Love and taxes

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Otto von Bismarck, Germany's first chancellor, once commented: "When you say that you agree to a thing in principle, you mean that you have not the slightest intention of carrying it out." He knew a thing or two about politics, facing as he did the challenge of unification of 39 German states that were members of a loose confederation. After the Franco-Prussian War of 1870-71 he was successful in drawing northern Germany and western Germany together and in 1871 the German empire was proclaimed.

Even so, the leap from a principle to the practical, unifying thought with action, can sometimes be too far and following the annual G8 summit, when the leaders of eight main economies meet, one must ask: will the United States of America's federal government be able to convince states, where necessary, to enact corporate transparency legislation? Such legislation would aid the fight against corruption, money laundering and tax evasion, both domestically and internationally, the very problems which the US and the international community frequently accuse countries in Latin America of not adequately addressing.

There is now evidence that Latin America is stepping up its efforts. In the case of money laundering, multinational financial institutions are under the spotlight as regional governments attempt to abate the flow of illicit funds through the banking system. Decisive action this summer in Costa Rica, Colombia, Venezuela and Mexico has been taken and some countries have, for example, investigated HSBC, JP Morgan and BNP Paribas; in the case of the latter two, Argentina's Financial Information Unit plans to file formal complaints against them.

The Unit's head, José Sbatella, sees such steps as being long overdue. One of his concerns is how large economic groups collaborate in the transfer of capital "to phantom companies" domiciled in tax havens; he could have also included lax, rather than tax, havens where corporate transparency is not guaranteed, such as the United Kingdom and the US.

It is hoped that any fines imposed in Latin America on foreign banks' misconduct will be more balanced than what would appear to be the case in the US. In 2010, America's Wachovia Bank, due to weak anti-money laundering systems, was fined USD160 million after it settled charges for not applying adequate controls in respect of USD378 billion in transfers suspected of having been from the Mexican drug trade; this did not include over USD4 billion in cash which was transported from Mexican banks to Wachovia accounts, bringing the total to USD382 billion. In contrast, the US government subsequently fined HSBC USD1.9 billion for failing to prevent money laundering by drug cartels. Admittedly, the amount was some USD300 billion more, but clearly Wachovia Bank got off lightly.

In the June issue of *Offshore Investment* (Issue 237) both my friend, Paolo Panico, in his Commentary and Professor Jason Sharman in his Fraud and Criminal Activity article, addressed the thorny issue of transparency. So has the European Network on Debt and Development which is a collection of non-governmental organisations in 16 European countries and a 2012 report reveals that the 50 biggest companies by turnover in Europe all have a presence in tax havens. EURODAD also looked at 69 jurisdictions and found that only six required all types of company to record beneficial-ownership information; the list included Monaco, Jersey and Bermuda. On a second list of 36 countries, where legal ownership is recorded for some or all types of corporate vehicle, there appeared Singapore and Germany along with Britain and Panama – the latter two allowing bearer shares, but only one of them has drawn the wrath of the US and the European Union for doing so. A clue to its identity: it has a useful canal for international shipping.

Recognised offshore financial services centres in Latin America and the Caribbean do not, in the words of the Financial Action Task Force, have "strategic deficiencies" and access to ownership of companies is possible. Meeting the deadline of 2015 set by the Financial Action Task Force for onshore jurisdictions to be similarly compliant is unlikely.

It is uncertain whether China – which is not a G8 member – will join the current drive for transparency and information exchange. Russia, on the other hand, which is a member of the G8, is keen to protect bank secrecy and access to information is expected to be restricted. Hong Kong is expected to move forward with Double Taxation Agreements rather than Tax Information Exchange Agreements and just as business moves eastwards, I suspect more offshore activity is going to find a home in Hong Kong – not to mention Singapore. Swiss National Bank has opened a small branch in Singapore, being the first non-Asian central bank to do so, and Switzerland's flag carrier, Swiss, has recently started direct flights between Zurich and Singapore, an illustration of the growing demand for business travel between both countries.

Taxes, however, not only transparency, challenged the G8 leaders at their meeting in June. One loud and clear message coming from the Lough Erne Declaration, following the summit, was David Cameron's assertion that the "era of tax secrecy" is over. Now would seem to be the time, with the public mood turning hostile towards secrecy, to make real progress and expect more frowns on the faces of the taxed; but as Edmund Burke once said: "To tax and to please, no more than to love and to be wise, is not given to men".

Latin America recognises its shortcomings in tax policy and sees that there is a vital need for more dialogue across the region. In July the third Latin America and Caribbean Forum on tax policy was held in Montevideo in Uruguay; one of the sponsors was Uruguay's Ministry of Economy and Finance as well as the country's General Directorate of Taxation. The initiative promotes dialogue on tax policy in the region and this year the forum looked at the shared practical experiences of countries in the use of taxation as a tool for reducing inequality. I should imagine that as they did so a few delegates would have had to reach for their handkerchiefs.

The region's tax authorities are also faced with applying (in many instances) stretched resources towards assisting the US government in collecting taxes from its own taxpayers under the Foreign Account Compliance Tax Act (FATCA) which is the culmination of efforts over more than 30 years to try and enforce the worldwide application of its income tax system. The starting point would probably be the 1981 report "Tax Havens and Their Use by United States Taxpayers – An Overview" prepared for the Commissioner of the Internal Revenue.

Virgil, the Roman poet, was so right: "Of all the ills there are, rumour is the swiftest. She thrives on movement and gathers strength as she goes". It certainly applies in the case of FATCA because despite its now sharper focus, no one yet really has a clear picture and perhaps practicalities will again delay the key start dates; so for now there is an abundance of second-guessing.

With the US insisting that it gets tax co-operation from beyond its borders, it is perhaps tempting to speculate on a Latin American FATCA in terms of which the US would have to reciprocate by changing its present open door policy that allows the Latin American rich to hide their money there without being asked too many questions. Miami is frequently called the financial capital of Latin America with an estimated US$50 billion or more in foreign deposits held in Florida banks; this is consistent with the analysis made by the Bank of International Settlements. I hardly think, however, that next year's Latin America and Caribbean Forum on Tax Policy will find a Latin FATCA proposal on the agenda.

For Latin American governments, implementing a sound tax policy of their own across the region remains, for now, beyond their grasp and I suspect that Viscount Sherbrooke's 1870 comments will have little relevance for decades to come: "The Chancellor of the Exchequer is a man whose duties make him more or less a taxing machine. He is instructed with a certain amount of misery which it is his duty to distribute as fairly as he can".

The words "fair" and "taxation" in Latin America, however, sit alongside each other as comfortably as today's Cypriot bankers would at a luncheon laid on by the Commission of the European Union.

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