Developments in Global Tax Transparency and the Need for Effective Dialogue (Part 2)

BY PHILIP MARCOVICI

This is Part Two of the article. Part One, published in the last edition of The World Financial Review, introduced the topic of tax transparency, and the global move towards automatic information exchange. Part One discussed some of the many abuses of bank secrecy by legacy private banks and others that has led to tax compliance properly becoming the norm, but in a way that may not be in the interests of any of relevant governments, wealth owners and the wealth management industry. Part One ended with a reference to a reality that not every country is actually ready for automatic information exchange.

Philip Marcovici explores alternatives that might be considered to address the reality that not all countries are ready for full transparency and the automatic exchange of information. This Part Two of the article highlights role of the wealth management industry and other stakeholders in encouraging effective dialogue.

Can We Have a Non-Governmental Approach to Evaluating Whether Countries are Ready for Full Automatic Exchange of Information? And Should Countries that are Not Ready for Automatic Exchange of Information Be the subject of an Alternative Tax Compliance Approach?

An approach that could address the needs of both the home country and the individual taxpayer would involve having a suitable non-governmental organisation, perhaps one like Transparency International, evaluate the tax systems of countries, measuring levels of corruption, misuse of taxpayer information and other characteristics relevant to the determination of the countries that are ready for full tax transparency.

Where countries are not ready for full transparency, financial centres and their banks and trust companies could agree to ensuring tax compliance by identifying the relevant owners of assets and income, and agreeing to withhold tax on initial capital and annual income, say at a figure of 10%. The proceeds of the withholding tax would be maintained in a fund that would be made available to the home country involved under certain conditions. Because the taxpayer would be considered tax compliant in the financial centre

involved, no anti-money laundering or other reports would need to be filed. This would be very different from Switzerland's failed "Rubik" strategy – not a complex system of withholding requiring the input of mathematicians, but a simple and transparent approach that is attractive to taxpayers and which reflects the reality of tax collections rather than headline tax rates. Should there be withholding at 40% if the effective tax collections in the relevant country are at 10%?

Most importantly, unlike the Swiss "Rubik" strategy, which initially focused on the UK and Germany, two examples of first world tax systems fully ready for automatic exchange of information, the withholding approach would be used for countries that are *not ready* for automatic exchange of information – countries that do not properly protect taxpayer information, where tax proceeds are corruptly converted to incorrect use or where the system is otherwise defective.

On agreeing to accept the funds held for it as settlement of tax due in relation to assets subject to withholding, the withheld amounts would be paid over to the home country. It would also be possible to have withheld amounts be the subject of disbursement with international oversight, something that may be particularly appropriate for countries where tax revenues are improperly applied. In some cases, the tax withholdings might have a role in repayments of outstanding international loans or otherwise.

The objective of the withholding arrangements implemented would be to be temporary – at such time as the country involved adapts its laws and practices such as to be considered ready for full tax transparency, automatic exchange of information would be implemented, making the withholding approach unnecessary.

Short term – immediate revenues that can be applied as they need to be given the circumstances of the country involved. Medium and long term – an influence on what the country needs to do to establish an effective and fair tax system that can operate in the interests of the country and its taxpayers.

Even better than forcing countries into withholding would be negotiated deals between the country whose taxpayers would opt for withholding and the financial centre that would facilitate the withholding and adapt its laws and procedures to provide the relevant assurances of confidentiality.

But will issues relevant to countries not ready for automatic information exchange be smoothly addressed in the years to come? Or will the industry and relevant financial centres again fail to take leadership?

Should Tax be the Driver in Asset Protection and Estate Planning?

Historically, there has been an over-emphasis on taxation in asset and succession planning, something fueled by advisors focused more on bank secrecy than understanding the real needs of their clients. These real needs are varied, and include needs that are particular to the family involved, such as where there is a child needing special protection, as well as needs that are driven by the laws and structure of the home country and countries of investment. On the latter, issues such as forced heirship, political risk, and many others come into the mix.

The over-emphasis on taxation notwithstanding, it is critical that wealth owners and their families understand their tax position, learning from advisors and being guided by them, but not allowing them to "kidnap" the family's wealth, keeping the family in the dark about how their own structures really work. If the wealth owner understands the

MANY WEALTH OWNERS WHO ARE IN THE YOUNGER GENERATION, AND WHO ON INHERITING ASSETS FROM THEIR PARENTS HAVE NEGOTIATED "VOLUNTARY DISCLOSURE" ARRANGEMENTS WITH TAX AUTHORITIES, ESSENTIALLY COMING CLEAN ON THE PAST TAX EVASION UNDERTAKEN BY EARLIER GENERATIONS.

tax systems of their countries of residence, citizenship and investment, he or she is in a better position to guide advisors and make the right decisions in the succession process. The industry generally can do more to help educate wealth owners to be better consumers of legal, tax and estate planning services.

An important overlay to how tax systems and planning work is to also understand the changing world of tax enforcement, and the reality that the luxury product offered by the private banking industry in the past – secrecy without much more – is fast falling away. This has real importance not only for families connected to countries at the forefront of tax enforcement, such as the US. In some ways the issue is of even greater importance to families connected to countries whose tax systems are just developing, and where corruption and misuse of tax information is rife. The combination of anti-money laundering rules and heightened institutional risk is driving advisors and intermediaries, such as banks, insurance companies, accountants and others to turn their clients in to the authorities. A wealth owner needs to understand these developing risks. And in a world where disparities of wealth are increasingly at the forefront of the political and social agenda, is "hiding the money" either an option or the right thing to do?

I have worked with many wealth owners who are in the younger generation, and who on inheriting assets from their parents have negotiated "voluntary disclosure" arrangements with tax authorities, essentially coming clean on the past tax evasion undertaken by earlier generations. Costs for this are often higher than the costs would have been to the older generation had they paid their taxes, and undertaken legitimate and legal ways to reduce exposures. Was the older generation right in believing that they were doing the younger generation a favour by salting the money away in secret accounts and opaque structures?

The move to tax transparency also brings with it the question of privacy, and whether privacy of one's financial affairs can be legally achieved. I am a believer that privacy is a human right, and that privacy and tax compliance can go hand-in-hand. But it is not always straight forward, and the approaches open to wealth owners very much depends on their countries of citizenship and residence. Importantly, the failures of the industry to take leadership on the issue of undeclared funds has resulted in bank secrecy, and its ability to deliver on the human right to privacy, being tied to tax evasion. While the misuse of bank secrecy needs to be addressed, bank secrecy should remain available to those who need it – but the industry and the jurisdictions involved, looking to the past, have gone pretty far towards throwing the baby out with the bathwater – allowing bank secrecy and related privacy rights to be compromised as part of growing tax transparency.

We are in times of enormous change, and in times where headline tax rates are probably much higher than they should or need to be – in a world of full tax compliance, governments would be collecting enough revenue to permit tax rates to decline substantially – but we are likely several decades away from this being able to happen. We are also decades away from all governments having tax systems that can be trusted; tax systems free of corruption and of political misuse of tax information; tax systems where information the tax authorities hold is truly kept confidential. We are also many decades away from a global tax system – despite the efforts of some countries – meaning that tax competition is alive and well. Countries compete for investment and business on the basis of their tax systems, and as the world moves to greater tax transparency, the role of mobility in tax and privacy planning becomes increasingly important. Interestingly, the world is also getting smaller, with wealth owning families becoming more and more international – with either investments in various countries or with family members living in various countries, and holding various citizenships. Mobility therefore becomes an important element of planning – carefully choosing where to be resident and how to manage time spent between different countries. Citizenship can also be

an issue here, and one that in the years to come may be more and more important.

While tax is important, and in succession and asset protection planning is a key issue to be managed and minimised, it is critical to keep tax in its place – and to not allow tax planning to drive the succession plan and to distract the family into allowing tax advisors and tax objectives to kidnap the family's asset holding and succession structures, something that in my experience is too often the case. I have come across a remarkable number of situations where the older generation has worked hard to achieve secrecy, managing to leave their assets in a messy labyrinth of secret structures facilitating theft and abuse and leaving a legacy of mistrust and unresolved tax liabilities to their family to sort out.

Tax laws are difficult for anyone to understand. Even the most sophisticated tax advisor will not have all the answers. Today's wealth owning families are international families. Different family members may live in different countries, the family is likely to invest in a number of places, and citizenship can sometimes play a critical role in the tax picture. Where grandchildren are born and the citizenships of sons and daughters-in-law, can all have an impact. And the only certainty in the tax world is one: the laws will change, and constantly do. The wealth owning family does not need to become expert in the tax laws of every country that affects them and their investments. Rather, the wealth owning family needs to be able to understand the advice they receive from experts, and needs to be able to challenge that advice, and ask the right questions. Being aware of how tax systems work can help families stay in control of the succession and asset protection planning put in place for their families.

The Role of the Industry in Encouraging Dialogue with All Stakeholders

The sometimes rough road to tax transparency can be smoothed out through dialogue and proactivity.

As governments grapple with reporting and taxpaying requirements associated with trusts, for example, an important role for industry is to help governments understand how their tax collection and enforcement objectives can be met while respecting the legitimate privacy and other reasons families may choose to use trusts. There are many countries, including Canada, the US and others, who have relatively clear tax laws regarding the taxpaying and reporting responsibilities of trustees, beneficiaries, settlors and others interested in trust structures. Over years, the relevant tax rules have developed in a way that reflects the ongoing need of governments to close loopholes, and to ensure that taxes are effectively collected. But in the case of the US and other regimes, this has been done in a way that supports the legitimate and appropriate use of trusts. Broad tax neutrality in the use of trusts is a positive, as is clarity in the tax results of using trusts.

There are other countries, such as France, that have taken a heavy-handed and destructive approach to trusts, demonstrating the consequences of a government failing to understand how trusts work, and how their legitimate use to address the needs of families can be entirely consistent with full tax compliance and transparency. But it is industry that should be showing leadership in helping onshore governments address their legitimate taxing needs – proactive dialogue designed to address the needs of all stakeholders.

The failure of offshore governments and the wealth management industry to proactively address issues in and around taxation has fueled the relative success enjoyed by the US in its efforts to crackdown on offshore tax evasion. The provocative practices of the offshore world and the wealth management industry triggered a series of steps taken by the US that have opened the door to global changes in exchange of information and tax enforcement in relation to offshore activities. But the lack of cooperative strategies has come at a significant cost for not only the industry and the families it serves, but for the US itself, which despite much in the way of effort and noise, is still at an early stage of truly addressing the issue of offshore tax evasion by US residents and, importantly, citizens (with the latter being subject to global taxation whether or not resident in the US, meaning that there remain large numbers of US taxpayers globally whose tax affairs remain to be sorted out).

We are also many decades away from a global tax system meaning that **tax competition is alive and well.**

The US and Switzerland: Failed Strategies by Switzerland, but has the US Achieved All that It Could?

The US took its first major step towards addressing offshore tax evasion when it introduced its Qualified Intermediary system in 2001. The US, through the QI system, successfully encouraged banks around the world to become their contractual partners in tax enforcement, with virtually every meaningful private bank having become a qualified intermediary, required to identify and document US interests in bank accounts, whether directly owned or through, in certain cases, structures. To avoid punitive withholding taxes on investments in US securities, even the most die-hard secrecy based private banks signed on for a complex system that required banks globally to learn the nuances of US international tax rules. Backed up by independent audits, qualified intermediaries made many promises to the US under the qualified intermediary system, and all under agreements that were written by the US, that could not be negotiated, and that could even be changed by the US without the consent of the other contracting party, the bank involved.

Interestingly, rather than entering into negotiation and dialogue over the request of the US to introduce the QI system, virtually every offshore centre and private bank took the defensive approach of simply agreeing to move forward with the QI system hoping that it would be the last step in tax enforcement. Meanwhile, had there been a clear and reasonable request by Switzerland or other countries that whatever system the US would seek to implement would have to be reciprocal, this would have delayed the QI system by years – the reality being that the US would have been unable to deliver reciprocity given the operation of its own bank secrecy rules and accompanying tax laws severely restricting information available to the US tax authorities on non-US owners of bank accounts and structures in the US.

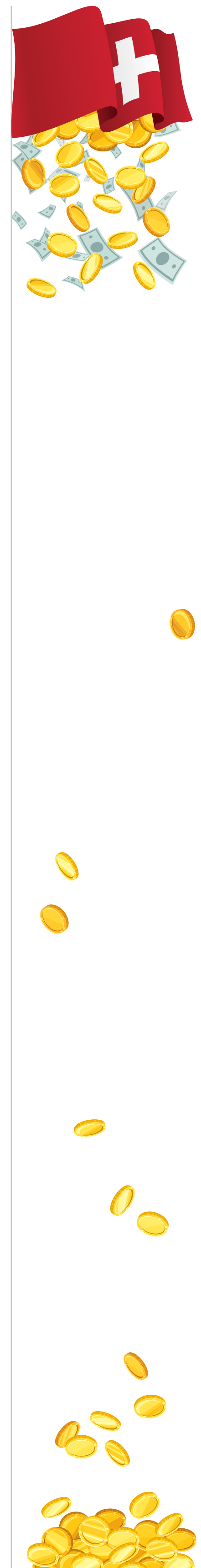
Sadly for many, the QI system was not recognised for what it was – a *first* step in tax transparency… not a *last* step. As can now be seen from the highly successful US attacks on private banks, particularly in Switzerland, the reaction of some banks to the QI rules was to circumvent the efforts of the US to stamp out foreign tax evasion by passively or actively working with American taxpayers to find ways to avoid reporting under the QI system. This was not a huge challenge given the clear limits under the QI reporting system in and around the question of "beneficial ownership" which was determined under US tax principles rather than under local know-your-client or other rules.

Under US tax principles, for example, the beneficial owner of a bank account, where the account was owned by a properly established and managed offshore company, was the company itself rather than its shareholders, even if those shareholders were US persons. While this did not change any other US tax principles associated with the tax and reporting requirements of Americans owning offshore companies or rules in and around aiding and abetting tax evasion or otherwise, the limits of what the QI rules required banks to technically document were misinterpreted (or taken advantage of) by what appears to be many banks who used the QI system as a roadmap for how to perpetuate offshore tax evasion by Americans.

The abuse of the QI system became clear in and around the US attack on UBS, facilitated by the information the US was able to obtain from whistle blowers and others. After US$780 million in fines, and the turning over of thousands of US depositors, the US scored further tax collection successes with its various voluntary disclosure programmes directed towards both taxpayers and banks. But were these voluntary disclosure programmes real wins for all stakeholders, including banks, families and interested governments? Could dialogue amongst stakeholders have led to more effective results, and perhaps results that were less destructive of lives and businesses?

Information obtained by the US through the UBS case played a big part in the next steps taken by the US, including its successful rollout of the next step in global tax enforcement, the heavy-handed FATCA – broadly, a reaction to the abuses discovered in and around the QI rules. FATCA was then the basis for the development of the Common Reporting Standard as the new global standard in automatic exchange of information between countries. Interestingly, as with the QI system, the US is still unable to deliver real reciprocity, despite reciprocity having now been documented in bilateral agreements that the US has entered into.

Information obtained by the US also led to further attacks on private banks, again primarily in



The fact that the US is the only major country in the world that is NOT part of the new world order of reciprocal automatic information exchange by virtue of the US having opted out of the Common Reporting Standard is attracting many to promote the US as a new haven for undeclared money – dangerous for the taxpayers involved and for the US and the intermediaries involved, this abuse is a sad and growing reality.

Switzerland, leading to the destruction of Switzerland's oldest private bank, Bank Wegelin, and significant financial, criminal and other challenges for a long list of Swiss banks, including Credit Suisse and others.

Along the road, the US Department of Justice introduced, in effect, a voluntary disclosure programme for Swiss banks, and itself was surprised at the significant sign-on to this, with over 100 Swiss banks (pretty much one third of the Swiss banking community) applying for non-prosecution agreements in exchange for disclosures of activities and data in and around undeclared accounts and the payment of significant penalties based on the value of accounts not disclosed to the US on certain key dates linked to the UBS case. Penalties were reduced for clients of the relevant bank who applied for voluntary disclosure, meaning that the arrangement had the effect of banks encouraging their undeclared US clients to come clean with the tax authorities.

But with penalties of between 20% and 50% of account *balances*, was the Department of Justice "agreement" with Switzerland a fair one for the private banks involved? Was the agreement ever really negotiated between the US Department of Justice and the financial services community? Will some private banks fail as a result of the costs of the arrangement? And what of the precedent the arrangement has set in terms of penalty levels when countries like Germany, the Netherlands, France and others consider the figures and begin to ask themselves what their fair share should be given the volume of undeclared assets and income in Switzerland and other offshore centres?

Dialogue and negotiation, with a view to coming to approaches that benefit all stakeholders may have brought a different result, and maybe there remains room for approaches that recognise that undeclared money is a *global* problem and not a Swiss problem. There is significant undeclared money around the world, and the financial centres involved extend geographically from Europe to the Middle East, to the Carribbean to Singapore and Hong Kong, and to the US itself, where Miami, New York and other centres provide international private banking services to clients from Latin America and around the world, and often without meaningful checks on whether the relevant earnings are declared in the home countries of beneficial owners. The fact that the US is the only major country in the world that is *not* part of the new world order of reciprocal automatic information exchange by virtue of the US having opted out of the Common Reporting Standard is attracting many to promote the US as a new haven for undeclared money – dangerous for the taxpayers involved and for the US and the intermediaries involved, this abuse is a sad and growing reality. And one which the policies of President Trump seem to support.

Lack of strategy and cooperation has resulted in other lost opportunities for Switzerland and the wealth management industry as a whole. Switzerland sought to address some of its difficulties in view of growing attention to the levels of undeclared funds within the wealth management industry by introducing its "Rubik" strategy. A failure from the outset, even the name of the strategy apparently came under challenge from the owners of the rights to Rubik's Cube. What Switzerland attempted to do, was to introduce a very complex (and costly) withholding system designed to allow it to provide confidentiality to account holders while accommodating the tax demands of the countries of residence of the account holders involved. Among the weaknesses of this poorly thought-out strategy was Switzerland's approach to Germany and the UK as first-takers (with Austria, a bank secrecy centre itself, an easier party to negotiate with).

At this period in history, with governments focusing on their legitimate rights to tax residents and address income inequality, it is hugely provocative to propose a solution to undeclared money that keeps secret the names of taxpayers – particularly in the case of countries, like Germany and the UK, whose tax laws are well-developed, and reflect a first world system of protections of taxpayer interests. In simple terms, while some may not like the UK and German tax systems, the reality is that both are generally free from corruption, are fair and provide significant taxpayer protections in relation to release of information and otherwise.

The deal with Germany eventually never came to pass because of resistance within the German political system, and in relation to the UK, which had gone forward with the agreement with Switzerland with a view to enjoying short-term tax revenues, Switzerland guaranteed CHF500 million in taxes to the UK. Ultimately, the ambitious tax collection estimates of

the UK were not met, and even the guarantee figure was not covered by tax withholdings, meaning that the Swiss bank community, which had shared in the responsibility of meeting the guarantee, is bearing the cost. How many more mistakes can the Swiss private banking community afford?

A complex, costly and failed system, the "Rubik" approach evidences yet another lost opportunity for Switzerland to have shown global leadership on a global issue – undeclared funds. Switzerland's provocation of the UK through its insistence on maintaining confidentiality for UK taxpayers, led to an expensive and unattractive deal for taxpayers and, ultimately, for Swiss banks.

Open, strategic dialogue between stakeholders may be a more effective way of addressing the changing world. This dialogue is urgent, but despite what some may think given the rapid move to transparency, there remain many, many issues to resolve, meaning that the opportunity for industry to take leadership remains.

The Liechtenstein – UK Example: The Possibilities of Strategy and Dialogue

An example of the positive effects of open dialogue is the Liechtenstein Disclosure Facility ("LDF") and the accompanying Taxpayer Assistance and Compliance Program ("TACP") put in place between the UK and Liechtenstein governments. Acting for the Liechtenstein government, I was able to initiate the LDF and TACP, with the help of the OECD, and eventually a team of advisors to Liechtenstein and the UK.

As was stated in the Liechtenstein Declaration of 2009, Liechtenstein committed itself to acting as a responsible member of the global community, contributing to the global effort to help foster long-term economic prosperity and the social well-being of everybody. As a member state of the European Economic Area and part of the European single market for financial services, Liechtenstein, with its solid and modern bank secrecy laws, was uniquely placed to go beyond current standards of exchange of information and approaches designed to address tax fraud, tax evasion and double taxation without compromising its commitment to privacy.

Liechtenstein's ground-breaking arrangements with the United Kingdom, which came into effect in September of 2009, have proved to be a success for clients of Liechtenstein's financial centre, for the United Kingdom and for Liechtenstein. These arrangements, which do not in any way compromise Liechtenstein's focus on the legitimate privacy rights of clients of its financial centre, recognise that countries whose tax and legal systems respect the human right to privacy are entitled to ensure that the integrity of their tax systems remains intact.

The United Kingdom achieved, through the LDF, tax recoveries in the region of £1.5 billion. The two countries entered into a full tax treaty, something relatively uncommon for the UK to do with a country like Liechtenstein. Most importantly, more than 6,000 United Kingdom taxpayers resolved their tax affairs favourably using the unique approach of the LDF, which then became a model for further disclosure facilities developed by the UK.

The Main Elements of the Liechtenstein Disclosure Facility and Related Arrangements

The arrangements negotiated with the UK were based on Liechtenstein's evaluation of the UK's approach to respecting taxpayer privacy and its commitment to putting the interests of its taxpayers at the forefront. Based on these factors, Liechtenstein agreed to full transparency in relation to UK taxpayers, and to an approach designed to respect the UK's legitimate right to have access to the names of those taxpayers using the Liechtenstein financial centre. As Liechtenstein committed to the UK the objective of ensuring that no UK connected taxpayer would be able to use the Liechtenstein financial centre without being fully tax compliant,

Adrian Hasler, Prime Minister of Liechtenstein, emphasises that his country has long since ceased to be a tax haven. © Reuters, 2017

the arrangements ensured that any taxpayers not wishing to avail themselves of the many benefits of the arrangements would exit Liechtenstein.

Among others, the relevant arrangements provided for:

- The TACP, providing, among others, a comprehensive commitment from Liechtenstein to ensure that UK taxpayers using the Liechtenstein financial centre are compliant with their UK tax and reporting obligations. Critically, this commitment, backed by agreed review, notice and audit procedures, covered not only banks, but a wide range of service providers in Liechtenstein, including trust companies. Specifically covered by the TACP were all forms of trusts, foundations, companies and certain other vehicles, the objective of the arrangements being that "grey areas" be addressed upfront and pragmatically.
- Documentation of the arrangements with the UK included a Memorandum of Understanding, a Joint Declaration (which was then followed by supplementary Joint Declarations clarifying issues remaining to be addressed) and a Tax Information Exchange Agreement designed to facilitate the terms of the arrangements between the two countries and to encourage the use of the Liechtenstein financial centre by those considering the benefits of voluntary disclosure.
- The LDF agreed with the United Kingdom provided UK taxpayers needing to regularise their tax affairs with an attractive, simplified approach to voluntary disclosure. Among others, the LDF provided for assurance against criminal prosecution, very favourable penalty and time limitations, simplified calculations of tax payable where complex structures are in place, a "bespoke" service from HMRC, the UK tax authority, for those considering use of the LDF and for their advisors, and a number of other benefits.
- Recognising that success of the TACP and LDF would require the full cooperation of Liechtenstein's banks, trust companies and other intermediaries, the arrangements with the UK included assurances against prosecution for past practices, as well as training and other support designed to assist Liechtenstein's financial intermediaries to adapt and thrive in a tax transparent world while preserving and enhancing the privacy rights of clients of its financial centre.
- Recognition and clarity on the treatment of Liechtenstein vehicles, such as insurance structures, foundations, *Anstalts*, trusts and others, and a commitment by the UK to assist Liechtenstein in the development of new products designed to address the needs of the clients of its financial centre in a manner that provides *tax transparent privacy* – the full protection of privacy rights while tax compliance in the home country was assured.
- In recognition of Liechtenstein's objective of becoming the financial centre of choice for tax compliant clients, the United Kingdom agreed to extending the benefits of the LDF to wealth owners with no previous connection to Liechtenstein, thereby allowing Liechtenstein's financial centre to expand its client base, and the United Kingdom to ensure that the maximum number of taxpayers could regularise their tax affairs. Most importantly, the interests of UK taxpayers being at the forefront, the arrangements were designed to be inclusive of all seeking to regularise their tax affairs on the most attractive terms possible. Broadly, more than half of regularisations came from taxpayers who had no previous connection to Liechtenstein, meaning that new business and new relationships for Liechtenstein intermediaries resulted in a meaningful way.

Prime Minister Adrian Hasler and the U.S. Chargé d'Affaires to Liechtenstein, Jeffrey R. Cellars signed an agreement to implement the provisions of the Foreign Account Tax Compliance Act (FATCA) on May 16, 2014.

It is interesting to contrast the approach of the LDF/TACP and its results for all stakeholders to the failed Rubik effort of Switzerland and to the approach of the US in its attacks on offshore tax evasion. For the UK, the LDF/TACP provided a full assurance against the misuse of Liechtenstein bank secrecy, with a guarantee that the Liechtenstein financial centre would not be used to shelter undeclared UK taxpayers. For the families involved, a sympathetic approach to voluntary disclosure and the choice of leaving the jurisdiction encouraged many to do the right thing and come clean. For Liechtenstein and its banks and trust companies, liabilities for past practices were dramatically reduced, and the system introduced encouragement of new relationships with UK connected families to be developed, as well as clarity on

Is it right that anti-money laundering rules should put individuals and their families at personal risk in terms of kidnapping, political oppression and corruption?

the treatment of Liechtenstein trusts, foundations and other wealth planning tools.

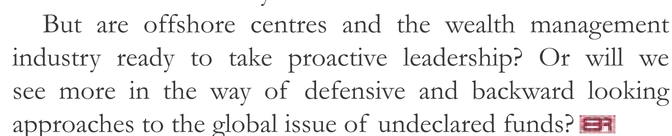
Despite its "win-win-win" approach, the LDF/TACP was not pursued by Liechtenstein or other offshore centres early on as a model… it was been used by the UK and its dependent territories in more recent disclosure facilities offering fewer advantages to taxpayers and the financial centres involved. Clearly, Liechtenstein and others may have missed the chance to take leadership. This reflects the continuing reality that industry players have been more focused on preserving the past than on shaping the future.

The Way Forward

What the world needs is a *proactive* rather than *defensive* approach to tax transparency designed to provide significant long-term benefits to affected families, offshore centres, the wealth management industry *and* to countries seeking to enforce their legitimate right to tax revenues.

There are many open issues as the world moves to tax transparency, and the challenges to rights to privacy and personal security will increasingly come to the forefront. How trusts should be reported and taxed is high on the agenda of countries worldwide, and a failure of the industry to take leadership here will result in the adoption of policies that not only discourage the use of trusts, but which may compromise the interests of the governments that are themselves seeking to address their use. An important practical area associated with the inclusion of tax crimes as a predicate offence in anti-money laundering rules relates to what happens when a bank or trust company files a suspicious transaction report relating to undeclared funds that are linked to the tax system of a country that misuses tax information or where corruption and instability otherwise puts the taxpayer at risk. Is it right that anti-money laundering rules should put individuals and their families at personal risk in terms of kidnapping, political oppression and corruption? Will transparency result in an *increase* in poverty and inequality as entrepreneurs flee their countries?

Perhaps the right way forward is for countries deserving of full tax transparency to be given MORE than they ask for in relation to exchange of information in exchange for a number of benefits, such as was the case for the LDF/TACP. But for countries not yet ready for full transparency, full automatic exchange and other promises should really only be offered if and when legal and tax systems protect privacy and the legitimate rights and interests of taxpayers. For these countries, a simple and confidential withholding tax approach as outlined above could be the offer. As countries implement anti-money laundering rules that include tax offences, the demand for a confidential and safe way to be compliant will increase – simply put, taxpayers from countries with corrupt legal and/or tax systems will fear having their assets and structures in countries where suspicious activity reports may find their way to their home country. A simple withholding system (including the voluntary elements of this) could provide an ideal solution for many.



But are offshore centres and the wealth management industry ready to take proactive leadership? Or will we see more in the way of defensive and backward looking approaches to the global issue of undeclared funds?

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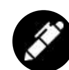

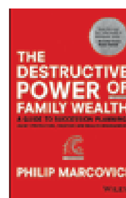

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