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English laws and global money markets: The rise of the Vanuatu tax haven

Gregory Rawlings

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ENGLISH LAWS AND GLOBAL MONEY MARKETS: THE RISE OF THE VANUATU TAX HAVEN

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Abstract

Between 1970 and 1972 the British colonial authorities in what was then the New Hebrides (now the Republic of Vanuatu) passed legislation that turned the territory into a tax haven, or Offshore Finance Centre (OFC). This paper examines the decision by the British to make Vanuatu an OFC. In the mid-1950s, interest rate differences between US and British banks, regulatory diversity between these two states and Soviet-US Cold War rivalry started to make third-party countries and territories increasingly attractive locations for the depositing and trading of US dollars and other currencies. As the post-World War II Bretton Woods agreement started to unravel in the 1960s and 1970s, banks, fund managers and wealthy individuals searched for new homes for surplus cash, free from central government control. In doing so, a number of countries and territories began to offer services to attract these funds. The rise of these Eurodollar foreign currency markets was crucial in the transition from fixed to floating exchange rates. Drawing from the growing scholarship of 'the offshore' along with primary sources held at the National Archives of Australia and those of Westpac Historical Services, it argues that the formation of the New Hebrides tax haven was the result of the interplay between English common law and the world's Eurodollar money markets. The British colonial authorities were able to legislate for company, banking and fiduciary law to attract tax-free funds to Vanuatu. This paper explores the interplay between this legislation and emerging world money markets from an historical perspective.

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Gregory Rawlings

Introduction

In 1999 the Federal Court of Australia, sitting in Queensland, was told of a family who had not filed a tax return for 20 years, but had A$13 million on term deposit with a Swiss bank managed by trustees in Vanuatu (see Map 1). The two applicants in this case,[1] Doreen and Barry Beazley, had in the mid 1970s sold a successful business in New Zealand for an undisclosed sum and placed the proceeds in what was then the Anglo-French Condominium of the New Hebrides. They did not move to the New Hebrides with their funds, but instead relocated to Australia and settled in Queensland. Between 1989/90 – 1995/96 these investments generated A$4 322 968, which was channelled through Vanuatu managed trusts, offshore corporations, captive insurance companies and debentures.

On the basis of documents seized by the Australian National Crime Authority (NCA), it was alleged that Mr and Ms Beazley had each failed to declare income of A$1 080 742 each between 1989 and 1996. However, the Beazley's claimed that these funds were not income at all, but rather the progressive repayment and receipt of 'loans' to and from Vanuatu. To meet their day-to-day expenses the family used Bank of Hawaii credit cards with entities in Vanuatu paying off the resulting debts.[2] They affirmed that these arrangements were part of 'a sophisticated but lawful taxation structure'.[3] Even though the court found that the documents suggested 'a guilty mind', it conceded that the structure *might* be 'entirely legal'.[4]

[1] *Beazley v Steinhart.* Federal Court of Australia (FCA) 447. The Honourable Dowsett J. Paragraphs 1-35. 14 April 1999. Queensland District Registry, Federal Court of Australia. Reported in *Australian Criminal Reports* 106 (1999), 21-29; *Beazley v Steinhardt.* On Appeal from a Single Court Judge of the Federal Court of Australia. FCA 1255. The Honourable Spender, Drummond and Mansfield JJ. Paragraphs 1-47. 14 September 1999. Queensland District Registry, Federal Court of Australia. Unreported Judgment: Butterworths BC9905270.
[2] See footnote 1.
[3] See footnote 1.
[4] See footnote 1.

In the same year, it was reported that A$107 billion of Russian mafia money had been processed through 400 offshore banks in Nauru.[5] At the same time the government of Niue denied that its contractual relationship with the Panamanian law firm Mossack Fonseca had made the country an attractive finance centre for South American drug cartels.[6] At the beginning of 2003 the Australian Taxation Office (Tax Office) revealed that A$295 million had been sent from Australia to Vanuatu where it was believed 60 tax avoidance schemes were operating.[7]

Stories of money laundering and tax evasion through Pacific island tax havens have made prominent headlines in the media and alarming reading in official reports. From the late 1990s Offshore Finance Centres (OFCs), more commonly known as 'tax havens' in the Pacific, Caribbean and Europe have been accused of facilitating money laundering, tax evasion, terrorist financing, accepting deposits from corrupt third world leaders and processing funds that should never have left their countries of origin (van Fossen, 2003). Supporters of OFCs counter this by contending that they perform a more vital role in the world's financial markets. OFCs allow for asset protection in the event of marriage breakdown or forced heirship provisions, risk management, intellectual property holdings, outsourcing, superannuation, business acquisitions, raising loans, lending money and the holding of both domestic and international real estate. In this view these perfectly legitimate operations explain why some 67 countries and jurisdictions listed by the International Monetary Fund (IMF) offer some form of offshore finance facility, including London, Dublin and New York (Errico & Musalem, 1999). In 1998, a British Parliamentary report estimated that over US$6 trillion was kept offshore (Edwards, 1998). This is reportedly still growing (Hampton & Christensen, 2002).

[5] 'Island states Nauru, Niue face sanctions over drug, mafia money', *Canberra Times,* 10 December 1999.
[6] 'Niue denies drug-cartel links', *Canberra Times*, 11 December 1999.
[7] '$5bn lost to foreign tax rorts', *The Australian,* 6 January 2003; 'Tax Office eyes dodgy Vanuatu tax schemes', *The Sydney Morning Herald*, 15-16 February 2003.

Map 1: Vanuatu

However, what these two opposed views on offshore finance centres portrayed in the media and popular press share is a lack of historical perspective. Tax havens are presented as new, sudden, and aberrant intrusions into the world's financial markets, portrayed as synonymous with the information age and the Internet. The only references to the past are broad caricatures that the wealthy have been using tax havens for 'a long time'. For example in 6 January 2003 *The Australian* reported that 'Billions of dollars are being transferred annually from Australia to tax havens … as mum-and-dad investors exploit new 'get rich schemes'… the ATO has revealed it is not just the super rich taking advantage of the new phase of global tax dodging that has sprung up with the advent of the Internet and other online facilities'.[8] Yet thirty years earlier in 1973, the Tax Office (then the Australian Tax Department) was observing similar trends with the *Sun-Herald* reporting 'A special branch of the Tax Department has been detailed to examine the increased use of isolated tax havens such as the New Hebrides, the Dutch Antilles and the Cayman Islands'.[9] It then went onto cite one tax officer who said 'Once only the very rich would be bothered with tax avoidance schemes, but that's no longer the situation. Today's increasing rate of inflation has made it increasingly a middle-class thing'. What the Internet is in one era, was inflation in another. These sensationalist reports tend to obscure the complex origins of offshore finance and tax havens, though both hint at the dramatic changes that have allowed countries such as Vanuatu to host OFC facilities; transformations in law, economy and polity.

The burgeoning scholarship on 'tax havens' however, is rich with historical detail and analysis of the economic and geo-political transformations that created 'the offshore' as a distinct realm of financial activity. This paper draws both from this scholarship and archival records to contextualise the emergence of the Vanuatu or New Hebrides OFC in the early 1970s. In doing so it illustrates how the Vanuatu tax haven emerged as a result of the interplay between law and liquidity. Contradictions in the post-World War II regulatory and financial landscape facilitated the trading of tax-free foreign currency deposits, securities and bonds. These circumvented onshore controls by using tax havens such as Vanuatu as 'booking centres' (Hampton, 1996, pp. 21-25). The colonial authorities

[8] *The Australian*, 6 January 2003.
[9] 'Growing Search for Havens Worries the Revenue Men', *The Sun-Herald*, 16 September 1973.

provided the legal infrastructure to do this by implementing laws that enabled banks, trustee companies and financial traders to operate out of the Vila OFC, allowing waves of liquidity unleashed by the ascendant money markets of the 1960s to surge upon its coral sea shores.

From an exporter of labour and then copra in the 19th and 20th centuries, the later part of the century saw Vila become a small but niche participant in the London money markets. This was actively encouraged by the British colonial authorities, but caused alarm in Australia, the latter with its much weaker link to international finance capital. In concentrating on the tax implications of the Vanuatu OFC, Australia failed to understand that it also served an equally important role – it was part of a geo-political package of tax havens located around the world that assisted in maintaining the city of London as the world's pre-eminent financial trading centre. While Australian authorities were increasingly alarmed at the rise of regional tax havens, its bankers, lawyers, accountants and fund managers who relocated in Vila relished these developments. Not only did they engineer Vila's participation in the London money markets and structure financial products for the likes of the Beazley's, but also their arrival triggered an economic explosion in the New Hebrides. Between 1972 and 1974 Vila's population tripled, land prices boomed, new buildings were built at rapid speed and lines of credit were extended into the pastoral economy.

Judith Bennett (2000, p. 5), reflecting on the value of archives in the Pacific, has written that many metropolitan and island governments have allowed 'their tertiary history departments to run down.' She continues that 'They failed to consolidate on the growing Pacific scholarship of the 1970s and early 1980s, so that recent events, deeply embedded in a complex historical context came as a surprise to many'. This paper, drawing from primary source records at the National Archives of Australia and the Westpac Banking Corporation, provides an historical overview of the emergence of offshore finance in the Pacific, by focusing on the rise of the New Hebrides/Vanuatu tax haven in the early 1970s. In doing so it may provide an historical context for contemporary tales of money laundering and tax evasion, asset protection and corporate financing.

Legal states, lawful colonies

A tax haven is a jurisdiction that levies no, or very low, direct corporate and personal income taxes (Walters, 1983). They are also known as Offshore Finance Centres (OFCs) and both terms are used in this paper. Mark Hampton (1996, p. 4) defines an OFC as a jurisdiction 'that hosts financial activities that are separated from major regulating units (states) by geography and/or by legislation'. Countries and territories that host OFC facilities offer a legal system that provides for the formation of international companies, trusts and foundations, also known as Special Purpose Vehicles (SPVs) that can be used in the management of tax neutral portfolios and world-wide assets. Most OFCs are based on English common law. The few that are based on continental civil law codes, such as Monaco and Andorra are limited in the choice of financial services that they offer. Civil law systems of law tend not to recognise trusts and fiduciaries and do not provide for courts of equity that can rule on property. Hence OFCs with civil law systems tend to limit their services to confidential private banking, company management and specialist services such as cross-border taxation planning.[10]

Throughout the years of joint French and British rule in the New Hebrides, from 1906-1980, two radically divergent systems of law operated in the same place at the same time; English common law and French civil law. The former is based on judicial precedent and the rulings of judges, with its origins in the innovations of the Plantagenet Kings of medieval England. French civil law however, is based on the Napoleonic code, whereby judges must make their decisions according to broad principals, rather than past precedent and the flexible interpretation of often conflicting rules. While civil and common law systems may co-exist together, they are invariably partitioned by spatially defined notions of jurisdiction. For example Scottish law (much closer to civil law than the common law) operates only in Scotland, not the whole of the United Kingdom and civil law codes in the United States and Canada are confined to Louisiana and Quebec respectively. Never before, had two such different systems of state-sanctioned law existed in the same place at the same time, as in the New Hebrides. The third law - condominium - was a combination of both systems and accommodated indigenous customary (*kastom*) law, though rulings of

[10] Author interview with accountants, Andorra La Vella, Principality of Andorra, 04 December 2003.

the Joint Court tended to invoke the 1914 Protocol rather than past precedents, thus remaining more faithful to the civil law system of its French co-ruler.

These distinctions, and particularly the presence of English common law within the territory were crucial to the formation of the New Hebrides tax haven in 1970-1971. Article 5:2 of the 1914 Protocol, which had superseded the convention of 1906 that had established the condominium, gave the two French and British administrations the power to levy direct taxation by joint regulation.[11] While poll taxes were levied on indigenous communities, neither the joint (condominium) nor national (French and British) administrations chose to levy taxes on their own citizens resident in the territory.[12] Thus the New Hebrides remained free of income tax for British and French residents alike from the very beginning of the condominium.

France did not levy direct taxation in its other Pacific territories of New Caledonia, Wallis & Futuna and French Polynesia either, but the power to decide this rested firmly with Paris. The United Kingdom on the other hand, with its view that its colonies were foreign countries under the crown's jurisdiction, invested the power to tax in local legislatures and administrations. In the absence of a local legislature (the New Hebrides Advisory Council was a condominium institution rather than an exclusively French or British body) a large measure of fiscal autonomy was conferred in the local colonial administration; the Residency and its public service, the New Hebrides British Service (NHBS). The Colonial, and later Foreign and Commonwealth Office (FCO) seldom interfered in local taxation matters, but rather permitted local colonial authorities to set their own fiscal policies. All British colonies were able to devise and enforce their own taxation systems while utilising the framework provided by English common law and equity to establish trusts, companies and a range of offshore financial products. This has enabled territories such as the Cayman Islands, Bermuda, Hong Kong, Gibraltar and the New Hebrides to establish OFCs from the 1950s through to the 1970s.

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[11] *Protocol Respecting the New Hebrides* signed at London on August 6, 1914, by Representatives of the British and French Governments [Ratification's exchanged at London, March 18, 1922].

[12] Professor Margaret Jolly, comments to author apropos the imposition of poll or head taxes in South Pentecost, New Hebrides.

The income tax-free status of New Caledonia and French Polynesia could be revoked at any time. Because French civil law regime does not recognise trusts and limits major modifications of company law, these territories could not be used as international tax havens and OFCs for non-residents. In 1946 and 1958 France reorganised its overseas empire, establishing *departments d'outre-mer* (Overseas Departments, DOMs) and *territories d'outre mer* (Overseas Territories, TOMs), integrating these DOM-TOMs into the French metropole. Robert Aldrich and John Connell state that '… DOM-TOMs do not enjoy sovereignty over domestic or internal affairs. The metropole coordinates policy through a department for DOM-TOM affairs that has existed since the disbanding of the old colonial ministry' (Aldrich & Connell, 1998, p. 29). The civil law system and the fact that French policy prevented local administrations from making substantial modifications to metropolitan law (despite the slightly greater autonomy exercised by the Pacific island TOMs as opposed to France's Caribbean DOMs) had fiscal implications. While French Polynesia and New Caledonia may not have levied tax on local residents, this status did not automatically mean that they could be used as offshore tax havens for non-residents.

The condominium system in the New Hebrides produced a series of constitutional compromises, bifurcating power between the two administrations, with France encouraging integration with the metropole (through territorialisation and eventual departmentalisation), while the UK sought to give the New Hebrides comprehensive autonomy with the ultimate goal of independence. The British prerogative of granting widespread fiscal powers to local administrations, including to tax or not to tax, remained intact. Between the end of World War II and 1970 British citizens and residents subject to British jurisdiction (optants) in the New Hebrides relied on the British Companies Act of 1929 and 1948 to register firms and regulate business activities.[13] There was concern about the legality of these acts to register companies in the New Hebrides as the 1948 Act in particular did not give the British Resident Commissioner sufficient power to fully regulate business activity in Vila. The lack of banking legislation allowed individuals to incorporate banks under the 1948 Companies Act, even though it was not designed for that purpose. Moreover, there were cases of citizens of third countries who had opted for the French legal system but then incorporated British companies, ‘many of them for land speculation purposes’.[14] In 1967 the opening of the first British legal firm in the New Hebrides in led to the ‘rapid growth in the number of incorporated companies’.[15]

Taking ‘into account the fiscal situation in the New Hebrides’ the Australia and New Zealand Banking Group (ANZ) opened a branch in Vila on 23 March 1970.[16] Yet the laws in place were inadequate to deal with increasing financial and commercial activity. In response the British administration sent representatives to London in April 1970 for discussions with the FCO, the Bank of England, the Board of Trade and the Treasury. The British Secretary for Financial Affairs in the New Hebrides, Mr Mitchell, then visited Bermuda and the Cayman Islands. The Cayman Islands had enacted offshore company and trustee legislation in 1966, and by 1971 had in excess of 2500 companies, 600 trusts and five major multinational banks (Caufield, 1978). Not only was the offshore sector expected to reach US$20 billion globally by the end of the 1970s, but there was already US$60 billion circulating in the international money markets that flowed without hindrance between deregulated (though not unregulated) OFCs such as the Bermuda, the Bahamas and Hong Kong (Caufield, 1978; Castlemen, 1971). Within this context a report to the Australian Department of the Prime Minister and Cabinet in 1972 stated:

> As a result of these wide-ranging talks and discussions, the British Administration took a policy decision that since the private sector was determined to use Vila as an international investment centre, there was no alternative but to enact legislation to control the situation and seek to gain much-needed revenue to keep down the spiralling grant-in-aid.[17]

Thus in 1970 and 1971 the British Administration introduced the Banks and Banking Regulations [CAP 8] 1970, Companies Regulations [CAP 9] 1970 and Trust Companies

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[13] ‘The Investment Industry in the New Hebrides’, a report for the Department of Prime Minister and Cabinet, Canberra, Reference No. 70/6973, 25 August 1972, National Archives of Australia (hereinafter NAA): A 1838/366, A 840/13/3, Part 1 New Hebrides as a Tax Haven, 4.
[14] See footnote 13.
[15] See footnote 13.
[16] See footnote 13.
[17] ‘The Investment Industry in the New Hebrides’, NAA, Canberra: A 1838/366, A 840/13/3, Part 1 New Hebrides as a Tax Haven, 5.

Regulations [CAP 10] 1971.[18] International Banks, trust firms, investment houses and companies quickly established themselves in Vila. By 1972, 500 companies, mostly Australian, had been set up in the archipelago's capital.[19] *The Australian* reported that 'Hundreds of companies formed by individuals – authors, architects and entertainers – are switching to Vila from the Bahamas and Switzerland'.[20] To service these new companies, accountants, legal firms and banks followed suit. By 1972 the accountants Price Waterhouse, Cooper Brothers and Arthur Anderson had all opened offices. Whereas there had only been one bank in 1969 (Banque de'l Indochine), by the end of 1973 13 overseas banks had opened their doors, including all major Australian banks (see Table 1).

Not all of this investment came from Australia. This is reflected in shareholdings of trust companies. By the end of 1973, 10 trust companies had been established in Vila.[21] Trust companies are crucial in the offshore sector, providing fiduciary financial services to corporate clients and wealthy individuals. Australian banks were instrumental in establishing trust companies in Port Vila. However, they also had substantial shareholdings from financial institutions and banks from the United States, the United Kingdom, Hong Kong and Japan (see Table 2). Caribbean financial institutions were also shareholders in some of the larger trusts. For example the Melitco (Melanesia International Trust Company Limited) consortium included the Bank of Bermuda and Bahamas International Trust Company Limited.

[18] 'Title III. Chapter 8 [Cap. 8] Banks and Banking', B C Ballard (editor), The British Laws of the New Hebrides containing the revised text of the Queen's Regulations and Subsidiary Legislation made there under in force on 22 September 1971, (Port Vila 17 September, 1970); 'Title IV. Chapter 9 [Cap. 9] Companies. To provide for the Incorporation, Regulation and Winding up of Companies New Hebrides', The British Laws of the New Hebrides, 2 (Port Vila 22 September 1970); 'Title IV. Companies Chapter 9 [Cap. 9] Companies Rules', The British Laws of the New Hebrides, 3 (Port Vila 15 April 1971); 'Title IV. Chapter 10 [Cap. 10] Trust Companies. To provide for the Licensing and the Regulation of the Business of Trust Companies The British Laws of the New Hebrides', The British Laws of the New Hebrides, 2 (Port Vila 13 May 1972).

[19] 'Australians Join Rush to Tax Haven: 500 firms set up offices in New Hebrides', *The Australian*, 28 August 1972, NAA A1838/366, 840/13/3, Part 1 New Hebrides as a Tax Haven.

[20] See footnote 19.

[21] 'Bank and Trust Company Representation in the New Hebrides', (Sydney, Westpac Historical Services, hereinafter WHS), 6 September and 31 December 1973, 2003/40/72.

Table 1: Banks licensed in the New Hebrides - 31 December 1973 [22]

ANZ (Australia & New Zealand Banking Group Ltd)
Australia & New Zealand Savings Bank Ltd
Commercial Banking Company of Sydney Ltd
The CBC Savings Bank Ltd
Bank of New South Wales Ltd
Bank of New South Wales Savings Bank Ltd
National Bank of Australia
The National Banking Savings Bank Ltd
Barclays Bank International
Commonwealth Savings Bank of Australia Ltd
Commercial Bank of Australia Ltd
Hong Kong and Shanghai Banking Corporation (HSBC)
Melanesia International Trust Company Ltd
Burns Philp & International Trustee Company Ltd
Asian & Pacific Commercial Bank Ltd
Bank Gutzwiller Kurz Bungener (Overseas) Ltd

Table 2: New Hebridean Trust Companies with Shareholdings - 6 September 1973 [23]

Trust Company	**Share %**	**Trust Company**	**Share %**
PITCO (Pacific International Trust Company)		**Burns Philp & International Trustee Company Lyd**	
Bank of New South Wales	20	Consolidated Holdings (owned by Burns Philp & Co Ltd)	25.61
Bank of America N.T. & S.A. (through its wholly owned subsidiary Bamercial International Finance Corporation)	20	The Royal Trust Co	25.61
The Sunitomo Bank Ltd	20	National Nominees Ltd (owned by the National Bank of Australia)	13.72
Perpetual Trustees Australia Ltd	12.5	Banque de l' Indochine	10.00
Montreal Trust Company	12.5	Lloyds & Bolsa International Bank Ltd	5.49

[22] 'Bank and Trust Company Representation in the New Hebrides', (Sydney, WHS), 6 September 1973 2003/40/72.
[23] See footnote 22.

Table 2(ctd): New Hebridean Trust Companies with Shareholdings - 6 September 1973

Trust Company	Share %	Trust Company	Share %
PITCO (Pacific International Trust Company), ***cont.,***		**Burns Philp & International Trustee Company Lyd,** ***cont.,***	
Darling & Company Ltd	7.5	The Bank of Tokyo Ltd	5.49
Hill Samuel & Co Ltd	7.5	The Mitsui Bank	4.57
		The Chartered Bank Hong Kong Trustee Ltd	3.11
		Lancaster Investments Ltd	1.83
MELTICO (Melanesia International Trust Company)		**Investors Trust Limited**	
ANZ	32.5	Dudley Nevison Schoales (partner Morgan Stanley & Co, New York)	72.77
Australian International Finance Corporation Ltd	14.375	Nils A. Lundberg of New York	6.55
Bahamas International Trust Company Ltd	14.375	Lord Cato	6.55
Barclays Bank International Ltd	14.375	Clayton B Wentworth	6.41
The Hong Kong & Shanghai Banking Corporation	14.375	Maryann B Wentworth	6.41
The Bank of Bermuda	10.00	R B Garry of New York	1.31
Trust Company	**Share %**	**Trust Company**	**Share %**
New Hebrides Trust Limited		**Commercial Pacific Trust Company Limited**	
The Commercial Banking Corporation	18.75	The Commercial Bank of Australia Ltd	25
Development Finance Corporation	9.375	Europacific Finance Corporation [24]	15
Winchcombe Carson Trustee Company Ltd	9.375	Trustees Executor & Agency Company Ltd	10
Westminster Nominees Limited	25.00	The Fuji Bank Ltd	12.5
Canadian Imperial Bank of Commerce	12.5	The Toronto Dominion Bank	12.5
Dai-Icho Kanyo Bank Ltd	12.5	United California Bank	12.5
The Sanwa Bank Ltd	12.5	European Asian Bank	12.5
Hong Kong and Shanghai Bank, Hong Kong (Trustee) Ltd		**Hartley Pacific Corporation, New Hebrides**	
Hong Kong and Shanghai Bank Limited	100	Private Shareholdings	100
Abacus (New Hebrides) Ltd		**SATO Ltd**	
Owned by Coopers & Lybrand. No further shareholding details available.		No further shareholding details available.	

[24] The shareholders in the Europacific Finance Corporation were the Commercial Bank of Australia Ltd, 25%; Midland Bank Ltd, 15.5%; Fuji Bank Ltd, 15.5%; United California Bank International, 12%; Amsterdam-Rotterdam Bank NV, 8%; Deutsche Bank AG, 8%; Societe Generale de Banque SA Brussels, 8% and Societe General Paris, 8%.

Caribbean connections

Perceptions and conditions of political stability vary through time, and in the 1970s it was not the Pacific that was deemed unstable but the Caribbean, whose territories had been founded as some of the world's first tax havens. Wealthy Americans for example, had used the Bahamas as a tax haven since the 1930s (Hampton, 1996; Picciotto, 1999). In the 1970s however, the Caribbean, and especially the Bahamas and Bermuda were considered increasingly unstable. The latter had implemented foreign exchange controls and was considering introducing direct taxes. Imminent Bahamian independence was discouraging offshore investors and making them look elsewhere (Hughes, 1981). In 1972, the Australian Representative Designate in Nauru, L. G. Stellers, visited the New Hebrides.[25] While in Vila Stellers discussed offshore business developments with two executives from the accountancy firm, Peat Marwick, Mitchell & Co. They informed Stellers 'much of the business came from the Bahamas and Bermuda and to a lesser extent from the UK and US firms.'[26] He also met with a senior inspector with the ANZ, a Mr Scrambler, who was also visiting the New Hebrides at the time, for the opening of the MELTICO trust company. The ANZ's inspector informed Stellers that:

> A considerable number of financial companies, which had hitherto operated in the Bahamas, were now losing confidence in the political stability of the Bahamas which had achieved self-government and was being run by mainly indigenous politicians. Scrambler said that the political climate in the New Hebrides was much better for financial transactions. The French Administration was conservative and self-government was nowhere in sight. In these circumstances the investment industry in the New Hebrides was growing rapidly, while the Bahamas was losing its attraction as a financial haven. Scrabler said that most of the money coming into the New Hebrides now was 'Bahamian money'.[27]

[25] 'Australian Representative (Designate), L. G. Stellers, Nauru – The Secretary, Department of Foreign Affairs, Canberra', Memo No. 1177, 9 November 1972, (Canberra, NAA) A 1838/366, A 840/13/3, Part 1 New Hebrides as a Tax Haven.
[26] See footnote 25.
[27] See footnote 25.

Port Vila: Financescapes in the Coral Sea

The arrival of trust companies, banks, accountancy firms and expatriates resulted in an economic boom in and around Vila. Land prices in the capital soared in value. In parts of the Central Business District they increased from 10 cents per square foot to A$15 dollars per square foot between 1970 and 1971.[28] While much of the activity was offshore in focus, the new service industries of international finance required new buildings, housing, infrastructure improvements and reliable telecommunications. This provided a range of ancillary employment opportunities for a growing expatriate population and ni-Vanuatu in the construction, retail and service sectors. The presence of so many banks to choose from also helped finance this growth, providing much needed credit to the condominium. In 1974 the Joint Administration borrowed A$2 million from two of these banks to fund major infrastructural projects. These included upgrading telephone facilities in Vila and Santo, expanding the Vila wharf, civil service housing and compensation payouts to indigenous landowners for road construction. The condominium raised more capital for additional projects such as improving the 'Vila and Santo water supplies, low cost housing and staff housing'. [29]

The multiplier effect – the effects of new investments that result in the payment of wages, salaries, fees, to a chain of workers, suppliers, retailers and households – through the New Hebridean economy, particularly in Vila and its peri-urban environs, fuelled economic growth in the 1970s and led to a construction boom and a growth in employment opportunities. The presence of trust companies, banks and accountancy firms created financial relationships not only between these firms, but also with contractors, suppliers, workers, architects, building firms, telecommunication providers, market gardeners, local transport and distribution networks and the government. Thus the multiplier effect of the New Hebrides tax haven reverberated through the South Efate regional economy linking everyone from indigenous housekeepers through to expatriate financiers in a matrix of expanding urban economic growth. In his discussion of the rise of OFCs in terms of regulatory dualism, Sol Picciotto (1999, p. 59) notes that the arrival of financial services

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[28] 'Tax Haven in the New Hebrides', *The Fiji Times*, 14 May 1971, (Canberra, NAA) A1838/366, 840/13/3, Part 1 New Hebrides as a Tax Haven.
[29] 'Business Briefs', *Pacific Islands Monthly* (hereinafter *PIM*), May 1974, 121.

can have a significant impact on small island economies. He writes that 'the employment effects and economic impact from an offshore centre are proportionately much greater in the small island centres, especially those which have pushed on to become 'functional' centres, offering a range of services such as trusts and fund management, stockbroking, reinsurance, and even stock exchanges.' Mark Hampton (1996) suggests that even the intra-firm links between trust companies, banks, fund managers, law firm and clearing banks, in terms of fees paid and services provided (such as auditing) tend to permeate through a small economy.

British banking, trustee and company legislation therefore had a significant impact on economic and urban growth in Port Vila. Moreover, the provision of credit to the joint administration led to the improvement of infrastructure, particularly air and sea transport links. This in turn brought an increased number of tourists to the islands and encouraged hotel corporations to build small resorts, whose guests could dine in the new waterfront restaurants opened by expatriate investors who in turn employed ni-Vanuatu waiters, waitresses, cooks, chefs and cleaners. The extension of Vila's wharf, made possible by bank credit to the local administration, meant that thousands of day visitors started disembarking from the *P&O Fairstar* and other cruise-liners once a week. The improved wharf and stevedoring facilities also allowed planters and growers to increase their exports of beef and copra, with higher profits invested in abattoirs and new stock. It also changed the value of land – it could be cleared to increase agricultural productivity and it could be sold at vastly inflated prices. This reawakened ni-Vanuatu opposition to the alienation of their land holdings and rapidly became the main driving force behind calls for independence. Thus the multiplier effect of the tax haven extended into pastoral economy and eventually into the political domain. It was felt that the phenomenal growth in the early to mid 1970s was just the beginning of a much larger and more dynamic finance centre. One bank official wrote an investor in late 1971 '… our investigations lead us to believe that the New Hebrides will develop into the major tax haven in the Pacific'.[30] Within three years this banking executive's prediction seemed to be on the verge of materialising, with Robert Forster writing:

[30] Correspondence, Sydney-Montreal, (Sydney, WHS), 12 December 1971, 2003/40/68.

> … the British Government introduced legislation modelled on the Cayman Island pattern to control the registration of companies and tax haven activities. So Wall Street, the City, Melbourne and Sydney were officially informed that the New Hebrides had become a tax haven. The result was electrifying. Between 1972 and 1974 Vila became a boom town. Thirteen overseas banks opened their doors; the expatriate population tripled, subdivisions sprouted in what had been previously virgin bush; and, as a side effect, tourism took off. Two large new hotels were built to international standards, air services increased rapidly and cruise ships tied at regular intervals alongside a newly built wharf capable of berthing vessels up to 40 000 tons. Suddenly Vila was on the map (Forster, 1980, p. 371).

The OFC transformed Vila and permeated into the rest of the territory. Officially the British supported that formation of the tax haven as a means of achieving economic growth, stability and financial independence. The administration argued that it would allow London to reduce its annual grant of aid to the territory. In a speech to 120 guests attending the opening of Melitco's new corporate headquarters in downtown Port Vila in November 1972, the British Resident Commissioner, Sir Collin Allan paid 'tribute' to the part played by the finance industry in contributing to the 'development' of the New Hebrides.[31] The Acting British High Commissioner to Australia was just as clear when he wrote the Department of the Prime Minister and Cabinet in Canberra, that one of the main aims of the British was:

> … to obtain maximum assistance from these activities to accelerate the economic development of the New Hebrides group … It has not been possible to agree with our French colleagues on the introduction of any direct taxation in the Condominium. We have therefore *turned our attention to maximising the benefits which may accrue to the group from its tax-free status,* whilst at the same time minimising any possible losses of revenue through tax evasion.[32]

[31] Speech, 'Investment Industry Must Key Itself to New Hebrides Needs' by Sir Colin Allan, British Resident Commissioner in the New Hebrides, *British Newsletter*, Issued by the British Residency Information Office, Vila, 14 November 1972, (Canberra, NAA) A1838/366, 840/13/3, Part 1 New Hebrides as a Tax Haven.

Australian opposition, British encouragement

In the narrative of the New Hebrides condominium and its demise, France and the UK are presented as the two key protagonists, the latter supported by its post-colonial protégées, Australia and New Zealand. This binary begins to dissolve in finer details, particularly taxation. As noted earlier, the tax-free status of French Pacific TOMs did not mean that they could be used as offshore platforms for tax minimisation in France or anywhere else for that matter. France had always opposed tax havens – *paradis fiscal* – and had actively attempted to prevent French citizens from using them. In 1963 it had forced Monaco to curtail tax haven activity by terminating the tax-free privileges that French citizens enjoyed in the principality (though they remained for nationals of other countries who wished to use Monaco to abate their taxes). The British however, permitted and seemingly encouraged the formation of tax havens in most of their smaller territories including the New Hebrides. Yet the para-constitutional provisions of the condominium prevented France from openly opposing the formation of the tax haven in the New Hebrides, despite its concerns about them elsewhere. Instead it was left to Australia to challenge British policy in this area.

Australian officials could not understand why the British were so enthusiastic about encouraging the New Hebrides tax haven. Australia was opposed to the formation of OFCs as a large number of Australian individuals and companies were using them to avoid their tax obligations. The Australian government had passed legislation to close down the Norfolk Island tax haven in 1972, a decision upheld in *Berwick Ltd v Gray* (1976).[33] However, the Australian government had no jurisdiction in the New Hebrides and had to rely on negotiating with the British to review the tax havens operations. At the time Australia, in common with most other industrialised countries, had no Controlled Foreign Company (CFC) legislation. A taxpayer could avoid their domestic tax obligations by forming an intermediary company in a low or no tax jurisdiction to receive that income rather than remitting it to their home country (OECD, 1996; Burns, 1992). If funds were

[32] D. P. Aiers, Acting British High Commissioner, Canberra – Sir John Bunting CBE, Department of the Prime Minister and Cabinet, Canberra, Correspondence, 15 August 1972, emphasis added, Canberra, NAA) A1838/366, 840/13/3, Part 1 New Hebrides as a Tax Haven.

required then they could be returned to the 'investor' by way of 'loans' and capital payments through trusts and holding companies. The structuring of financial arrangements in this way could be used to deny a personal connection with the arrangement. The UK did not have any CFC legislation at the time either, but it did not share Australian opposition to tax havens.

The British had two official explanations for this. As discussed above, the first was that OFCs contributed to development in small and remote territories. The second was that there was a distinction between perfectly legal tax avoidance and illegal tax evasion in British law, a separation confirmed by the House of Lords in 1949 (Picciotto, 1999). This distinction was emphasised by the British administration in the New Hebrides. In his visit to Vila in 1972, The Australian Representative Designate to Nauru, Stellers, also met with the Secretary for Finance in the British Administration, Mr F Brown. In his memo to Canberra, Stellers reported that 'Brown made the point that the British Government traditionally accepted that individuals and companies were at liberty to arrange their business in such a way as to minimise the incidence of tax on their incomes. Such tax avoidance was regarded by the British as legitimate and he cited use made by British companies of the arrangements available in the Channel Islands and the Isle of Man, where apparently no income tax was levied. Brown made a distinction between legitimate tax avoidance and tax evasion, which was regarded as illegal by the Treasury authorities'.[34]

Australia made little distinction between evasion and avoidance. Australian tax and treasury officials told a visiting British parliamentary delegation in Canberra in October 1972 that 'Australia was concerned both with illegal tax evasion and the avoidance of taxation within the law. Treasury felt that legislation to cover tax avoidance by the use of Norfolk Island as a tax haven might be frustrated if the New Hebrides could be used for the

[33] Anthony van Fossen, (2002); *Berwick Ltd v Gray,* High Court of Australia 133. The Honourable Barwick CJ.; McTierban, Mason, Jacobs and Murphy JJ. High Court of Australia. Reported in *Commonwealth Law Reports*, 603 (1976).

[34] 'Australian Representative (Designate), L. G. Stellers, Nauru – The Secretary, Department of Foreign Affairs, Canberra', Memo No. 1177, 9 November 1972, (Canberra, NAA) A 1838/366, A 840/13/3, Part 1 New Hebrides as a Tax Haven.

same purposes'.[35] The British were not convinced by this and the FCO insisted on having a 'fairly concise statement of the disadvantages that Australia sees in the operation of the New Hebrides as a tax haven', before acting on Canberra's concerns.[36] The Australian Treasury however, was unwilling to cooperate. It informed the Department of Foreign Affairs that 'We should be reluctant, as things now stand, to add to the British expertise in these matters by divulging the particular ways in which it is known that Australian residents are seeking to use the New Hebrides to minimise their tax.'[37] While the British authorities, both in London and in Vila, were willing to discuss the tax haven with Australian officials, they were not about to close it down, as Australia had with Norfolk Island. In an earlier response to the British High Commissioner's official position on the tax haven, a foreign affairs memorandum reported that [Australian] Treasury 'said it was clear we weren't going to get far with the British. It was tax avoidance (the avoidance, within the law, of taxation) rather than illegal tax evasion that we were concerned about. He [Treasury Official] described the British reply as 'full of lies and courteous statements'.[38] Yet while Treasury thought that it might be appropriate to hold talks with the British in Vila itself, as a means of deterring Australians from using the tax haven, the offshore industry and its clientele seemed unconcerned. The British authorities no doubt aided this. While the UK insisted that Australia keep their negotiations secret from France, it had no hesitation in covertly passing on information gained from talks with their Australian counterparts to the banks, trust companies and fund managers that had established themselves in Vila. At the conclusion of the Anglo-Australian talks in mid 1973, one banker in Vila reported:

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[35] 'Record of Interdepartmental Meeting with Mr Anthony Kershaw, M.C., M.P., Held at Department of Foreign Affairs, 10.15am, Wednesday 11 October 1972, (Canberra, NAA) A 1838/366, A 840/13/3, Part 1 New Hebrides as a Tax Haven.

[36] Memorandum, 'First Secretary, Australian High Commission – The Secretary, Department of Foreign Affairs, Canberra, Ref No 3/6/1/5, Memo. No. 1187, 10 November 1972, (Canberra, NAA) A 1838/366, A 840/13/3, Part 1 New Hebrides as a Tax Haven.

[37] Correspondence, 'First Assistant Secretary, The Treasury, Canberra – The Secretary, Department of Foreign Affairs, Canberra, Ref No 67/5391, 30 November 1972, (Canberra, NAA) A 1838/366, A 840/13/3, Part 1 New Hebrides as a Tax Haven.

[38] Memorandum, File No 735/3/1, 30 August 1972, (Canberra, NAA) A 1838/366, A 840/13/3, Part 1 New Hebrides as a Tax Haven.

> … the British have leaked information that representations have been made by Australia to London to further the former's hopes of gaining access to information on local activities in this Tax Haven, and that these approaches were rebuffed … the British are now clearly committed to assisting the Tax Haven expansion.[39]

The British enthusiasm for assisting the expansion of the tax haven, to the extent of leaking diplomatically sensitive information, suggests that they had additional interests in its success over and above its contribution to local development, reducing grants-in-aid and assisting individuals to 'legitimately' minimise their taxes. The Australian Treasury could not understand how savings derived from lower aid commitments could exceed the total amount of money lost to the British Inland Revenue through the use of tax havens such as the New Hebrides. The money saved in reduced aid obligations would be minimal in comparison to the disappearance of funds through tax flight. Australian Treasury 'thought that the loss of revenue to the British, through tax avoidance by British residents, would be greater in fact than the revenue gained from operating the tax haven'.[40] This was a perfectly reasonable observation, but it overlooked a transition that was occurring in global finance. The British encouragement of offshore finance had little to do with tax and almost everything to do with those US$60 billion in worldwide circulation at the time. For although those funds were globally mobile they were at home in London, with second homes built by their British rulers – Hong Kong, the Bahamas, Bermuda, Jersey, the Cayman Islands and by the early 1970s, the New Hebrides. To account for this it is necessary to detail events that occurred in British banks 20 years earlier.

Soviet deposits, Regulation Q and the Eurodollar

Between the end of World War II and the early 1970s, foreign exchange trading was largely determined by governments, not markets. At least that was the theory. The post war Bretton Woods agreement sought to regulate international finance and foreign exchange trading in order to prevent economic collapses such as the 1930s depression (Seabrook, 2001). The architect of the Bretton Woods agreement John Maynard Keynes, argued that capital controls were necessary to preserve and protect industry and society and 'to stop the

[39] Correspondence Vila-Sydney, (Sydney, WHS), 22 June 1973, 2003/40/59.

evasion of taxes by sending money abroad'.[41] However, the Bretton Woods agreement produced financial paradoxes and regulatory contradictions that started to be manifested in the mid 1950s. This was partly due to key omissions from Bretton Woods that Keynes was keen to include. In particular this included an independent global currency, which would be used for international trade.[42] The US rejected this proposal. Instead the US dollar became the *de facto* international currency. It was tied to gold at US$35 per ounce and was used as the currency for international settlements (in other words the US dollar would be used to settle payments when trading goods and services between countries).

This created a number of problems. The US dollar was not a neutral international currency, but belonged to the world's pre-eminent super-power, making all nations, including its Soviet rivals, dependent on it for trade finance. Yet this dependence also constrained US monetary policy. The US could not easily devalue the dollar by adjusting its value to the price of gold, as other countries could follow suit, negating the effects of US action in this area (Seabrook, 2001). Moreover, the Bretton Woods agreements preserved regulatory diversity between states. Britain, the United States, France, Australia and other signatories to the agreement could set their own interest rates and determine varying levels of bank access to foreign exchange, creating opportunities for banks to take advantage of arbitrage between varying national regimes.

In the mid 1950s, the geo-political implications of the dominance of the US dollar led the Soviet and Chinese governments (fearful of the confiscation of their US dollar holdings) to open US dollar accounts in European banks. Mark Hampton (1996), charts the rise of these dollar deposits outside the US to a decision by Chairman Mao's government to transfer their US dollars from New York to the 'Soviet-owned Banque Commerciale pour l'Europe du Nord in Paris, which had the cable address: *Eurobank*'. The Soviet Union and other Eastern block countries started to do the same, depositing US dollars in English banks, creating a new kind of financial product: the Eurodollar (Picciotto, 1999). This is not to be

[40] Memorandum, File No 735/3/1, 30 August 1972, (Canberra, NAA) A 1838/366, A 840/13/3, Part 1 New Hebrides as a Tax Haven.
[41] John Maynard Keynes, Speech, House of Lords, 23 May 1944, edited by Donald Moggridge, The Collected Writings of John Maynard Keynes, Activities 1941-1946, Shaping the Post-War World: Bretton Woods and Reparations (London 1980), 9-21.
[42] See footnote 41.

confused with the much more recent new European Union Euro. Rather what came to be known as the Eurodollar, Eurocurrency and Eurobond markets, defined foreign currency deposits maintained outside of their country of origin, such as US dollars kept and traded anywhere outside of the USA.

Catherine Schenk (1998) suggests that the movement of cold war funds provided a general context to the emergence of the Eurodollar market. Inconsistency in policy within and between the US and the UK was more important as it allowed banks to exploit lacunae in regulatory systems. For example, in the United States Regulation Q placed ceilings on what banks could offer in interest on deposits until 1963. There was no such regulation in the UK. Thus when British Midland Bank (which Schenk credits as the first to allow Eurodollar deposits), started to attract US dollar deposits in 1955, they could pay much higher interest rates to non residents than would be available in the US itself. However, instead of depositing these US dollars in the Bank of England they 'used their dollar deposits for loans to third parties either in the UK or abroad' (Schenk, 1998, p. 221). This attracted new customers with more US dollars that flowed into the UK. With only cautionary reservations permitting extensive self-regulation the Bank of England and Treasury encouraged this as a means of maintaining London as the world's leading international finance centre.

The Bank of England, was not only lender of last resort, but had close relationships with leading members of the private banking sector in London, in the form of interlocking directorships, kinship ties and 'gentlemen's agreements', often in-lieu of formal regulations (Schenk, 1998; Hampton, 1996). The UK Treasury and Bank of England, created a highly regulated onshore domestic economy, but by permitting the growth of the Eurodollar and Eurobond (loans in US dollars) markets they also facilitated the rapid rise of a deregulated offshore market, with the city of London at its centre, fiscally partitioned from the mainstream British economy. Between 1959 and 1961 Eurodollar deposits in UK authorised banks grew from US$190 million to US$710 million (Schenk, 1998; Hampton, 1996). In the following decade the global Eurobond market expanded exponentially, from US$7 billion in 1963 to approximately US$91 billion at the end of 1972 (Picciotto, 1999). This generated a massive pool of deregulated private liquidity that could be traded with minimal restrictions in complete anonymity. In his analysis of US power in international finance, Leonard Seabrooke (2001, p. 62) compared Eurodollars to ‘bills of exchange in previous errors’ that offered ‘wealthy investors and banks a means to send their financial assets out of territories where there was a threat of plunder, or in the American case, interest rate caps that impeded profits’.

In both the UK and the US (as well other industrialised states such as Australia and France where regulations were even tighter), there were still reserve requirements (the amounts of money banks had to keep in order to cover withdraws), interest rate ceilings and inconsistent capital controls (for example, the UK welcomed the flow of funds into London, but still regulated their outward movement). In many British territories, particularly the smaller islands and enclaves, none of these restrictions existed. Thus they were ideal ‘booking centres’ for Eurodollar deposits and the raising of Eurobond loans, whereby these funds could be legally domiciled in tax free OFCs such as Bermuda, the Bahamas and the Cayman Islands, along with larger regional hubs such as Hong Kong and Singapore (Hampton, 1996). As Picciotto (1999) shows, in these territories Common law was received and OFC facilities, enabling such book entries, could be introduced by statute. This gave new meaning to the Bank of England’s recommendation that there should be ‘suitable geographical spread of deposits and maturity’ (Schenk, 1998). Indeed these Eurodollar deposits and transactions would be spread to the far ends of the earth. The manifestations of the inherent contradictions of the Bretton Woods had unleashed a wave of liquidity across the globe, and separated the offshore from the onshore as distinct domains of activity, while retaining vital links between them. It allowed bankers, fund managers, lawyers and trustees to by-pass, quite legally, national rules and regulations, with the support of two key state actors: the United States and the United Kingdom, both keen to reassert and maintain their pre-eminence as the world’s leading financial powers. Countries, such as Australia and France were committed to regulations and capital controls. They had relatively weak financial markets with the government exercising tight control over the supply of credit. They were no match for the alliance of capital and Anglo-American state power.

Yet while Australian authorities may have been taken by surprise by these developments in international finance, its bankers, corporate lawyers and trustee officers were becoming aware of the potential of these new markets. In Vila tax planning and money market trading merged in a surge of offshore activity whereby rules and regulations could be legally transcended. As one Australian banker advised London in 1973, 'For your information we have adequate 'islands' Australian dollar liquids available in Vila, Nauru and Tarawa branches to fund bond purchases (within a limit which would need to be determined).'[43] A realm of islands and enclaves, awash in oceans of liquidity, had been created beyond the shores of state regulation. This enabled the New Hebrides, and Vila, to trade US dollars on the London money market, creating links and flows from the banks and finance houses of the city to the construction boom of a once far-away Pacific port town.

A 'Vila Book': The New Hebrides and the London money markets

In November 1971 the ANZ Banking Group announced that it has set up a subsidiary in the New Hebrides, called the International Finance Corporation (IFC). Other shareholders in the subsidiary included the ANZ, the Bank of Montreal, Crocker National Bank, Irving Trust Co and the Mitsubishi Bank. The company with, seven directors, two or whom were local, was established to trade in 'Eurodollar, Australian dollar and Sterling currencies'.[44] From the very beginnings banks and trust firms established offices in Vila to participate in the highly lucrative Eurocurrency market. These globally mobile funds converged in a fiscal environment where it was recommended to keep as many profits on Vila's books as possible for tax purposes.[45] Capital mobility, tax optimisation and anonymity (bonds were traded as bearer instruments, that is the holder was anonymous) could intersect in offshore states such as the New Hebrides.

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[43] Correspondence, Sydney-London, (Sydney, WHS), 25 July 1973,WHS 2003/40/81.
[44] 'ANZ Group subsidiary set up in New Hebrides', *Australian Financial Review,* 16 November 1971, (Canberra, NAA) A 1838/366, A 840/13/3, Part 1 New Hebrides as a Tax Haven.
[45] Correspondence, Sydney London, (Sydney, WHS), 09 January 1973, WHS 2003/38/37.

The Bank of New South Wales (BNSW) allowed Eurocurrency deposits through Vila of up to US$2 million per day before it was required to advise its Sydney headquarters.[46] In July 1972 the BNSW in Vila participated in a US$20 million Eurobond loan to the government of Singapore. It contributed a four-year fixed Euro dollar loan to the bond issue. The loan was booked as an asset account debit and a liability account credit in Vila under the general ledger 'Euro-currency loans'.[47]

Trading Eurobonds out of Vila enabled foreign banks to transcend onshore regulations. Reserve Bank of Australia regulations restricted non-resident investment in 'loans or other fixed interest security', while Bank of England regulations had a 25 percent surrender clause for bonds not sold within three months. In Vila however, none of these restrictions applied, 'allowing greater flexibility in accepting underwriting or selling participations.'[48] The New Hebrides was used to write forward (future dated) foreign currency contracts, taking advantage of arbitrage in interest rates and foreign exchange differences between money markets. Time also became a resource, which could be hedged by mathematically verifiable statements of financial truth, which 'Vila' could produce by formula as follows:[49]

[46] See footnote 45.
[47] Memorandum, (Sydney, WHS), 02 May 1973, WHS 2003/40/81.
[48] Correspondence, Sydney-London, (Sydney, WHS), 25 July 1973,WHS 2003/40/81.
[49] For the capacity of numbers, accounts and ledgers to produce truth statements of financial reality see Bill Maurer (2002a; 2002b).

Table 3: Forex formulas ex-Vila [50]

Vila are approached (either direct or through ourselves) by an Overseas Bank wishing to sell US dollars against Australian dollars 3 months forward. To arrive at the appropriate forward margin the steps will be:

1) Vila borrows from London Office US dollars for three months at say –	10%
Earning capacity on Australian $ balances. Rate set by Chief Accountant and Currently forward margin	+ 6.50%
(discount)	– 3.50%
2) The forward margin may then be widened out to accommodate an appropriate profit level for the bank (say 0.50% p.a.) following calculation into exchange rate terms will take place	
3 From 1) above	
forward margin	3.50%
profit margin	0.50%
discount	4.00% p/a
equals discount	0.413
spot rate	1.4191
Vila three months forward buying rate for US$	1.4334

4) To cover their exchange risk exchange risk Vila to sell spot value US dollars against Australian dollars. The shortfall in US dollars thus created will be met by borrowing a like amount (rounded to the nearest US$5,000) from London office for a term of three months. The Australian dollar equivalent will be credited to Vila's vostro account with Sydney office.

Vila was thus an ideal accounting centre that could purchase bonds in its own name, arrange Eurocurrency borrowings, sell and repay them, and write forward foreign exchange contracts with no interference from the metropolitan states. As one bank official noted 'The availability of Eurodollar bonds is dictated solely by the market and is unaffected by central banking or government control'.[51] It was in this transition from fixed to floating exchange rates that the New Hebrides tax haven was born.

50 Memorandum, (Sydney, WHS), 18 July 1973, WHS 2003/38/8.
51 See footnote 50.

Conclusion

The formation of the Pacific's first major OFC in the New Hebrides was the result of regulatory, fiscal and temporal convergence. The British colonial authorities, backed by key players in the London money markets and British civil service took what was already an existing state of affairs and augmented it through legislation to provide for international vehicles that facilitated tax-free cross-border investment. This coincided with major structural transformations in global finance. In the New Hebrides the absence of income tax nestled in a basket of broader fiscal freedoms including the lack of foreign exchange controls, the complete absence of state regulation over interest rates and no capital reserve requirements for banks and insurers. The local British colonial administration was thus free to convert this environment into an active offshore platform through the scripting of law that had a ready global marketplace. Banks, trustee companies and investors were free to take advantage of Eurobonds and the ability to by-pass national rules and regulations and their accompanying taxes. While other OECD countries such as Australia and to a lesser extent France opposed the emergence of this offshore world, they were relatively powerless to prevent its rise given support and encouragement by the UK and the US.

Thirty years onwards, public concern over the use of tax havens worldwide now occupies an important part of tax policy in all OECD countries, including the UK and US.[52] In addressing these concerns it may not only be necessary to scrutinise the activities that occur inside the OFC jurisdictions themselves, but also the character of international relations that produced them in the first place. Just as tax havens can creatively turn credit into debt, so too can diplomacy make allies one day, competitors the next. It may therefore be necessary to decide whether or not a globalised world would benefit more from more tax competition or tax cooperation. Further inquiry into the histories and specificities of Offshore Finance Centres in the Pacific, Caribbean and Europe may well assist in addressing these broader global debates.

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[52] For details of public concern about tax minimisation using offshore vehicles see Gregory Rawlings (2003), and for perceptions of vertical inequalities in the tax system see Valerie Braithwaite (2003).

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