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Capital unchained: finance, intangible assets and the double life of capital in the offshore world

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ABSTRACT

The rise of intangible assets such as brand names, research and development, patents and other forms of abstract capital such as digital platforms and data flows has confounded extant measures and concepts of capital and accumulation. What used to be a residual asset category known as 'goodwill' has now overtaken so-called fixed or tangible assets in the profitability and valuation of many leading corporations. Yet these intangible assets lead a double life as both spatial and temporal in some dimensions, yet fluid and spatio-temporally elusive in others. Using a framework focused on measuring (by accountants), managing (by corporations) and monitoring (by International Political Economy scholars and regulators), this article explores the longer term implications of accumulation of internationalised capital in intangible and abstract forms, and the prominent role of finance and offshore in giving mobility and fluidity to

these forms of capital. The article suggests that while global value chain and global production network analyses have helped researchers and policy-makers to track increasingly fragmented and fluid networks of commodity production, there also is a need to follow the global double life of internationalised and financialised intangible assets and wealth flows, and parallel reorganisations of state forms in response to those transformations.

KEYWORDS:

intangible assets

taxation

offshore

Global Wealth Chains

finance

knowledge economy

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DISCLOSURE STATEMENT

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Notes

1. To give just one example, Nobel Laureate Paul Krugman and his colleagues posed the problem of nations as spatial economic units in this rather stark way 'Given that national boundaries no longer provide the natural unit of economic analysis, what could replace them?'(Fujita et al., [1999](#): 209). The earlier observation by the economic geographer, Richard Walker ([1989](#): 61) about the ontology of the corporate form as an organisational unit of capital are worth noting here, because he anticipates this dilemma a decade earlier but identifies its analytical origins:Capital circulates and accumulates behind the various forms of industrial organisation... It was unfortunate that the corporation was substituted for capital in the lexicon of economics and

geography...(Capital) is not the same thing as the firm, corporate or otherwise, yet this error is commonly made...The firm is not the only 'container' for production...

2. Bernstein and Campling further argued that this is partly due to the GVC/GPN focus on unequal relations of exchange and power (such as between (small and large) firms (2006).
3. Wayne Upton Jr. ([2001](#): 68), a researcher with the accounting standards board in the USA, defines an intangible asset as '...nonphysical sources of probable future economic benefits to an entity'.
4. Indeed, recognition of the industrial and financial importance of intangible property can be traced back to the late nineteenth century, notably to the American institutionalist Thorsten Veblen ([1904](#)) - who referred to intangible assets (then known in corporate finance and accounting as 'goodwill') as 'pecuniary' or 'vendible' capital and in so doing made the distinction between industry and business, and J. R. Commons ([1924](#), [1934](#)) - who took the issue further and suggested a unifying concept of capital defined in terms of exchange value and more particularly in terms of the future 'earning power' of the assets (which he called 'futurity'), rather than in terms of those assets measured in terms of their (depreciated) historical cost.
5. Audacious, both in the scale of tax minimisation, and the defiant stance of many companies engaged in the practices. For instance, Eric Schmidt, then Chairman of Google, responding to the claim that the company shifted nearly \$10 billion in revenues through a Bermudan subsidiary to avoid an estimated \$2b in global tax, said, 'I am very proud of the (tax) structure that we set up... It's called capitalism. We are proudly capitalistic. I'm not confused about this' (cited in Kumar and Wright, [2012](#)).
6. By 'narrative', the OECD is suggesting that intangible assets are simply described rather than quantified.
7. In 2008, Ron Bossio (FASB) warned that in the light of the accounting standards body's changed priorities, not to expect major improvements on accounting of intangibles to happen quickly (Mackie, [2009](#)).
8. There are a growing range of corporate activities, including their more fluid organisational arrangements, that clearly affect performance but are confounding corporate accounting. Research by Bamford and Ernst ([2002](#)), for instance, found that most large firms have at least 30 alliances (arrangements that require a more porous

concept of corporate borders), with some having more than 100 such arrangements. Yet very few systematically track the performance of those alliances, despite the considerable assets and revenue they involve.

9. May ([2010](#)) outlines the conceptual difficulties for theories of property that arise in commodifying knowledge.

10. Grubert ([2012](#)), for instance, estimates that aggregate pre-tax worldwide income earned abroad by multinational firms based in the USA increased from 37.1% in 1996 to 51.1% in 2004.

11. In comparison, the size of the global hedge fund industry is estimated at \$2.2 trillion (Chung, [2012](#)).

12. The suggestion by the EU's antitrust and competition regulator that Ireland's relationship with Apple might constitute unlawful state aid and be in contravention of article 107(1) of the Treaty on the Functioning of the European Union (TFEU) prompted the Irish Finance Minister to proclaim the loophole closed during his presentation of the 2015 budget. Companies already operating in the country were given five years to wind down and the door shut to new entrants.

13. The next section argues that the notions of a 'correct' transfer price or its real value are oxymoronic concepts, with important regulatory implications.

14. The parallels with the earlier development of Eurodollar markets are apparent here (Burn, [1999](#)).

15. The OECD defines 'Hard-to-Value-Intangibles' as intangibles that are only partially developed at the time of the transfer; intangibles that are not anticipated to be exploited commercially until several years following the transaction; intangibles that separately are not HTVI but which are connected with the development or enhancement of other intangibles which fall within the category of HTVI; Intangibles that are anticipated to be exploited in a manner that is novel at the time of the transfer. The 2014 Discussion Draft on transfer pricing guidelines for intangibles goes on, 'For such intangibles, information asymmetry between taxpayer and tax administrations may be acute and may exacerbate the difficulty encountered by tax administrations in verifying the arm's length basis on which pricing was determined. As a result, it will prove difficult for a tax administration to perform a risk assessment for transfer pricing purposes, to evaluate the reliability of the information on which pricing has been based

by the taxpayer, or to consider whether the intangible or rights in intangibles have been transferred at undervalue or overvalue compared to the arm's length price, until ex post outcomes are known in years subsequent to the transfer' (OECD, [2014](#): 5).

16. Actions 8–10 update the OECD's transfer pricing rules and have been amalgamated as, 'Aligning Transfer Pricing Outcomes with Value Creation' and Action 13, 'Transfer Pricing Documentation and Country-by-Country Reporting' contains revised standards for transfer pricing documentation incorporating a master file, local file, and a template for country-by-country reporting of revenues, profits, taxes paid and certain measures of economic activity. The revised approach requires taxpayers to articulate consistent transfer pricing positions and promises to provide tax administrations with useful information to assess transfer pricing and other BEPS risks.

17. This ambiguity, and subsequent regulatory frailty, arising from the 'curious bind' OECD guidance sits in is compounded by the fact that CBCR data will not be made publicly available. Limited transparency and conceptual ambiguity may leave the door open for states to ignore cases of artificially reallocating intangible wealth under the pressure of on-going tax competition.

Additional information

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