

CAMBRIDGE INTERNATIONAL  
SYMPOSIUM, 2001

SESSION ON TAXATION AND  
MONEY LAUNDERING

TOWARDS A CLEAN WORLD

Address by Andrew Edwards  
Thursday 13 September 2001

**Introduction**

I remember arguing here, two years ago, that economic crime is a threat to civilisation.

As this week's appalling events in New York and Washington remind us, it's not the only threat. Nor the most obvious.

But it's a serious threat even so. And a threat that's here to stay. Combating economic crime will be a continuing task for public authorities everywhere.

The experience of the CIS countries, in particular, is a constant reminder of the misery that results when national authorities can't or don't contain the threat effectively.

In many countries, the authorities *have* contained the threat. But none of us is as successful as we should be. Recoveries of the proceeds of crime are generally minuscule.

Within the spectrum of economic crimes, *tax evasion* is surely the most important in terms of scale of proceeds and number of persons involved.

In my opinion, tax evasion, money laundering and economic crime of all kinds are *symbiotically linked* in a *social ecology which is shamefully prevalent*. So I'm glad today's seminars will look at them together.

In these few minutes I'd like to look at:

- what progress the world *has made so far* in these areas
- what *problems remain*, and
- what the world *needs to do next*.

**Progress so far**

We've made a lot of progress in recent years. The big ideas have included

- international co-operation based on international standards
- external assessments of individual countries
- co-operation with offshore centres
- transparency
- suspicion reporting
- co-operation between national tax authorities

The major countries, and others too, now co-operate extensively in the *regulation of financial institutions*.

Many countries now co-operate in *combating money laundering*. The FATF has successfully promulgated what is in effect a world standard, the Forty Recommendations, with an emphasis on co-operation, transparency and suspicion reporting.

The major countries now have a framework for *co-operation with offshore centres*, based on assessment against international standards by IMF teams.

And *national tax authorities* have at least *begun* to co-operate, mainly through the OECD, on the collection and allocation of tax revenues.

Two particular insights we've gained are:

- first, that *international standards*, suitably expressed, are a vital instrument for progress
- second, that there *are ways to enforce them*, or make them effective, based on the desire of most countries to appear respectable.
- Third, tax and other authorities typically have *no powers to conduct joint investigations*. Problems of locus constrain individual authorities when making investigations.

Those who oppose using tax data to help combat crime typically base their case on data privacy and human rights. This shows how these big ideas of our time can be abused so as to help criminals.

### **Problems still to be solved**

In spite of the progress, there are many unsolved problems. These can be summarised under five main headings, nearly all involving tax in some way.

#### **1. Inadequate co-operation between national authorities, especially tax & other authorities**

In all countries known to me, co-operation between national authorities leaves much to be desired.

Tax and customs authorities, police, financial regulators, company, trust and property registries all do their own things in separate compartments.

Tax authorities in particular operate as a race apart. They are *not properly wired into the wider business of combating crime*:

- First, they have *no obligation to volunteer information* to the police or other authorities. Unlike banks, tax officials are not required to file suspicion reports. Neither are company or property registration authorities. Truly a remarkable omission.
- Second, tax authorities typically *don't share information with other authorities*, such as police or Financial Regulators, even on request. There are often no "gateways".

#### **2. Inadequate co-operation internationally**

International co-operation in the pursuit of crime and tax collection still leaves much to be desired. The deficiencies again seem greatest in the tax area. The problems include:

- *Inadequate statutory powers* in some countries to enable national Tax (and other) authorities to co-operate internationally
- *Understaffing or poor governance*, leading to chronic delays in responses to requests for help
- *Dual criminality and own tax interest constraints*, preventing national authorities from giving assistance unless they too treat the offence being investigated as a criminal offence and / or their own tax revenue is affected.
- *Mistrust of national authorities in certain other countries*. The authorities in most countries are understandably hesitant to share sensitive information with Governments they don't trust.
- *A tradition of minimum co-operation between tax authorities*.

This is un-sustainable in a world with electronic money transmission and no exchange controls. If it's maintained, the world's tax authorities will face increasing difficulty in collecting any direct taxes at all.

The OECD's "Harmful Tax Competition" initiative, though surely mis-named, has been a step in the right direction.

The public attack on the initiative by US Treasury Secretary O'Neill this summer has delayed progress and diluted earlier attempts to counter the practice of ring fencing of non-residents. Spanish objections have since caused further delays.

But the initiative remains alive. It now emphasises even more than before the need for co-operation between tax authorities, including full exchange of information on tax matters as well as in the pursuit of other crimes.

### 3. Patchy combating of economic crimes

In all countries, the combating of economic crime is patchy.

Many countries seem not to be serious about combating *tax evasion*, critical though it is in terms both of scale and the ethos of society:

- In some countries, *tax evasion is not even classified as a crime.*
- In most countries tax evasion is *not considered a predicate offence for purposes of applying money laundering legislation.* This undermines the suspicion reporting system as well as hindering the

combating of tax evasion. "I thought it was probably tax evasion" is a perfect defence for a bank official who prefers not to report a suspicion.

- In many countries, again, tax authorities are *reticent in pursuing tax crimes.* Often tax rates are so high that widespread evasion is unavoidable and Governments cannot realistically combat it.

Tax evasion is not the only under-targeted crime. Most Governments seem reluctant to tackle similarly severe and serious problems of *corruption in public bodies* and *professional misconduct* in fiduciary areas.

### 4. Failure to make transparent the true ownership of assets or income

The world's authorities have been slow to tackle the misuse of corporate vehicles, notably companies and trusts, to mask criminal activities and hide assets and income.

As we all know, serious criminals mostly commit crime and launder its proceeds, not under their own names, but through company or trust formats.

In most countries, however, tax and company registration authorities don't even require to know *who the true or beneficial owners of private companies, trusts or foundations are.*

The OECD's Fiscal Affairs Committee included such a requirement earlier this year in their model agreement with offshore centres but have since realised they don't even do it themselves.

The OECD's Corporate Governance Committee's Report this summer on

the misuse of corporate vehicles has at last begun to address the problem. But it settled disappointingly for a second or third best solution on declaring true or beneficial ownership, presumably so as to avoid obliging member countries to do anything different.

In most countries, similarly, land registration authorities don't try to establish who the true or beneficial owners of property are.

## **5. Problems of Court and prosecution procedures**

The traditional procedures of prosecution and justice raise similar problems. But there's no time now to discuss these.

### **What needs to be done?**

So we come to the \$64,000 question: what needs to be done?

In my opinion, the international community needs at the appropriate time, and preferably sooner rather than later, to set a *new mission or objective for this century*, a new *big idea* to extend the big ideas of the last century.

It needs above all to promote a *clean world*. Clean societies in all countries. Societies in which *economically motivated crime of all kinds is effectively combated*. As well, of course, as terrorism.

And it needs to achieve this with the help of enhanced international standards, suitably enforced.

This may at first seem an idle dream. But it's no more dream-like than the World Bank's mission, "a world without poverty".

It would be nice to match this World Bank mission with a parallel mission for "a world without crime".

But that, sadly, *would* be an idle dream. The love of money will always tempt people to commit crimes. As Shakespeare put it:

Bell, book and candle shall not  
drag me back  
When gold and silver becks me  
to come on.

Hence the somewhat less exacting formulation of a "clean world".

The reference to combating economically motivated crimes "of all kinds" is important. Such crimes, as I said before, are symbiotically linked together and need to be tackled comprehensively.

Combating money laundering, drug trafficking, fraud and market abuse has been a good beginning.

But there is an equal need to combat tax evasion, corruption, abuse of public office, other professional misconduct and misuse of corporate formats.

So much, then, for the goal.

The other key requirement is to put individual governments everywhere under pressure to *deliver* the goal and make the needed improvements.

And the most promising way to achieve that is through the development of *international standards and procedures for enforcement*.

### **Practical agenda**

I'd like finally to suggest a *practical agenda* along these lines for the

shorter-term and the organisations that might best take the lead in particular areas.

## **G7 or G8**

### *A clean world*

I'd like first to see *the G7 or G8* launch with a flourish of trumpets the *central mission of a clean world*, in which economically motivated crime of all kinds is effectively combated.

The G7 or G8 would invite all other standard setting bodies to refer to this mission in their standards.

And they'd urge public authorities everywhere to co-operate in delivering it, with the help of enhanced international standards and effective provisions for enforcement.

## **Financial Action Task Force, FATF**

Next I'd like to see the FATF develop enhanced international standards in five areas when revising its "Forty Recommendations".

### 1. *Sharing of information: "open gates"*

The FATF standards should provide for *open gates* in the sharing of information, in both directions, between Tax and Customs authorities, Financial Regulators and Company, Trust and Property Registrars, in the pursuit of crime.

Tax authorities should be obliged to *volunteer* information, and in particular to report suspicions, as well as responding to *requests* for information.

The traditional arguments *against* open gates seem unconvincing, though

temporary derogations may be in order.

### 2. *Adequate powers of investigation, including co-operation in investigations and joint investigations*

The FATF and maybe OECD standards should emphasise the need for all relevant authorities to have the powers (and resources) to conduct investigations and obtain evidence in the pursuit of crime and to co-operate with each other in investigations.

The standard should encourage *joint* investigations by Tax, Regulatory, Company and Police authorities, or by any sub-set of these. There may be a case for joint prosecutions, too.

### 3. *Tax evasion to be a crime and a predicate crime for money laundering*

The FATF and OECD standards should make clear that

- tax evasion should be a crime everywhere
- all countries should co-operate internationally in combating it
- the proceeds of tax evasion should be treated like those of any other crime and trigger the full force of the money laundering provisions.

Any derogations from this should again be time-limited.

### 4. *International co-operation without dual criminality, "own tax interest" or other "wrecking" restrictions*

The standards should provide that national authorities should have powers and encouragement to co-

operate with other national authorities in the pursuit of crime of all kinds.

The powers should not be limited to prescribed types or circumstances of assistance. Neither should they be constrained by “dual criminality” or “own tax interest” restrictions.

5. *Universal requirement to disclose true / beneficial ownership of assets to public authorities*

The FATF standard, and a new OECD standard, should provide that company, trust and property registrars should all obtain information on true or beneficial ownership of the companies or other assets they register.

They should be obliged to share it as required with police and tax authorities in the pursuit of crime of all kinds.

The standard should also preferably outlaw or neutralise the practice of some states and centres in registering companies operating elsewhere about which they know little or nothing.

## **OECD**

I would like to see the OECD take the lead on *international “good practice” standards for tax systems and co-operation and regulation of fiduciaries.*

The OECD should be encouraged to develop its policies in the form of international standards reflecting extensive consultation with others (not quite its present practice). The main priorities might be:

1. *Co-operation and exchange of information between tax authorities internationally*

In the spirit of the OECD’s existing initiative, national tax authorities would be obliged to help each other ensure, through exchange of information and mutual assistance in investigations and evidence, that the right amounts of tax are collected with minimum evasion and that revenues are correctly distributed between jurisdictions.

2. *Tax authorities to design tax systems and deploy enforcement resources to minimise tax evasion*

This good practice standard, which the World Bank and / or IMF might alternatively sponsor, would urge that tax *rates* be set at realistic levels and that *collection* be rigorously enforced, with the help of modern systems.

3. *Licensing and regulation of professionals with fiduciary responsibilities*

Such a standard would define good practice in licensing and regulating professional providers of company and trust services. The Channel Islands & Isle of Man have set a splendid example in these areas.

## **United Nations and World Bank**

*A new international standard against corruption and misuse of public office*

I’d like next to see the *United Nations and / or the World Bank* promote an international standard providing for public authorities to be scrupulous, among other things, in the use they make of the enhanced powers to combat crime just discussed.

Such a standard would complement the other standards by providing in effect for *regulation of the regulators*. It’s perhaps the best answer to misgivings

about sharing sensitive information with foreign authorities who might misuse it. No one would be under any obligation to share information with a country not complying with the standard.

These provisions might best be part of a *wider new international standard for combating corruption and misuse of public office*, backed by the customary means of international enforcement.

In contrast with the present OECD Convention, the new standard would be designed to combat corruption and abuse of office of all kinds *inside* countries.

It would apply to police, regulatory and tax authority officials as well as other public servants (Ministers and officials).

The new standard would extend the work on principles already launched in the UN. It could be modelled on the FATF's Forty Recommendations. The standards of other standard-setting bodies could all cross-refer to it.

The world badly needs such a standard. Its existence could greatly strengthen the voices of all those inside countries who are opposed to corruption.

### **All standard setting and monitoring bodies**

#### *Procedures for universal enforcement*

I'd like finally to see *all standard setting and monitoring bodies* develop *enforcement procedures* that are acceptable but effective.

These might be modelled on the scrutiny, naming and shaming and other techniques pioneered by the OECD and FATF and on the IMF's

new procedures for monitoring offshore centres.

### **Conclusion**

With a clear mission and enhanced international standards on these lines, it should be possible to promote a far cleaner world than we have now or have ever known. A world in which the threats to civilisation from economic crime are firmly contained.

If the will is there, especially among the G7 Leaders, all elements in the list should be deliverable.

In practice it may take time. The will may not yet quite be there. The world's leaders will probably, and understandably, be concerned to deal with terrorism first.

There is some disarray, too, in many important individual areas, including tax evasion and misuse of corporate vehicles. Much progress has still to be made in these and other areas.

*But* the foundations have been laid. And the present international structures are in principle well-placed to make progress.

So we can proceed, I believe, in hope.

As Shakespeare said, again, the game's afoot. It's time to stand like greyhounds in the slips, straining upon the start.

Andrew Edwards