

Abstract

The current international climate regarding tax evasion is one of intense scrutiny. The various initiatives addressing the issue range from the bilateral and multilateral models of the Organisation for Economic Cooperation and Development (OECD) to unilateral action by the United States in the form of the Foreign Account Tax Compliance Act (FATCA). The prevailing view is that secrecy provisions in various jurisdictions are used to facilitate illicit fund transfers from other jurisdictions into monetary flows that are difficult to trace. Moreover, they obfuscate the identity of individuals who are the beneficiaries of such strategies.

Part of the solution to this issue is to improve exchange of information between jurisdictions. This can be achieved through the creation of a unique instantaneous exchange of information mechanism. This thesis proposes such a contribution to existing initiatives but with the added benefit of current technology. The PhD analysis critically analyses the problem of tax arbitrage, outlines current and past initiatives and proposes a data repository solution to support existing initiatives. It then discusses implementation of the information uploads and downloads and where they sit within the context of current international treaty models.

Structurally, this mechanism will be derived from current Organisation for Economic Cooperation and Development (OECD) exchange of information initiatives, utilised in the work of the OECD Global Forum. Its implementation can be achieved as an extension of the current Global Forum peer review of jurisdictions. In practical terms, implementation involves the cooperation of Competent Authorities in each jurisdiction vested with the authority to exchange information.

The research question examined in this thesis is whether competent authorities are empowered to provide real time information to and extract information from the repository, for the purpose of identifying the transfer of illicit funds between jurisdictions. This raises two further questions: can jurisdictions do so from the point of view of technical capacity; and do competent authorities have the legitimacy to do so under current international rules? These questions are addressed and recommendations made accordingly.

This thesis addresses a gap in knowledge created in part by the dominant OECD approach which is a 'request of information process'. This process incorporates legal

safeguards designed to protect individual taxpayer confidentiality. The other component contributing to the gap is automatic exchange of information. This initiative seeks to accelerate information exchange but is limited by the depth of information able to be exchanged. Unsurprisingly, the latter is gathering international momentum due to the volume of data and the speed with which it is able to be transferred.

The gap occurs at the point of overlap between these two approaches. This is because there is a trade-off between the safeguards inherent in the one and the volume of data transferred in the other. The safeguards protect taxpayer rights but can be hampered by local jurisdictional inefficiencies. This, in turn, leads to a lack of timeliness and effectiveness in detection and enforcement. The automation leads to large volumes of data being transferred but cannot legitimately contain data with the depth of a specific request.

This gap is overcome by the solution proposed. That is, the uploading of data to and downloading from an international tax repository. This includes both highly specific case information from audits and other compliance action; and bulk data of the kind currently transferred under automatic exchange of information.

The front end of the repository allows immediate access to bulk data provided under current treaties. As regards case specific information, this will be available at the front end only in anonymous format. This format will allow research on legal and fact scenarios through a search engine. Once a potential case has been identified, the relevant competent authorities can determine whether a taxpayer specific request for exchange of information is warranted.