# INFORMATION EXCHANGE AND GLOBAL ECONOMIC REGULATION – FOR WHOSE BENEFIT?*

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## Introduction

Ever since reading Adam Smith's 1776 Inquiry into the *Nature and Causes of the Wealth of Nations*, taxation and economic regulation generally and their importance for the wealth and prosperity of nations have been a source of personal fascination. In speaking today, I am not representing the views of anyone other than myself and, indeed, my purpose is not so much to represent any definitive view so much as to offer some personal thoughts and reflections on the wider philosophical issues raised by current OECD and other complaints against tax havens or offshore financial centres.

There has been a great deal of demonizing of tax havens or offshore financial centres (OFCs) and sometimes anyone who raises a different voice may also be demonized. So to make matters clear, my purpose is not to suggest that tax evasion or business fraud are good things. I do not think they are, nor do I think that many other features of modern life in so-called developed countries are good things. I do not think that bad tax, social security or corporate law systems which institutionalize lying and hyprocrisy are good things. I do not think that divorce laws which allow an innocent party to be stripped of most of his or her assets in a divorce are good things. The fact is that morality matters.

Increasingly it is becoming clear that there is a common theme of *moral* complaint underlying the attacks on offshore financial centres, be it on tax, money laundering or misuse of corporate vehicles.

The great trouble in these increasingly strident attacks is that all too often it is accepted that there is only one view of what is moral and that view is the view of some bureaucrats from OECD countries. But genuine morality is not the same thing as unctuous, self-serving or hypocritical moralism.

Users of offshore financial centres and those countries whose OFCs provide employment and income are not to be condemned as immoral merely because they seek or offer some kind of economic freedom or financial privacy. Just as patriotism can be the last refuge of a scoundrel, so appeals to morality (however disguised) can mask a rather ruthless pursuit of perceived economic self-interest. The economic background to the attacks on offshore financial centres can therefore provide a useful starting point.

## Economic background

Developed countries have income taxes to pay for high spending on age pensions and welfare recipients. But income taxes on capital income are hard to enforce if capital can flee. And their labour income taxes are already high and facing shrinkage as populations age and people retire from workforce.

It is therefore not surprising that Japan, the most rapidly ageing OECD country, instigated the OECD work against tax havens and tax competition in 1995.

From the conventional OECD point of view, offshore financial centres or tax havens are thoroughly anti-social places which help OECD taxpayers evade taxes on capital income which rightly belongs to the OECD home country.

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I have pointed out in an earlier article (referenced below) that the logic of this argument does not stand up. No country *has* to tax capital income. Land, for example, is an immobile tax base: unlike capital, OECD countries could tax it without fear of it leaving. In economic theory, at the end of the day, there are only three things you can tax - land, labour or capital - and only one of them cannot run away (or stop regenerating).

And as for declining labour income tax bases, if OECD countries refuse to allow immigration from developing countries, then whose fault is this? It is interesting to observe that Japan has a very restrictionist attitude to immigration while the United States economy almost seems to float on a sea of Latin labour.

So the first point to make is that, in terms of economic arguments, the OECD has only itself to blame if OECD countries choose to try to tax a mobile tax base like capital income instead of an immobile one like land. By the way, if one is concerned about tax evasion and tax fraud, it is one of the silent beauties of taxes on land and natural resource rights that it is much harder for taxpayers to lie about what they own. Taxes which minimize the temptation to lie are, one might think (and as Adam Smith thought), to be preferred to taxes, such as world wide residence-based income taxes, which maximize that temptation.

Incidentally, examination of nearly 100 years of Australian land valuation statistics shows that with a higher reliance on land taxation Australia could abolish corporate taxes altogether and most of personal income tax. The land values of great cities such as Sydney, London or Paris could be as valuable to their tax authorities as their oil bearing lands are to the rulers of Saudi Arabia, Kuwait or Brunei. If OECD countries choose, for their own domestic political reasons, to tax business profits and their workers so heavily instead of landholders, that is their choice and they should expect to live with the natural economic consequences of capital flight and falling birthrates.

Further, from a moral point of view, it might be seen as a little rich for wealthy OECD countries to be telling small developing countries they should help collect OECD taxes (on income arising in those small developing countries) while refusing to let those small countries export labour to OECD countries which are experiencing labour shortages.

More than one economist has noted the paradox of moves towards free trade in goods and services and free movement of investment capital coinciding with increased restrictions on the mobility of labour. In this regard, it is noteworthy that the European Union did accept the need for free mobility of labour as part of the completion of the European common market, while tax harmonization and tax co-operation have lingered behind. If the European Union thinks free trade in services and free movement in labour comes before tax harmonization or co-operation, why are small developing countries not entitled to take the same view with the OECD?

Be all that as it may, the purpose of these observations is to concentrate on the practical and logical issues which confront a small country in deciding whether or not to agree to cooperate with the OECD demands on tax havens and, if so, what it should seek in return. I also want to make some comments on the emerging idea that offshore financial centres are also havens for all sorts of illicit activities through the misuse of offshore companies.

**What should be the price of agreement?**

The OECD demands on harmful tax competition originally fell into three groups – transparency, ring fencing and exchange of information (all subsumed under the idea of supposedly "fair" tax competition). Ringfencing has been pushed to the back seat since most OECD countries themselves could not conform to that original requirement. The most important of the two remaining demands of transparency and exchange of information is the so-called exchange of information. I say so-called because, in practice, information flow is almost certain to be virtually one-way - from the tax haven to OECD countries to allow them to tax their residents on their overseas interests *or deemed interests*.

The first thing to observe is that agreements for exchange of information for tax purposes are normally found only in the context of full double taxation agreements. The starting point for an offshore financial centre in dealing with an OECD country should therefore be that exchange of information for tax purposes could only be considered in this context. Under such an agreement, an offshore financial centre agreeing to exchange of information would expect:

- Reduced withholding taxes on dividends and interest flying from an OECD country to the OFC;
- A business profits exclusion rule which would mean that investors from the OFC in the OECD country who did not have a permanent establishment in the OECD country would not be subject to tax in the OECD country; and
- Concessional or zero capital gains taxation on disposal of assets in the OECD country by investors from the OFC.

Further, exchange of information and articles in full double taxation agreements are generally subordinated to the local legislation of each country. For example, the usual exchange of information article in a full double taxation agreement does not require a country to do anything beyond its normal legal or administrative processes.

Thus, if a country has strict bank secrecy, such as Switzerland or Singapore, its local tax authority cannot provide more in response to a request for information from a treaty partner then it could obtain under local practices. Similarly, given that the United States Constitution prohibits unreasonable searches and seizures, a treaty partner of the United States cannot expect the United States Internal Revenue Service to provide information on request which it does not have and which would require a search warrant authorised by a judge on probable grounds to suspect wrongdoing.

If there are global tax norms (a proposition which I severely doubt), then the OECD tax treaty system would be the logical place to look. Incidentally, the OECD may reply it is revising its model treaty but there are literally hundreds of treaties still in force based on previous OECD and UN tax treaty models. And if you do look at these treaties, you find a very different set of tax norms to unilateral surrender of information. Information is precious and no country agrees to force its citizens or residents to provide information for another country unless there is a benefit in doing so.

The long history of negotiations since the 1920s on double taxation agreements show that most countries will only agree to exchange of information for tax purposes if they are assured of substantial concessions as a quid pro quo from the treaty partner.

**The jurisprudence of international tax**

The background to all international tax negotiations is that taxation, of course, is a sovereign act. As Lord Mansfield recognised in the 18$^{th}$ century case of *Holman v Johnson*, "no country ever takes notice of the revenue laws of another". This was recognised as good law in the case of the *Government of India vs Taylor*.

The New South Wales Supreme Court refused to allow assets to remitted to foreign trustees to pay Singapore death duty in the case of *Bath v British and Malayan Trustees Ltd.* Even within federations, it has been recognised that no State has an obligation to assist the revenue collectors of another state. For example in Australia, the State of New South Wales could not enforce death duties against a resident deceased's assets under a separate will in the Australian Capital Territory, as in the case of *Permanent Trustee Co. (Canberra) Ltd v Finlayson (Niesche's Case)*.

Of course it is open to jurisdictions to agree to enforce each others' taxes, as has occurred in Australia – though taxpayers may regard such a situation as little more than a collective of thieves seeking to plunder their pockets.

The salient point, however, remains that no jurisdiction has the slightest duty, in terms of either morality or international law, to agree to any form of tax information exchange that is not in its own interests. This principle also applies to self-governing colonies in the British tradition.

As Pitt the Elder noted in his speeches on the American Revolution, it is a fundamental principle of English law that the sovereign has no right to put his hands into the people's pockets without their consent and that consent can only be given by a local parliament agreeing to local tax laws.

**Further considerations**

On the question of benefits from a tax treaty, if an OFC were to agree to a full double taxation agreement with an OECD country it would also need to seek some further concessions on tax sparing. There is not much point to offering tax incentives or being a tax-free jurisdiction if your tax exemptions are wiped out by other countries imposing taxes on income which you have chosen not to tax. That is basically what OECD residence taxation does.

In this context, it should be noted that at around the same time as the OECD produced its famous or infamous report on harmful tax competition it also produced another report on tax sparing, suggesting that OECD countries rethink their willingness to forgo taxation on income exempted from tax through incentives in developing countries, such as Malaysia and Singapore.

It should also be remembered that the OECD has recommended countermeasures against offshore financial centres not agreeing to exchange of information. Many of those defensive measures already exist. Accordingly, an offshore financial centre being asked to provide information for tax purposes to an OECD country might well wish to demand that the OECD country remove its existing countermeasures, as well as agreeing to a full double taxation agreement and tax sparing recognition of the OFC's tax incentives.

Among the most important countermeasures already in existence is legislation on controlled foreign companies, passive investment funds and transferor trusts. Such legislation in OECD countries has increasingly become the norm but in its origins were highly controversial. Switzerland at one stage took the view that it was fundamentally contrary to a double taxation agreement for one OECD country to seek to tax income arising to a company or trust in another country by attributing that income to its own domestic taxpayers.

Essentially, controlled foreign company, passive investment fund or transferor trust legislation seeks to bypass the normal legal rules on residence or source of income to tax OECD residents not on their *actual* foreign income but on income of foreign entities which it *deems* under domestic law to be the income of its residents. So income arising in Vanuatu to a Vanuatu company or trust may be taxed by an OECD country even if no OECD resident has any right to that income.

There is often enough a large degree of arbitrariness about such deeming processes but, from the point of view of an OFC seeking to attract investment capital, such provisions may be viewed as a discriminatory OECD export tax on capital.

Hence the logical question to ask is why a small offshore financial centre would cooperate in a double tax agreement with an OECD country which is not only not willing to remove tax barriers to the free flow of capital but trying to impose them through the back door.

Why should Vanuatu or any other developing country be expected to assist OECD countries tax the income of Vanuatu companies and trusts? Isn't it up to Vanuatu to decide whether or not or how to tax Vanuatu entities or relationships? And if Vanuatu, quite logically, wants to encourage local economic growth through an income tax exempt financial services sector, why should it be expected to wipe out those incentives for the benefit of OECD countries richer than itself?

**What if a full double taxation agreement is not possible?**

So far I have spoken of information exchange in the tax context and in the context of a full double taxation agreement. However, any treaty takes two to agree. It may be unlikely that an OECD country would agree to a proposal for information exchange for tax purposes with an offshore financial centre on the basis outlined above of a full double taxation agreement, plus tax sparing, plus withdrawal of counter-measures. To do so would be to acknowledge the legitimacy of the right of offshore financial centres to compete for investment capital with full recognition of their sovereign right *not* to impose taxes.

An apparent unwillingness to accord such recognition of fiscal sovereignty to offshore financial centres seems to be why the OECD has not pursued information exchange for tax purposes in the normal context of full double taxation agreements with offshore financial centres.

Instead, the OECD has increasingly shifted its lines of argument from harmful tax competition (a debate which they cannot sustain) to a focus on information exchange for law enforcement purposes.

**Civil versus criminal law co-operation**

Nations have traditionally cooperated on matters of common criminality. The basic rule of international law is that one jurisdiction may help another in a criminal matter where the alleged offence is criminal under both systems of law.

What the OECD is now doing is to say that the rule on common criminality is too narrow. Effectively, as a matter of comity between nations in a globalising world, it is now necessary for offshore financial centres to agree to information exchange for both civil and criminal law enforcement purposes, including both criminal and civil tax matters. Further, such information exchange – or more accurately unilateral disclosure by offshore financial centres – should occur without offshore financial centres expecting a *quid pro quo* in terms of full double taxation agreements or withdrawal of existing defensive counter-measures in OECD countries' domestic tax systems.

Such a position represents a drastic expansion of de facto extra-territorial law enforcement beyond the borders of OECD countries. Yet the traditional rule on common criminality makes logical sense, as it recognises that each sovereign country is master in its own house.

**Tax evasion and avoidance - is there a difference?**

It seems that the OECD is trying to undermine this fundamental international law objection to information disclosure based on the pre-requisite of common criminality. The argument is put that information disclosure from offshore financial centres upon request by OECD countries is necessary for them to prevent tax evasion according to their laws. The reasoning is that tax evasion is fraud, fraud is criminal under most legal systems and therefore information exchange for tax purposes is justified.

This sort of argument had success in the House of Lords with the *State of Norway's* application but it still seems fundamentally inconsistent with the traditional rule in *Government of India vs Taylor* that countries do not enforce each other's tax laws.
There is of course a further point, namely, that tax planning or tax avoidance is not fraud. However, tax administrators are often not inclined to distinguish between tax evasion and tax avoidance. Increasingly

revenue authorities in OECD countries tend to take the view that any attempt at aggressive tax planning is essentially tax evasion and may be prosecuted as a criminal activity.

Interestingly, tax evasion has not always been dealt with as a form of fraud in law and a criminal matter. In many countries, this was precisely because taxpayers were expected to supply voluntarily the information which would expose them to financial liabilities. For example, in Australia, before 1980 the normal practice on matters of tax evasion was – and generally still is – to impose penalty tax administratively without any Court case to prove criminal fraud.

If tax evasion were treated as a normal criminal matter, taxpayers could justify their refusal to answer tax return questions, or to allow access to documents on request etc by retorting that such demands violate the normal rule against self- incrimination (which incidentally does apply to pecuniary penalties such as taxes). Quite simply, the normal day-to-day administration of taxes would become impossible if taxpayers were all treated as potential criminals and in turn demanded their rights to the normal protections for the accused under criminal law.

So the compromise developed that tax authorities were given enormous inquisitorial powers (far greater than any powers given to police) to investigate taxpayers affairs without search warrants or other legal protections on the corresponding understanding that taxpayers would not be treated as criminals and that any tax deficiency would be recovered through administrative penalties as a debt.

Another quid pro quo was that taxpayers were often assured by law that their personal financial affairs would be kept secret and not disclosed to other authorities such as the police. For example, a prostitute could file a tax return disclosing the source of her earnings without risking prosecution.

In recent years, however, such balances of public policy interests have been eroded in OECD countries. OECD taxpayers can often face both civil and criminal proceedings for the same default without the normal protections owed to the suspect or the accused in the criminal law.

It is precisely because of the uneasy overlap between civil and criminal and the often unclear distinction in administrative and judicial practice between avoidance and evasion in tax matters that it is technically dubious to assert that tax evasion is simply a form of fraud covered by the international law rules on mutual assistance in matters of common criminality. Such doubts explain why countries have usually declined to enforce, or assist in the enforcement of other countries' taxes in any way.

Hence there is still compelling logic in favour of the traditional treatment of taxes as pecuniary penalties imposed by a sovereign and which another sovereign need not concern himself with. Whether civil or criminal, taxes still represent pecuniary penalties, not normal commercial debts, and it is not the job of one sovereign to collect them for another.

**Privacy and human rights – security of capital**

From the point of view of an offshore financial centre seeking to attract capital, there are other serious questions raised by demands for information disclosure for other countries' law enforcement purposes. Increasingly arguments are being made that corporate vehicles are being used for other illicit purposes besides tax evasion or avoidance, such as corporate law manipulations, insider trading, exchange control avoidance, hiding assets from creditors or spouses, avoiding forced heirship rules.

Whether one regards such purposes as legitimate or illicit or whether it depends on the circumstances of the case, the argument is being made that disclosure of information – for example of beneficial ownership – is necessary if OECD countries are to prevent avoidance of their laws through the use of offshore vehicles.

But, as Hernando de Soto has noted in his book *The Mystery of Capital: why capitalism triumphs in the West and fails everywhere else*, a country can only develop and attract capital investment if it can offer secure property rights. The word "property" traces from the Latin *propriu*s – that is, belonging to oneself. Similarly the words "private" and "privacy" come from the Latin word, *privatus* – that is, peculiar to oneself, the opposite of public.

To attract investment, a country has to offer secure rights of private property. That means what it says: private property is private, not transparent. You cannot have private property without privacy. You cannot attract *private* investment if its details are to be made *public* to every inquisitive foreign bureaucrat.

The recognition that privacy and private property go together is why many countries, including the USA, have constitutional protections protecting private citizens from arbitrary searches and seizures, preventing laws impairing the performance of contracts, guaranteeing privacy and preventing unjust taking of private property.

You cannot have economic development if local and overseas investors fear the disturbance of their commercial affairs or taking of their property by government officials. Governments exist to protect people's rights and to protect them in their life, limb and property. Once governments cease to do this and become seen as among the thieves themselves, merchants and others seek to take their wealth elsewhere. For example, greedy officials oppressing trade and commerce were among the reasons for the economic decline of the Chinese and Ottoman Empires.

Any form of information disclosure concerning the affairs of a private citizen is inherently a diminution of rights of private property. For example, it has always been part of the common law duty of bankers to keep their customers' affairs confidential. There are very good reasons for that, including the obvious risk of damage to a customer's credit.

It may therefore be seen as somewhat peculiar that on the one hand the OECD has supported the growth of market capitalism throughout the world yet, through demands for information disclosure, is now undermining the security of private property upon which nations depend for their prosperity. At the same time, OECD governments are loudly proclaiming Data Protection and Privacy Acts while busily seeking to allow their officials increased powers to invade the privacy they are supposed to be legislating to protect.

Against this background, let us remember that privacy is both a human right and a property right. If information is to be sought within a country's borders, the citizens of that country may well insist that it should only be available under very strict safeguards.

For example, it may be insisted that:

- Information may only be disclosed pursuant to a local search warrant issued by a judge upon probable cause supported by a sworn statement, and that damages will be payable if that sworn statement cannot be supported or represents an abuse of process;

- Information may only be disclosed where it may be relevant to an offence against that country's laws – not any other country's laws;

- Spouses and family members should not be compelled to give evidence against each other (it was a peculiar horror of Hitler's Nazi Germany and Stalin's Soviet Union that such regimes forced the betrayal of all loyalties of natural affection); and

- Information sought and obtained for one purpose should not be abused by being used for another.

To take a hypothetical example from current circumstances, the vast majority of humanity would be happy to provide voluntarily any information they could to ensure that such things as the World Trade Centre attacks do not happen anywhere ever again. But a US resident who did so and helped the FBI trace through an overseas bank account might be more than upset if that information was then turned over to the US Internal Revenue Service and used to convict him for non-disclosure of a foreign bank account for tax purposes.

In a similar way, OFCs and their business sectors have shown themselves willing to co-operate against common criminality but that does not mean they are happy or willing to see their investors scared away by implied threats that their private financial affairs will be disclosed upon request to any OECD tax collector or regulatory authority.

If a private client investor from London or Frankfurt thought that his affairs in the Caribbean would be transparent to all European tax and regulatory agencies, he might not wish to place funds there rather than leave all his financial affairs in London or Frankfurt.

If offshore financial centres wish to retain or attract private client business, it is therefore essential that there be very strong safeguards to any process of exchange of information from offshore financial centres to OECD or other countries. Information on private client affairs should only be supplied to other countries where genuinely required for investigation of common criminality and subject to the normal legal rules on warrants, immunities, admissibility etc. For example, information supplied in good faith to an OECD country for the protection of public safety or international aviation should not be able to be used to prosecute private clients of an offshore financial centres for, say, corporate, tax or foreign exchange reporting offences.

**"Misuse" of corporate vehicles for illicit purposes?**

As for the substantive argument that offshore corporate vehicles are being misused for illicit purposes, one can well envisage circumstances where that will be the case. But it does not follow that every attempt to secure offshore financial privacy is illegitimate. It is absurd for OECD officials to argue that any legal system which offers secrecy or confidentiality is therefore *ipso facto* suspect or that offshore governments should insist that beneficial ownership of companies be available for OECD tax or other investigators in cases outside the scope of common criminality.

For a start, most legal systems, including those of OECD countries, do protect privacy and require secrets and confidences to be kept. One can think of German, Austrian or Swiss bank secrecy. English land law, as Professor Pollock once observed, is a history of the struggle of English landholders to keep secret the charges they were creating over their lands. The English law of wills always recognized the ability of testators to create secret or semi-secret trusts for the benefit of others such as illegitimate children or mistresses. Breaches of confidence can be stopped by injunctions in equity. Nor do trustee owners of company shares have to disclose beneficial ownership except in certain circumstances. Partnerships can be silent partnerships, both in England and in Europe.

So the idea that privacy or secrecy in commercial affairs somehow connotes wrongdoing and should be prohibited is nonsense. All commerce is about competition and competition means not letting your competitors know what you are up to or gain an insight into your strengths or weaknesses.

Many uses of offshore financial centres do involve attempts to secure privacy in order to get around various forms of economic or social regulation in the country of the investor. But it does not follow that attempts by an investor's home country to enforce its economic or social regulations through information disclosure should be accorded the same respect as requests for assistance in normal law enforcement in cases of, say, theft or criminal injury.

Investors may use offshore financial vehicles and financial privacy for tax planning which, as noted above, does not necessarily mean tax evasion. An investor engaging in perfectly legal tax planning will still want financial privacy because he does not want to risk unnecessarily the hassles and expenses of onshore litigation to prove the correctness of his position. He may be perfectly happy that his arrangements are legal under his own country's laws but he nonetheless knows that as soon as the information is disclosed, new tax legislation will be introduced in his home country to nullify his planning stratagems. There is nothing morally or legally wrong with trying to keep secret one's successful commercial or legal strategies.

To take another example, investors may use offshore financial vehicles for insider trading. Insider trading has an interesting history. Until recently, it was not a criminal offence in the European Community. For many years in England, Australia and Europe, share trading opportunities from inside knowledge were almost perceived as a perquisite of being a company director. Legal academics and economists still disagree as to how insider trading should be defined and how far the offence should go.

It may be wrong for a company director in possession of company information to trade in their shares (as a shareholder, I certainly think so) but is it wrong for a passerby in a lift who overhears a conversation to then buy shares on what he heard? In Australia, a man was prosecuted for insider trading when all he had done was buy shares after a telephone call from his father in law in Papua New Guinea that a company they were interested in had just won an important legal dispute over mining rights. The point is that a country may agree that some forms of insider trading are within the rule on common criminality and yet insist to another country that other things it designates as "insider trading" are not.

Countries may take different views quite legitimately about how far such economic regulation should extend and therefore no country should expect another country to help enforce automatically its peculiar laws on such subjects.

Another case where offshore financial vehicles are used would be for exchange control planning. Again, why should a country with no exchange controls be expected to disclose information so that another country can enforce its repressive financial regulation?

A common use for offshore structures is for asset protection from creditors, spouses or forced heirship rules. Again is it necessarily wrong for a prudent businessman to wish to segregate assets from such claims? It may be, where he knows the creditors are about to bang on the doors, but then again, depending on the circumstances, it may not be. Similar considerations arise where we are talking about use of companies or trusts to evade marital community property laws or forced heirship. An honest man may genuinely fear his estate passing absolutely to a wife or son he has had reason to doubt, if only for a perceived lack of business judgment (and heiresses may fear marital claims from impecunious husbands).

No one can say that all attempts to use offshore vehicles to avoid or evade marital property regimes, forced heirship, divorce courts or testator's family maintenance orders are morally wrong. For example, if Osama bin Laden's father had taken a dim view of his son's emerging extremist views and evaded Islamic forced heirship rules by using a trust in Jersey, the world might now be a calmer place.

It therefore seems impossible for OECD bureaucrats or anyone else to assert that offshore financial privacy necessarily connotes illegitimate or illicit activity. There is nothing inherently wrong in countries competing with other to provide investors with a choice between differing legal systems. One assumes most people in most countries are generally happy with their legal systems or else those systems would not be what they are. But significant numbers may not be.

For example, an English businessman living in France may not like the French marital community property system or the French commercial code. He may therefore wish to avoid both by using Jersey trusts and companies to hold assets and run his international business interests.

The very real risk for an offshore financial centre is that if it agrees to unrestrained information disclosure on the financial affairs of its private client investors to their home countries for all sorts of civil

law, tax or other economic regulatory purposes it will very soon be out of business. It will be throwing away the advantages of engaging in international commerce hich the Internet is now providing. It will be throwing away its sovereign right to seek prosperity by providing people from other countries with a different choices of legal regime to govern their assets and business affairs.

Yet on the other hand there can be no disagreement with information disclosure in the case of suspected criminal activity where that criminal activity falls under the rule of common criminality.

**Information exchange treaty protections**

So I want to finish by commenting on what would be possible useful provisions to have in relation to a treaty for information exchange.

First, a request for information might need to be supported by sworn statements which could be tested before a local jdge. From the point of view of protecting human rights and rights of private property, local citizens are likely to find it totally unacceptable if their rights can be swept aside merely on the "say so" of some foreign official.

Second, one might expect there to be immunities for use and derivative use of information supplied. For example, if a foreign government seeks information relating to drug trafficking by person X, it should not be able to use that information to prosecute person Y for an unrelated offence. Such immunities would be required both for foreigners and local residents. For example, no country can be expected to force its citizens to disclose information to a foreign country when such disclosure would expose its citizens or public officials to arrest when visiting that foreign country.

The crucial point is that information disclosure under any treaty has to be seen as thoroughly governed by legal due process. Legitimate investors in offshore financial centres should not be worried by information exchange on matters of common criminality. But one expects they will be worried if information exchange amounts to unilateral disclosure for the purposes of their home country's economic or fiscal regulatory purposes. The truth of the matter is that governments themselves compete for investment and compete in terms of offering different legal and fiscal systems. The US and UK are well-known tax havens for foreign investors and they have richly profited from being so.

Investors place their monies in or through offshore financial centres precisely because they want to take advantage of tax and regulatory competition which benefits the offshore financial centres themselves. It is therefore unrealistic for OECD countries to expect other countries to agree to information disclosure on such lax terms that the investment attractiveness of those non-OECD countries is destroyed.

At the end of the day, offshore financial centres have both the sovereign right and the moral right to insist that information exchange be limited to matters of common criminality and governed by due legal process for the protection of both their own residents and citizens and their own economic interests.

There is nothing wrong, immoral or unnatural about sovereign countries competing for investment by offering differing legal and economic regulatory systems. That is how human beings learn from each other. That is how the world discovered that Communism was not such a good economic system. That is also perhaps how people will learn that OECD bureaucratic attempts to force an international groupthink (under the guise of internationally accepted standards) on matters of fiscal and economic regulation are not necessarily a good thing for human liberty or economic progress.

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