51 OECD Countries Sign Tax Evasion Treaty

Last Wednesday's agreement among 51 countries belonging to the Organization for Economic Co-operation and Development (OECD) in Berlin to share tax information across borders in a continuing effort to crack down on tax evasion was announced with great excitement but precious little logic.

German Finance Minister Wolfgang Schaeuble told the group at a meeting entitled the "Global Forum on Transparency and Exchange of Information for Tax Purposes" that the agreement is "a joint contribution to more transparency and fairness in our globalized 21st century." Britain's Finance Minister George Osborne added, "Tax evasion is not just illegal, it is immoral. You are robbing from your fellow citizens and you should be treated like a common thief." Said Osborne, the new treaty "strikes a blow on behalf of hard-working taxpayers."

A careful look reveals that the new treaty in fact is designed to benefit tax *collectors*, not taxpayers.

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This can be understood by looking at the definition of theft and taxes. One dictionary defines taxation as an "involuntary fee" levied on individuals that is enforced by a government to finance its activities. Another defines theft as nearly the same thing: "The crime of taking the property … of another without consent." In either case it's immoral. But according to Osborne, it's the people who are trying to keep their money away from government who are attacked for somehow being immoral.

Justice Billings Learned Hand, the most-quoted lower-court judge in the United States, in *Gregory v. Helvering*, wrote in 1934:

> Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one's taxes. Over and over again the Courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible. Everyone does it, rich and poor alike and all do right, for nobody owes any public duty to pay more than the law demands.

Putting the moral/immoral argument against taxation aside, there is an enormous error in logic presumed by these worthies: that if taxes are raised on one individual, or class of individuals, taxes will go down on others who did pay "their fair share." But, as economist Donald Boudreaux pointed out in a letter to the *Wall Street Journal*, government spending goes up as revenues increase:

> Consider the U.S.: in 31 of the 67 post-war years from 1946 to 2013, Uncle Sam's budget deficit rose … when his tax receipts increased.
>
> This fact means that Uncle Sam almost as often as not responds to each dollar of additional tax revenue by increasing his spending by more than a dollar — thus imposing a heavier tax burden on future taxpayers.

What Boudreaux is implying is this: Tax avoiders (staying inside the codes of various countries) are actually performing a welcome public service by reducing, however slightly, a government's revenues and thus reducing, however slightly, it's propensity to increase its spending.

The new treaty's signers include a number of traditional tax havens used by wealthy individuals and corporations for decades: Liechtenstein, the British Virgin Islands, and the Cayman Islands. Under the agreement the 51 signers will automatically exchange tax data with each other beginning in 2017.

The treaty is in addition to and on top of treaties that have already curtailed efforts by those seeking to keep their money away from the tax man. For instance the European Union has enforced the automatic exchange of interest income since 2005 and the Foreign Account Tax Compliance Act (FATCA) adopted by the United States has required non-U.S. institutions to provide U.S. tax authorities with data on their accounts since 2010.

Aside from the logical fallacy that governments will reduce the tax burden on some taxpayers as they increase it on others, there is another one: that all taxpayers are somehow better off when governments spend more of their money. This is the fiction first noted by Frederic Bastiat, who observed, "Everyone wants to live at the expense of the state. They forget that the state lives at the expense of everyone."

Another fallacy noted amid the joyful exclamations emanating from Berlin last week is that, no matter how invasive and intrusive the state becomes, governments can stop tax evasion. Even Schaeuble admitted as much last Wednesday when he said:

> The risk of being found out becomes very high. But as long as people exist, they will not all obey the law. They'll work out new ways to dodge taxes.

That the new agreement is based on what's best for the tax collectors and not for the taxpayers is clear from this: There was not one word from the meeting of tax hounds around the world about reducing the incentive to escape taxation by cutting taxes and simplifying the tax codes. If, in theory, all tax rates were reduced to zero, then there would be no incentive by anyone to seek relief. But that would happen, in the United States at least, only if the Constitution were once again honored and upheld.

It's helpful to remember that, prior to 1913, the U.S. government operated without the benefit of an income tax on anyone. It met its constitutional obligations through tariffs and fees. Individuals were left alone to work, save, invest, take risks, and generally live lives seeking their own best interests. If they were successful, they got to keep the fruits of their labors without worrying one whit about the tax man.

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