
Sharing Tax Information in the 21st Century: Big Data Flows and Taxpayers as Data Subjects

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PRÉCIS

Au cours des 10 dernières années, les gouvernements ont entrepris plusieurs réformes pour échanger automatiquement entre eux des blocs de renseignements sur les contribuables (principalement par l'entremise de la *Foreign Account Tax Compliance Act*, la Norme commune de déclaration, et la déclaration pays par pays). Ce partage accru des renseignements fiscaux a été incité tant par les changements technologiques, y compris la numérisation, les mégadonnées, et l'analyse des données, que par les tendances politiques, y compris les efforts des gouvernements pour réduire l'évasion fiscale à l'étranger et l'évitement fiscal international abusif. Dans certains cas, cependant, les protections juridiques de la vie privée et des autres intérêts des contribuables ne sont pas assez solides pour faire face à ce nouveau cadre international de partage de renseignements. Sur le plan conceptuel, les contribuables devraient être considérés comme des « personnes visées » dont les droits sont protégés proactivement par les lois et les politiques de protection des données, y compris des pratiques d'information équitables. Un régime optimal, qui équilibrerait les intérêts des contribuables et ceux des administrations fiscales, devrait inclure une déclaration multilatérale des droits des contribuables, une retenue fiscale transfrontalière pouvant être imposée au lieu de l'échange de renseignements, et un registre financier mondial qui permettrait aux gouvernements d'identifier les propriétaires effectifs d'entreprises et d'entités juridiques.

ABSTRACT

In the last 10 years, governments have initiated several reforms to automatically exchange bulk taxpayer information with other governments (mainly via the Foreign Account Tax Compliance Act, the common reporting standard, and country-by-country reporting). This enhanced sharing of tax information has been encouraged both by technological change, including digitization, big data, and data analytics; and by political trends, including governments' efforts to reduce offshore tax evasion and aggressive international tax avoidance. In some cases, however, legal protections for taxpayer privacy and other interests are insufficiently robust for this emerging international

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sharing framework. Conceptually, taxpayers should be seen as “data subjects” whose rights are proactively protected by data protection laws and policies, including fair information practices. An optimal regime, which would balance the interests of taxpayers against those of tax authorities, should include a multilateral taxpayer bill of rights, a cross-border withholding tax that could be imposed in lieu of information exchange, and a global financial registry that would allow governments to identify the beneficial owners of business and legal entities.

KEYWORDS: TAX EVASION ■ TAX AVOIDANCE ■ TIEA

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INTRODUCTION

In recent years, data leaks from tax havens, including the Panama papers and the Paradise papers, have suggested that the problem of offshore tax evasion and aggressive international tax avoidance, along with the related revenue losses, may be more serious than previously suspected.¹ At the same time, technology trends—ongoing digitization and the rise of big data, data analytics, and artificial intelligence (AI)—have facilitated government efforts to share and analyze “bulk” taxpayer information across borders. Beginning with the 2010 passage by the US Congress of the Foreign Account Tax Compliance Act (FATCA), governments are increasingly participating in the bulk transfers of tax and financial information across borders. More recently,

1 Arthur J. Cockfield, “Big Data and Tax Haven Secrecy” (2016) 18:8 *Florida Tax Review* 483-539.

global agreements contemplate the automatic exchange—through the Organisation for Economic Co-operation and Development/Group of Twenty (OECD/G20) common reporting standard (CRS) and country-by-country reporting (CBCR)—of financial account information and of detailed tax and other financial information regarding a multinational company’s activities in every country where it operates. These processes (sometimes referred to as the “exchange of information” [EOI]), which now involve cross-border big data flows, pose a challenge to traditional legal protections for taxpayers’ privacy, confidentiality, and other rights.

The policy challenge is important: tax and financial information is among the most sensitive and personal information that one can collect on individuals and business entities such as corporations. Yet it remains unclear whether the legal framework that is emerging to protect these taxpayer rights is sufficient. In this paper, I connect several broad topics in order to demonstrate that taxpayers should be viewed as “data subjects” governed by proactive data protection laws and policies (including fair information practices). Building on the views of Tim Edgar, who emphasized that government coordination can improve the efficiency of outcomes, I review some ways in which governments could cooperate to create a more effective regime for the cross-border exchange of tax information.²

This paper comprises three parts. In the first part, which follows this introduction, I provide context, discussing the technological and political trends that are encouraging the automatic exchange of “big tax data.” In the second part, I discuss the need to protect taxpayers’ liberty, privacy, and confidentiality, and I show how the current legal regime governing these interests suffers from a number of drawbacks, including the legal gaps created when different bilateral or regional agreements offer inconsistent and, at times, inferior legal protections. In the paper’s last section, I review the elements that would be included in an optimal regime for promoting efficient and fair EOI: a multilateral taxpayer bill of rights, a cross-border withholding tax in lieu of information transfer, and a global financial registry.

CONTEXT: THE PUSH FOR AUTOMATIC EXCHANGE OF INFORMATION

Taxpayers may currently be increasing their use of tax havens in order to evade taxes, launder drug money, or finance terrorist activities. According to some estimates, US residents are evading between \$40 and \$100 billion each year through the use of tax havens.³ A wide range of estimates exist regarding the total amounts maintained in the world’s tax havens; studies suggest that these havens may hold between \$5 and \$38 trillion in undisclosed financial assets.⁴ A common problem for governments is the significant difficulty of identifying how much of their residents’

2 See Tim Edgar, “Corporate Income Tax Coordination as a Response to International Tax Competition and International Tax Arbitrage” (2003) 51:3 *Canadian Tax Journal* 1079-1158.

3 Cockfield, *supra* note 1, at 494.

4 *Ibid.*

taxable income is generated within foreign countries. To address this problem, governments enter into agreements to collect and share tax information with each other via EOI. In what follows, I describe how technological and political trends are encouraging the use of automatic EOI in order to curb the revenue losses associated with offshore tax evasion and aggressive international tax avoidance.

Technological Trends

Moving from Analogue to Digital Technologies

Developments in technology—in particular, big data, data analytics, and artificial intelligence (AI)—have provided new tools to tax authorities, enabling them to collect and share detailed tax and financial information at an unprecedented scale and speed. Methods of tax collection have evolved in parallel with the technological change; in the 1960s, paper-based analogue systems began evolving into digital ones.⁵ Apprehensions about the interaction between technology and taxpayer privacy have existed for some time. In the 1970s, concerns arose about the use of electronic records; in the 1980s, about the movement from analogue to digital storage; in the 1990s, about online return filing and software audits; and, more recently, about the collection of taxpayer information in order to tax global digital goods and services.

Once converted into a digital format, tax records share the same attributes as any other “information good”; the fixed cost of amassing the information in the first place may be high, but the marginal cost of replicating and distributing it approaches zero.⁶ At one time, tax authorities stored tax returns and other paper records in dusty cabinets where they were often difficult to access and mail to other domestic agencies (let alone to a foreign tax authority). Now, a tax authority can, at virtually no cost, (1) design software to automatically access a taxpayer’s detailed personal information, (2) cross-index this information against other government and private sector records, and (3) copy and transmit the information across borders.

These developments have enabled governments to share ever greater amounts of tax information with each other in order to help enforce their residence-based tax regimes. This cross-border sharing began to gather real steam in the 1990s. In 1997, for example, under the US Internal Revenue Code’s (IRC’s) qualified intermediary program,⁷ Canada and the United States began exchanging bulk taxpayer data regarding interest income on bank deposits earned by residents of either country. As disclosed under access-to-information requests, the Canadian government transfers roughly 1 million information slips and records to the United States each

5 Arthur Cockfield, Walter Hellerstein, and Marie Lamensch, *Taxing Global Digital Commerce*, 2d ed. (The Netherlands: Wolters Kluwer Law & Business, 2019), at 515-518.

6 Arthur J. Cockfield, “The Law and Economics of Digital Taxation: Challenging Traditional Tax Laws and Principles” (2002) 56:12 *Bulletin for International Fiscal Documentation* 606-619.

7 Internal Revenue Code of 1986, as amended (herein referred to as “IRC”).

year.⁸ In 2014, Canada agreed to transfer to the Internal Revenue Service (IRS), via FATCA (discussed below), bulk taxpayer data on “US persons” that have Canadian bank accounts. In the two years following this agreement, the amount of transferred information grew by almost 100 percent (from roughly 150,000 information slips and records to roughly 300,000 information slips and records).

Big Data, Data Analytics, and Recent Technology Trends

Most recently, the combination of three related technology developments has enabled governments to contemplate exchanging and analyzing taxpayers’ personal information at levels previously unheard of.⁹ In the first development, governments increasingly amass big data concerning their taxpayers’ activities. Three features are sometimes seen as defining big data: (1) the data set is large and diverse; (2) the information is generated on a “flow” or ongoing basis (rather than as a static data set); and (3) the data are capable of being subjected to analytics.

Data analytics, the second technological development, involves using the computer analysis of big data to reveal patterns or other information that is useful to governments (or other parties).¹⁰ Data analytics provides insights by combining data points in order to reveal new information or connections among these data points that would otherwise be obscure to the human mind.

The third development involves AI, machine learning, and blockchain. By AI, I simply mean very powerful computers that are capable of processing and storing (including via the Cloud)¹¹ large amounts of data. (I do not mean sentient machines that will one day overthrow their human masters.) Machine learning allows tax authorities to craft their own algorithms more effectively in order to detect risks of taxpayer non-compliance. (The software, by examining its own track record of success or failure, will over time improve its ability to detect non-compliance.) A debate is currently underway concerning the implications of such algorithms, which may have biases (regarding race and gender, for example) built into their coding.¹² Blockchain, the other component of this development, provides a distributed digital ledger, and it enables the registration, storing, and sharing of unprecedentedly large amounts of taxpayer information. It also offers the possibility that taxpayers can register and verify the accuracy of their own stored personal tax information.

8 Arthur J. Cockfield, “Policy Forum: Examining Canadian Offshore Taxation” (2017) 65:3 *Canadian Tax Journal* 651-680, at 674.

9 Cockfield, Hellerstein, and Lamensch, *supra* note 5, at chapter 2.

10 Kimberly A. Houser and Debra Sanders, “The Use of Big Data Analytics by the IRS: Efficient Solutions or the End of Privacy as We Know It?” (2017) 19:4 *Vanderbilt Journal of Entertainment and Technology Law* 817-72.

11 Orly Mazur, “Taxing the Cloud” (2015) 103:1 *California Law Review* 1-65.

12 Frank Pasquale and Arthur J. Cockfield, “Beyond Instrumentalism: A Substantive Perspective on Law, Technology, and the Digital Persona” [2018] no. 4 *Michigan State Law Review* 821-68.

Although it is clear that bulk taxpayer information is increasingly being exchanged across borders, it is less clear whether tax authorities have yet harnessed the technologies involved in AI, machine learning, and blockchain. At the domestic level, there are ever more examples of big data and data analytics being used. For instance, a number of US state governments analyze large amounts of data in order to determine whether taxpayers have filed tax returns to generate fraudulent refunds. State tax authorities cross-reference a taxpayer's refund request against billions of records from public and commercial databases in order to catch the tax cheats. In 2010, for example, the New York Department of Taxation and Finance decreased revenue losses by \$1.2 billion through this approach.¹³ More recently, the Canada Revenue Agency (CRA) introduced a big data program that examines data sources related to a Canadian taxpayer's global income in order to determine whether the taxpayer is complying with tax law.

A barrier to enhanced EOI is the concern that new technologies, which enable the mass storage and transmission of detailed taxpayer information, will violate privacy laws, policies, and interests.

Political Trends

In what follows, I briefly examine how the revelations from tax haven data leaks, along with OECD and G20 reforms, have encouraged governments to adopt enhanced cross-border tax information exchanges.

Tax Haven Data Leaks

Governments and non-governmental groups have long worried about the role of tax havens within the international tax regime. On the one hand, governments seem to embrace these tax havens: some tax laws explicitly encourage their use.¹⁴ Similarly, the business communities in many countries have long advocated for the use of tax havens and other low-tax jurisdictions in order to promote the tax competitiveness of resident companies relative to companies that are based in countries that offer tax breaks when their companies "go global." On the other hand, governments worry that the use of tax havens may be leading to significant revenue losses. Moreover, tax havens can be used by criminals to facilitate global financial crimes such as offshore tax evasion, international money laundering, and, potentially, terrorist financing.

Public engagement with the issue of offshore tax evasion has been sparked by recent data leaks from tax havens.¹⁵ Earlier leaks from Lichtenstein and Switzerland

13 JoAnne Bourquard and Cassandra Kirsch, "Big Data = Big Benefits" (2014) 40:8 *State Legislatures* 32-34.

14 For instance, under Canadian tax law, a double-dip cross-border financing structure, with the use of a financing affiliate based in a tax haven, has been enabled by a recharacterization provision within subparagraph 95(2)(a)(ii) of the Income Tax Act since the 1970s.

15 Cockfield, *supra* note 1.

involved bank employees who stole account information and provided it to authorities. Much larger data leaks ensued, involving millions of stolen documents. Beginning in 2013, the International Consortium of Investigative Journalists (ICIJ), a journalist organization based in Washington, DC, revealed a series of data leaks, including (1) the 2013 leak of over 2.5 million documents from Cook Islands, Singapore, BVI, Caymans; (2) the 2016 “Panama papers” leak of over 11 million documents; (3) the 2016 Bahamas leak of over 1.5 million documents; and (4) the 2017 Paradise papers leak (Bermuda) of over 13.4 million documents.¹⁶

In some countries, these leaks heightened public anxiety that global financial opacity—that is, the inability of governments to access information on the behaviour of taxpayers—may be contributing to income inequality by allowing criminals and high-income taxpayers to move and hide monies offshore.¹⁷

Tax scholarship recognizes the importance of the less tangible cultural and social influences in promoting taxpayer compliance. These influences, which are sometimes referred to, collectively, as “taxpayer morale,” include whether a taxpayer feels patriotic toward his or her country and whether the taxpayer thinks that he or she is getting a more or less fair return on a tax payment. The tax policy concern, with respect to financial opacity, is that average taxpayers will become less compliant over time if they feel that multinational corporations are not paying their fair share of taxes or that high-net-worth taxpayers are greatly reducing their legal tax payments and getting away with it.

Most sensationally, the recent leaks have provided evidence of global financial crimes, such as offshore tax evasion and international money laundering. The leaks have also highlighted how trillions of dollars flow from developing or middle-income countries to wealthier (mainly OECD) states. In some cases, this capital flight is contributing to human rights violations, as assets or profits are shifted offshore and ordinary citizens are left with far fewer resources.

The leaks have also revealed details concerning how multinational firms engage in aggressive tax planning. For instance, LuxLeaks showed how the Luxembourgian government provides such firms with private advance tax rulings so that they can reduce their global tax liabilities.¹⁸ Google, Apple, and other large multinational firms were identified in the leaks as having deployed corporate subsidiaries in tax havens in order to (legally) reduce their global tax liabilities. In addition, the leaks have given rise to concerns among multinational taxpayers that adverse media coverage could harm a company’s brand, goodwill, and reputation, and possibly reduce its long-term share value. These taxpayers increasingly assess the risk that aggressive

16 For more information on data leaks, see International Consortium of Investigative Journalists (www.icij.org).

17 Arthur J. Cockfield, “Shaping International Tax Policy in Challenging Times” (2018) 54:2 *Stanford Journal of International Law* 223-40, at 236-37.

18 Omri Marian, “The State Administration of International Tax Avoidance” (2017) 7:1 *Harvard Business Law Review* 1-65.

international tax planning could attract negative media coverage down the road and lead to reputational damage.

Perhaps most importantly, the leaks placed political pressure on governments to take steps to curb areas of alleged abuse. In particular, the leaks encouraged global cooperation in the CRS (discussed below).

The EOI Reforms and Privacy Protections

In this section, I briefly outline three recent EOI initiatives: FATCA, the CRS, and CBCR.

All US citizens and residents must pay US taxes on their worldwide income.¹⁹ US policy makers worry that many of these individuals fail to report this income, resulting in revenue losses to the government of billions of dollars each year.²⁰ Accordingly, the FATCA legislation was passed in 2010, with a view to raising revenues by taxing the undisclosed offshore income of US citizens and others.²¹ Many foreign governments complied, agreeing to enter into an intergovernmental agreement (IGA) with the US government to implement FATCA: under the general approach, tax authorities amass financial account information collected by banks, and then transfer this information to the IRS.

Partly as a result of FATCA, the G20 and OECD endorsed the CRS as the global standard.²² A related multilateral agreement contemplates the automatic sharing of bulk taxpayer information across borders.²³ Under this approach, a participating country such as Singapore is supposed to pass laws that mandate (1) the automatic collection by banks of foreign investors' account information and (2) the transference of this information to the Singaporean government and, subsequently, to other participating countries.

In 2013, the OECD also began an ambitious plan to counter base erosion and profit shifting (BEPS) by multinational firms. BEPS refers to the many international

19 See IRC section 61(a): "gross income means all income from whatever source derived."

20 Martin A. Sullivan, "US Citizens Hide Hundreds of Billions in Cayman Accounts" (2004) 103:8 *Tax Notes* 956-64.

21 The initial legislation, entitled the Foreign Account Tax Compliance Act (FATCA), was not enacted. See HR rep no. 3933, 111th Cong., 1st sess. (2009). The legislation was subsequently passed within a large omnibus legislative package that was mainly directed at job creation. See Hiring Incentives To Restore Employment Act of 2010, Pub. L. no. 111-147. The provisions to implement FATCA are now contained in sections 1471 to 1474 of the IRC (Sup. 2011).

22 See Organisation for Economic Co-operation and Development, *Standard for Automatic Exchange of Financial Information in Tax Matters* (Paris: OECD, 2014) (<http://dx.doi.org/10.1787/9789264216525-en>). A second edition was released in 2017.

23 *Ibid.*, at 215, annex 1. The OECD agreement, in turn, is based on article 6 of an earlier multilateral agreement. See Organisation for Economic Co-operation and Development, Convention on Mutual Administrative Assistance in Tax Matters, signed at Strasbourg on January 25, 1988, as amended by the Protocol Amending the Convention on Mutual Administrative Assistance in Tax Matters, signed at Paris on May 27, 2010.

tax-avoidance plans that firms adopt in order to legally reduce their global tax liabilities, often by shifting paper profits to tax havens. After two years of reform efforts, the OECD produced its final recommendations, including a recommendation that all participating countries adopt CBCR.²⁴ Under CBCR, multinational firms for the first time need to disclose their tax and other payments to their domestic tax authority and to the foreign tax authorities in every country where these firms operate.²⁵ CBCR applies only to very large multinational firms with annual consolidated group revenues that exceed €750 million (that is, roughly US\$850 million). Unlike the FATCA and CRS initiatives, which try to reveal hidden bank accounts in order to combat offshore tax evasion, CBCR aims to help governments identify risks of aggressive international tax avoidance for possible auditing.

Summary

New initiatives—most prominently FATCA, CRS, and CBCR—contemplate the exchange of bulk (or big data) tax and financial information on an automated basis. The exchanges are facilitated by technology changes such as data analytics, AI, and blockchain, which allow the collection, analysis, and disclosure of vast amounts of detailed personal information. Moreover, global political cooperation has been encouraged by a series of data leaks from tax havens, which have heightened public anxiety that undue revenue losses are resulting from (legal but non-compliant) aggressive international tax avoidance and (criminal) offshore tax evasion. A corresponding worry is that these concerns, in an era of growing income inequality wherein many people believe that the system is rigged in favour of the wealthy and powerful, may delegitimize democratic practices.

LIBERTY AND PRIVACY INTERESTS

In what follows, I review concerns about taxpayers' liberty, privacy, confidentiality, and other interests, and I provide an overview of related legal protections. I also show how the legal framework that is emerging to protect these interests does not provide sufficient safeguards.

Taxation and Liberty

Before proceeding to discuss specific taxpayers' rights, such as privacy, let us step back and consider the broader liberty interests that are at stake when a government exercises its monopoly on the coercive power to extract a portion of a taxpayer's income or assets. Historically, tax developments helped define the relationship

24 Arthur J. Cockfield and Carl MacArthur, "Country-by-Country Reporting and Commercial Confidentiality" (2015) 63:3 *Canadian Tax Journal* 627-60.

25 Dries Lesage and Yusuf Kaçar, "Tax Justice Through Country-by-Country Reporting: An Analysis of the Idea's Political Journey," in Jeremy Leaman and Attiya Waris, eds., *Tax Justice and the Political Economy of Global Capitalism, 1945 to the Present* (New York: Berghahn, 2013), 262-82 (<http://hdl.handle.net/1854/LU-4214980>).

between the state and the individual. In some countries, these developments provided the basis for later claims regarding the need to protect taxpayer privacy, lawyer-client confidentiality, commercial and trade secrecy, and other interests.

The relationship between tax policy and the state is ancient, of course. Over 2,000 years ago, Herodotus traced the influence of Ancient Egyptian tax policies on Ancient Greece. In the Anglo-American context, the development of tax policy has been influenced by (1) a historical pattern of reaction against taxation and (2) the norms underlying the political philosophy of liberalism, which is the basis of modern democracies.

The year 1066, in which the Normans conquered England and slew the last Anglo-Saxon king, Harold II, marked a clear turning point in the Anglo world. The new king, William the Conqueror, immediately embarked on cruel tax policies in governing his Anglo-Saxon subjects. The English lords were required, for the first time, to record their names, property holdings, property yields, and other details as tax records within the Domesday (“doomsday,” in modern English) Book, which served as a final judgment of tax liabilities from which no appeal was available. From that point on, tax inspectors would scrutinize a lord’s property and farm yields to ensure that he was paying the appropriate amount of tax. These tax measures threatened to stir rebellion, which was averted only by William’s death and by the laws introduced by his younger brother, Henry I—in particular, the precedent-setting Charter of Liberties (1100) and Grant of Tax Liberties to London (1133).²⁶

Subsequent English conflicts over taxation similarly resulted in new tax laws that provided for procedural protections against oppressive taxation measures—perhaps the most famous being the conflict between the country’s overtaxed barons and King John that led to the signing of the Magna Carta in 1215. Over centuries, these tax debates influenced the development of norms regarding taxation, such as the view of 17th-century philosopher John Locke that every individual is entitled to keep the fruits of his or her labour and that the only acceptable and moral political system is one in which the people *consent* to government regulation and the taxation of their properties.²⁷ The prevalence of such views, along with tax disputes between King George III and American colonists, played an important role in the founding of the United States, in 1776, as the modern world’s first democracy (though one must keep in mind that the franchise was initially extended only to white, male property owners).

As a result of these developments, the state’s coercive power to tax has generally been considered a necessary albeit sensitive political element of liberal democracies. Many democracies now have a rigorous rule of law, along with a variety of taxpayer protections. The tension between liberty and taxation is more acute in autocratic

26 Arthur J. Cockfield and Jonah Mayles, “The Influence of Historical Tax Law Developments on Anglo-American Law and Politics” (2015) 5:1 *Columbia Journal of Tax Law* 40-68.

27 Arthur Cockfield, “Income Taxes and Individual Liberty: A Lockean Perspective on Radical Consumption Tax Reform” (2001) 46:1 *South Dakota Law Review* 8-71.

regimes, whose residents often transfer monies offshore to protect them against improper seizure by their home governments. Such claims to liberty call for legal protections, such as a withholding tax in lieu of EOI, when the claims are made by individuals who need anonymous global investments in order to protect the security of their own persons (along with the security of family members) against arbitrary state action. Moreover, the Lockean “natural rights” view later developed into human rights claims to the protection of an individual’s privacy, which, in turn, became the foundation for later claims to taxpayer privacy—a topic to which I now turn.

Taxpayer Privacy

Owing, in part, to historical developments and to fears about tax agents breaking into homes to seize tax payments, taxpayer information (along with financial information) has traditionally been considered one of the most sensitive areas of privacy.²⁸ Tax information may include detailed personal information about an individual’s identity and behaviour. (For example, tax return information can include information about, among other things, an individual’s income, dependents, health and disability status, and political donations.) In addition, tax information about income can generate security concerns (for example, the children of the wealthy may be kidnapped), public envy, and political reprisals.

Deploying the technological developments noted above, governments amass ever greater amounts of detailed personal information on individuals in order to protect against the risk of criminal tax evasion and non-compliant tax avoidance.²⁹ To the same end, they also collect non-tax personal data. For example, the Australian government cross-indexes a taxpayer’s insurance premiums against his or her income in order to analyze risks, and the Greek government has flown helicopters over personal residences in order to better assess taxpayers’ true wealth. These efforts may be effective, but they give rise to increased privacy concerns.

The increase in the collection and cross-border sharing of taxpayers’ big data raises concerns, including concerns that transferred information (1) will not be protected to the extent provided by the law of the transferring country; (2) may be misused for political purposes, such as helping domestic companies compete against foreign competitors; (3) may be misused to sanction taxpayers for political reasons, which could lead to human rights violations;³⁰ (4) may be illegally accessed or altered

28 Cynthia Blum, “Sharing Bank Deposit Information with Other Countries: Should Tax Compliance or Privacy Claims Prevail?” (2004) 6:6 *Florida Tax Review* 579-648.

29 Arthur J. Cockfield, “How Countries Should Share Tax Information” (2017) 50:5 *Vanderbilt Journal of Transnational Law* 1091-1132.

30 United Nations, General Assembly, Human Rights Council, “Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona,” 22 May 2014, Document no. A/HRC/26/28; and International Bar Association’s Human Rights Institute Task Force, *Tax Abuses, Poverty and Human Rights: A Report of the International Bar Association’s Human Rights Institute Task Force on Illicit Financial Flows, Poverty and Human Rights*, Task Force rapporteur, Lloyd Lipsett (London, UK: IBA, October 2013).

by third parties; and (5) may be inaccurate, which could lead to foreign investigations that target innocent taxpayers.

These are serious concerns, of course. Yet the near-anonymity that the current global financial regime affords global financial transactions and investments is problematic.³¹ The main beneficiaries of this lack of transparency are large multinational corporations, ultra-high-net-worth individuals (typically defined as individuals with at least \$50 million in assets), and individuals engaged in global financial crimes such as offshore tax evasion, international money laundering, and terrorist financing. The main losers are average citizens, whose governments sustain losses in tax revenue because of aggressive international tax avoidance and offshore tax evasion. This state of affairs, in turn, encourages the view that the global financial system is rigged in favour of the wealthy and powerful (as discussed above). Situations where cross-border tax laws and financial privacy laws are used to frustrate the interests of average citizens call for a nuanced legal analysis of distributive justice concerns (as I have discussed elsewhere).³²

Confidentiality and Trade Secrets

The privacy rights of corporate taxpayers have attracted less attention from academics and policy makers than have individual taxpayer rights. This is partly because substantive privacy rights are generally associated with individuals. The nature of these privacy rights arises from the potential for intimate harm (for example, kidnapping) created by the disclosure of an individual's personal information. Such concerns are less evident in the case of corporate taxpayers.³³

Notwithstanding the relative lack of emphasis on corporate privacy rights, it is clear that taxpayer confidentiality and trade secrecy remain important and valid privacy concerns for multinational enterprises.³⁴ Under article 26(2) of the OECD model tax treaty,³⁵ tax authorities must maintain the confidentiality of tax information that they receive. Under the general approach, disclosure of such information is limited to persons or authorities involved in the assessment, collection, enforcement, prosecution, and determination of appeals. Pursuant to paragraph 19.2 of the OECD commentary on article 26, a trade or business secret is "generally understood to mean facts and circumstances that are of considerable economic importance and

31 Cockfield, *supra* note 1.

32 For such an analysis, see Cockfield, *supra* note 29.

33 Joshua D. Blank, "Reconsidering Corporate Tax Privacy" (2014) 11:1 *New York University Journal of Law and Business* 31-121, at 40.

34 Cockfield and MacArthur, *supra* note 24.

35 Organisation for Economic Co-operation and Development, *Model Tax Convention on Income and on Capital: Full Version 2017* (herein referred to as "the OECD model tax treaty") (Paris: OECD, 2019) (<https://doi.org/10.1787/g2g972ee-en>).

that can be exploited practically and the unauthorised use of which may lead to serious damage (e.g., may lead to severe financial hardship).³⁶

The revelation of a commercial or trade secret could harm the ability of a multinational enterprise to compete effectively in the marketplace, which could reduce national and global welfare. For example, if a firm fears the revelation of an important intellectual property right, it may be reluctant to transfer this resource via a licensing agreement with a related foreign affiliate, which could ultimately interfere with the efficient allocation of resources throughout the global economy. Importantly, none of the financial information mandated by CBCR would constitute confidential information (for example, trade secrets, business secrets, or other secrets) as defined by the OECD within the commentary to its model tax treaty.³⁷

Problems with the Existing Legal Framework

A complex patchwork of domestic laws, constitutional protections, bilateral tax treaties, and multilateral treaties governs and protects privacy and other taxpayer interests. First, governments pass domestic tax laws that prohibit unauthorized access to, or transfer of, taxpayer information.³⁸ Non-tax domestic laws, such as corporate laws, often allow the identity of the true (or beneficial) owners of business entities to remain hidden.

Second, certain countries (such as Canada and the United States) have additional constitutional protections (such as prohibitions against unreasonable government searches, which include investigations of taxpayer information). In this context, the Supreme Court of Canada has emphasized the importance of protecting individuals' personal information, repeatedly recognizing the right to privacy as a fundamental human right aimed at protecting the dignity, autonomy, integrity, and security of individuals.³⁹ In the broader context, certain provisions of the European Union (EU) Convention on Human Rights offer similar human rights protections against governments' abusive access to, use, or disclosure of tax information.⁴⁰ Such protections

36 See paragraph 19.2 of the commentary on article 26 of the OECD model tax treaty.

37 The OECD has explicitly stated that any information transferred under CBCR should ensure that there is no public disclosure of "confidential information (trade secrets, scientific secrets, etc.) and other commercially sensitive information." See Organisation for Economic Co-operation and Development, *Action 13: Guidance on the Implementation of Transfer Pricing Documentation and Country-by-Country Reporting* (Paris: OECD, February 6, 2015), at paragraph 44.

38 Jinyan Li, "Taxpayers' Rights in Canada" (1997) 7:1 *Revenue Law Journal* 89-137. Li notes that, while privacy and confidentiality rights were built into tax systems, such as the Canadian one, at inception, in the 1980s there began to be increasing recognition—and increasing legal protection—for these rights. See *ibid.*, at 89-90.

39 *R v. Dymnt*, [1988] 2 SCR 417; *R v. O'Connor*, [1995] 4 SCR 41; and *R v. Mills*, [1999] 3 SCR 668.

40 Philip Baker and Pasquale Pistone, "BEPS Action 16: The Taxpayers' Right to an Effective Legal Remedy Under European Law in Cross-Border Situations" (2016) 25:5-6 *EC Tax Review* 335-45, describing the impact of "European law," including the European Convention on

are also provided by the United Nations (UN), including in recent documents that try to inhibit the privacy harms caused by governments' mass surveillance of very particular personal data (data that do not specifically reference tax matters).⁴¹ The increased linkage between human rights and the protection of taxpayer data demonstrates the need for data protection laws and policies to protect the taxpayer as a data subject (see below).

Third, bilateral tax treaties typically provide for a series of protections for privacy and commercial confidentiality (generally based on article 26 of the OECD model tax treaty). Commercial and trade secrets are thus protected by both domestic rules and tax treaty rules. Domestic tax laws provide for the maintenance of confidentiality with respect to any non-public tax information, including commercial and trade secrets. Tax treaties generally contain a provision that lets the tax authority of one country request tax information from the tax authority of another country, mainly to assist with audits. Under the general rule in article 26(3)(c) of the OECD model tax treaty, a government can deny an information request on the basis that the request violates the taxpayer's right to maintain commercial and trade secrecy. In the FATCA context, the bilateral IGAs between the United States and other countries offer additional protections.

Fourth, multilateral agreements increasingly bind participating countries to privacy protections. For example, under the CBCR reforms (discussed above), governments must agree to provide and enforce legal protections for the confidentiality of reported information that are equivalent to the protections provided under an income tax treaty or other EOI agreement.⁴² Further, the automatic transmission of CBCR information is limited to those countries that satisfy these requirements. Regional agreements also exist, such as the EU Directive on Administrative Cooperation, which was extended in 2014 to include automatic EOI among member states.

Although the global tax framework for EOI is currently evolving, a number of observers have suggested that this regime still provides insufficient legal protections

Human Rights; Clement Endresen, "Taxation and the European Convention for the Protection of Human Rights: Substantive Issues" (2017) 45:8/9 *Intertax* 508-26, discussing how the convention does not normally apply to substantive tax issues—appropriately, given the national sovereignty concerns. But see *Sommer v. Germany*, no. 73607/13 (April 27, 2017) (ECHR), holding that the German government's search of a lawyer's financial information records violated article 8 of the Convention.

41 United Nations, General Assembly, "Universal Declaration of Human Rights," resolution 217A, December 10, 1948. In December 2013, the UN General Assembly adopted resolution 68/167, which expressed concern over the negative impact that the surveillance and interception of communications may have on human rights. While the resolution focused on mass surveillance techniques, it would also apply to the possible misuse of bulk tax information exchanged across borders. See United Nations, General Assembly, "Resolution Adopted by the General Assembly on 18 December 2013: 68/167, the Right to Privacy in the Digital Age," document no. A/RES/68/167, January 21, 2014.

42 See paragraphs 14 to 19.9 of the commentary on article 26 of OECD model tax treaty.

for taxpayer privacy and other rights.⁴³ First, elements of the current regime, such as FATCA, do not operate on a reciprocal basis; the privacy protections go only one way. Second, the existence of so many different domestic and now international agreements gives rise to “legal gaps,” which occur when particular countries have not signed onto measures to protect taxpayer interests in ways that are required by transferring countries. Third, the enforcement of EOI measures is significantly uneven, which can lead to concerns that transferred tax information will be used for improper, illegal, or abusive purposes. Fourth, many countries have financial secrecy laws that mask the true identities of owners of cross-border investments made by wealthy or criminal taxpayers, leaving less well-resourced taxpayers at the mercy of the uneven legal regime.

Summary

In the modern world, countries’ tax systems are inextricably interwoven with normative views of justice and of the appropriate relationship between citizen and state. In many countries, the government’s power to take away a portion of the fruits of one’s labours (along with unearned wealth accumulated via gifts and bequests) is attenuated by legal and constitutional protections for privacy rights, commercial confidentiality, and trade secrets. Individuals who are dealing with autocratic governments—living in countries where taxpayers’ personal information is more at risk of being improperly accessed, used, and disclosed—rely on the current global environment of fiscal opacity to protect their taxpayer rights when they transfer monies offshore. The problem with this environment is that governments worldwide, including liberal ones in which the rule of law is robust, generally know little to nothing about their residents’ foreign-based assets or income.

To inhibit revenue losses associated with offshore tax evasion and aggressive international tax avoidance, governments have initiated new EOI measures such as FATCA, CRS, and CBCR. Critics of these initiatives note that the legal framework currently emerging to protect taxpayer privacy and other rights suffers from a number of deficiencies that could be addressed through better laws and policies. I discuss such laws and policies in the next part of this paper.

43 For a comprehensive review, see Filip Debelva and Irma Mosquera, “Privacy and Confidentiality in Exchange of Information Procedures: Some Uncertainties, Many Issues, but Few Solutions” (2017) 45:5 *Intertax* 362-81, at 377, advocating a multilateral agreement for privacy and confidentiality; and Irma Mosquera et al., *The Rule of Law and the Effective Protection of Taxpayers’ Rights in Developing Countries*, WU International Taxation Research Paper series no. 2017-10 (Vienna: Vienna University of Economics and Business, 2017). See also Baker and Pistone, *supra* note 40, discussing how the rules of certain surveyed countries do not sufficiently protect the right to confidentiality and privacy; Menita Giusy De Flora, “Protection of the Taxpayer in the Information Exchange Procedure” (2017) 45:6/7 *Intertax* 447-60, at 448-50 and 458, advocating for “a clear and common set of rules”; Niels Diepvens and Filip Debelva, “The Evolution of the Exchange of Information in Direct Tax Matters: The Taxpayer’s Rights Under Pressure” (2015) 24:4 *EC Tax Review* 210-19.

OPTIMAL REFORMS

Two discrete but related elements are involved in effective cross-border exchanges of tax and financial information.⁴⁴ First, the legal regime for such exchanges needs to be efficient, in the sense that it should promote low costs for taxpayer compliance and low costs for administration by tax authorities. Second, the exchange should be fair, in the sense that any information transferred is afforded a requisite level of protection for privacy and other rights (normally equivalent to the legal protections set out in a country's domestic law). The two elements—efficiency and fairness—are related in the sense that governments will be reluctant to engage with other countries in exchanges of big tax data (or to implement existing agreements in a meaningful way) unless they have legal assurances that the rights of their taxpayers will not be violated. In the remainder of this paper, building on the views of Tim Edgar, I discuss how to achieve an appropriate balance between taxpayers' privacy concerns and tax authorities' need to access foreign-based taxpayer information.

On the Need for Coordinated Responses

When should governments cooperate for the purposes of international tax policy? Tim Edgar examined this issue in a variety of contexts. In particular, a 2003 article by Edgar titled "Corporate Income Tax Coordination as a Response to International Tax Competition and International Tax Arbitrage" focused on optimal forms of cooperation, including limited coordination among governments, as a response to vexing challenges posed by tax competition and tax arbitrage.⁴⁵ Elaborating on his seminal contribution to the taxation of financial instruments,⁴⁶ Edgar noted that competition and arbitrage pose similar problems: both challenges can be defined in terms of the identification, by taxpayers, of the perfect or near-perfect substitutability of a lower-taxed transaction for a higher-taxed transaction.

For both competition and arbitrage, according to Edgar, taxpayers seek out the most lenient tax system—the one that provides for reduced levels of taxation for a given tax base. In essence, Edgar claimed that some limited coordination among governments with respect to tax base issues could inhibit the harmful effects of

44 For a more detailed discussion, see Arthur J. Cockfield, "Protecting Taxpayer Privacy Under Enhanced Cross-Border Tax Information Exchange: Toward a Multilateral Taxpayer Bill of Rights" (2010) 42:2 *UBC Law Review* 419-71, at 428-37.

45 Edgar, *supra* note 2. I previously relied on these views in using game theory to model NAFTA. See Arthur J. Cockfield, *NAFTA Tax Law and Policy: Resolving the Clash Between Economic and Sovereignty Interests* (Toronto: University of Toronto Press, 2005), at 166-74. In the North American context, coordination versus full-blown harmonization may be the preferred route, because larger economies, such as the US one, gain a disproportionate share in pay-offs derived through cooperative behaviour. See *ibid.*, at 171-72.

46 Edgar, *supra* note 2, at 1083. Edgar's work on the taxation of financial instruments focused to a large extent on transaction substitutability. Tim Edgar, *The Income Tax Treatment of Financial Instruments: Theory and Practice*, Canadian Tax Paper no. 105 (Toronto: Canadian Tax Foundation, 2000), at 29-35.

competition.⁴⁷ That is, by agreeing to remove tax incentives associated with different tax bases, governments could cooperate in removing tax incentives for the migration of capital and (to a lesser extent) of labour.

Similarly, governments should coordinate in the exchange of tax information in order to identify how taxpayers are engaged in tax planning that involves seeking out regimes that enable the substitution of a lower-taxed transaction for a higher-taxed transaction. CBCR would appear to be a straightforward response to this challenge. For affected taxpayers, this new regime would allow tax authorities to better understand whether tax payments in foreign countries have driven aggressive international tax planning. This type of tax reporting helps tax authorities meet the challenge of information asymmetry, whereby the taxpayer knows exactly what sorts of tax payments it makes around the world whereas the tax authority generally knows only what it is told by the taxpayer. The cross-border exchange of tax information is often a starting point for the kind of tax coordination that Edgar envisions.

The situation differs with respect to criminal behaviour. In a sense, criminal tax evaders substitute a more leniently regulated country for their residence country, where they have committed a crime. A criminal who shifts monies out of his or her country for the purposes of tax evasion will be subject to the same tax burden no matter what the foreign tax base or rate may be (assuming that his or her activity is discovered and a tax liability is assessed by the residence country). Approximating tax bases will not discourage such activity (although, in theory, the harmonization of tax rates across all nations could remove some of the incentives to shift illegal income abroad); criminals launder their monies in zero-tax jurisdictions so that the seemingly legitimate monies will not be subject to tax. What is required is a system of government coordination to help ferret out the criminals.

The following discussion provides an overview of such a system, whereby governments cooperate to inhibit resident criminals from identifying countries more leniently regulated than their own and shifting their capital to them. As per Edgar, the system focuses on limiting governments' coordination to the greatest extent possible in order to promote political feasibility. However, Edgar himself might protest that the system I propose, unlike his own prescriptions, requires an unrealistic level of political cooperation.

Multilateral Taxpayer Bill of Rights

As has been discussed in detail elsewhere,⁴⁸ governments should consider adopting a broad, multilateral taxpayer bill of rights that would provide assurances to participating countries that any tax or financial information that they transfer will be

47 Edgar, *supra* note 2, at 1157-58. The form of coordination, according to Edgar, should differ for competition and arbitrage despite their conceptual similarities. See *ibid.*

48 See Cockfield, *supra* note 44; Philip Baker and Anne-Mieke Groenhagen, *The Protection of Taxpayers Rights—An International Codification*, editor, Graham Mather (London: European

accorded some minimum level of legal protection. Such a global agreement would address the concerns noted above, such as the legal gaps that result from the application of inconsistent bilateral and regional legal protections.

This global agreement could also implement data protection laws and policies in recognition of the fact that, given the current technological and political trends (set out above) and given the critical role of taxpayer liberty and privacy in the context of human rights, a taxpayer today is increasingly viewed as a data subject. Accordingly, the agreement could emphasize widely accepted fair information practices (including requirements in respect of notice, consent, access, the specification of collection purpose, and the accuracy and security of data) that would seek to proactively protect the interests of data subjects. These practices were initially developed by the OECD in 1980, and they are reflected in (1) the EU's General Data Protection Regulation, (2) the privacy laws of countries such as Canada (via the Personal Information Protection and Electronic Documents Act),⁴⁹ and (3) the administrative guidelines of nations such as the United States (via the Federal Trade Commission's data privacy guidelines).

These fair information practices are used to smooth over conflicts that arise from the interaction of different national privacy laws when personal information is transferred across borders. These practices were recently used in the 2016 EU-US Privacy Shield, which is designed to protect the privacy rights of individuals when their personal data are transferred from European companies to US ones.⁵⁰ Given the changes in technology and the enhanced EOI efforts, building fair information practices into an international agreement would mean that taxpayers—specifically, those individuals who are subjected to personal information collection techniques from businesses and other entities—would be treated in the same way as data subjects.

Withholding Tax for Non-Cooperative States

As briefly discussed above, a cross-border withholding tax on global investments could help tax authorities enforce their tax laws and protect the liberty and privacy interests of taxpayers who reside in autocratic regimes.

Policy Forum, 2001); Adrian J. Sawyer, "A Comparison of New Zealand Taxpayers' Rights with Selected Civil Law and Common Law Countries—Have New Zealand Taxpayers Been 'Short-Changed'?" (1999) 32:5 *Vanderbilt Journal of Transnational Law* 1345-1400.

49 SC 2000, c. 5, as amended.

50 Under this agreement, the United States provided the EU with binding assurances that the US government authorities' accessing of transferred personal information for national security purposes will be subject to clear limitations, safeguards, and oversight mechanisms. In addition, EU citizens are offered a mechanism by which to seek redress if their rights appear to be violated, and an annual joint review will monitor the implementation of the commitments. See European Commission, Guide to the EU-U.S. Privacy Shield 9-19 (2016). See European Commission, "European Commission Launches EU-U.S. Privacy Shield: Stronger Protection for Transatlantic Data Flows," *Press Release*, July 12, 2016 (https://europa.eu/rapid/press-release_IP-16-2461_en.htm).

A challenge to be addressed, as the new EOI initiatives gain steam, is that certain countries are either refusing to participate in the initiatives or signing onto them but not cooperating in their implementation in a meaningful way. As Avi-Yonah has discussed, as long as there is one non-participating or non-cooperating country, undisclosed investment monies can flow to this outlier.⁵¹ Avi-Yonah's proposed solution resembles the now-defunct EU Savings Directive in that it prescribes (1) the automatic exchange of information about non-resident portfolio interest payments; or (2) that if EOI does not occur, the country where the investment takes place taxes the interest and sends the bulk of the resulting tax revenues to the residence country.⁵² Accordingly, this EOI measure ensures tax payment via withholding tax or provides the government with another source of financial information to compare with the taxpayer's filings. Elsewhere, building on these views, I have outlined how tax authorities could use online technologies—an "extranet" shared by participating countries—in order to impose such a withholding tax.⁵³

As well as promoting enforcement, this measure would serve to protect taxpayers' liberty and privacy interests. Taxpayers that reside in countries with autocratic governments and weak rules of law, or that deal with such governments, may not trust these governments to protect their privacy and other rights. Such taxpayers could choose a country with a non-participating or non-cooperative government as the base for their global investments, such that their cross-border investments would be subject to the withholding tax.

Global Financial Registry

A major challenge to the EOI initiatives is that governments often cannot identify the ultimate (or beneficial) owners of cross-border investments because corporate laws provide ownership anonymity (by permitting business entities to own investments without disclosing the true owners of these entities). To address this problem, academics and governments have discussed the need for financial registries that mandate the disclosure of the beneficial owners of business entities (such as corporations) and of legal entities (such as trusts and foundations).⁵⁴

A fully searchable public financial registry, which some governments and commentators espouse, would be highly problematic because it would intrude excessively on taxpayer privacy rights and could inhibit global capital flows, reducing

51 Reuven S. Avi-Yonah, "Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State" (2000) 113:7 *Harvard Law Review* 1573-1676, at 1667-69.

52 European Union, Council Directive 2003/48/EC of 3 June 2003 on Taxation of Savings Income in the Form of Interest Payments. The EU abandoned this approach to join the Common Reporting Standard initiative.

53 Arthur J. Cockfield, "Transforming the Internet into a Taxable Forum: A Case Study in E-Commerce Taxation" (2001) 85:5 *Minnesota Law Review*, 1171-1266, at 1235-63.

54 Gabriel Zucman, "Taxing Across Borders: Tracking Personal Wealth and Corporate Profits" (2014) 28:4 *Journal of Economic Perspectives* 121-48 (<http://dx.doi.org/10.1257/jep.28.4.121>).

overall economic growth.⁵⁵ However, a global financial registry that would be accessible only by government tax authorities might be politically feasible. Such a registry would help government investigators by addressing one of the main disadvantages facing governments with respect to information—namely, their inability to identify the beneficial owners of cross-border investments. In addition, the registry would help governments determine whether their resident firms had paid tax on worldwide income.

Governments might consider the government-to-government exchange of entity and ownership information if they were provided with sufficient privacy safeguards, including a multilateral taxpayer bill of rights. Still, non-participating or non-cooperative states would presumably develop new business or legal entities that would not be covered by the new disclosure obligations. In addition, the entity and ownership information is often recorded by offshore service providers, and the governments of tax haven countries do not currently have access to this information.⁵⁶ Problematically, governments such as Canada and the United States maintain “on-shore” financial secrecy laws that mask the identities of beneficial owners (although, in the last two years, reforms to Canadian federal and provincial corporate laws have reduced shareholders’ ability to lie hidden). Further, many low-income countries lack the human and technological resources needed for the effective collection, use, and disclosure of tax information within an EOI regime.

Finally, the global registry will not cover the non-participating or non-cooperative states discussed above in connection with the withholding tax (such countries will presumably not sign on). In lieu of disclosure under a global registry, a payment made by someone living in a non-cooperative state to someone living in a participating state will be subject to the withholding tax. There would need to be a way to identify the jurisdiction of the beneficial owner of the payment, so that this country could enjoy the revenues associated with the withholding tax.

CONCLUSION

In recent years, academics have begun a more careful study of automatic cross-border EOI. EOI is being driven by technology developments (for example, the transition from analogue systems to digital systems, big data, data analytics, and AI) and by political developments (for example, tax haven data leaks and the OECD/G20 BEPS reforms). In particular, FATCA, the CRS, and CBCR all contemplate automatic cross-border exchanges of bulk tax and financial information. Under this regime, taxpayers’ rights and interests are protected by a complex patchwork of domestic law, constitutional protections, bilateral tax treaties, and, increasingly, multilateral agreements.

Despite these measures, concerns are ongoing about the EOI initiatives that involve cross-border big data flows. These concerns relate to problems such as lack of reciprocity, legal gaps, uneven enforcement, the lack of administrative resources for

55 Cockfield, *supra* note 29.

56 Cockfield, *supra* note 1.

the meaningful implementation of the initiatives, and the ongoing impact of offshore and onshore financial secrecy laws. In addition, the effective cross-border sharing of tax information will be inhibited to the extent that the exchanges are not perceived to be fair because of insufficient protections for taxpayer privacy.

A multilateral taxpayer bill of rights could set out widely accepted fair information practices and promote legal certainty as well as the effective implementation and enforcement of EOI measures. It could be accompanied by a global financial registry, accessible only by governments, that would allow tax authorities to discern the real identities of taxpayers. To further protect the liberty and privacy of taxpayers (and to account for the fact that some states will not cooperate in the regime), the proposed regime could provide for a withholding tax in lieu of EOI—an alternative that would protect the concerns of taxpayers who reside in countries with autocratic governments, or who have to deal with such governments.

