

Jersey – straightforwardly denying the truth

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Jersey has been stung by criticism from Lord Wallace, some of it [reproduced here](#) as a the Jersey Evening Post would not put it on line.

In the [Telegraph a local spokesperson](#), Martin De Forest-Brown, director of international finance for the Chief Minister's Department in Jersey, has said

Jersey qualified as a jurisdiction that had substantially implemented the [OECD] internationally agreed tax standard [in April 2009] alongside the UK, US, Germany and France. But Austria, Luxembourg, Belgium and Switzerland, alongside Liechtenstein, Panama and Singapore did not.

One of the key differences is that Jersey does not have any banking secrecy laws, only the normal common law of privacy and confidentiality found in most jurisdictions including the UK and the US. Switzerland, on the other hand, remains firmly committed to its banking secrecy.

Despite Jersey being demonised from several quarters, those countries, international and supranational bodies that police the world's international finance activity and have worked closely with Jersey, know only too well that Jersey can stand shoulder to shoulder with the best of jurisdictions and ahead of many when it comes to international transparency, co-operation and regulation.

I'll refer to this in my comments, below, in a moment. De Forest-Brown himself moves on from this wholly unjustified claim to make another:

So what will happen at the next round of G20 meetings in September? The expectation is that there will be some focus on those jurisdictions that have yet to meet the international standard as well as ambitions for nations to go beyond the minimum requirement that 12 bilateral tax information sharing agreements are signed.

Signing agreements with the Faroe Islands, Greenland and Iceland is not an indication of ambition to comply: it is clear indication of two things, the first being constructive non-compliance by Jersey, who knows that such agreements are utterly

meaningless and will never be used. The second is the sheer outright and unmitigated folly of the OECD in setting such an absurdly low standard for 'compliance' and secondly in pinning it to the utterly unusable Tax Information Exchange Agreements.

How unusable? Put it like this one very senior figure in international tax enforcement when talking to me late last week said "Unless every TIEA is matched by a deal like that the UK signed with Liechtenstein then TIEAs are worthless — as you've been saying Richard". He agreed, by themselves TIEAs can never deliver what is required to create transparency. The OECD's plan, to be approved over the next two days, to audit this meaningless process changes nothing. Finding out the system does not work should not be so costly, or time consuming. The design flaw has been built in from the outset.

But that design flaw suits Jersey very well. Take De Forest-Brown again:

Separately, the OECD is likely to demand what would amount to an audit of those agreements, to ensure the promises are matched by action. Such an audit would take the form of an independent review and Jersey remains active in the process of how "effectiveness" may best be assessed in the future.

You bet it is. It wants to be on the regulatory panel. The reason is clear:

Perhaps the most crucial issue is the pressure to move from information exchange on request to automatic exchange of information. Jersey has stated publicly that it supports this as a matter of principle, but wants to see it adopted as an international standard. This would be a fundamental change for jurisdictions such as Switzerland as the requirement would be in conflict with their national banking secrecy laws.

In other words — Jersey is attaching conditions to its support that renders it meaningless. Constructive non-compliance, again. Except it's worse than that. He finishes.

Jersey is committed to international standards of regulation, tax information exchange and co-operation and is actively engaged in discussing improvements to those international standards objectively introduced as part of a level playing field.

Jersey has long been pushing for greater pressure on non co-operative jurisdictions and welcomes the G20 initiatives and looks forward to their widespread implementation.

Wouldn't it be nice if the whole world finally came together to ensure that international standards are objectively and effectively applied across all jurisdictions?

Sorry, but this is totally untrue. To explain let me draw attention to a [paper](#) on which I was lead author submitted to the US Senate in 2007 on the tax haven activities of Jersey, point by point rebutting their claims to be well administered and to not be a tax haven. It concluded:

This paper has sought to show that:

- 1. Jersey remains committed to conventional tax haven practices, with all that implies;*
- 2. Jersey's compliance is with the form of international standards but not with the substance of the conduct that they expect;*
- 3. Jersey's co-operation with the USA is not indicative of its general approach to international issues;*
- 4. Jersey is purposefully creating structures and procedures for use by its financial services industry that will result in information not being available for exchange under internationally agreed arrangements, so nullifying their effect;*

The evidence supports these conclusions. Jersey is offering no or nominal taxation to those using its legislation and secrecy space for tax haven purposes, whilst increasing the tax burden on its local population to pay for this.

The new laws it is introducing on corporate tax, the taxation of high net worth individuals and GST do not comply with international norms. Its new money laundering arrangements will allow abuse not possible at present. At a time when increased standards are expected internationally Jersey is finding ways to lower those it operates whilst offering apparent compliance with internationally imposed obligations. Its new laws on trusts, incorporated cell companies and redomiciliation are all indication of this. At the very least each makes information exchange harder: in the worst possible case each could be of benefit to those undertaking fraudulent transactions, and in the case of the trust laws correspondence that has been seen shows that the government in Jersey knew this to be the case.

It is apparent that in the light of this extremely limited range of tax agreements into which it has entered that the cooperation that Senator Walker claimed Jersey is providing to the USA in his submission to the US Senate dated 17 May 2007 is illusory. Even if some cooperation is being offered to the USA, it is unusual for tax haven activity to exist on a pure bilateral basis. As such if a US transaction is routed to Jersey via another location it is highly unlikely that effective information exchange arrangements will be in place to track it, so nullifying many of the benefits of the US TIEA. That TIEA should be seen for what it is: a token gesture designed to curry favour that is not indicative of any serious effort on the part of Jersey to exchange information that might limit its ability to be a fully effective tax haven.

So what is happening? The best explanation appears to be the simplest one. As pressure mounts for tax havens to exchange information so they are reacting by ensuring that they either do not have that information, or by providing mechanisms that make it both harder to secure, and easier for it to flee. The result is that corruption

in places like Jersey can no longer be tackled at the transaction level. Put simply, transaction data will soon be unavailable or in perpetual transit between tax haven locations. As such offshore corruption can now only be tackled at the systemic level. This requires a changed approach. The corrupt user of tax haven services is no longer the problem; the corruption of the tax havens is the problem now.

It is time to tackle the suppliers of corruption services if the integrity of the world's economy, taxation systems and democracies is to remain intact. Tax havens are at the heart of this challenge to the way we live. And tackling them systemically is the solution to this problem.

Has anything changed since then? Yes, at least four. First, Jersey has introduced Foundations to add to the range of secrecy products they can supply as a secrecy jurisdiction. This is completely contradictory to all claims they make.

Second, they have persistently removed data about information exchange from their web sites whenever we draw attention to them because the rates are pitifully small — a handful a year to the USA.

Third, they have said they will join the European Union Savings Tax Directive, but only because the withholding rate is going to 35%.

Fourth, they have finally introduced a universal 0% tax on foreign (but not local) companies — in a scheme that is completely abusive of international agreements.

The reality is Jersey is a tax haven / secrecy jurisdiction, is dedicated to remaining so, is heading for bankruptcy as a result because it has insufficient tax revenues to support its government, so bizarre is its economic policy, and its complete dependence on financial services (23% of its workforce work in financial services) means it has no choice but maintain its status as a place where tax evasion is rampant.

Those are the facts.

Answer them De Forest-Brown and stop hiding from real debate with the people who know the truth — people like me.