



BERNE DECLARATION

Tax havens, postbox companies and offshore structures

In April 2004, the Berne Declaration strongly criticized Winterthur-based coffee trading company VOLCAFE for its use of an offshore structure. Since VOLCAFE conducted some business activities through the Jersey-based subsidiary, any profits arising from those transactions were not subject to taxation. Three months later VOLCAFE dismantled the controversial postbox company.

Documents leaked to the Berne Declaration in early 2004 show how the Winterthur-based coffee trading company VOLCAFE used a postbox company on the Isle of Jersey, the tax haven in the British channel, to avoid paying taxes. They included a memo titled "Instructions for Offshore Invoicing" that contained precise instructions on how to settle accounts through the offshore-company Cofina (COF). When the memo was issued, VOLCAFE was part of the Erb-Group, which has since gone bankrupt. In the summer of 2004 the company was sold to the British firm ED&F Man. VOLCAFE is the world's number two in the raw coffee trade with a market share of 13 percent.

VOLCAFE/ED&F Man confirmed in a joint statement with EvB that Cofina Jersey was dismantled in August 2004 and thus no longer conducts any business through so-called tax havens. VOLCAFE/EDF& Man now conducts all the commodity future transactions through VOLCAFE International Ltd, based in Winterthur. According to VOLCAFE any profits arising from that business will be taxable in Winterthur.

Just a postbox in a tax haven

VOLCAFE booked a part of the profits from the VOLCAFE Group through Cofina on Jersey – tax-free, because the little island in the British channel does not tax corporate profits.

As a de facto company Cofina did not exist, it was merely a postbox company. The coffee was shipped directly from producer countries to end customers. Although officially it was Cofina that sold to end customers, all customer contacts and contract negotiations were conducted between the subsidiaries in the exporting countries and the buyers. «Please take care that all communication with the final buyer is made in the name of COF and mention clearly towards your customers that they receive all documents in the name of COF», VOLCAFE wrote in the instructions for the managers of its subsidiaries in exporting countries. The export companies write contracts and freight bills that look as though Cofina prepared them. «The creation of contracts, amendments, invoices, etc. and the dispatch of documents in the name of COF (written on COF-heading stationery) are under your responsibility.»

The employees at the local subsidiaries of the VOLCAFE Group also doubled as phantom employees on a nonexistent Cofina staff. Instructions concerning the documentation of sales to Cofina by the company in the country of export make this clear: «either a sales contract (on your stationery by you) or a purchase contract by COF (made by you on their stationery) is prepared, depending on the requirements of your local authorities.»

Even at VOLCAFE Winterthur work is done in the name of Cofina: «Requests for pre-financing have to be addressed to COF but sent – whenever possible two working days in advance – to Fax No. 52 264 xx xx of VOW.»

On Jersey there was a person who signed important documents for Cofina. Cofina also controlled the archives: «during the handling of the contracts you may keep documents for easy reference and information with you, but they should be kept separately and strictly confidential. The complete filing and documentation has to stay with COF.»

Keeping up appearances

Subsidiaries in producer countries are also told how to give Cofina the appearance of bona fide company: «As COF will act as an independent entity in our group certain requirements in the flow of documents and a uniform appearance of COF is of great importance.»

It starts with the fax machine: «you should program your fax machine in a way that your name does not appear on faxes dispatched in the name of COF. If it is cost wise justifiable you should install another fax machine for the dispatch of 'COF Faxes'.»

All important documents written on Cofina stationery were carried by messenger to Jersey to be signed. Documents of lesser importance could be signed by the subsidiaries in the name of Cofina but not by the person in charge of the company: «The person to sign must not be the General Manager or any other person/employee who officially signs for your company towards third parties.»

Lest customers be confused by this charade, subsidiaries were advised to «add a sticker with your address to all documents which you dispatch in the name of COF and to which you expect an answer. This makes it easier for your business partners to send their mail to the right address.»

Lost tax revenue

BD has detailed figures for 1998. Cofina's profit for that year was 24,102,093 US Dollars. This being Jersey, Cofina paid no corporate profit tax. Had this profit been liable to tax in the countries where the value added was produced, it would have been taxed at the rates prevailing in those countries. Besides Cofina's profit, the various companies of the VOLCAFE Group booked together a loss of 19 million dollars in 1998.

Cofina and VOLCAFE companies in import countries: comparing the figures for 1998:

1998 In US\$	VOLCAFE Winterthur	Gollücke und Rothfoss, Bremen	VOLCAFE Osaka	Cofina
Net sales	589'016'653	182'447'504	95'583'377	408'658'346
Cost	- 580'524'919	- 177'553'277	- 94'763'418	- 381'159'638
Gross margin	8'491'734	4'894'227	3'819'959	27'498'708
Pre-tax profit	4'387'357	2'187'227	1'677'626	24'102'093
Taxes	- 255'959 ¹	- 661'781	- 786'260	+ 173 ²

Although Cofina's profits in the other years between 1995 and 1999 were smaller, they still averaged 7.6 million US-dollars over the entire five-year period.

Based on the known figures and documents Berne Declaration is not able to substantiate its original claim that Volcafe's offshore structure primarily affected coffee-producing countries. It therefore no longer asserts this claim. Nevertheless, some of the added value attributed to Cofina was probably generated in the producer countries.

The tax-free profits accumulating on Jersey added to the after-tax profits of the Volcafe Group. This benefited shareholders and executives of Volcafe. 14 Volcafe managers held a minority share in the Group of 20%. The tax revenue lost to the general public in several countries ultimately lined the pockets of a mere handful of people. The precise amount depends on the rates at which the 24 million dollars held on Jersey would have been taxed in the various countries.

No exception

A marginal phenomenon twenty years ago, offshore transactions, i.e. transactions conducted through tax havens, are now a major field of global trade. Today, roughly 50% of the financial transactions relating to world trade are conducted through tax havens even though most of these countries produce no goods to speak of. The number of offshore companies is growing at an annual rate of about 150,000. Several hundred thousand offshore companies are managed from Switzerland. Tax evasion is one of their primary business objectives. The only remarkable aspect of the VOLCAFE/Cofina-case is that for once the public was allowed to see what goes on in the world of tax evasion.

¹ the minus [-] indicates a tax payment (d.h. expense for Volcafé) in the respective country.

² Cofina received 173 Dollar 25 Cents.

It remains a concern for Berne Declaration that earnings from the international commodities trade be distributed fairly. Berne Declaration considers the use of offshore structures, even though legal, to be inappropriate and unjust and demands changes in the international legal system that address this problem. At the same time, companies involved in world trade – for instance coffee traders – could, in a first step, adopt voluntary guidelines such as those proposed by the Berne Declaration.

The Berne Declaration proposes:

- Swiss buyers of coffee and other commodities – companies like Nestlé, Migros, and Coop – reject suppliers operating through tax havens and insist that the goods they buy are correctly taxed in the country of origin.
- Corporations acknowledge that paying taxes is part of their corporate social responsibility. Aggressive borderline tax practices are illegitimate even if technically legal.
- Tax authorities in cantons with many registered companies need to hire more personnel to monitor the tax practices of corporations more effectively.
- Switzerland must stop aiding and abetting tax evasion. The self-serving distinction between tax evasion and tax fraud needs to be abolished. Switzerland should provide other countries with legal and administrative assistance in cases of simple tax evasion.