

- Lawyers' duty of confidentiality can be used to protect extractive companies from insight into their potential tax evasion and human rights violations.
- This makes it nearly impossible to prosecute companies that break the laws.
- Governments must protect the lawyer's duty of confidentiality, but at the same time ensure that this confidentiality cannot be abused.



Silence is golden



TOP SECRET

In the report “Silence is golden”, **Publish What You Pay Norway** sheds light on an unintended and concerning consequence of lawyers’ duty of confidentiality.

THE PROBLEM

To plan and facilitate tax evasion for multinational companies has become a global and lucrative business – and lawyers play an important role in it. This practice is evident in the extractive industries, where many poor, resource-rich countries are tapped for tax revenues from their natural resources. Capital that should accrue to these host countries, or to the home country of the company, is instead moved within the company structure and transferred to tax havens. Companies often use lawyers to structure these transactions. Lawyers have a duty of confidentiality, which obliges them to respect the confidentiality of their clients’ affairs. The noble purpose of this principle is to protect an individual’s ability to access the justice system, and safeguard rule of law in the society. Yet this confidentiality also has an unintended effect that it is necessary to shed light on: companies can use it to claim client confidentiality to protect themselves against government insight into activities, transactions and company structures. It also protects the lawyers from having to disclose their own contributions to tax evasion.

THE CONSEQUENCES

Multinational companies have, with the help of lawyers, built complex corporate structures that make it nearly impossible to prosecute companies for human rights violations, or for illicit tax evasion from both rich and poor countries. The global financial integration has developed much faster than the national governments’ capacity to get an overview over the implications for their legislations and economies. Poor countries with non-renewable and finite natural resources are in a particularly vulnerable position. Developing countries are being drained of nearly 1000 billion US dollars each year through illicit financial flows. That equals ten times the value of total international aid to poor countries. Tax evasion from commercial companies constitutes the largest share of illicit financial flows. Complex corporate structures and lack of transparency makes it nearly impossible for tax authorities to prosecute the companies.

"The essential purpose of the global shadow financial system is the shift of money from poor to rich. This is about getting rich secretly and not having to account for such riches locally", writes Raymond Baker, Director of the think-tank Global Financial Integrity (taken from another of our reports, "Piping Profits")



Q&A

Will Norway lead the way?

In January 2012, the Norwegian Ministry of Finance published a draft bill proposing an exception from lawyers' duty of confidentiality in the tax area. The proposal involves new provisions of the Assessment

Act and the VAT Act, which will oblige lawyers to provide information on deposits and debt, money transfers and other balances on clients' bank accounts and other accounts in the lawyer's name. This obligation will also apply to others who have a statutory duty of confidentiality regarding such information. The backdrop is a Supreme Court ruling from 2010, which concluded that the names of clients who transfer money through lawyers' client accounts should be kept secret.

The Ministry has stated that the purpose of the bill is to draw a line between the lawyers' duty of confidentiality and the tax authorities' right to information about income and wealth that is important for tax estimation. You can read more about the draft bill and the different consultative statements from relevant actors at the Government's webpages: www.regjeringen.no.

Why should I read this report?

PWYP Norway presents a small selection of articles highlighting various aspects of the lawyers' privilege of confidentiality and how it relates to tax matters. Renowned experts have written these articles, including public prosecutors, practicing lawyers and academics.

A SOLUTION

Lawyers' duty of confidentiality is vital, noble and necessary for a free and civilized society. Yet it is important to separate lawyers' passive protection of clients, from active contribution to crimes like illicit tax evasion. Publish What You Pay Norway sees no contradiction in seeking to protect the lawyers' duty of confidentiality on the one hand, and at the same time ensure that this confidentiality cannot be abused. It is vital to make this distinction, as the abuse of the privilege of confidentiality can undermine the privilege itself. One potential solution is to remove the duty of confidentiality on a specific and limited area concerning client accounts, in order to ensure tax authorities' ability to access and collect their fair share of tax and revenues. This possibility has been discussed in Norway and is supported by PWYP Norway.

Download the full report for free at www.pwyp.no

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PWYP Norway is the Norwegian chapter of a global network of more than 750 organizations from over 70 resource rich countries. We work to establish financial transparency and accountability in the extractive sector, so that countries can mobilise their own capital to promote a sustainable future, democracy, and human rights

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