

Brown out to fix financial world he played a hand in wrecking

The big news from the recent G20 summit is that British Prime Minister Gordon Brown is going to save the world by his decisive action in the face of the financial crisis. He is going to attack the offshore financial centres (OFCs) that caused the whole mess in the first place by depriving Britain and others of badly needed taxes. This, obviously, caused the banks to buy worthless assets.

Mr Brown has conveniently forgotten that the major factor in the present financial crisis was the conduct of the British banks operating under his "light hand of regulation" while he was chancellor of the exchequer and then prime minister. They were onshore not offshore. He actively encouraged the growth of financial services in the OFCs under direct or practical British control. This includes most of the major OFCs – Bermuda, Cayman, British Virgin Islands, Turks and Caicos, Gibraltar, Isle of Man and Jersey. Now he is calling for an end to banking secrecy and the reining in of OFCs' activities.

What Mr Brown seems to forget is that beating up on the little OFCs is hardly new. In 1996, the Organisation for Economic Co-operation and Development called for a report, which was delivered in 1998, listing all "tax havens" engaged in "harmful tax competition". The implication was that anybody who had a tax rate lower than the norm among the OECD states were not being fair. Boo hoo! Another source of irritation was that the OFCs would not open their books to onshore nations and tell them who was doing what in their jurisdiction. Many argued this was ridiculous and that nations should not be trying to dictate tax rates to other nations. In 2001, the then US Treasury secretary, Paul O'Neil, scotched the project saying the US was not interested in dictating other countries' tax rates and all it wanted to secure was "countries to be able to obtain specific information from other countries upon request to prevent the illegal evasion of their tax laws by the dishonest few".

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The illegal tax evasion he was referring to does not take place offshore. There is nothing to stop someone setting up an offshore company or trust. That person may well have an obligation to report the existence of that company or trust on their home tax form. If so, a simple offshore structure will not achieve any tax advantage provided the

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correct reporting is made. What the OECD was objecting to was that some of their citizens and residents were "forgetting" to submit the required information on their tax forms. The secrecy found offshore encouraged them to think they could get away with this. Even now, some offshore practitioners still rather irresponsibly promote this idea of hide it and don't declare. It is this type of stuff that gives offshore practitioners a bad name. What they should be advising on is how to achieve the desired tax saving with a structure which legitimately and

legally avoids or defers taxes onshore. It is nearly always possible. The OECD threatened sanctions against any jurisdiction that did not agree to sign up to an exchange of information programme. All tax havens made a commitment to do what they were told with the notable exceptions of Andorra, Liechtenstein and Monaco. At that time, Hong Kong was left off the list of tax havens – not because it did not correspond to the OECD's criteria but probably more because the OECD did not feel it could bully China. Those funny little offshore islands were a different matter, they were easy to take down.

The tax havens committed to signing tax information exchange agreements (TIEAs) under which information about ownership of offshore structures could be passed onshore upon request. This was made conditional upon the onshore jurisdictions introducing similar provisions because, funnily enough, many of the OECD member states had greater banking secrecy and lack of information exchange than those they were gunning for.

Quietly, over the last few years, Cayman, British Virgin Islands and all the other recognised OFCs have signed TIEAs with most onshore countries. The OFCs have not exactly advertised they have been doing this but the TIEAs are there and in place.

Next came the European Union savings directive under which EU member states agreed to force banks within their jurisdictions, or jurisdictions under their control (that included most OFCs) to automatically pass information back to the home tax authority of any other EU resident who banked within their borders and earned income on the account.

Switzerland reluctantly signed up and talks have been on with Hong Kong and Singapore to get them on board. Thus far they have resisted as they have been a massive beneficiary of the directive. EU residents have switched their banking from places such as Cayman, Jersey and Guernsey to Hong Kong or Singapore en masse and the private

banking industries in both have flourished as a result.

So what is all the new noise about? Well, under intense pressure, Monaco, Andorra and Liechtenstein have agreed to introduce exchange of information, while Switzerland and Austria have agreed to roll back their banking secrecy to allow for the same. Hong Kong and Singapore are being encouraged to do likewise and have indicated they may accede.

Mainly it is a way of Mr Brown making headlines and showing what a true statesmen he is, leading the way in the fight against evil tax havens. Only the fight has already been won years ago.

Should you be worried? Probably not. Hong Kong operates a territorial system of taxation, so profits generated on offshore accounts are not taxable in Hong Kong. Many Hong Kong residents like to hold assets within an offshore structure for a variety of reasons. Confidentiality may often be one. You should be aware that confidentiality no longer exists in any meaningful form.

Hopefully this should not matter to you as all of your banking and offshore structures achieve their aims because you have been well advised and they work in a legitimate manner. Everyone has a right to privacy, but the world does not seem to think so. The prevailing view is that if you are not doing anything wrong, you will not mind it being looked at. So the best approach is if you cannot show the taxman exactly what you have done then you should not be doing it. It might be a good time to review those arrangements and make sure they do not rely for their effectiveness upon the fact that nobody will find out about them. And if you do not want Hong Kong to sign up to exchange of information, now would be a good time to mention this.



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