in a recent speech, saying "it is a feature of this debate that legitimate behaviour by taxpayers—consistent with both the letter and spirit of the law—is being classified as 'avoidance'. This action artificially inflates both estimates and perceptions of the 'tax gap'" (Speech by David Gauke, to the Hundred Group, London, 1 March 2011). Richard Murphy has countered that HMRC uses flawed methodology and insufficient data to estimate the tax gap (Tax Research UK, *The Tax Gap, Who is Right?*, 9 March 2011).

2.3 Money Laundering

In answer to a parliamentary question last year, the government provided the following statistics on convictions for money laundering in the last five years for which information was available:

Year	Number of defendants found guilty at all courts for 'money laundering offences', England and Wales, 2004–08
2004	209
2005	596
2006	1,276
2007	1,348
2008	1,286

(HC *Hansard*, 26 July 2010, col 690W)

The UK Financial Intelligence Unit collects information on money laundering by asking businesses or individuals to submit a Suspicious Activity Report (SAR) if they suspect that a person is engaged in money laundering. The Unit received 240,582 SARs from October 2009 until the end of September 2010, an increase from 228,834 from October 2008 until the end of September 2009 (Serious Organised Crime Agency, *The Suspicious Activities Reports Regime Annual Report 2010*).

A Treasury report in 2007 estimated that organised crime generates money laundering through the regulated sector of around £10 billion per year (HM Treasury, *The Financial Challenge To Crime And Terrorism*, February 2007).

The European Union has collected statistics on money laundering across EU member states, producing a report entitled *Money Laundering in Europe* (Eurostat, 2010). Table 9 on page 60 offers figures on 'The Number of Persons/Legal Entities Convicted for Money Laundering'.

3. Legislation and Policy

3.1 Bribery

The Bribery Act 2010 received Royal Assent on 8 April 2010, but has not yet come into force. Under current law, bribery and attempted bribery are common law offences punishable by imprisonment or a fine, or both. Corruption offences are also found in at least 12 statutes: the main statutes are the Public Bodies Corrupt Practices Act 1889 and the Prevention of Corruption Act 1906 as supplemented by the Prevention of Corruption Act 1916 and the Anti-Terrorism, Crime and Security Act 2001 (Crown Prosecution Service website, 'Bribery and Corruption').

The 1889 Act makes it an offence for any person to corruptly solicit or receive a gift in order that a member of a public body should agree to act on any matter in which the public body is concerned. It creates a similar offence in respect of anyone who corruptly gives or offers a gift. The 1906 Act makes it a crime to bribe any agent. An agent is anybody employed by or acting for another, whether in the public or private sector. The Prevention of Corruption Act 1916 introduces a presumption of corruption, meaning that the defendant must prove that a gift was not given or received as a bribe (Crown Prosecution Service website, 'Bribery and Corruption').

The Anti-Terrorism, Crime and Security Act 2001 amends the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916 to clarify that the existing offences of bribery apply to the bribery of foreign public officials and foreign agents in the public or private sector. It also gives the courts in England, Wales and Northern Ireland extra-territorial jurisdiction over bribery and corruption offences committed abroad by UK nationals or bodies incorporated under UK law (Crown Prosecution Service website, 'Bribery and Corruption'). For a more detailed discussion of the current law on bribery see Law Commission Consultation Paper No 185, *Reforming Bribery*, November 2007.

Work to review the law on bribery dates back to 1995 and the Nolan Committee's *Report on Standards in Public Life*, which suggested that the Law Commission should review the statute law on bribery. The Law Commission made reform proposals in a 1998 report: *Legislating The Criminal Code: Corruption*. In June 2000 the government published a white paper, *Raising Standards and Upholding Integrity: the Prevention of Corruption*. This led to a draft government Bill in 2003: *Corruption*. A joint committee of Parliament rejected the draft bill (Joint Committee on the Draft Corruption Bill, *Draft Corruption Bill*, 31 July 2003). The government published a consultation paper, *Bribery: Reform Of The Prevention Of Corruption Acts And SFO Powers In Cases Of Bribery Of Foreign Officials* in 2005. The Law Commission issued a consultation paper, *Reforming Bribery*, in October 2007, and published a report, *Reforming Bribery*, on 19 November 2008. For more information on the development of the Bribery Bill, see *Impact Assessment of Bill on Reform of The Law On Bribery* (Ministry of Justice).

The government published a draft Bribery Bill on 25 March 2009. The draft Bribery Bill underwent pre-legislative scrutiny by a joint committee, which published a report on 28 July 2009. The Bribery Bill was introduced in the House of Lords on 19 November 2009. For more information on the passage of the Bribery Bill, see House of Commons Library Research Paper *Bribery Bill [HL]: Bill No 69* (HCRP 10/19, 1 March 2010).

The Bribery Act received Royal Assent on 8 April 2010. The Act replaces the bribery offences at common law and in the Prevention of Corruption Acts 1889–1916, and creates two general offences covering the offering, promising or giving of an advantage,

and requesting, agreeing to receive or accepting of an advantage. It creates a discrete offence of bribery of a foreign public official and creates a new offence of failure by a commercial organisation to prevent a bribe being paid on its behalf, unless the organisation has adequate procedures in place to prevent bribery ('Bribery Act 2010', Ministry of Justice website).

It was reported that the Act was due to come into force in October 2010 (*The Times*, 'Bribery and corruption crunch time for companies', 20 April 2010). In July 2010, the Secretary of State for Justice, Kenneth Clarke, announced that the Act would be implemented in "the spring of 2011", following "a public consultation exercise on the form and content of guidance to be issued under section 9 of the Act" (HC *Hansard*, 20 July 2010, cols 11–12WS). The Ministry of Justice issued a press release entitled 'Bribery Act Implementation', 20 July 2010. Kenneth Clarke launched this consultation in September 2010 (HC *Hansard*, 14 September 2010, cols 37–8WS). For information on the consultation, see the Ministry of Justice webpage entitled 'Guidance about Commercial Organisations Preventing Bribery (Section 9 of the Bribery Act 2010)'.

On 31 January 2011 it was reported that a Ministry of Justice spokesperson had announced that there would be a further delay in the implementation of the Act (T*elegraph*, 'Bribery Act: Lack of Clear Guidance from Ministry of Justice Blamed for Second Delay', 31 January 2011). It has also been reported that, as part of the Growth Review (HM Treasury website, 'Growth Review', 29 November 2010) the government will review the Bribery Act 2010 (*Personnel Today*, 'Bribery Act 2010 to be Reviewed', 20 January 2011).

3.2 Tax Avoidance

A report published by the Institute for Fiscal Studies suggests "legislation used to counteract tax avoidance can be seen as falling into two groups: the first is the legislation that changes the way the tax system deals with a particular transaction or arrangement; the second is legislation that introduces TAARs—specific anti-avoidance rules—which are bolted on to existing legislation or are included in new legislation" (*Countering Tax Avoidance In The UK: Which Way Forward?*, February 2009). The report provides a detailed discussion of legislative and regulatory attempts to address tax avoidance.

In addition there have been several more recent initiatives: in November 2010, the government reported that the top 15 UK banks had signed a Code of Practice, promising to "follow the spirit of the law as well as the letter" on tax (HM Treasury website, 'Top 15 Banks sign Code of Practice', 30 November 2010).

The government announced a number of anti-avoidance measures in December 2010 (HC *Hansard*, 6 December 2010, cols 1–3WS). An HMRC press release summarises these initiatives as follows:

> Two measures with immediate effect will tackle tax avoidance by:
>
> - preventing groups of companies using intra-group loans or derivatives, to reduce the group's tax bill, and,
> - addressing schemes where a company does not fully recognise certain amounts in its accounts involving loans and derivatives.

Three measures with further detail to be set out shortly, will tackle tax avoidance through:

- addressing the practice of disguised remuneration,
- stopping investment companies retrospectively changing the currency they prepare their accounts in for tax purposes, and,
- tackling businesses who artificially split the supply of services to reduce VAT.

(HMRC website, 'Government Announces Tax Avoidance Clampdown', 6 December 2010)

The government also announced that Graham Aaronson QC had been asked to lead a study into "whether a General Anti-Avoidance Rule (GAAR) could deter and counter tax avoidance" (HMRC website, 'Government Announces Tax Avoidance Clampdown', 6 December 2010). The terms of reference for this study are available at the HMRC website: *Study of a General Anti-Avoidance Rule: Terms of Reference* 6 December 2010.

On 9 December 2011, the Exchequer Secretary to the Treasury, David Gauke, stated that "the Government are introducing legislation to tackle arrangements involving trusts or other vehicles used to reward employees which seek to avoid or defer the payment of income tax or National Insurance Contributions (NICs)" (HC *Hansard*, 9 December 2010, col 27WS).

3.3 Money Laundering

The main UK legislation covering money laundering is the Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2007 (Office of Fair Trading, *Money Laundering Regulations 2007*, May 2009). The Proceeds of Crime Act 2002 establishes the primary offences related to money laundering, including concealing, transferring or removing criminal property from the UK. The Terrorism Act 2000 sets out the primary offences related to terrorist funding and requires regulated businesses to report knowledge or suspicion of offences related to terrorist financing (The Law Society, *Anti-Money Laundering Practice Note*, 29 October 2009).

The Money Laundering Regulations 2007 repeal and replace the Money Laundering Regulations 2003 and implement the third European Union money laundering directive. The Regulations aim to limit the use of professional services for money laundering by requiring businesses including credit institutions, legal professionals and estate agents to monitor how clients are using their services (The Law Society, *Anti-Money Laundering Practice Note*, 29 October 2009). HM Revenue and Customs has published a guide to the Money Laundering Regulations on their website.

4. The UK's Record: Some Perspectives

4.1 Bribery

The Bribery Act, and the timing of its implementation, has divided opinion. The OECD have strongly criticised the delay in implementation. Mark Peith, Chair of the OECD

Working Group on Bribery, has stated:

> It is very disappointing that despite public commitments, the UK will further delay this important Act to tackle bribery and corruption... Establishing a level playing field for international business is as important now as ever and will help strengthen the global economic recovery. As a G20 country, the UK bears a special global responsibility and should lead by example.
>
> (OECD website, 'UK: Chair Of OECD Working Group On Bribery Concerned Over Delay Of New Bribery Act', 1 February 2011)

In comments reported by the *Guardian* newspaper, Mr Peith went further, suggesting that British companies could face international blacklisting if the Act was not implemented soon (*Guardian*, 'British Firms Face Bribery Blacklist, Warns Corruption Watchdog', 31 January 2011). The OECD have long been critical of the UK's position on bribery. In October 2008, a report produced by the OECD Working Group on Bribery criticised the United Kingdom's failure to bring its anti-bribery laws into line with the OECD Anti-Bribery Convention, stating:

> The Working Group is disappointed and seriously concerned with the unsatisfactory implementation of the Convention by the UK. The continued failure of the UK to address deficiencies in its laws on bribery of foreign public officials and on corporate liability for foreign bribery has hindered investigations. The Group urges the UK to adopt appropriate legislation as a matter of high priority.
>
> (*United Kingdom: Phase 2bis Report On The Application Of The OECD Anit-Bribery Convention*, 16 October 2008).

Such criticism has led several British commentators to express concern about reputational damage to British businesses. It has been reported that Richard Alderman, Director of the Serious Fraud Office, has written to the Justice Secretary, Kenneth Clarke, warning that delays in introducing the Act have left the government open to the charge that it is not committed to fighting corruption, angering not only the OECD but the US government (*Daily Telegraph*, 'Serious Fraud Office Boss Worried by Bribery Act Delays', 7 March 2011). Writing in *The Times*, David Wighton has suggested:

> The risk is that this will further damage the reputation of British business and undermine the UK's international clout on a key economic issue. British companies generally have a very good record on corruption, whatever their French rivals may say. But Britain's standing has been badly hit by the long-running bribery inquiry into BAE Systems, which has now paid £290 million in fines in the US and UK.
>
> (*The Times*, 'If China is Curbing Corruption, Why Can't We?', 7 February 2011)

The *Financial Times* has suggested that, in delaying the Act, "at stake is nothing less than the ethical reputation of British business" (*Financial Times*, 'Bribery Law Will Benefit Business', 2 February 2011).

However, other commentators have insisted that the delay is necessary in order that proper safeguards are put in place to protect British businesses from being negatively affected by new obligations which will be introduced by the Act. The CBI have suggested that implementing the Bribery Act in its current form would risk "harming UK

competitiveness" (*Daily Telegraph*, 'CBI and OECD Clash on Bribery Act Delay', 2 February 2011). The CBI outlined their concerns in a recent report:

> The legislation omits the notion of corruption, dishonesty or impropriety. This means legitimate business promotional expenditure and proportionate use of corporate hospitality could fall foul of the law. Under the current primary legislation, a pharmaceutical company offering bona fide hospitality to a doctor in China—technically a state employee—while tendering for contracts there could lead to a prosecution under the Bribery Act, even if there is no corrupt intent. This section has potential consequences for sponsors of major sporting events such as the Olympic Games, and must be resolved as soon as possible. We believe the law—and at the very least the guidance—should state that there must be evidence of corrupt intent behind hospitality and promotional expenditure.
>
> ... Employers are also concerned that they will be liable for the offences of firms in their supply chains—not just in their own workforce. The guidance is not clear about which entities firms' anti-bribery procedures should apply to. This is an important issue for business—and one that must be put right before implementation.
>
> (*CBI Response to the Government Growth Review*, February 2011)

Fears have been expressed that the Act will place British businesses at a commercial disadvantage since they will be subject to more onerous requirements on bribery than their foreign competitors. Writing in the *New Law Journal*, Justin Michaelson and Andrew Berkeley suggest:

> While it is entirely understandable that the government wishes Parliament to direct provisions to UK companies and show a strong hand to the international community, it is equally important that it does not suffocate activity in markets where those companies come up against international competitors. Strict penalties and corporate liability and absolute offences will make more companies take notice and tighten internal controls. But how far should the UK go in terms of enforcement, when trying to set out a new golden standard? Parliament should not go further than a "functional equivalence" of the OECD Convention in the race to catch up.
>
> (Justin Michaelson and Andrew Berkeley, 'Positive Steps', *New Law Journal*, 4 June 2009)

The Director of the British Chambers of Commerce, David Frost, has warned that "in a cut and thrust world of exporting what we don't want is the British playing with a straight bat and we find some of our competitors are not. If this is going to work it has to be policed globally" (*Daily Telegraph*, 'Bona Fide Corporate Freebies "Must Survive Bribery Act"', 8 November 2010).

Other commentators have raised concerns that journalistic freedoms will be put at risk. Writing in the *Observer* Stephen Pritchard suggests that:

> News organisations could be caught in the slipstream, with editors facing unlimited fines or up to 10 years' imprisonment if a journalist made some sort of payment to a source, even in an attempt to expose wrongdoing. So lunch for a public official anywhere in the world, including the UK, could be construed as a bribe. Journalists seeking off-the-record briefings with civil servants might be liable to prosecution—as would their lunch guests.

> ... This all seems overly heavy-handed. It would be the ultimate irony if journalists who pride themselves on exposing corruption in public life were to be prosecuted for corruption themselves in the pursuit of the truth.
>
> (Stephen Pritchard, 'Bribery or the Pursuit of Truth?', *Observer*, 19 December 2010)

Another criticism of the Act has been that it creates offences which are too vague. Writing in the *Archbold Review*, David Aaronberg QC and Nichola Higgins argue that:

> The Act has the potential to include conduct that might be considered wrong but not necessarily criminal, particularly in relation to section 6 (bribery of foreign officials). The responsibility for deciding where conduct crosses the line lies with prosecutors. This does not permit either individuals or commercial organisations to predict with certainty when behaviour, seemingly criminalised by the Act, will in fact be prosecuted.
>
> (David Aaronberg QC and Nichola Higgins, 'The Bribery Act 2010: All Bark and No Bite?', *Archbold Review*, 21 June 2010)

Transparency International have issued a report, *Bribery Act: Myth and Reality*, which seeks to dispel such concerns, arguing that "hospitality, gifts and promotional expenditure are adequately covered in the draft Guidance to Section 7 of the Bribery Act that the Ministry of Justice published for consultation last year" and suggesting that "the Bribery Act is drafted such that it would also enable prosecution of non-UK companies. This creates a level playing field, as long as the UK and US authorities are willing to prosecute foreign companies" (Transparency International, *Bribery Act: Myth and Reality*, February 2011).

In light of these concerns, it has been reported that the government intends to relax key elements of the Bribery Act (*Daily Telegraph*, 'Government Relaxes Bribery Act', 26 February 2011). However, Justice Secretary Kenneth Clarke has denied that this is his intention, stating in reply to a recent parliamentary question:

> There is no watering-down of the Act. All parties supported it when it went through the House, and we are going to implement it properly. It requires me to provide statutory guidance to businesses on what steps they should take to ensure that they are trying to prevent bribery, and that is what I am working on. I believe that it is possible to produce guidance and enforce the Act in a way that produces the rigour and fairness that the hon. Gentleman demands. There is no backing down from the principles of the Act at all.
>
> (HC *Hansard*, 15 February 2011, col 794)

4.2 Tax Avoidance

Criticism of tax avoidance legislation has tended to come from two distinct directions. Some argue that the burden of tax administration incumbent on corporations and high-earning individuals is too great, and that tax avoidance legislation is too stringent. The Institute for Economic Affairs suggests that tax compliance and administration costs British businesses £20 billion per year, with small businesses bearing a disproportionate amount of this cost. They argue that "the chief contributory factor to the increasing hidden costs of taxation is complexity", and suggest a key driver of this complexity is "a desire to prevent avoidance" (*Taxation and Red Tape*, February 2010). Others suggest

that UK tax avoidance legislation is too stringent in forcing high-earning individuals to forfeit part of their wages. Writing in the *Sunday Telegraph*, Emma Simon suggests that:

> Politicians seem to be blurring the line between tax evasion and tax avoidance. The former involves breaking tax rules and is, of course, illegal. The latter involves sticking to the rules but planning your finances carefully so you don't pay more tax than you have to. This could be as simple as using tax-efficient savings plans such as Isas, pensions and Premium Bonds, or utilising legitimate tax reliefs efficiently. And despite the rhetoric, Nick Clegg, the Deputy Prime Minister, was forced to concede that middle-class taxpayers were "perfectly entitled" to use accountants to lower their tax bills.
>
> In fact, it could be argued that we need to be more vigilant about such measures: many families are feeling the strain on their finances thanks to increased National Insurance contributions, rising inflation, the new 50p top tax rate—and the fact that many also face additional tax demands, thanks to HM Revenue & Customs' computer errors.
>
> (Emma Simon, '10 Ways To Beat The Taxman Honestly', *Sunday* Telegraph, 24 September 2010)

Furthermore, Andrew Ellson, writing in *The Times*, warns that anti-tax avoidance measures might damage growth:

> Capping tax breaks to the wealthiest may seem a sensible move, but if it had the side-effect of discouraging enterprise and economic growth, it would be counter-productive. Changes should always be designed to maximise revenue while minimising economic distortions.
>
> (Andrew Ellson, *The Times*, 25 September 2010)

Another school of thought is that UK legislation does not penalise tax avoidance strongly enough. Campaign group UK Uncut argue that if businesses did not engage in tax avoidance, public spending cuts would not be necessary:

> We are told that it is vital to reduce the deficit, and that the only way of doing this is to cut public spending. This is certainly not the case. There are alternatives, but the government chooses to ignore them, highlighting the fact that the cuts are based on ideology, not necessity.
>
> One alternative is to clamp down on tax dodging by corporations and the rich, estimated to cost the state £95bn a year. Another is to make the banks pay for a crisis they created: last year they paid out over £7bn in bonuses and just four banks made £24bn in profit.
>
> The tax avoided and evaded in a single year could pay for the £81bn, four-year cuts programme.
>
> (UK Uncut webpage, 'The Government's Lies')

Writing in the *Guardian*, George Monbiot criticises what he sees as the government's plans to allow further tax avoidance:

> Our political system protects and enriches a fantastically wealthy elite, much of whose money is, as a result of their interesting tax and transfer arrangements, in

> effect stolen from poorer countries, and poorer citizens of their own countries. Ours is a semi-criminal money-laundering economy.
>
> (George Monbiot, 'To Us, It's an Obscure Shift Of Tax Law. To The City, It's The Heist Of The Century', *Guardian*, 7 February 2011)

Alongside the debate about the stringency of anti-avoidance measures, debate has centred around attempts to simplify the complex legislation on tax avoidance. The Institute for Fiscal Studies suggests that complexity in the tax system is not only time consuming and costly but may be less effective:

> Highly complex legislation does not necessarily achieve the purpose of stopping avoidance: the more detailed the rules, the more opportunity there may be for those wishing to do so to find and exploit loopholes. Then yet more complexity is added in response, and so the process continues.
>
> (Institute for Fiscal Studies, *Countering Tax Avoidance In The UK: Which Way Forward?*, February 2009)

However, the IFS suggest that simplifying the system will not be easy: "there is no 'golden bullet' in terms of a legislative, administrative or judicial approach that will solve the 'tax gap' problems caused by tax avoidance". The government have commissioned a study into whether to introduce a General Anti-Avoidance Rule (GAAR). The idea of a GAAR has been strongly criticised by some. Bill Dodwell, head of tax at Deloitte, has suggested it would "create huge confusion", because "business wants to know what it can and cannot do and this law again breeds huge uncertainty". Mark Green, head of tax at Legal & General argues a GAAR would be "a draconian overreaction, using the proverbial sledgehammer to crack a nut" (*Daily Telegraph*, '"Super Law" to Close Tax Loopholes', 23 June 2010). David Wighton, writing in *The Times*, suggests that a GAAR "sounds simple and effective", but writes:

> In practice, however, it has serious drawbacks, as the countries that have adopted such a rule have found. It can lead to greater uncertainty and expense.
>
> For complex tax arrangements, the idea would be that companies would seek clearance from the Revenue that they did not fall foul of the rule. But frequently there would not be time. So companies would go ahead and if the Revenue wanted to mount a challenge, it would all end up in the courts anyway.
>
> (David Wighton, 'Simple Concept Has Drawbacks', *The Times*, 7 December 2010)

The IFS concludes that "a GAAR on its own would not provide a solution". However they suggest a GAAR could have a role if used alongside other tools (Institute for Fiscal Studies, *Countering Tax Avoidance In The UK: Which Way Forward?*, February 2009).

4.3 Money Laundering

Money laundering regulations have drawn criticism from the private sector, because of the time and money which professionals from a wide range of organisations must spend in reporting suspected money laundering. The House of Lords European Union Committee published a report in 2009, which argued that the reporting requirements imposed on regulated organisations were unfairly stringent. In particular they criticised the "all crimes" approach, which requires an activity suspected to involve property which

might be laundered to be reported no matter how trivial the underlying criminal offence. The Committee recommended that:

> Failure to report a suspicious transaction based on a minor criminal offence should not be prosecuted; and this should be achieved, not by a decision that in a particular case prosecution would not be of public benefit, but by amending the law so that such a transaction would not need to be reported. Consideration should therefore be given to amending the Proceeds of Crime Act 2002 to include a de minimis exclusion.
>
> (House of Lords European Union Committee, *Money Laundering And The Financing Of Terrorism*, 22 July 2009)

The Committee also raised concerns about data protection in relation to the system which is used to report suspected money laundering. They pointed out that the system which was used, the ELMER database, was accessible by "every police force in England and Wales, Scotland, Northern Ireland, all of the national agencies that have prosecution powers—HMRC, DWP, the Serious Fraud Office—together with other agencies such as trading standards, and some county councils". The Committee argued that this was unnecessary and recommended that:

> The Information Commissioner should review and report on the operation and use of the ELMER database, and should consider in particular whether the rules for the retention of data are compatible with the jurisprudence of the European Court of Human Rights.
>
> (House of Lords European Union Committee, *Money Laundering And The Financing Of Terrorism*, 22 July 2009)

The House of Lords debated the Committee's report on 7 December 2009 (HL *Hansard*, cols 958–80).

The House of Lords European Union Committee followed up their 2009 report with a report published in January: *Money Laundering: Data Protection For Suspicious Activity Reports* (20 January 2011). This report comments on progress made on the recommendations which the Committee made in their 2009 report. On proportionality, it notes that:

> In their response, the government strongly defended the "all crimes" approach, and argued that a de minimis exclusion would be unworkable. They did however undertake to work with the Law Society to review ways of re-focusing the definition of money laundering and money laundering offences.
>
> We hope that, when the government consider the Commissioner's doubts about the justification of reporting transactions where there is a very low level of suspicion, they will also give further consideration to our own concerns about the requirement to report suspicions about the commission of trivial criminal offences. We recall and reiterate the recommendation in our first report that consideration should be given to amending the Proceeds of Crime Act 2002 to include a de minimis exclusion.
>
> (House of Lords European Union Committee, *Money Laundering: Data Protection For Suspicious Activity Reports*, 20 January 2011)

On data protection, the Committee suggests that insufficient action has been taken since their first report:

> If the only change since we reported is that local authorities no longer have direct "desk-top" access (the expression used by the Director of the FIU) or access "from a terminal in a local police unit" (Lord West's answer) but still have indirect access, again this does little to reassure us.
>
> (House of Lords European Union Committee, *Money Laundering: Data Protection For Suspicious Activity Reports*, 20 January 2011)

Another complaint about money laundering regulations has been that the UK's rules on reporting suspicious behaviour cause UK figures on money laundering to appear unnaturally high. Research conducted by Deloitte on behalf of the European Commission finds that figures on money laundering in EU Member States may be distorted by "higher reporting rates in the UK" (Deloitte, *Final Study on the Application of the Anti-Money Laundering Directive*, 24 January 2011). Writing in the *Law Society Gazette*, Jonathan Goldsmith argues that this report "shows how the UK's own gold-plating of the money laundering legislation has distorted the reporting process". He adds: "there are no figures on the most interesting question: does such a gigantic reporting duty lead to any more convictions, either in the UK compared to other Member States, or indeed, taking the EU as a whole, compared to the position before the reporting obligation was introduced?" (*Law Society Gazette*, 'Explaining Money Laundering to a Martian', 21 February 2011).

Countering these concerns, the government, international organisations and several professional groups argue that money laundering regulations are necessary in order to protect the financial sector. HMRC has issued guidance which states "Money Laundering Regulations are designed to protect the UK financial system" (HMRC website, 'Introduction to the Money Laundering Regulations'). The Serious Organised Crime Agency acknowledges that it is difficult to measure the impact of money laundering regulations, since it is impossible to capture "the financial or social costs which have been saved by the UK economy or the longer term benefits of disrupting organised criminal groups". However, the Serious Organised Crime Agency provides case studies each year of successful outcomes from the submission of Suspicious Activity Reports, for example, in 2010:

> A bank submitted a SAR on a small internet payment provider which acted as a clearing house for offshore gambling websites. Although the company maintained sterling, euro and US dollar accounts, only the US dollar account was active on a regular basis and the pattern of payments between companies in different countries led the bank to suspect this might be used for 'cyberlaundering', where money laundering takes place via the internet.
>
> Other intelligence available to the police suggested this was likely to be the case and they embarked on a money laundering investigation. The subjects of the SAR pleaded guilty to money laundering and a confiscation order for over £1.3 million was made.
>
> (Serious Organised Crime Agency, *Suspicious Activity Reports Regime Annual Report 2010*)

The International Monetary Fund states that:

> Money laundering and terrorist financing activities can undermine the integrity and stability of financial institutions and systems, discourage foreign investment, and distort international capital flows. Strong anti money laundering regimes enhance financial sector integrity and stability.
>
> (*The IMF and the Fight Against Money Laundering and the Financing of Terrorism*, September 2010)

Although the House of Lords European Union Committee recommended that the SARs regime should be reformed, several professionals giving evidence to the Committee expressed positive views on the system: a representative of the British Bankers' Association suggested that the "all crimes" approach was necessary because of the reputation of the United Kingdom as an international centre. A representative of the Institute of Chartered Accountants in England and Wales "entirely agreed" with that view (House of Lords European Union Committee, *Money Laundering And The Financing Of Terrorism*, 22 July 2009).

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