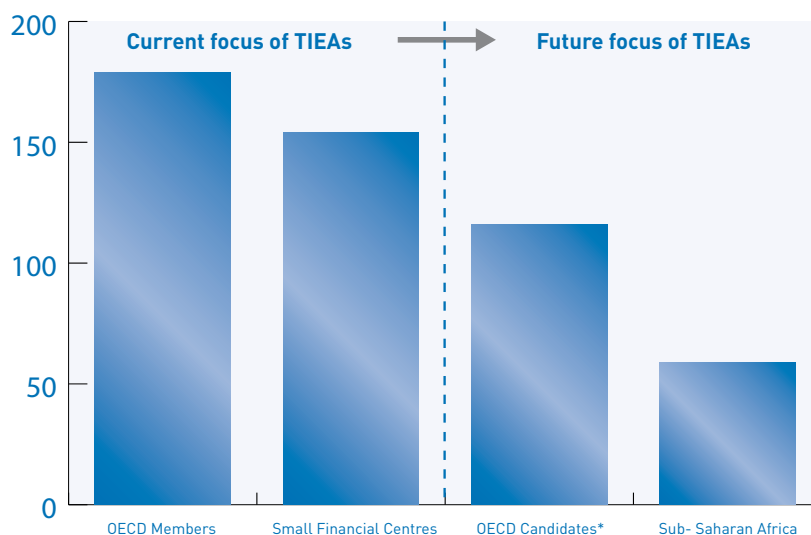


MAKING TAX DATA EXCHANGE SECURE

This STEP Policy Briefing examines issues raised by the OECD's programme to extend the network of Tax Information Exchange Agreements (TIEAs). On current plans, a much wider range of countries could shortly have access to sensitive information on taxpayers via TIEAs. The OECD is in discussions aimed at expanding OECD membership and also wants to extend TIEAs to many developing countries. Without fresh safeguards, the result could be detailed data on individuals being provided to countries with poor records in areas such as respect for human rights or protecting personal data from abuse. This reflects a major flaw in the current OECD peer review process for TIEAs – the review process only examines a country's ability to deliver tax information. There is no equivalent process for reviewing how countries receiving information handle and respect it. There is an urgent need to ensure the integrity of the tax data exchange system by explicit and transparent safeguards that ensure tax data only goes to those countries who can guarantee its legitimate use.

Quality of Governance



* Estonia, Israel, Russia, Slovenia, Brazil, China, India, Indonesia and South Africa

The chart above shows the average 'quality of national governance' for various groups of countries as measured on widely respected indicators developed by the World Bank. It is clear that as the OECD expands the TIEA network from its current focus on OECD members and international financial centres, the quality of governance in countries exchanging data is likely to decline sharply unless there are strong new safeguards built into the system.

Main points

- Over 70 countries have substantially implemented the OECD's international standards for tax transparency and over 350 TIEAs are now in place between countries.
- As the leading worldwide professional body for those advising families on cross-border wealth structuring, STEP believes TIEAs are a sensible response to the problem of tax evasion. TIEAs are a powerful disincentive to anyone trying to evade taxes by hiding their money in another country.
- The great majority of current TIEAs are between countries with strong track records in terms of national governance and protecting human rights. The World Bank publishes a regular assessment of over 200 countries' quality of governance and only seven TIEAs (out of more than 350) involve governments not in the upper half of these world rankings on national governance.
- The OECD is now looking to expand dramatically the pool of countries accessing detailed tax information through TIEAs. Over 90 countries have now joined the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, the body taking forward the OECD's work in this area. Several of these countries have relatively poor track records for respecting human rights.
- There is also strong political pressure to bring many of the world's poorest countries into the information exchange framework. Again, many of the countries in question have extremely weak national institutions and governance, often linked with limited respect for individual property rights.
- The current TIEA framework is based on information exchange upon request and contains some basic checks and balances to ensure information requests are not abusive. There is, however, sustained pressure on the OECD to replace information exchange upon request with automatic information exchange agreements. If implemented, this would see a vast increase in the amount of data shared between governments and remove many of the checks and balances in the current system.
- There are growing concerns that without strong and explicit safeguards, the growing number of countries exchanging data via TIEAs will significantly increase the danger that sensitive personal data will be abused. The risk of data abuse would be compounded if there is any general move to automatic information exchange without further strong safeguards. In a worldwide survey of STEP members, all leading professionals in their field, less than half (45%) expressed confidence that legitimate client confidentiality will be respected in the future.
- There are currently (July 2010) no published proposals from the OECD on measures to ensure the integrity of tax information exchange or even an acknowledgement from leading politicians of the dangers in this area. Remarkably, the peer review process currently underway as part of the OECD's tax transparency initiative only focuses on the efficiency with which countries *provide* information. It does not cover how countries *receiving* tax data handle this highly sensitive information. This deficiency needs to be urgently addressed.
- TIEAs should only be agreed when the participating countries meet explicit minimum standards (as measured by authoritative independent bodies such as the World Bank) on issues such as national governance. Performance against these minimum standards should be an integral part of the OECD peer review process.
- Confidence in the integrity of tax data exchange should be further reinforced by making access to information via TIEAs conditional on adherence to best practice in terms of data security procedures. The European Data Protection Supervisor has recently laid out a series of core recommendations, subsequently supported by the European

The Society of Trust and Estate Practitioners (STEP) is the worldwide professional body for practitioners in the fields of trusts and estates, executorship and related issues. STEP members help families secure their financial future and protect the interests of vulnerable relatives. With over 15,500 members around the world, STEP promotes the highest professional standards through education and training leading to widely respected professional qualifications.

Parliament, designed to protect EU citizens when data is transferred to the US under the Terrorist Financing Tracking agreement. It seems appropriate to use similar procedures to underpin taxpayers' legitimate rights when transferring data for tax purposes. In addition, a range of countries (and the majority of US states) now have regulations on mandatory data loss disclosure if data should go astray – their adoption within TIEAs would help further reinforce confidence.

- Without reform, the current system risks detailed financial information data on taxpayers being handed over to national governments with poor human rights records, rampant corruption or weak institutions. Without better safeguards the danger is that law-abiding taxpayers and their families will find themselves increasingly vulnerable to asset seizure, political persecution or personal attack as result of sensitive data on their financial affairs being shared with weak or unscrupulous governments.

STEP's recommendations

STEP believes that a set of guaranteed minimum standards to protect taxpayers should be implemented before any data is made available to countries under TIEAs or similar agreements.

These should include:

- (i) Only countries meeting agreed minimum standards on objective measures of quality of national governance (such as those provided by the World Bank data) can have access to personal data on individuals from other jurisdictions.**
- (ii) Clear mechanisms are in place to ensure that only 'relevant and necessary data' are exchanged.**
- (iii) Requests for data are assessed by a public judicial authority, in line with the current EU legal framework for data protection.**
- (iv) Clear measures are in place to ensure that the legitimate rights of individuals are made explicit and effectively enforceable if data exchanged under TIEAs is abused.**
- (v) Independent oversight and supervision mechanisms for TIEAs are in place with regular public reporting.**

Common international standards for tax transparency

There has been rapid progress in recent years towards establishing common international standards for tax transparency. Strong political impetus has been provided by the G20, although the OECD has done most of the practical work. The result has been a rapidly growing framework of agreements and treaties between countries to exchange information and cooperate on tax affairs. By this spring, the OECD indicated that all the countries it surveys had made a commitment to internationally agreed tax standards and that well over 60 countries had substantially implemented those standards. A group of fewer than 20 countries, typically smaller nations, are left with more work to do on implementation.¹

Many within the OECD argue that the priority now should be achieving effective implementation of existing agreements. With that objective in mind a series of peer review groups have been set up to see how the new tax information exchange agreements (TIEAs) are working in practice. Critics, however, have argued that the current OECD approach is too timid.

Some suggest that, as currently structured, TIEAs are unlikely to be very effective. Most TIEAs work on the basis of information exchange on request. Country A asks Country B for information on one of its citizens because it has reasonable grounds to suspect they may have undeclared income from assets held in Country B. The problem is that if Country A does not know (or at least have strong grounds to suspect) its citizen has assets in Country B it will never have grounds to ask.

The other strand of criticism is that the OECD's current programme to improve tax transparency is a rich man's club. The IMF gives preferential support to 71 of the poorest countries in the world via its Poverty Reduction and Growth Facility (PRGF). Of these 71 countries, only five are participants in the current programme of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, the body taking forward the OECD's work in this area. The argument is, therefore, that the OECD's programme is currently doing little to ensure that tax revenues go back to some of those countries that need the funds most, i.e. the poorest countries in the world.

The OECD is therefore under strong pressure to extend its current agenda, widening the TIEA process to include groups of developing countries on a

STEP's views on improved tax transparency

STEP unequivocally condemns tax evasion and supports international efforts to improve tax transparency if accompanied by appropriate safeguards to protect legitimate client confidentiality. STEP has therefore worked positively with a broad range of OECD, EU and national initiatives to improve the transparency and effectiveness of tax systems. STEP believes TIEAs are a sensible OECD-level response to the problem of tax evasion. TIEAs are a powerful disincentive to anyone trying to evade taxes by hiding their money in another country.

multilateral basis and moving as quickly as possible towards automatic exchange of information rather than just exchange of information on request.

STEP's concern is that the practical problems attached to such proposals are very significant and are not sufficiently acknowledged by those managing the OECD process. So far, information exchange has in practice generally only seen tax information flowing between countries with good governance and strong institutions. As pressure grows to widen the TIEA process, the danger is that this will lead to growing numbers of countries with poor standards of national governance and weak institutions gaining access to sensitive personal data on taxpayers. If we also see a shift to automatic information exchange this will further raise the danger that personal data will be subject to abuse.

The importance of good-quality governance

Those who spend their professional lives advising international investors have long recognised the importance of quality of national governance in attracting and retaining savings and capital to a country. Much of the political focus on what drives cross-border transactions has recently been on tax related issues. The more fundamental issue is that countries with problems such as weak legal systems, little respect for property rights, widespread corruption and poor personal security due to crime are always going to struggle to persuade either their own citizens or international investors to invest capital.

¹OECD Progress Report, 10 May 2010

A substantial body of empirical evidence confirms this view in terms of corporate investment. A recent EU Commission research paper, for example, argues that ‘institutional quality’ at the national level has a significant impact on foreign direct investment (FDI) flows over and above any tax rate effect.² Indeed in terms of corporate investment flows, survey evidence suggests that the issue of ‘Transparency and stability of political, legal and regulatory environment’ ranks significantly higher than tax in terms of determining where companies choose to invest.³ For corporates and individuals alike, the reality is that issues such as confidence that assets are secure from seizure are ultimately much more important than issues such as possibly saving some tax.⁴

The World Bank publishes a regular update of national ‘governance indicators’.⁵ This gives an indication of the relative performance of 212 countries and territories (although full data is only available for 208) in terms of national governance as assessed on six broad ‘dimensions’:

- Voice and accountability – looking both at citizens’ ability to participate in choosing their government and issues such as freedom of expression, etc
- Political stability and absence of violence
- Government effectiveness – looking at both perceptions of the quality of policy formulation and implementation and the quality of civil

servants and their independence from political pressure

- Regulatory quality
- Rule of law – looking at confidence in the police and courts as well as respect for property rights
- Control of corruption

On each of these six dimensions a range of differing data sources are brought together to produce national governance measures. To give a broad indication of overall country performance we have simply added each country’s rank on each of the governance dimensions as assessed by the World Bank. Table 1 shows the top and bottom 25 countries in terms of governance around the world on this basis. Thus on the World Bank data, Finland is seen as having the best national governance, while Somalia is seen as having the worst.

The contrast between the Top 25 and Bottom 25 countries in Table 1 is stark. Major developed economies plus a number of small international financial centres dominate the Top 25 listing in Table 1. 12 of the Top 25 are EU members. At the other extreme, several of the Bottom 25 countries are failed or failing states or countries governed by notoriously harsh and repressive regimes. The Bottom 25 list also contains a high percentage of sub-Saharan Africa countries.

Table 1 – Top and bottom 25 countries on World Bank derived governance indicators

National Governance Rankings

Top 25		Bottom 25	
Finland	Liechtenstein	Comoros	Equatorial Guinea
Luxembourg	Germany	Angola	Central African Republic
Switzerland	Andorra	Tajikstan	Cote d’Ivoire
Norway	United Kingdom	Burundi	Guinea-Bissau
Sweden	Anguilla	Guinea-Bissau	Iraq
Denmark	Malta	West Bank Gaza	Chad
New Zealand	Hong Kong	Turkmenistan	Afghanistan
Austria	Belgium	Haiti	Sudan
Australia	Singapore	Eritrea	Zimbabwe
Netherlands	USA	Congo	Congo D.R
Canada	France	Venezuela	Mynamar
Iceland	Barbados	North Korea	Somalia
Ireland		Uzbekistan	

² ‘Taxation and the quality of institutions; asymmetric effects on FDI’, Serena Fatica, *EU Commission Taxation paper No 21*, November 2009.

³ See, for example, Ernst & Young European Attractiveness Survey 2008

⁴ Campaigners such as Hernando de Soto have also long argued that respect for property rights has a huge impact on development and the welfare of the poorest people in developing countries, particularly indigenous peoples. See the Institute for Liberty and Democracy website on www.ild.org.pe

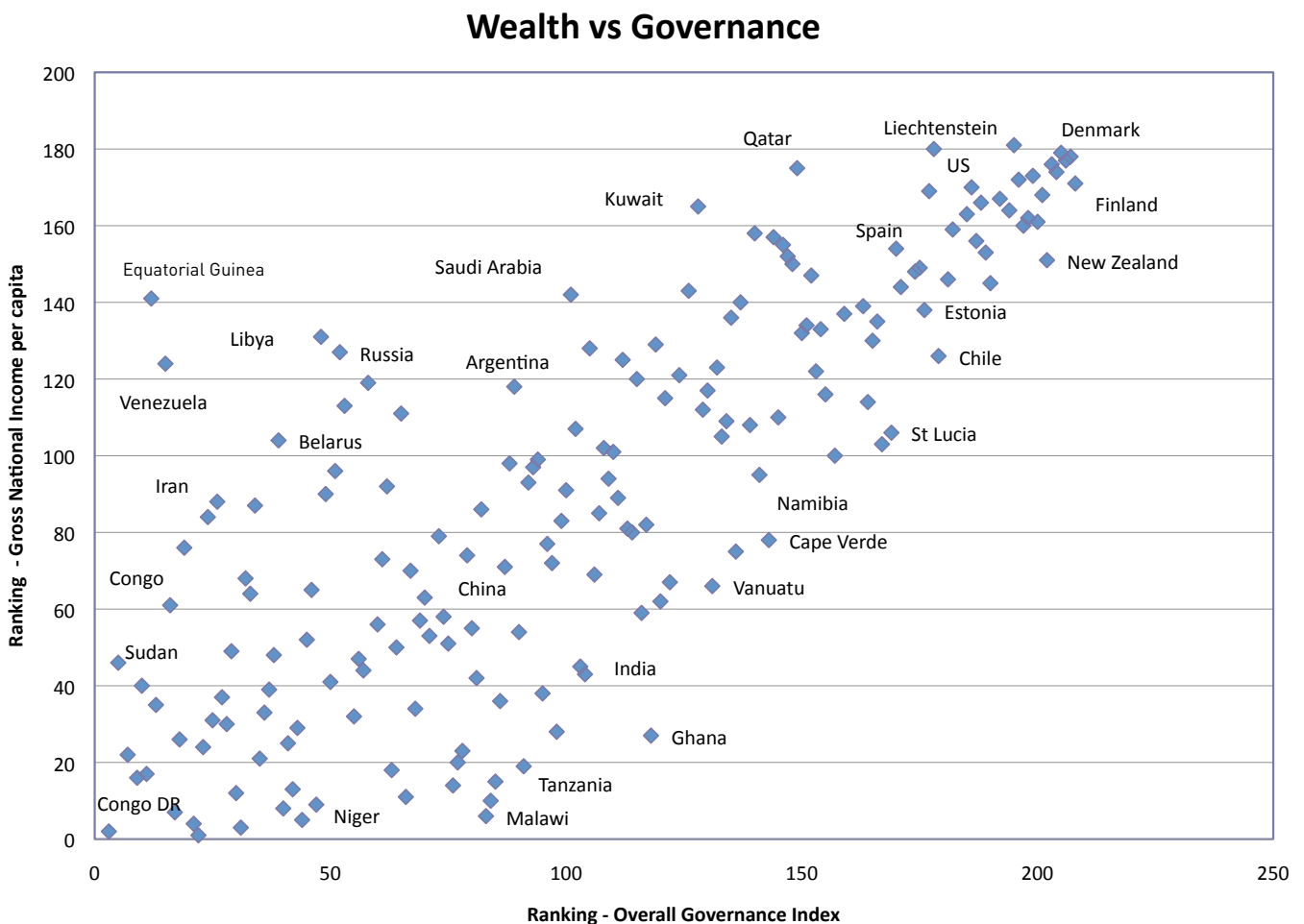
⁵ ‘Governance Matters’, Policy Research Working Paper 4978, The World Bank, June 2009

Table 1 gives a strong hint that in the real world there may be strong linkages between good national governance, investment flows and, ultimately, prosperity. Chart 1 (below) gives further evidence, plotting the overall rankings on the governance measure we have derived from the World Bank data against countries' rankings in terms of Gross National Income (GNI) per capita.⁶

Chart 1 illustrates that many resource rich (particularly oil rich) countries are rather more prosperous than their

national governance rankings might ordinarily imply. Similarly, a series of resource-poor sub-Saharan African countries perhaps fare worse in terms of per capita GNI than their governance indicators would point to. On the whole, however, it is clear that countries with strong national governance tend to be more prosperous and that poorer countries often suffer from weak national governance. It seems inevitable, therefore that any moves to bring poorer countries into the international tax exchange framework will need to consider the problem of how to deal with weak or despotic governments.

Chart 1 – Governance Ranking vs Ranking for Gross National Income per capita



⁶ World Development Indicators database, World Bank 2009

Exchanging information across the G20 and OECD

As we noted earlier, much of the political momentum for establishing common international standards for tax transparency has come from the G20. Even at the G20 level, however, the picture as regards quality of national governance is very mixed. Table 2 looks at the 19 countries that have seats on the G20 (the 20th seat is taken by the EU). Several have below average (in some cases well below average) rankings on our World Bank based indicator of overall national governance. These countries suffer from a mix of poor human rights records, limited respect for property rights and weak law enforcement. It seems right to question if the developed democracies should really be sharing detailed personal information on a routine basis with such jurisdictions.

So far, however, most of the practical work around exchange of tax information has been at the OECD level, not the G20. Looking at the OECD, the governance record of member states is much stronger.

No current OECD member is in the bottom half of the global governance ranking we have derived (see Table 3). Indeed 21 of the OECD's current 31 members are in the top 30 countries around the world in terms of governance. Thus in spite of the presence of countries such as Mexico (outside the top 100 in global governance terms), the average ranking (out of 208) for OECD members in terms of national governance is 29th.

The nature of the OECD is nevertheless changing. The Organisation has established formal accession discussions with four countries (Estonia, Israel, Russia and Slovenia, Chile having joined the OECD in May 2010) and has granted 'enhanced engagement' – a process seen as having 'the potential in future to lead to membership' to another five (Brazil, China, India, Indonesia and South Africa). Assuming this enlargement process is completed, the net effect will be to bring several of the G20 members with the most questionable record in terms of governance inside the OECD. Relative to the current OECD average governance ranking of 29, these 'candidate states' (see table 4) have a significantly weaker average governance ranking of 92. Indeed most of these countries, including some of those with the most questionable governance records, have already joined the key OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. Members of the Global Forum shape the TIEA peer review process.

Table 2 – G20 countries, Governance Ranking*

Country	Ranking	Country	Ranking
Australia	9	Brazil	94
Canada	11	Turkey	97
Germany	15	Mexico	104
UK	17	India	105
USA	23	Saudi Arabia	108
France	24	Argentina	120
Japan	27	China	130
Rep of Korea	57	Indonesia	139
Italy	65	Russia	157
South Africa	75		

Table 3 – Current OECD Members Governance Ranking*

Country	Ranking	Country	Ranking
Finland	1	Belgium	21
Luxembourg	2	USA	23
Switzerland	3	France	24
Norway	4	Japan	27
Sweden	5	Portugal	28
Denmark	6	Chile	30
New Zealand	7	Czech	38
Austria	8	Spain	39
Australia	9	Hungary	43
Netherlands	10	Slovak	46
Canada	11	Poland	58
Iceland	12	Greece	62
Ireland	13	Italy	65
Germany	15	Korea	75
UK	17	Turkey	97
		Mexico	104

There is a strong case for arguing that the OECD's work on tax transparency is now moving into new ground and must be adapted to meet new challenges. The initial leg of the OECD's drive to improve tax information exchange has seen over 350 TIEAs signed, of which just seven have so far involved countries outside the top half of the global governance table (principally China and Argentina) while Mexico (ranked 104 out of 208) has additionally signed another three TIEAs. Generally, therefore, TIEAs have involved

*Out of 208

exchanging limited amounts of information between countries with generally strong institutions and legal systems that protect the rights of individuals. If the pressure now grows, via an expanding OECD, to bring more countries with weaker track records in protecting individual rights into the TIEA framework, that will inevitably prompt serious concerns.

Table 4 – OECD ‘Candidate’ Members Governance Ranking*

Country	Ranking
Estonia	33
Slovenia	34
Israel	61
South Africa	75
Brazil	94
India	105
China	130
Indonesia	139
Russia	157

Exchanging information with the world’s poorest countries

The issue of bringing many of the world’s poorest countries into the tax information exchange framework has perhaps sparked the most passionate debate about extending tax transparency. Many developing countries suffer from lack of capital. First, they have to struggle with the problem of capital flight – i.e. their citizens generally opt to hold any savings they have outside the country. Second, the poorest countries struggle to attract any capital in from international capital markets.

In practical terms, as we noted in Chart 1, there is a strong link between quality of national governance and wealth and it is plausible to argue that it is poor governance that ultimately drives capital away from many of the world’s poorest countries.

To look at this more closely it would clearly be desirable to look directly at any linkage between quality of national governance and capital flows. Unfortunately, credible data on international capital

flows are notoriously difficult to come by. An indirect view is nevertheless instructive. 47 countries in sub-Saharan Africa are eligible for World Bank borrowing facilities. This group can probably be taken as a good representative sample of the sort of countries critics of the current OECD approach believe should be brought much more directly into initiatives to gather and share tax information. Some of these countries score relatively well in terms of governance measures. Mauritius, for example, ranks 45th out of 208 on our aggregate governance ranking. Overall, however, the average ranking for sub-Saharan countries is 149 and, as Table 1 demonstrated, many of those countries with the worst governance records in the world are found in sub-Saharan Africa.

In contrast, a recent IMF working paper⁷ identified a group of 30 small international financial centres and we have governance data for 23 of these.⁸ International financial centres are likely to be the (temporary) recipients of much of any capital flow out of the poorer countries before that capital is recycled elsewhere. Smaller international centres are often themselves emerging from colonial pasts and economically still in the development phase. Of the 23 small international financial centres, however, only one country has a below average governance ranking (Lebanon, ranking 156th in the world and perhaps a rather surprising member of the IMF’s list). The average ranking for the group of 23 small international centres is therefore 54, compared with an average ranking of 149 for sub-Saharan countries. Moreover, as Chart 2 shows, not only is overall governance relatively strong in small financial centres, it is markedly stronger than among sub-Saharan countries on each of the six dimensions of governance measured by the World Bank.

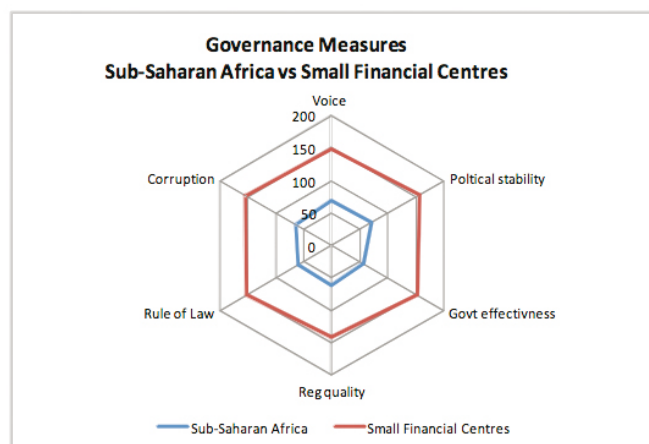
This data sits very comfortably with the view that the prime driver behind many capital flows is political risk of various forms. It also highlights that any attempt to bring the poorest nations into the developing framework of tax information exchange will in practice quickly run into the problem that this is likely to imply exchanging information with countries with poor governance records. Indeed without precautions some of the countries involved could have very poor governance records indeed, raising very legitimate concerns about what might happen as result of the information exchanged.

*Out of 208

⁷ ‘Cross-Border Investment in Small International Financial Centres’, Lane and Milesi-Ferretti, IMF February 2010.

⁸ Andorra, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Bahrain, Barbados, Belize, Bermuda, Cayman Islands, Grenada, Lebanon, Liechtenstein, Macao, Mauritius, Netherlands Antilles, Panama, Samoa, Seychelles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Vanuatu.

Chart 2 – Governance Measures: Sub-Saharan Africa vs Small Financial Centres



'Small Financial Centres' – Andorra, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Bahrain, Barbados, Belize, Bermuda, Cayman Islands, Grenada, Lebanon, Liechtenstein, Macao, Mauritius, Netherlands Antilles, Panama, Samoa, Seychelles, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Vanuatu.

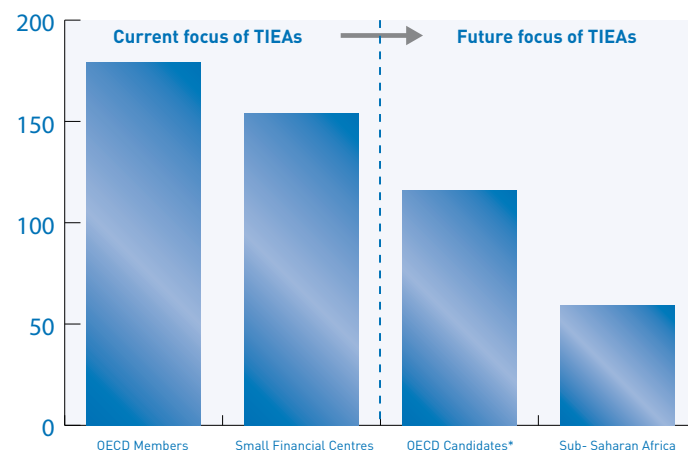
The changing nature of tax information exchange

Chart 3 summarises some of the data presented in the previous sections and highlights how the nature of the governments involved in tax information exchange seems set to change on current OECD plans.

Until now, information has largely flown between international financial centres and OECD members. As we have seen, these are both groups typically comprised of politically stable countries with strong legal systems and a respect for individual rights.

The focus of TIEAs is now shifting to groups of countries with much weaker track records in terms of national governance. Many of what we have termed 'OECD Candidates' are already members of the OECD's Global Tax Forum but, as we have seen, all the objective measures suggest that the quality of their national governance, as a group, is materially weaker than that typically found in either current full OECD members or international financial centres. If, in addition, we see access to TIEAs becoming widespread among developing countries in areas such as sub-Saharan African, this will again result in taxpayers' data being shared with countries with much weaker protections for citizens than we have seen previously.

Chart 3 – Quality of Governance



* Estonia, Israel, Russia, Slovenia, Brazil, China, India, Indonesia and South Africa

Automatic information exchange

The concerns about widening the pool of countries with access to sensitive tax data would be compounded by any shift by the OECD towards automatic information exchange. TIEAs currently focus on exchange of information on request. Such agreements normally have checks and balances to prevent 'fishing expeditions' by countries sending out blanket requests for tax information or making requests that might not be in the public interest. Automatic exchange, in contrast, sees vast quantities of data flowing across national frontiers with few, if any, checks along the way.

Automatic exchange is already the norm across much of the EU. Even in Europe – where national institutions are notably stronger than average, there have in practice been several serious breaches of taxpayer confidentiality. It is not unknown for tax authorities to 'lose' sensitive information on individuals or publish detailed personal information on taxpayers for apparently political purposes. The UK tax authorities, for example, 'lost' computer discs containing millions of taxpayers' details⁹ while the Italian Government briefly published taxpayers' personal details on the internet, a move Italy's data protection commissioner is reported as describing as 'extremely dangerous'.¹⁰ As well as the obvious enhanced risk of data leakage and abuse with automatic data exchange, there is also considerable anecdotal evidence that many national tax authorities within the EU cannot cope with the amount

⁹ www.independent.co.uk/news/uk/politics/lost-in-the-post-the-personal-details-of-25-million-people-758867.html

¹⁰ www.guardian.co.uk/world/2008/may/02/italy

of information they receive from automatic information exchange arrangements. The costs of automatic information exchange are also substantial to both the financial services industry and to tax authorities and it remains questionable if the benefits outweigh the costs.

In spite of these problems, STEP, alongside other professional bodies and trade associations, has worked positively with the EU in trying to make automatic information exchange function effectively. Key to confidence in the system has been the fact that information within the EU is flowing between states with strong governance records and, ultimately, individuals have the protection of the European courts should the information be abused. Moving to automatic information exchange without such basic protections would be likely to spark widespread and well-founded concerns about the security of sensitive personal data.

Ensuring confidence in tax information exchange

We noted earlier that STEP and other professional bodies involved in helping international clients manage their affairs have generally been supportive of developments so far in the tax information exchange arena. Apart from one or two so-called 'secrecy' jurisdictions, most of the major developed economies have a long track record of exchanging tax information in one form or another. The main concern of practitioners has therefore been to ensure that systems developed for exchanging information between countries are practical and do not involve disproportionate cost. There have been few serious concerns to date about the basic integrity of the system.

As the network of TIEAs expands, however, it is clear that confidence in the security of the information being exchanged across borders is beginning to slip. In late 2009, STEP surveyed its membership, all leading professionals in their field, on emerging themes in the international scene.¹¹ Two clear issues emerged. First, the great majority of STEP members believe and accept that bank secrecy is now dead. Second, however, there was a widespread concern that the issue which the G20, and by extension the OECD, had failed to address was how to protect the legitimate right to confidentiality in the personal financial affairs of law-abiding and wholly compliant taxpayers. Only 45% of respondents expressed confidence that such client confidentiality will be respected in the future. Since last autumn, as the TIEA network has grown and the political pressure has intensified to include more countries, often with

What might go wrong?

A recent court case in the UK illustrated the sort of problems that might arise if detailed personal information is shared with governments with poor governance records. The Zimbabwean authorities seized USD300 million of assets after they became aware that the UK authorities were making anti-money laundering checks on a wholly legitimate large transaction for someone based in Zimbabwe. (See case of *Shah and another v HSBC Private Bank (UK) Ltd*, 4 February 2010, www.bailii.org/ew/cases/EWHC/QB/2009/79.html).

poor governance records into the system, conversations with practitioners point strongly to market confidence in the system declining still further.

While officials from bodies such as the OECD occasionally pay lip service to the need to ensure that information exchange is secure and only takes place between trusted parties, the rhetoric from politicians suggests that in reality this is a secondary priority. Expanding the information exchange network, even if this implies sharing data with an ever-rising number of problematic partners, is the issue generally emphasised at the political level.

Without reform, the current system risks detailed financial information data on taxpayers being handed over to national governments with poor human rights records, rampant corruption or weak institutions that leave them vulnerable to infiltration by criminal elements. If nothing is done, the danger is that taxpayers will find themselves increasingly vulnerable to asset seizure, political persecution or personal attack from weak or unscrupulous governments.

Meeting the challenges of extending tax transparency

So far, relatively few TIEAs have in fact been signed with countries with poor governance records. Governments with strong governance credentials have generally been wary of sharing information with countries where there are real concerns that tax information will be used for political, corrupt or otherwise criminal purposes.

The concern of practitioners and savers alike, however, is that political expediency could change the current largely tacit policy of sharing information only with trusted partners. As the pressure to widen the OECD

¹¹ *Offshore Evolution: The STEP Perspective*, October 2009.

framework grows it is likely that large, powerful economies with poor governance records will begin to demand access to current tax information sharing arrangements. In the absence of explicit protections, *real politik* on the part of the major democracies may result in them getting such access.

The current arrangements around anti-money laundering checks provide an example of how multi-national agreements can be 'adapted' to fit wider political considerations when it suits. For example, most of the G20 nations are currently regarded as having so-called 'third country equivalence', i.e. they are officially considered as having equivalent AML/CFT systems to the EU member states. There is very little formal evidence to back up this assessment and in reality most finance professionals would readily identify several G20 countries as having very porous anti-money laundering procedures.

It is not just in the debate around powerful players in the G20 that there is a danger that the current implicit 'rules' about sharing tax information might be tested. There is a much talk of 'capacity building' in sub-Saharan African tax systems – a concept STEP strongly supports. Even so, it should be explicitly recognised that building strong tax institutions in developing countries needs to go hand in hand with building stronger and more accountable political institutions. The danger is that more efficient tax systems working for dubious regimes will simply help perpetuate injustices.

It is remarkable to note that as currently constituted, the OECD TIEA peer review process focuses purely on those jurisdictions *providing* tax information and the effectiveness with which they respond to requests for information from other countries.

As the pool of countries joining the OECD framework grows it becomes ever more imperative that the peer review process should be widened to include assessments of those jurisdictions *receiving* tax information and the way they handle that information. There should be clearly laid out governance criteria that all countries need to meet before they can access tax information from other countries. Assessment against those criteria, using objective measures such as those developed by the World Bank should be an integral part of the remit of the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes peer review process. An appropriate starting point may be to ensure that no government in the lower half of the World Bank governance tables has

access to sensitive personal information via OECD endorsed processes.

In addition, the OECD should ensure that there are strong safeguards built into the TIEA system to ensure that it complies with best practice in terms of data security procedures. There has recently been considerable debate within the European Union about a draft EU-US agreement on financial data transfers as part of an EU-US Terrorist Financing Tracking Programme (the so-called SWIFT agreement). The initial draft agreement drew considerable criticism from the European Parliament and others for failing to ensure adequate safeguards for EU citizens. The European Data Protection Supervisor (EDPS) thus made a variety of key recommendations¹², supported by the European Parliament to ensure citizens' rights to adequate protection of data held on them were respected within the SWIFT agreement.

STEP believes a similar approach is appropriate to ensure tax payers rights when sensitive personal data is exchanged under TIEAs. In the TIEA context, however, there also needs to be an overarching 'good governance' test applied to all governments gaining access to data. The OECD should therefore look to supplement its current procedures, which are focused on placing explicit requirements on countries to *provide* tax data, with additional obligations on all parties *receiving* tax data. The aim should be to guarantee minimum standards of protection to taxpayers before any data is made available to countries under TIEAs or similar agreements. These measures should ensure that:

- (i) Only countries meeting agreed minimum standards on objective measures of quality of national governance (such as those provided by the World Bank data) can have access to personal data on individuals from other jurisdictions.
- (ii) Clear mechanisms are in place to ensure that only 'relevant and necessary data' are exchanged.
- (iii) Requests for data are assessed by a public judicial authority, in line with the current EU legal framework for data protection.
- (iv) Clear measures are in place to ensure that the legitimate rights of individuals are made explicit and effectively enforceable if data exchanged under TIEAs is abused.
- (v) Independent oversight and supervision mechanisms for TIEAs are in place with regular public reporting.

¹² www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2010/10-06-22_Opinion_TFTP_EN.pdf

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