Evolving Networks: Information Exchange's Reshaping of Global Finance

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ABSTRACT

This article challenges the characterization of international financial centers (IFCs), often called "tax havens," as enablers of tax evasion and money laundering. Drawing on an extensive analysis of tax treaties, regulatory statutes, and historical literature, we explore the evolution of the global information exchange network, its impact on integrating IFCs into the global financial system, and the resulting curtailment of their use for illicit purposes. The expansion of treaties, from Mutual Legal Assistance Treaties (MLATs) to Tax Information Exchange Agreements (TIEAs) and multilateral frameworks like the OECD's Common Reporting Standard (CRS), has significantly limited the potential for secrecy-driven financial activities across all jurisdictions around the world. We also examine the regulatory transformations within IFCs generated in part by these standards, highlighting the rise of licensing systems, independent regulatory bodies, and compliance-driven practices. By focusing on how the regulatory and treaty networks have evolved to restrict financial opacity and facilitate international cooperation, we show that reputable IFCs today function no less than larger onshore centers as compliant financial hubs rather than as enablers of financial misconduct. This nuanced view suggests that the global financial architecture, while imperfect, has come a long way to create value and to increase resiliency by disrupting the use of "sunny places" by "shady people."

A tax authority today can access information about offshore accounts and companies through multiple established channels.[1] Under the Common Reporting Standard (CRS), different national jurisdictions exchange financial account information annually within nine months after each calendar year.[2] Additional information sharing occurs through bilateral double tax treaties

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[1] We use the term "offshore" to refer to accounts and companies in a jurisdiction other than the one in which the individual(s) or entities concerned operate and are generally tax resident.

[2] ORG. FOR ECON. COOP. & DEV., *Model Competent Authority Agreement*, § 3(3), https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-transparency-and-international-co-operation/multilateral-competent-authority-agreement.pdf.

(DTAs), Tax Information Exchange Agreements (TIEAs), the OECD Convention on Mutual Administrative Assistance in Tax Matters (CMAAT), and Mutual Legal Assistance Treaties (MLATs). This systematic information sharing contradicts the popular perception of international financial centers (IFCs) as enabling financial secrecy that impedes anti-money laundering and anti-tax evasion/avoidance efforts.[3] As we describe below, it also has now largely removed those financial secrecy practices that were thought to impede anti-money laundering and anti-tax evasion/avoidance efforts. Many IFCs do well (and sometimes better than onshore governments) in formal evaluations from intergovernmental bodies (IGOs). For example, the Global Forum gave the Cayman Islands the highest rating for the effectiveness of its automatic exchange of information (AEOI) regime in 2022;[4] Cayman has since enhanced its legal regime further.[5] IGOs focused on making the international financial system more efficient have also set out concrete measures including the development of local human infrastructure like Foreign Intelligence Units (FIUs) to improve information exchange. FIUs working together as the Egmont Group, in turn, establish protocols and principles for international information sharing that require information exchange to be conducted in a timely manner through secure channels.[6]

The scale of information exchange today is staggering when compared to the tiny amount that occurred (and then only through cumbersome procedures) fifty years ago. More than 100 jurisdictions now automatically exchange financial account information internationally through CRS,[7] more than 250,000 requests were made for information on particular taxpayers worldwide between 2010 and 2020, and, in 2022 alone, tax authorities exchanged data on 123 million accounts worth €12 trillion.[8] There are 3,527 DTAs and 802 TIEAs in force, a number that understates their coverage of the world economy because developed countries tend to have deeper treaty networks than developing countries and, as we describe below, there are many other routes through which information exchange occurs.[9] Today,

[3] *See, e.g.,* Tax Justice Network, *Financial Secrecy Index 2022,* https://fsi.taxjustice.net ("a ranking of jurisdictions most complicit in helping individuals to hide their finances from the rule of law.").
[4] GLOB. F. ON TRANSPARENCY & EXCH. INFO. FOR TAX PURPOSES, *Peer Review of the Automatic Exchange of Financial Account Information*, ORG. FOR ECON. COOP. & DEV. (Nov. 9, 2022), https://www.oecd.org/en/publications/2022/11/peer-review-of-the-automatic-exchange-of-financial-account-information-2022_cc68e340.html.
[5] *See* Beneficial Ownership Transparency Act, 2023 (Act 13 of 2023) (Cayman Is.).
[6] *Connecting Financial Intelligence Units Worldwide*, EGMONT GRP., https://egmontgroup.org ("The Egmont Group provides FIUs with a platform to securely exchange expertise and financial intelligence to combat money laundering, terrorist financing, and associated predicate crimes."). *See also Egmont Group of Financial Intelligence Units Principles for Information Exchange Between Financial Intelligence Units*, EGMONT GRP. (July, 2013), https://egmontgroup.org/wp-content/uploads/2021/09/Egmont-Group-of-Financial-Intelligence-Units-Principles-for-Information-Exchange-Between-Financial-Intelligence-Units.pdf.
[7] GLOB. F. ON TRANSPARENCY & EXCH. INFO. FOR TAX PURPOSES, *Pioneering Global Progress in Tax Transparency: A Journey of Transformation and Development*, ORG. FOR ECON. COOP. & DEV. 6 (2023), https://web-archive.oecd.org/tax/transparency/documents/global-forum-annual-report-2023.pdf.
[8] [or *Id.*] GLOB. F. ON TRANSPARENCY & EXCH. INFO. FOR TAX PURPOSES, *Pioneering Global Progress in Tax Transparency: A Journey of Transformation and Development*, ORG. FOR ECON. COOP. & DEV. 6 (2023), https://web-archive.oecd.org/tax/transparency/documents/global-forum-annual-report-2023.pdf; Zayda Manatta, Radhanath Housden & Adrian Wardzynski, *OECD Global Forum Outlines What's Next in the Tax Transparency Revolution*, 31 INT'L TAX REV. 26 (2020).
[9] Authors' calculations.

> [t]he exchange of information is now subject to a set of rules that were previously missing in international tax law: (i) international treaties, either bilateral or multilateral, specifically regulating mutual assistance between the CSs and based on the Model TIEA; (ii) provisions governing the exchange of information embedded in bilateral treaties ([OECD Model Convention] Art. 26); (iii) rules regulating exchange of information within regional contexts, such as the EU rules; and (iv) unilateral instruments enacted by individual countries with extra-territorial effect.[10]

Such developments continue to evolve. As Ana Paula Dourado noted, "the internationally agreed standard on exchange of information is moving fast."[11]

We focus in this article on how the evolving requirements and associated infrastructure to implement information exchange have integrated international finance centers into the global financial regulatory system creating regulatory capacity and resiliency as this has occurred. There is no solid number of how many IFCs are operating, but two to four dozen jurisdictions are generally included in IFC or offshore financial center listings. (Table 1, below, lists them.) IFCs exist on all continents and include both independent countries such as the Bahamas, Liechtenstein, Malta, and Mauritius and territories affiliated with Britain, such as Bermuda, the Cayman Islands, Gibraltar, Guernsey, Jersey, and the Isle of Man. As to what an IFC does, at its most basic, an IFC is a jurisdiction that provides laws and regulations to govern individuals and businesses that operate outside the jurisdiction.

Today's larger information exchange infrastructure rests on multiple, complementary foundations.[12] In addition to the dense network of bilateral tax treaties and information exchange agreements connecting many jurisdictions, network density is increased by connections through CRS, CMAAT, U.S. Foreign Account Tax Compliance Act (FATCA), and other jurisdictions' "son of FATCA" agreements which require automatic reporting of a great deal of financial account information.[13] MLATs facilitate criminal investigations.

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[10] CARLO GARBARINO, JUDICIAL INTERPRETATION OF TAX TREATIES: THE USE OF THE OECD COMMENTARY 569 (2016).

[11] Ana Paula Dourado, *Exchange of Information*, *in* 2 KLAUS VOGEL ON DOUBLE TAXATION CONVENTIONS 1853 (Ekkehart Reimer & Alexander Rust eds., 4th ed. 2015).

[12] Dourado, *supra* note 11, at 1856–57

> (Exchange of information upon request results not only from Article 26 OECD and UN MC but also from Article 1 of the 2002 MA on Tax Information Exchange Agreements (TIEAs) and its 2005 Comm. and the 2010 Prot. to the Council of Europe/OECD | Convention on Mutual Administrative Tax Matters. They require exchange of information on request in the case of foreseeable relevance to the tax administration without regard to the domestic interest of the requested State, bank secrecy (nos. 19.10 and 19.11 OECD MC Comm. on Article 26) or dual criminality.).

[13] On CRS, *see* ORG. FOR ECON. COOP. & DEV., *What is CRS?*, https://web-archive.oecd.org/tax/automatic-exchange/common-reporting-standard/index.htm ("The Common Reporting Standard (CRS), developed in response to the G20 request and approved by the OECD Council on 15 July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis."). "Son of FATCA" refers to the various agreements between other governments to which FATCA led. *See Foreign Account Tax Compliance Act, the Common Reporting Standard and International Automatic Exchange of Information*, SIMMONS & SIMMONS (Sept. 24, 2014), https://www.simmons-simmons.com/en/publications/ck0b1gitp77nr0b94d98uuv8s/24-foreign-account-tax-compliance-act-and-international-automatic-exchange-of-information

These overlapping treaty networks have different rationales and focus on information exchange for different purposes,[14] but together they create channels and practices of information exchange that are mutually reinforcing. For example, the 2005 amendment of the OECD Model DTA explicitly permitted requests for information where "the proposed information is not needed by the requested State for domestic tax purposes." Although this was not previously expressly stated, the *Commentary* notes that the change was made to reflect

> the practices followed by Member countries which showed that, when collecting information requested by a treaty partner, Contracting States often use the special examining or investigative powers provided by their laws for purposes of levying their domestic taxes even though they do not themselves need the information for these purposes.[15]

Moreover, even agreements focused on a particular area often provide for an astonishingly broad definition of the types of information that can be exchanged.[16]

Domestic regulations in many jurisdictions also require financial institutions to collect and report detailed beneficial ownership information, which is then shared with other

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> (The US FATCA rules have led to more wide-ranging automatic exchange of information developments. These include the conclusion by the UK of a number of bilateral FATCA style IGAs with British Crown Dependencies (the Isle of Man, Guernsey and Jersey) and Overseas Territories with financial centres (Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat and the Turks and Caicos Islands).).

[14] For example, the goal of exchanging information in the tax context is to allow "agents (tax authorities) to make choices that yield higher expected payoffs/utility than they would obtain from choices made in the absence of that information." GARBARINO, *supra* note 10, at 567.

[15] ORG. FOR ECON. COOP. & DEV., *Commentary*, *in* 2 KLAUS VOGEL ON DOUBLE TAXATION Conventions 1844 (Ekkehart Reimer & Alexander Rust eds., 4th ed. 2015).

[16] *See, e.g.*, Dourado, *supra* note 11, at 1860 (describing information that can be exchanged under the Model TIEA). The list is worth contemplating:

> The fiscal residence of an individual or a company; the tax status of a legal entity; the nature of income in the source country; the income and expenses shown on a tax return; business records (for instance to determine the amount of commissions paid to a company of another State); formation documents of an entity and documents about subsequent changes of shareholders/partners; name and address of the entity at the time of formation and all subsequent name and address changes; number of entities residing at the same address as the company for relevant years; evidence (contracts and bank statements) of their remuneration; social security payments and information about their occupation with regard to any other entities; banking records; accounting records and financial statements; copies of invoices, commercial contracts, etc.; the price paid for goods in a transaction between independent companies in both States; information regarding a triangular situation where in transactions between two companies, each situated in a Contracting Party, a company of a third country C (with which neither country A nor B have an information exchange instrument) is interposed. Here, countries A and B may exchange information regarding transactions with the company in country C for the correct taxation of their resident companies; prices in general, necessary to check the prices charged by their taxpayers even if there are no business contacts between the taxpayers. For instance, country A may wish to check prices charged by its taxpayers with reference to transfer pricing information on similar transactions in country B, even if there are no business contacts between the respective taxpayers in countries A and B….

Id.

governments both automatically and on request.[17] The virtual elimination of bearer share companies in most offshore jurisdictions closed a significant gap in tracking financial assets.[18] Professional licensing regimes in IFCs impose strict documentation and reporting requirements on service providers.[19] FIUs share suspicious transaction reports through secure channels as part of their role as national centers for receiving and analyzing suspicious transaction reports, as required by FATF Recommendation 29.[20] This information gathering and sharing occurs through well-established protocols and dedicated secure communication systems.[21] Together, these overlapping systems make preventing regulators and law enforcement agencies from obtaining information across borders far more difficult than was the case a few decades ago.

The practical implications of this change are profound. The traditional tax evasion strategies using offshore accounts have become largely obsolete.[22] Attempts to hide assets through complex corporate structures now leave clear data trails.[23] Professional enablers (bankers, lawyers, accountants, and others) face potential criminal liability for helping clients evade reporting requirements.[24] While determined criminals may still attempt to exploit gaps in

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[17] GLOB. F. ON TRANSPARENCY & EXCH. INFO. FOR TAX PURPOSES, *Beneficial Ownership and Tax Transparency – Implementation and Remaining Challenges: OECD and Global Forum Report to G20 Finance Ministers and Central Bank Governors*, ORG. FOR ECON. COOP. & DEV. 6 (July 2024), https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/07/beneficial-ownership-and-tax-transparency-implementation-and-remaining-challenges_616488db/f95790b1-en.pdf (103 of 111 jurisdictions assessed have fully implemented the requirements in their legislative frameworks" on automatic exchange of information on bank accounts, although just 50% had adequate frameworks for information exchange on request).

[18] Manatta, Housden & Wardzynski, *supra* note 8, at 28 (over 90% of reviewed jurisdictions have eliminated them which has "effectively shut down a high risk route to evade tax").

[19] *See infra* Part IV.

[20] FATF, *Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems*, 102–03, 148–51 (Aug. 2024), https://www.fatf-gafi.org/content/dam/fatf-gafi/methodology/FATF-Assessment-Methodology-2022.pdf.coredownload.inline.pdf (Recommendation 29 and Immediate Outcome 6).

[21] *Operational Guidance for FIU Activities and the Exchange of Information*, EGMONT GRP. 3 (Feb. 2017), https://egmontgroup.org/wp-content/uploads/2021/09/Egmont_Group_of_Financial_Intelligence_Units_Operational_Guidance_for_FIU_Activities_and_the_Exchange_of_Information.pdf.

[22] *See* EU TAX OBSERVATORY, *Global Tax Evasion Report 2024*, 6 (2024), https://www.taxobservatory.eu/www-site/uploads/2023/10/global_tax_evasion_report_24.pdf ("Thanks to the automatic exchange of bank information, offshore tax evasion has declined by a factor of about three in less than 10 years."). The report (which promotes some truly staggering tax increases) also notes that tax evasion "is increasingly happening domestically" rather than internationally, suggesting the need for countries to get their own houses in order. *Id.* at 6, 13–14.

[23] Pillar 2 of the OECD's BEPS initiative requires entity-level data collection, aggregated to any group of which the entity is a part. *See BEPS Pillar Two: Understanding Data Requirements and Managing Data*, WOLTERS KLUWER (Mar. 6, 2024), https://www.wolterskluwer.com/en/expert-insights/understanding-beps-pillar-two-data; IRS, *Frequently Asked Questions (FAQs) - Country-by-Country Reporting*, https://www.irs.gov/businesses/international-businesses/frequently-asked-questions-faqs-country-by-country-reporting

> (a competent authority will automatically exchange CbC reports prepared by multinational enterprise (MNE) groups with a reporting entity in its jurisdiction with partner jurisdiction competent authorities in all jurisdictions in which the MNE group operates, provided that a legal instrument allowing for the automatic exchange of information (e.g., double taxation convention (DTC) or tax information exchange agreement (TIEA)) is in force and a competent authority arrangement (CAA) for the exchange of CbC reports is operative with such second-mentioned jurisdictions.).

[24] *See, e.g.*, Lawrence Brown, *Facilitating Tax Evasion: Criminal Liability for Aiding, Abetting and Promoting Tax Law Violations*, BROWN PC (Mar. 29, 2024), https://www.browntax.com/insights/facilitating-tax-evasion-criminal-liability-for-aiding-abetting-and-promoting-tax-law-violations/ ("When seeking to close the tax gap through

coverage, the infrastructure of information exchange has been part of changes which fundamentally transformed the role of IFCs in the global financial system.[25] Indeed, one result of onshore efforts was to spur IFCs to innovate in regulation and contribute to the development of a more nuanced international regulatory regime that ultimately made for a sounder global financial system.[26] In one sign of the change, the debate between IFCs and their critics over beneficial ownership today has largely moved from whether there should be a beneficial ownership registry to whether such registries must be public or can be restricted to public officials.[27]

This article challenges the common narrative that characterizes IFCs as enablers of tax evasion, money laundering, and other forms of financial misconduct without reference to their development into financial hubs compliant with international norms.[28] To do so fails to recognize recognize the scope and depth of today's global financial system and undervalues the legal and human infrastructure, both internationally and within jurisdictions, that sustains it and connects IFCs and onshore economies. Through an analysis of tax treaties, regulatory statutes, and historical literature, we demonstrate how the evolution of information exchange networks has

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enforcement, the Internal Revenue Service (IRS) doesn't solely target taxpayers who have underreported and underpaid their federal tax liability. It also targets those who facilitate tax evasion and tax fraud. Accountants, advisors and promoters can all face heavy-handed enforcement…."); IRS, *Office of Promoter Investigations at a Glance*, (Oct. 15, 2024), https://www.irs.gov/about-irs/office-of-promoter-investigations-at-a-glance ("The IRS will investigate promoters and enablers of abusive tax transactions and assess all applicable civil penalties. The IRS may also refer the promoter, return preparer or enabler to the Office of Professional Responsibility, IRS Criminal Investigation or to the Department of Justice."); Heather Brehcist, *Civil Penalties for Enablers of Offshore Evasion – and Other Deterrents*, TAXADVISER (Nov. 1, 2016), https://www.taxadvisermagazine.com/print/pdf/node/666 (discussing applicability of s 328 of the UK Proceeds of Crime Act 2002, which can lead to a sentence of up to 14 years and/or a fine).

[25] *See* Andrew P. Morriss & Charlotte Ku, *The Evolution of Offshore: From Tax Havens to IFCs*, IFC REV. (Feb. 3, 2020), https://www.ifcreview.com/articles/2020/february/the-evolution-of-offshore-from-tax-havens-to-ifcs/; Charlotte Ku & Andrew P. Morriss, *The "Not Seen" Effect of International Financial Centers: Innovation in the Global Financial Ecosystem*, (m.s. under submission) (2025).

[26] *See* Charlotte Ku & Andrew P. Morriss, *IFC Regulatory Innovation: Vital to the Maintenance of a Healthy Global Financial Ecosystem,* IFC REV. (Jan. 12, 2022), https://www.ifcreview.com/articles/2022/january/ifc-regulatory-innovation-vital-to-the-maintenance-of-a-healthy-global-financial-ecosystem/.

[27] Petr Jansky et al., *Is Panama Really Your Tax Haven? Secrecy Jurisdictions and the Countries They Harm*, 16 REGUL. & GOVERNANCE 673, 674, 677 (2021). IFC critics also complain that IFCs facilitate multinational businesses avoiding taxes through mechanisms such as transfer pricing. Accomplishing such transactions has also been made more difficult by the development of the Common Reporting Standard and various domestic anti-avoidance measures. These are generally quite different in kind from the mechanisms we discuss here that are aimed at individuals and we plan to address these in future work.

[28] *See, e.g.*, Emmanuel Mathias & Adrian Wardzynski, *Leveraging Anti-Money Laundering Measures to Improve Tax Compliance and Help Mobilize Domestic Revenues* (IMF Working Paper, 2023), https://www.elibrary.imf.org/view/journals/001/2023/083/article-A001-en.xml; Nicholas Shaxson, *Tackling Tax Havens*, INT'L MONETARY FUND (Sept. 2019), https://www.imf.org/en/Publications/fandd/issues/2019/09/tackling-global-tax-havens-shaxon; RONEN PALAN, THE OFFSHORE WORLD: SOVEREIGN MARKETS, VIRTUAL PLACES, AND NOMAD MILLIONAIRES 40–41 (2003). More recently, a paper proposed a "Bilateral Secrecy Index" that purported to uncover the "hypocrisy … at the core" of OECD and EU anti-tax avoidance efforts by identifying "hidden power relations" which are "at the center" of "regime design." Petr Jansky et al., *Is Panama Really Your Tax Haven? Secrecy Jurisdictions and the Countries They Harm*, 16 REGUL. & GOVERNANCE 673, 674, 677 (2021). [or Petr Jansky et al., *supra* note 26, at 674, 677.] Jansky et al., argue it is ineffective as OECD countries employ "selective resistance" to information exchange in "their controlled secrecy jurisdictions." Janksy et al., *supra* note 27, at 689.

transformed IFCs from so-called "secrecy jurisdictions"[29] into transparent, well-regulated financial hubs. We trace this development from the initial "tax haven era" (from the 1950s to the 1980s, depending on the jurisdiction) to the early bilateral agreements (1980s to 1990s) and then through to today's automated multilateral systems, indicating how layered oversight mechanisms now enable unprecedented visibility for tax, regulatory, and criminal justice authorities into cross-border financial flows. This historical approach is necessary to understand today's network of agreements because they arose out of the experience of major economies attempting to close pathways to tax avoidance, tax evasion, and money laundering, which grew up during the tax haven era. Onshore governments then built upon the framework of tax treaties developed after World War II to facilitate international business to create key parts of the information exchange infrastructure.[30] Without understanding these origins, we cannot understand why the networks are shaped as they are.

This Article examines the evolution of those networks alongside the evolution of IFCs, showing that large scale opaque-to-regulators transfers of funds face serious obstacles in IFCs today. In addition, the expansion of IFCs' financial regulatory apparatus over the past fifty years, including both regulatory bureaucracies focused on stopping illicit transactions and information exchange and domestic legal infrastructure within IFCs, make using a reputable IFC in a financial transaction more a financial "Good Housekeeping seal of approval" than a red flag for tax avoidance, tax evasion, or money laundering. Our analysis makes use of a comprehensive database of tax treaties as well as our collection of regulatory statutes in IFCs and our extensive analysis of the literature by offshore promoters on how to make use of IFCs to avoid (and occasionally evade) taxes. We track not only the development of the reporting requirements and the agreements requiring them, but also the building of accompanying legal and regulatory infrastructure within IFCs to comply. This domestic capacity has enabled IFCs to be a voice in policy and decision-making at the international level resulting in more nuanced and effective regulation.[31] This position has moved IFCs from the tax haven era to the present one of international regulatory collaboration and enhanced development of innovative financial services that are widely beneficial.[32]

Part I begins with a brief account of the tax haven era, when the primary point of an offshore jurisdiction was that it was *not* the place where the owner of assets was taxed and regulated. Offshore jurisdictions in this era often resisted cooperation with onshore governments, focusing on enabling a business in which even legitimate users sought to avoid providing information on their activities offshore to their home jurisdictions. As a result, the initial efforts to control the use of offshore jurisdictions for tax avoidance/evasion and money laundering came from onshore governments' strengthening of their own domestic tax regulations and laws and the creation of anti-money-laundering laws. Much of the anti-IFC literature today fails to recognize the evolution in financial services that has taken place in these jurisdictions to structures that are quite different from early ones as onshore governments successfully countered the strategies that

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[29] *Tax Havens and Secrecy Jurisdictions*, TAX JUST. NETWORK (2020), https://taxjustice.net/topics/tax-havens-and-secrecy-jurisdictions/.
[30] *See infra* Part III.
[31] Ku & Morriss, *IFC Regulatory Innovation*, *supra* note 26; Ku & Morriss, *Not Seen*, *supra* note 24.
[32] Morriss & Ku, *Tax Havens*, *supra* note 25.

enabled tax evasion/avoidance by aggressive anti-avoidance moves.[33] Understanding this pre-history of the modern information exchange era is important context because it shaped the initial responses that laid the foundation for the post-tax haven era. Thus, this section examines how early tax haven operations thrived not through complex schemes, but rather by exploiting fundamental gaps in international oversight—particularly the lack of formal cooperation between jurisdictions, limited enforcement capabilities, and the absence of standardized information-sharing frameworks between onshore and offshore authorities.

Part II describes the initial phase of the efforts to develop cross-border information sharing mechanisms. These include the signing of Memoranda of Understanding, Mutual Legal Assistance Treaties, and other agreements to facilitate information exchange between IFCs and onshore governments in the 1980s and 1990s. We discuss how that affected IFCs' offerings, including how it changed who used IFCs and how onshore users made use of IFCs. The impact of these efforts is often undervalued by IFC critics, who generally ignore or dismiss the robust information sharing provided on request and internal information gathering tools that it produced.[34] Most importantly, this period created initial channels of communication and departments within IFC governments focused on keeping their jurisdictions compliant, producing both a framework for increasing cooperation and an interest group within IFC governments with an incentive to build information exchange channels. This interest group acquired considerable internal political clout, as international pressure grew on IFCs to adopt ever-more-comprehensive measures.

Part III focuses on the evolution of the network of double taxation agreements, tax information exchange agreements, and other multilateral agreements on information sharing among jurisdictions, a network which expanded rapidly beginning in 1977 and has evolved to emphasize information exchange provisions as a core purpose of tax treaties alongside the traditional reduction of double taxation. The creation of pipelines for sharing information reinforced the shift in mindset in offshore governments by adding internal voices for prioritizing information exchange and collaboration with onshore governments.

Part IV examines the expansion of licensing regimes for financial services professionals, a regulatory tool most highly developed in IFCs (and which many onshore governments have yet to adopt), and how it equips IFCs to both prevent money laundering and collaborate internationally in preventing financial crime. Not only did this empower the increasingly independent regulators offshore, but it changed the composition of many of the participants in

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[33] *See* Richard Gordon & Andrew P. Morriss, *Moving Money: International Financial Flows, Taxes, and Money Laundering*, 37 HASTINGS INT'L & COMP. L. J. 1 (2014) (discussing problems with characterization of IFCs).

[34] *See, e.g.*, TAX JUST. NETWORK, *Tax Havens and Secrecy Jurisdictions*, *supra* note 29, where in the discussion of *Secrecy Indicator 19: Information Exchange Upon Request*, (https://fsi.taxjustice.net/fsi2022/KFSI-19.pdf), TJN gives a score of 100 to jurisdictions that signed the CMAAT and 0 to those that have not, regardless of their participation in any other agreements (DTAs, TIEAs, etc.) that provide for information exchange, a deliberate change from earlier editions of their index. *Id.* ("In past editions of the Financial Secrecy Index a different approach was used, and in cases in which a jurisdiction had not signed or ratified the amended Tax Convention [CMAAT], we assessed the number of effective bilateral information exchanges."). *See also* Mary Alice Young, BANKING SECRECY AND OFFSHORE FINANCIAL CENTRES: MONEY LAUNDERING AND OFFSHORE BANKING 1 (2013) (IFCs have "no more than a superficial commitment to international confiscation standards due to the irreconcilability of confiscation with their main economic pillar, for example strong banking confidentiality.").

offshore financial industries. For example, the shift from relatively unregulated individual trustees to licensed trustees shifted the trust service provider business toward corporate entities, that developed extensive compliance departments to protect their licenses.

Part V concludes by examining the impact of this trajectory toward greater information sharing.

I. The Tax Haven Era

In this section, we briefly recount the origins of IFCs as part of the tax havens that sprang up as onshore tax regimes in Europe and North America raised tax rates during and after World Wars I and II and the creation of modern welfare states, all of which required increasing levels of public revenue.[35] Table 1 lists jurisdictions frequently referred to as "tax havens."

Table 1 - "Tax Haven" Jurisdictions

Jurisdictions			
Andorra	Cook Islands	Jersey	San Marino
Anguilla	Curacao	Labuan (Malaysia)	Seychelles
Antigua and Barbuda	Cyprus	Liechtenstein	Singapore
Aruba	Dominica	Luxembourg	Sint Maarten
Bahamas	Dubai IFC	Malta	St. Kitts & Nevis
Barbados	Gibraltar	Marshall Islands	St. Lucia
Belize	Grenada	Mauritius	St. Vincent & the Grenadines
Bermuda	Guernsey	Monaco	Switzerland
British Virgin Islands	Hong Kong	Montserrat	Turks & Caicos
Brunei	Isle of Man	Panama	Vanuatu
Cayman Islands		Samoa	

Understanding how tax havens operated is important to understanding the broader story today for two reasons. First, as we previously noted, much of the criticism of IFCs comes from people who believe that IFCs today operate as tax havens did in 1970.[36] Understanding the past helps us understand how the world has changed. Second, tax haven operations provoked responses from onshore governments both individually and collectively. These responses included initiatives by existing organizations including the Organizatioin for Economic Cooperation and Development (OECD), European Economic Community/European Union (EEC/EU), and International Monetary Fund (IMF), the creation of new organizations that focused heavily on IFCs such as the Financial Action Task Force (FATF) and Global Forum, and the creation of new organizations formed to coordinate areas of financial regulatory policy more broadly, such as the Basel Committee. As we will describe later, the combination of these efforts at the various levels has transformed both the external legal infrastructure of international financial transactions and the internal regulatory environments within both onshore and offshore jurisdictions.

[35] TIM BENNETT, INTERNATIONAL INITIATIVES AFFECTING FINANCIAL HAVENS 7 (2d ed. 2002) (quoting *Tolley's International Tax Planning* that "the tax haven is a creature of the twentieth century, and began to be used extensively because of the high levels of tax which prevailed after the First World War.").
[36] Morriss & Ku, *Tax Havens*, *supra* note 25.

Understanding what prompted these changes will help us understand the impact of the changes and predict their further evolution.

A. The Rise of Tax Havens

Although there is evidence of pre-World War II use of offshore jurisdictions (particularly the Bahamas and Bermuda for North Americans and the Channel Islands for the British), it was the simultaneous rise in post-World War II tax rates and the concurrent fall in transportation and communications costs that made use of offshore jurisdictions into a more significant business.[37] In Britain, post-War Labour Governments were trying

> to grasp an essentially slippery and elusive object – the spending power of the rich. As soon as tax tightened on income, so it changed its appearance and emerged as capital. Lifetime earnings of whatever form were being quietly sustained by inheritance, which in turn passed outside the more exposed forms of individual title and instead through the more elusive and labyrinthine network of trusts.[38]

Although rarely reaching UK levels, World War II and postwar tax rates in the United States also incentivized efforts by the wealthy and businesses to find ways to shelter income.[39] These efforts occurred in an environment where there was a "general consensus that international financial activities were very limited in scope and thus [so was] risk," although this began to change in the 1970s with the rise of the Euromarkets.[40]

The punitive levels of taxation in many onshore economies changed taxpayers' attitudes toward taxes. UK solicitor Tim Bennet, a prolific commentator on international tax issues, summarized the impact of UK tax rates in the 1970s as provoking "a sea change in taxpayer morality in the UK."[41] Taxpayers "started to question the morality of such oppressive rates" and "many emigrated to escape them, and those who chose to remain worked with their tax advisors on schemes to reduce or circumvent and eliminate taxation."[42] The UK 'game' had changed

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[37] Andrew P. Morriss, *Cultivating Trust Law: Four Phases of Offshore Trust Law's Development*, *in* CAMBRIDGE HANDBOOK OF COMPARATIVE TRUST LAW (forthcoming). *See also* ANTHONY SUMPTION, TAXATION OF OVERSEAS INCOME AND GAINS 109 (3d ed. 1979)

> (The simple scheme of transferring funds to a foreign trust or company which could invest in securities not subject to the deduction of tax and be safe from the clutches of the Revenue occurred to wealthy taxpayers' advisers soon after the First World War when income tax and super tax, as it was then called, began to be levied in peacetime at the high rates which have become habitual in the last 50 years.).

[38] RICHARD WHITING, THE LABOUR PARTY AND TAXATION: PARTY IDENTITY AND POLITICAL PURPOSE IN TWENTIETH-CENTURY BRITAIN 138 (2000).

[39] For U.S. historical tax rates, *see Historical U.S. Federal Individual Income Tax Rates & Brackets, 1862-2021*, TAX FOUND. (Aug. 24, 2021), https://taxfoundation.org/data/all/federal/historical-income-tax-rates-brackets/; *see also Historical U.S. Federal Corporate Income Tax Rates & Brackets, 1909-2020*, TAX FOUND. (Aug. 24, 2021), https://taxfoundation.org/data/all/federal/historical-corporate-tax-rates-brackets/. The top individual income tax marginal rate in the United States hit 94% (for incomes over $200,000) in 1944 and 1945. It remained over 90% at the top bracket (which rose slightly) until 1964 but continued to be 70% or above until 1982. *Id.*

[40] Douglas W. Arner, *Cross-Border Supervision of Financial Institutions*, *in* THE OXFORD HANDBOOK OF FINANCIAL REGULATION 490 (Niamh Moloney, Eilis Ferran & Jennifer Payne eds., 2015).

[41] BENNETT, INTERNATIONAL INITIATIVES AFFECTING FINANCIAL HAVENS, *supra* note 34, at 11.

[42] BENNETT, INTERNATIONAL INITIATIVES AFFECTING FINANCIAL HAVENS, *supra* note 34, at 11.

irrevocably."[43] Similarly, in the U.S., "[b]etween 1970 and 1986, a series of 'tax shelters' were developed by promoters and marketed to tens of thousands of taxpayers that had income that was not subject to withholding tax, such as physicians, dentists and lawyers."[44] In addition to its use by those with income that was not subject to withholding at the source, jurisdictional tax arbitrage was made possible by features of onshore tax systems that made IFC entities particularly useful despite onshore governments' efforts to restrict arbitrage strategies. For example, in the UK, inter-company dividends were exempted from tax because traditionally it was thought that the first company had already been taxed on the income.[45] This exemption provided a pathway to shift dividends booked in low tax jurisdictions to the UK. By 1974, international tax avoidance pioneer and London solicitor Milton Grundy could report in the third edition of his guide to tax havens that

> [a] whole flood of newspaper and magazine articles, at least two lengthy books and a variety of conferences and seminars in widely-separated parts of the world have, over the last two or three years, poured out a mass of information, of varying degrees of relevance and accuracy, about the tax-haven phenomenon.[46]

Grundy's comment highlights how a business developed in which entrepreneurs of varying degrees of ethics and skill made increasing use of offshore jurisdictions to lower onshore tax bills in the 1960s and 1970s.[47] These efforts were initially built around simple structures created

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[43] BENNETT, INTERNATIONAL INITIATIVES AFFECTING FINANCIAL HAVENS, *supra* note 34, at 11.

[44] Reuven S. Avi-Yonah & Amir Pichhadze, *Formulating a General Anti-Abuse Rule (GAAR) in Tax Legislation (Insights and recommendations)*, *in* THE ROUTLEDGE COMPANION TO TAX AVOIDANCE RESEARCH 122 (Nigar Hashimazade & Yuliya Epifantseva eds., 2018).

[45] Although this tax treatment was not consistent with Labour's plans for reforming the taxation of companies in the 1960s, it was not seen as worth the political capital necessary to change the rule because, as the notes from the meeting that abandoned the idea recorded, "a whole complex of inter-company relationships had grown up under the existing tax system. It would be extremely contentious to disrupt company financial arrangements and equity markets by taxing inter-company dividends now." RICHARD WHITING, THE LABOUR PARTY AND TAXATION: PARTY IDENTITY AND POLITICAL PURPOSE IN TWENTIETH-CENTURY BRITAIN 163 (2000). [or WHITING, *supra* note 37, at 163.]

[46] GRUNDY'S TAX HAVENS: A WORLD SURVEY vii (Milton Grundy ed., 3d ed. 1974).

[47] The advice from guides to the use of IFCs by Grundy, an adviser on the use of IFCs who helped draft multiple statutes for IFCs over several decades to facilitate their development of financial services businesses, and Marshall Langer, a U.S. tax attorney who also pioneered offshore strategies in the 1960s and 1970s, provides a window into how people and businesses made use of tax havens. GRUNDY'S TAX HAVENS: A WORLD SURVEY 4–5 (John Walters ed., 4th ed. 1983) (There are some signs, however, that future legislation in the tax havens will be less concerned to make it easier for the | offshore client to utilize those jurisdictions, and more concerned to regulate the tax haven business. … [And so] governments in the tax havens are, as a result, understandably concerned about their image and are looking for mechanisms to ensure that undesirable business does not come to their shores."). (unsure where quote begins) Grundy wrote and edited comparative guides to tax havens (later termed guides to offshore financial centers) between 1969 and 1997. Grundy began with TAX HAVENS: A WORLD SURVEY (Milton Grundy ed.) [1st edition] (Etablissement General des Institutes Financiers, 1969). The publication had new editions under the title *Grundy's Tax Havens: A World Survey* in 1972, 1974, 1983, 1987, and 1993. It then appeared as *Offshore Business Centres: A World Survey* in 1997.

Langer's guides began with *The Cayman Islands – A New Base for Foreign Companies and Trusts,* coauthored with Cayman lawyer William S. Walker (1973). A non-exhaustive list of further publications includes MARSHALL J. LANGER, 1973 SURVEY OF FOREIGN TAX HAVENS (1973); MARSHALL J. LANGER, HOW TO USE FOREIGN TAX HAVENS (New York: Practicing Law Institute 1975); MARSHALL LANGER, THE SWISS REPORT (1991–1992 ed. 1991); MARSHALL J. LANGER, THE TAX EXILE REPORT (5th ed. 1996). He also published a series of guides,

to put assets legally outside high tax jurisdictions (generally trusts, bearer share companies, and personal holding companies) and were initially successful.[48] However, these structures quickly provoked countermeasures from onshore governments which eventually resulted in the elimination of tax advantages to virtually all individuals from the use of simple structures. As we discuss below, these countermeasures inspired some of the offshore jurisdictions to seek to become better regulated.[49]

The transactions that first appeared in tax havens were simple ones.[50] Their "essence" was creating a legal entity with certain characteristics:

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essays, and articles dealing with specific issues, aimed at individuals and small business owners rather than multinational corporations.

Both were integral to the creation of offshore tax avoidance strategies. *See, e.g.*, *Milton Grundy, Lawyer Who Pioneered Offshore Tax Havens and Philanthropist Who Set Up a Gallery in His Own Home for Promising Artists – Obituary*, THE TEL. (Jan. 8, 2023), https://www.telegraph.co.uk/obituaries/2023/01/08/milton-grundy-lawyer-who-pioneered-offshore-tax-havens-philanthropist/#:~:text=Milton%20Grundy%2C%20who%20has%20died,indefatigable%20patron%20of%20the%20arts.; W.G. Hill, *Forward*, *in* LANGER, SWISS REPORT, *supra,* at vii (W.G. Hill, in the forward to Langer's book for Scope Books on Switzerland, said

> Dr. Langer single-handedly invented the field of *International Tax Planning!* It was around 1970 (when I was living in Canada) that a flyer from a law book company alerted me to his great classic, *How to Use Foreign Tax Havens* [sic]. It was the Bible in its field. It was not that no one had ever done this sort of tax planning before, it was just that no-one had ever *written a book* on the subject.).

While we have not tracked down every publication by Grundy and Langer, we have reviewed their major publications. These provide an invaluable documentary record of the evolution of what tax havens were being used for by serious tax professionals. In addition, the Economist Intelligence Unit published a series of guides to *Tax Havens and Their Uses* between 1971 and 2002, which we also reviewed.

[48] A series of less reputable guides, published by publishers like Scope International, offered what might be most charitably described as "extremely aggressive tax planning advice." These continued to promote such strategies into the 1990s, long after most of the strategies covered had progressed from tax avoidance to tax evasion. These provide a window into the ideas of those seeking to completely avoid/evade taxes through strategies that—even at the time they were being written about—were likely, at a minimum, to wave numerous red flags in front of any regulator on- or offshore who encountered someone engaged in them. We include in this many of the writings by Adam Starchild in which he promoted international tax avoidance strategies from the 1970s through the early 2000s. Despite federal and state convictions for fraud, securities violations, and sexual offenses involving obscene materials and minors, Starchild continued until his death in 2006 to promote what can most charitably be characterized as "extremely aggressive" tax reduction strategies, often involving use of offshore jurisdictions through an extensive series of guides to these strategies with titles like *Tax Havens: What They Are and How They Work* and *Everyman's Guide to Tax Havens*. As his Wikipedia entry dryly notes, "Periods in the 1970s and 80s when he produced no books appear to tie-in with times when he was in prison." *Adam Starchild,* WIKIPEDIA, https://en.wikipedia.org/wiki/Adam_Starchild.

[49] To a great extent, current critics of IFCs appear to believe that these type of activities are widespread today. As we will describe in greater detail in the following sections, they are not because of the growth of a dense web of regulatory efforts which make it virtually impossible for individuals to move large sums of money to or through IFCs without those transactions being monitored and reported to relevant authorities. The growth of this network has made IFCs unattractive locations for money laundering as well as tax avoidance and tax evasion since it makes movement of money legible for law enforcement authorities in multiple jurisdictions.

[50] Andrew P. Morriss, *Cultivating Trust Law: Four Phases of Offshore Trust Law's Development*, *in* OXFORD COMPANION TO COMPARATIVE TRUST LAW (forthcoming 2025); MILTON GRUNDY, ESSAYS IN INTERNATIONAL TAXATION 17 (2001)

> (In those days the subject – like the expression – was quite a new one. A trust in, say, Bermuda or the Bahamas could be thought of simply as an English trust in a warmer climate: it could accumulate income throughout the perpetuity period, but did not otherwise depart from the English model.).

> (1) They are separate from their creator in a fashion guaranteeing that the income they derive from their assets cannot be considered part of his income. (2) They 'reside' in countries where the tax situation is much better than in the investor's home country. (3) An investor can control them and their assets and income as he pleases, without either tax or debt liabilities.[51]

That nascent tax havens allowed the creation of such entities did not distinguish them from onshore economies; until the 1970s Herstatt and Franklin National Bank crises, even onshore the "general approach was to restrict business in local currency and markets but to allow representative offices to engage in wholesale business in foreign currencies."[52] In addition, the use of nominee directors, compliant trustees, bearer share companies, and bearer bonds enabled those making use of offshore structures to cloak their holdings behind a virtually impenetrable screen of legal structures.[53] Even if tax haven governments had wanted to provide information on such structures, they would have found it virtually impossible to do so as no one could say who held the bearer shares over a company or was behind nominees as directors.[54]

It did not take much legal infrastructure for a jurisdiction to compete in this market. For example, Grundy described the Bahamas' success at this strategy in 1974 as due to "the complete absence of any form of taxation on income or capital gains" which he said "has made the Bahamas into one of the most important locations in the world for investment companies and 'offshore' companies, and the provision of banking and related financial services has now become the second largest industry in the Bahamas."[55] What it did take was guaranteeing to

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A 1971 British government list of twenty tax evasion methods had nine involving tax havens: use of bearer securities, abuse of treaty provisions, use of dummies, nominees and numbered bank accounts, use of bearer shares, "use of foreign holding companies and trusts," "transfer of income-producing assets to a tax haven entity," "transfer of income-producing functions to a tax haven entity," "payment of deductible expenses to a tax haven entity," and "payment of deductible expenses which benefit a tax haven entity." *Corrignendum to "Simple Methods of International Income Tax Evasion", 3 June 1971, Background Paper III.3,* in IR 40/16744 – Review of Tax Havens, British Archives.

[51] ADAM STARCHILD, THE COMPLETE TAX HAVEN GUIDE: FINANCIAL FREEDOM THROUGH GLOBAL INVESTING 45 (rev. ed. 2005).

[52] Arner, *supra* note 40, at 490.

[53] *See, e.g.*, MILTON GRUNDY, THE WORLD OF INTERNATIONAL TAX PLANNING 64 (1984) (touting availability of bearer shares as a key feature of the 1981 Companies Ordinance in the Turks and Caicos Islands, one which came about as a results of the Government taking "the views of a number of practitioners in the international tax planning field"); LANGER, HOW TO USE, *supra* note 47, at 101 ("In a word, bearer shares are dangerous. But Europeans love them and they will probably continue to exist forever."); *Tax Evasion Through the Netherlands Antilles and Other Tax Haven Countries: Hearing Before a Subcomm. of the H. Comm. on Gov't Operations*, 98th Cong. 276 (1983) (statement of John E. Chapoton, Assistant Secretary for Tax Policy, U.S. Dep't of the Treasury) (describing U.S. corporate bonds issued in Netherlands Antilles as bearer bonds, not registered with the SEC, and sold initially only to foreign lenders).

[54] *Improper Use of Foreign Addresses to Evade U.S. Taxes: Hearing Before a Subcomm. of the H. Comm. on Gov't Operations*, 97th Cong. 42 (1982) (statement of Alan W. Granwell, International Tax Counsel, U.S. Dep't of the Treasury) (quoting Granwell that "If you have a refund system, then that is one way of doing it, but let us say you have a Dutch company which has bearer shares. We ask them for certification and what are they going to do?").

[55] GRUNDY'S TAX HAVENS: A WORLD SURVEY 13 (Milton Grundy ed., 2d ed. 1972). In some cases, such strategies worked within high tax countries as well as offshore. In the 1960 edition of his investment advice book, Grundy explained how a British couple using a British holding company to hold their investments could reduce the tax bill

clients that the financial professionals and governments of the tax havens would not share their information with the governments they wished to escape.[56]

Such strategies were often effective through the mid- to late-1970s, by which time the cumulative effect of the various countermeasures by onshore jurisdictions began to the simplest strategies ineffective legally, relegating them to flagrantly illegal efforts to evade taxes.[57] Of course, tax haven practitioners and promoters continued to evolve new strategies in response to countermeasures.[58] For both legal and illegal strategies, the identification of tax haven users was hampered by the use of opaque legal and financial structures and offshore confidentiality laws. [59] It was also hampered by the primitive level of communications and data processing capacities of tax authorities and by internal restrictions within onshore governments.[60] This made the problem more than one of enhancing external cooperation. Disgruntled business partners or ex-romantic partners and ex-spouses sometimes provided the detailed information that enabled onshore regulators and law enforcement agencies to penetrate opaque offshore structures, but the combination of primitive communications and cumbersome methods of gathering information

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on the investment income by almost 60%. MILTON GRUNDY, MONEY AT WORK: A SURVEY OF INVESTMENT 10–11 (2d ed. 1960).

[56] *See, e.g.*, GRUNDY, 1969 ed., *supra* note 47, at 13 (noting Bahamas required order of Supreme Court to release confidential information).

[57] Morriss, *Cultivating Trust Law*, *supra* note 50. For example, Starchild suggested what he called "quasi-legal tricks," including incorporating a company in a tax haven with a single bearer share and giving the share to a friend to hold while completing his tax return in a 1979 book. ADAM STARCHILD, TAX HAVENS: WHAT THEY ARE AND WHAT THEY CAN DO FOR THE SHREWD INVESTOR 70–71 (1979). According to Starchild, the taxpayer then need not report ownership of the tax haven company, since his friend technically owned it. *Id.* at 71. After the return is filed, the friend returns the bearer share and files his own tax return, again not listing ownership of the company as he no longer owns the company. *Id.* Conceding that "this may seem a little fishy," he argued it meets the "letter of the law" before asking "but what about the spirit?" *Id.* His answer: "Only a judge can divine that." *Id. See also* ADAM STARCHILD, EVERYMAN'S GUIDE TO TAX HAVENS 47–48 (1980) (Starchild recommended using a foreign trust in a tax haven that controlled a tax haven company to invest in the United States, which he (incorrectly) suggested would avoid a U.S. resident having a controlled foreign corporation.). Similarly, a guide to using Gibraltar as a tax haven noted encouragingly that simply living there and not paying taxes was a viable strategy: "If you run a consulting operation for foreigners or manage foreign investments for foreigners from your Gibraltar apartment, there is no great risk of being asked to pay any taxes at all." W.G. HILL, THE ANDORRA & GIBRALTAR REPORT: UNDISCOVERED FISCAL PARADISES OF THE IBERIAN PENINSULA ~~x~~ (4th ed. 1995).

[58] *See, e.g.*, Boris Gehlen & Christian Marx*, "I am a Professional Tax Evader": Multinationals, Business Groups, and Tax Havens, 1950s to 1980s*, *in* HISTORIES OF TAX EVASION, AVOIDANCE AND RESISTANCE (Korinna Schonharl, Gisela Hurlimann & Dorothea Rohde eds., 2023) (case studies of the evolution of multinationals' tax avoidance strategies over time).

[59] *See, e.g.*, Cayman Islands' Confidential Relationships (Preservation) Law 1976. More generally, William Anderson of the General Accounting Office testified at a 1983 congressional hearing that "Tax havens are a problem for the United States primarily because their banking and commercial secrecy laws limit U.S. access to the information it needs to assure compliance with domestic tax and other laws." *Tax Evasion Through the Netherlands Antilles and Other Tax Haven Countries: Hearing Before a Subcomm. of the H. Comm. on Gov't Operations*, 98th Cong. 3 (1983) (statement of William J. Anderson, General Accounting Office).

[60] *See, e.g.*, *Letter, from D A Walker (Treasury), to J M Green (Inland Revenue), 24 Jan 1968, re Tax Havens,* IR 40/16744 – Review of Tax Havens, British Archives ("As we explained at the meeting, the Treasury is precluded from disclosing certain information obtained under the exchange control enforcement powers although of course when a prosecution results the information becomes public."); Richard H. Blum, Report to Ford Foundation: *Offshore Banking: Issues with Respect to Criminal Use*, (Nov. 1979), reprinted in *Illegal Narcotics Profits*: *Hearings before the Permanent Subcommittee on Investigations of the S. Committee on Governmental Affs*., 96th Cong. 478 (1979) (after Nixon, privacy values trumped tax collection).

even where offshore authorities were willing to cooperate made it hard to identify who was using tax havens.[61]

The duration of this sometimes-legal avoidance-by-relocating-assets period differs depending on the particular countermeasures particular countries took and when they took them. For example, because the United States introduced controlled foreign corporation (CFC) legislation in 1934 (for personal holding companies) and expanded the rules in 1962, but Britain did not do so until 1984, simple strategies involving offshore companies' usefulness persisted much longer for British taxpayers.[62] Additional law enforcement tools began to develop onshore as interest grew in using the financial system as a tool to address lucrative criminal enterprises, particularly drug trafficking.[63] Because they often lacked usable leverage over offshore jurisdictions,[64] many of the strategies onshore jurisdictions initially deployed depended on requiring their own taxpayers to provide tax or other regulatory authorities with information on foreign assets. These tools were of limited use where the individual who was required to report was engaged in criminal conduct and simply did not comply. In addition, even at this early stage in the development of IFCs, onshore governments recognized that these pesky offshore jurisdictions had an argument that was impossible to ignore—that they had the right to develop their own financial systems.[65]

Onshore governments deployed some controversial unilateral methods to gather information. For example, in several prominent cases U.S. authorities detained foreign bank

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[61] *See, e.g.*, David Warren, *Tax Evasion and Divorce*, TAX L. OFF. DAVID WARREN KLASING. P.C., https://klasing-associates.com/divorce-tax-issues/tax-evasion-divorce/

> This can be made many folds worse by a partner who is resentful and vengeful if you have ever committed tax fraud and made the mistake of sharing this information with your significant other. Your partner can become the bane of your existence at the time of divorce. If he or she decides to divulge this information to the authorities, you could be in significant trouble to the extent of criminal tax prosecution. It is also very common for one spouse to use the threat of a criminal tax referral or whistleblower claim again the other spouse in an attempt to gain leverage the upper hand in divorce court.

[62] Revenue Act of 1934, ch. 277, § 351, 48 Stat. 751 (U.S.) (personal holding company provisions); Pub. L. 87–834 subpart F, 76 stat 1006 (1962); Finance Act 1984, §§ 82–91 (UK).

[63] GUY STESSENS, MONEY LAUNDERING: A NEW INTERNATIONAL LAW ENFORCEMENT MODEL 4–14 (2000).

[64] For example, during internal Foreign and Commonwealth Office discussions on efforts to control the growth of tax havens in 1969, one official wrote

> I think that we may be in danger of looking at this too much from the point of view of the interests of the British Government and not sufficiently from the point of view of the interests of the dependent territories themselves. I do not think it would be wise to dismiss out of hand the possible indirect benefits which 'brass plate' companies may bring to dependent territories in the form of commercial entrepreneurship that might not otherwise be attracted to the area.

Letter, T.J. O'Brien, FCO, from J.E. Rednall, 2 May 1969, Tax Havens and Tax Concessions, in T 295/588 – Overseas Tax Havens: Balance of Payments and Tax Problems, British Archives.

[65] *Memo to Mr. Packman, British Dependent Territories and Tax Haven Business, from J.G. Littler, 3 Sept 1971,* in T 295/892 – Balance of Payments and Tax Problems Resulting from the Setting Up of Overseas 'Tax Havens', British Archives

> (One important argument which the Foreign and Commonwealth Office adduce, and in which there is obviously some force, is that a major problem of some of the very small dependent | territories is the capacity to absorb purely financial aid: what they really need is economic activity. It is an undeniable fact that tax haven business has some spin-off in the form of local economic activity, although part of the Treasury and Inland Revenue argument is that the spin-off is very small in relation to the volume of business.).

officials from offshore jurisdictions who made the mistake of visiting the United States, holding them until the information sought was provided,[66] and engaged in some elaborate ruses to gather information from them.[67] The IRS launched larger scale operations (Operation Tradewinds, Swiss Mail Watch, the Bahamas Project, and Project Haven) in an effort to identify tax evaders using offshore jurisdictions by monitoring their mail and similar efforts, which also raised civil liberties concerns owing in part to the Nixon administration's weaponization of the IRS against Nixon's "enemies."[68]

Outside such ad hoc operations, however, the existing legal infrastructure was not much help. For example, while some tax treaties in effect during the 1970s provided for exchange of information and other cooperation, they largely did so only for treaty purposes and their provisions often proved useless. Thus, although the Netherlands-U.S. treaty (which had been extended to the Netherlands Antilles) provided for information exchange, the widespread use of bearer share companies and bearer bonds in the Netherlands Antilles meant there was little information to exchange even if Antillean authorities wished to be cooperative.[69] Similarly,

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[66] Anderson, *supra* note 56, at 3.

[67] An (in)famous example was the provision of "female entertainment" to a Bahamas bank official at a restaurant, enabling an informant to take the official's briefcase from an apartment and provide it to IRS agents, who photographed the contents of his brief case in search of client information after which the briefcase was returned to the apartment. *Oversight Hearings into the Operations of the IRS: Operation Tradewinds, Project Haven, and Narcotics Traffickers Tax Program: Before the H. Comm. on Gov't Operations, Com., Consumer and Monetary Affs. Subcomm.*, 94th Cong., 29 (1975). An IRS representative summarized what he called "the briefcase incident":

> As we understand the facts now—and we do not have a complete understanding of the facts—the confidential informant arranged top provide female entertainment for the bank official while the bank official was at a restaurant. This was done out of an apartment. The briefcase was in the apartment. . . . The briefcase contained financial information in which we were interested. It was taken by the confidential informant. Apparently he had access to the apartment. There was no breaking and entering. He took the briefcase with its contents to special agents, who then photographed the contents. It was then returned to the apartment from which it was taken.

Id. Domestic tax investigations sometimes turn on similarly ridiculous maneuvers. The 1992 edition of David Jeffery's *Tolley's Tax Compliance and Investigations* reports on a UK tax investigation into a fish and chips shop launched by a Revenue inspector who weighed a bag of chips, then calculated the number of bags of chips a bag of potatoes would yield. Comparing this with the known quantities of bags of potatoes the shop reported it had bought, he estimated that the shop's sales were larger than the reported sales. Only after the shop contested the claim with the assistance of the Fish Fryers Federation ("who have built up a significant expertise in the area of Revenue investigations into the affairs of their members") and the matter was headed for a contested hearing, did the inspector sample additional bags of chips (something there was no budget for, and so the chip purchases were hidden in "postages etc.") and discover that his initial estimate had been based on an atypical bag. The case then settled in favor of the taxpayer. JEFFERY, TOLLEY'S, *supra*, at 77–78. Given the difficulties—which the authors attribute to lack of funds and lack of time to carry out proper investigations—with assessing the taxes on a local fish and chips shop, it is not surprising that revenue services struggle with more complex returns. *Id.* at 78.

[68] *Oversight Hearings into the Operations of the IRS*, *supra* note 64; Joseph J. Thorndike, *Tax History: Nixon Tried to Weaponize the IRS by Pressuring the Commissioner*, TAX NOTES (Mar. 13, 2023), https://www.taxnotes.com/tax-history-project/tax-history-nixon-aide-tried-weaponize-irs-pressuring-commissioner/2023/03/10/7g45r.

[69] Staff Memorandum on Tax Evasion through the Use of Netherlands Antilles and the Treasury Department's Efforts to Renegotiate the Netherlands Antilles Tax Treaty to the Subcomm. Chairman and Members 569 (Apr. 5, 1983)

> (The Antilles 'bearer share' concept is unique even among tax treaty countries and enables U.S. and foreign persons to establish companies or financial accounts in the Antilles without disclosing their identities. As a result, IRS agents cannot determine whether an Antillean company or financial account receiving U.S. source income at zero percent withholding is entitled to a tax exemption.).

during this time, the Jersey courts allowed payments (let alone information from) by Jersey trusts to be provided to UK revenue authorities under Jersey's agreement with the United Kingdom only under quite limited circumstances.[70] One reason that offshore jurisdictions showed such reticence was that it was still a generally accepted legal principle that governments did not assist other governments in collecting taxes.[71]

Another part of the problem for revenue authorities during this period is that even when they had information on foreign transactions involving their taxpayers, they were often unable to make use of it. For example, in 1975, the U.S. Internal Revenue Service received more than 50,000 reports of foreign income of U.S. taxpayers, covering more than $688 million in income, from sixteen countries, but made little use of the information because it lacked the administrative capacity to do so.[72] In other cases, there was a lack of internal cooperation. For instance, the Bank of England rebuffed efforts by British tax authorities in the 1970s to use exchange control records to identify potential tax evaders.[73]

Revenue authorities also worried about other features of tax treaty networks that allowed use of treaties by third country nationals to avoid U.S. taxes (what U.S. authorities invented the

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[70] *See* Philip Baker, *Transnational Enforcement of Tax Liabilities*, *in* TOLLEY'S INTERNATIONAL TAX PLANNING 33–08 (Malcolm J. Finney & John Dixon eds., 3d ed. 1996) (comparing *Re the Marc Bolan Charitable Trust [1981] JJ 117* (allowing payment) and *Re Sidney Walmsley (deceased)* [1983] JJ 35 (refusing permission for payment)).

[71] *In re Visser, Queen of Holland v. Drukker* [1928] 1 Ch. 877, 884; Philip Baker, *The Transnational Enforcement of Tax Liabilities*, 1993 BRITISH TAX REVIEW 313, 313 (1993) (citing Dicey's *Conflict of Laws* that "This was due in part what an English court termed the "well recognized rule, which has been enforced for at least two hundred years or thereabout, under which these Courts will not collect the taxes of foreign States for the benefit of the sovereigns of those foreign States," a rule not limited to the English courts). *See also*, *Government of India v Taylor* [1955] AC 491, HL.
(It is a widely recognized rule of private international law that one state will not assist in the direct enforcement of a foreign claim." and citing Dicey's *The Conflict of Laws* that "the English Courts have no jurisdiction to entertain an action for the enforcement, either directly or indirectly, of a penal, revenue, or other public law of a foreign state.).

[72] *Oversight Hearings into the Operations of the IRS (Income Information Document Matching Program): Before the H. Comm. on Gov't Operations, Subcomm. on Comm., Consumer & Monetary Affs.*, 94th Cong. 16 (1976) (statement of Jacob Kaufman & Dean Scott, Subcomm. Staff Investigators). The General Accounting Office reported that "IRS agents had very little or no knowledge relating to the existence or use of the foreign income information documents. This is not surprising since all these documents simply arrive at the Philadelphia Service Center and then are shipped off without examination to a Federal records center." *Id.* at 17. Documents from Germany and the UK had "very serious deficiencies" that made it impossible to match them to taxpayers. *Oversight Hearings into the Operations of the IRS (Income Information Document Matching Program): Before the H. Comm. on Gov't Operations, Subcomm. on Com., Consumer & Monetary Affs.*, 94th Cong. 68 (1976) (statement of Donald C. Alexander, Comm'r, IRS). The former director of the IRS Intelligence Division reported that Canada sent information returns in bulk to the IRS but that these "were not processed by the service and therefore were not retrievable," leading his office to make a deal with the Canadians to send copies of those returns they thought "could be of significance" to his office directly. *Id.*, at 4 (statement of John J. Olszewski).

[73] GRUNDY, ESSAYS, *supra* note 47, at 47

> (An interesting – and to the foreign user undoubtedly appealing – feature of the English scene was the impeccably gentlemanly behavior of the Bank of England. If the intending shareholders were resident outside the Sterling Area (and they generally were), then – until 1979 – their identity had to be disclosed to the Bank, which would designate the company 'non-resident' for exchange control purposes. There was never – absolutely never – an occasion when the Bank passed this information as to any other person, at home or abroad.).

terms "treaty shopping" and "treaty abuse" to describe)[74] or by American taxpayers to evade them by pretending to be foreign corporations.[75] In many instances, offshore governments and service providers did little to verify eligibility of those claiming treaty benefits. For example, a GAO official reported in 1983 that

> the Netherlands Antilles has really done nothing to verify the country of residency of those people who tend to set up, that is those who set up to do business through the Netherlands Antilles. … something like 99 percent of their referrals were generated from U.S. law firms. The Netherlands Antilles accepts the mere affirmation of the attorney involved that in fact this person, this corporation qualifies under the treaty. They do not look beyond that, so therefore you can say they are doing nothing.[76]

The desire to 'send a signal' about such behavior led the United States to cancel the extension of the U.S.-U.K. treaty to the British Virgin Islands (BVI) and later the extension of the Netherlands-U.S. treaty to the Netherlands Antilles,[77] which disrupted those using these jurisdictions for simple forms of tax avoidance and evasion.[78] The introduction of the concept of "treaty shopping"[79] and the resulting spread of limitation of benefit (LOB) clauses in DTAs slowly restricted the use of treaties in many efforts to avoid taxes.[80]

At this same time, lawyers and other professionals in many tax havens were realizing that the increased competition for customers from new entrants to the "tax havenry" business (as British officials sometimes called it)[81] meant that there was a need to move up the value chain if they were to thrive or even survive.[82] A key trend in the late 1970s and 1980s, which continues

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[74] Dana Olzhabayeva, *The New Limitation on Benefits (LoB) in Article 29 of the UN Model*, *in* SPECIAL FEATURES OF THE UN MODEL CONVENTION 558 (Anna Binder & Viktoria Wöhrer eds., 2019).

[75] Anderson, *supra* note 56, at 9

> (Treasury's primary concern with the existing treaty centers on its belief that it is being used extensively for treaty-shopping purposes. In particular, Treasury is concerned about third-country investors' use of the treaty. It also suspects that U.S. citizens are taking advantage of the anonymity provided by the Antilles bearer share companies to evade U.S. taxes. For this reason, Treasury is now seeking to incorporate stronger exchange of information and antiabuse measures in the renegotiated treaty.).

[76] Anderson, *supra* note 56, at 18.

[77] Craig M. Boise & Andrew P. Morriss, *Change, Dependency, and Regime Plasticity in Offshore Financial Intermediation: The Saga of the Netherlands Antilles*, 45 TEX. INT'L L. J. 377, 418–19 (2009); Anderson, *supra* note 56, at 53 ("Treasury sent a meaningful signal to the international tax community").

[78] Boise & Morriss, *supra* note 74, at 419–26; Colin Riegels, *The BVI IBC Act and the Building of a Nation*, IFC REV. (Mar. 1, 2014), https://www.ifcreview.com/articles/2014/march/the-bvi-ibc-act-and-the-building-of-a-nation/.

[79] Olzhabayeva, *supra* note 71, at 557 (defining treaty shopping as involving three features:

> (i) the beneficial owner of a conduit entity does not reside in the country where the entity is created; (ii) the conduit entity has a minimal presence or economic activity in the country in which it is located; and (iii) the income is subject to minimal (if any) tax in the country of the conduit entity.).

[80] Olzhabayeva, *supra* note 71, at 561 (describing use of LoB clauses in MLI).

[81] *See, e.g.*, *Letter, to C Ward, Treasury, from B V White, Financial Relations Dept., FCO, 5 May 1977,* in IR 40/16744 – Review of Tax Havens, British Archives ("You are probably aware that, from time to time, some of the Dependent Territories take up with us the question of tax havenry….").

[82] *See, e.g.*, MILTON GRUNDY, OFFSHORE BUSINESS CENTRES: A WORLD SURVEY vii (Milton Grundy ed., 7th ed. 1997)

> (I have to say (and shall earn myself no popularity by saying it) that some of the claimed advantages of a particular jurisdiction can be a bit illusory—rather like the attempts of oil companies to persuade us that

now, was the evolution of "tax havens" into "financial centers" through the expansion of services from merely holding assets outside high-tax jurisdictions to providing specialized regulatory and legal environments that facilitate particular types of transactions (e.g. Bermuda and insurance).[83] Meanwhile, as a result, as even a promoter of barely legal and illegal strategies such as Starchild belatedly acknowledged in a 1995 book, "A decade or two ago, tax haven countries were used primarily by wealthy families setting up trusts for the grandchildren. As tax laws in various countries have changed, such simple solutions are generally no longer possible."[84]

Further, new, more complex strategies built around treaty networks began to be used, such as the "relatively common strategy" of creating "mixer" companies. These enabled multinational businesses to make full use of home country foreign tax credits by mingling income from high and low tax foreign jurisdictions before repatriating the profits at a blended tax rate.[85] Where they did not have sufficient income from high tax jurisdictions to take full advantage of their home country credits, this mixing of income from different overseas

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> petrol with a different label is a different fluid. A zero-tax company is (to borrow from the late Miss Stein) a zero-tax company. Still, the sheer number of competing jurisdictions has no doubt had the effect of keeping down costs.);

Tony Freyer & Andrew P. Morriss, *Creating Cayman as an Offshore Financial Center: Structure & Strategy Since 1960*, 45 ARIZ. ST. L. J. 1297, 1352–62 (2013). We use the term "value chain" to describe the legal products an IFC offers. A simple discretionary trust is at the low end, requiring little legal work beyond approving the trust documents. A captive insurance company is at a higher point, since it not only requires more complex work to create, including interfacing with local insurance regulators, but also requires ongoing efforts such as audits, regulatory reporting, administration, etc.

[83] *See* Morriss & Ku, *Tax Havens*, *supra* note 25. Prof. R.A. Johns described this trend's appearance in 1983,

> [d]uring the last decade or so, some haven centres have evolved a further stage of development as a result of participation in the process of global internationalization of national money and credit markets subsequent to the creation of the Interbank Markets and the Eurocurrency and Eurobond Markets in the 1960s, and the general spread of transnational banking in the 1970s.

RICHARD ANTHONY JOHNS, TAX HAVENS AND OFFSHORE FINANCE: A STUDY OF TRANSNATIONAL ECONOMIC DEVELOPMENT 21 (1983). Johns attributed this to

> an electronic revolution in fund transfer mechanisms which considerably lessened the costs and inconvenience of operation of banks in remote locations and made inter and intra time-zone business activity viable. This gave rise to the creation of international wholesale banking, where large denomination deposits held in a variety of currencies, obtained via extensive world-wide branch networks from non-resident corporate customers, banks, government agencies, etc. are re-lent through such markets transnationally to similar sectors. These deposit-gathering, loan-distributing, network infrastructures also created the diversification possibilities of new transnational business superstructures, as well as the practice of international subcontracting via syndicated loan activities.

Id.

[84] ADAM STARCHILD, THE TAX HAVEN REPORT 9 (3d ed. 1995–96). In another 1995 book, he was still listing "establishing holding companies and trusts" as one of the ten roads to "the completely legal process of avoiding U.S. taxes by operating in tax-haven countries." ADAM STARCHILD, THE OFFSHORE ENTREPRENEUR: PROFIT & OPPORTUNITY HAVE NO BORDERS 3 (1995). By 1990, "W.G. Hill," the pseudonymous author of multiple books on avoiding and evading taxes, was advising readers to move to Campione (an Italian enclave in Switzerland) because while "Campione is not a tax haven like Monaco, Andorra or Sark where legally there are no taxes. *It is just a place where tax collections are not enforced!*" W. G. Hill, THE CAMPIONE REPORT: SWITZERLAND'S SECRET SEMI-TROPICAL TAX HAVEN 23 (1990).

[85] Richard Collier & Tony Hughes, *Tax Planning for Large Foreign Tax Credits*, *in* TOLLEY, *supra* note 64, at 28-12 to 28-13.

subsidiaries allowed them to do so.[86] The result of this shift was that offshore professionals became a voice for engagement internationally within jurisdictions that had previously been dominated by the promoters of tax avoidance/evasion schemes, a crucial step in changing jurisdictions' attitudes toward information exchange.

The key lesson of this brief overview of the early days of simple tax haven strategies is that tax avoidance, tax evasion, and money laundering across national borders was initially accomplished through generally unsophisticated strategies. The stereotype of a shady character hauling a suitcase of cash to a foreign bank reflects part of the reality of a bygone era, but, as we will see, it no longer accurately describes how money launders and tax evaders operate. Years ago, simple strategies were made possible only by the absence of channels of cooperation among and between onshore and offshore officials, the lack of capacity in onshore authorities when information was shared, and the absence of an international legal framework for information sharing that created recognized regular channels for information sharing. The development of money laundering laws expanded the definition of the problem beyond revenue laws to include other criminal matters, and so this began to change.[87] As it became ever more difficult to simply haul a suitcase of money across an international border and deposit it in a bank in a different jurisdiction to conceal assets, that stopped being a major problem that needed further measures. Efforts by taxpayers to reduce tax burdens did not cease abruptly, of course, but over time, they became less and less effective as information exchange, anti-abuse, and other legal strategies were implemented by onshore jurisdictions, and, increasingly, by offshore regulators as well. For our purposes here, the primary point is that the modern information exchange infrastructure arose in reaction to these simple locational strategies for tax avoidance, tax evasion, and money laundering and was shaped by the strategies that arose to counter such problems. The first step was the development of aggressive countermeasures in onshore jurisdictions. Two key components of this were enhancing the ability to gather information from taxpayers suspected of engaging in money laundering, tax avoidance, and/or tax evasion and then creating the legal infrastructure to cooperate internationally.

B. The Onshore Disruption of Tax Haven Strategies

Onshore governments quickly reached the limits of the unilateral measures to gain the information they sought which they were willing to deploy against their own taxpayers and citizens. After all, by suspending communications links, ending direct air travel, and/or cutting off bank connections, they could effectively close a financial center. These governments largely did not use these strategies,[88] as offshore jurisdictions served some useful purposes in channeling

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[86] *See* Richard J. Vann, *International Aspects of Income Tax*, *in* 2 TAX LAW AND DRAFTING 39 (Victor Thuronyi ed., 1998).

[87] Stessens, *supra* note 60, at 3 (AML "has now been drastically expanded to cover other [than drug crimes], if not all, types of offence. In addition, the international fight against money laundering also signifies an evolution of the norm-making process in the field of law enforcement.").

[88] U.S. lawyer and offshore tax avoidance promoter Marshall Langer asked in his 1975 PLI publication, *How to Use Foreign Tax Havens*, "Why do the developed countries tolerate the continued existence of tax havens? Can't they prohibit their taxpayers from using tax havens?" LANGER, HOW TO USE, *supra* note 47, at 3–4. Such measures worked. Outside pressure has almost completely eliminated Vanuatu's financial center by severing virtually all connections to U.S. banks, prompting the dozens of international banks operating there in the 1970s and 1980s to sell off their operations and leave the jurisdiction. ANTHONY VAN FOSSEN, TAX HAVENS AND SOVEREIGNTY IN THE PACIFIC ISLANDS 66, 104 (2012); Jihad Alwazir et al., *Challenges in Correspondent Banking in the Small States of*

capital into the onshore economies and in providing alternative legal regimes that were useful to onshore economies.[89]

Instead, onshore jurisdictions turned toward building the legal infrastructure to facilitate obtaining the information they sought. In particular, they began by creating domestic legal tools to increase tax authorities' and law enforcement agencies' ability to get information from taxpayers on what they were doing offshore. As Grundy summarized in 1997,

> over the last few years the tax world has provided a spectacular example of such different treatment meted out to 'our own' and 'strangers': for the resident (or citizen, in the United States) an avalanche of reporting requirements, tightening of CFC rules, anti-avoidance measures (practitioners in the United Kingdom are still reeling from a Finance Bill of 400 and something meaty pages).[90]

In the UK in particular, the sophistication of the revenue authorities in dealing with international transactions grew markedly in the 1970s and 1980s.[91]

At the same time, many IFCs became more cooperative as their businesses evolved toward more sophisticated transactions. The evolution of the Cayman Islands' attitude toward secrecy and cooperation with the United States illustrates this. In 1976, Cayman passed the

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the Pacific (IMF Working Paper WP/17/90, 2017). Similarly, Nauru's and Niue's tax havens were closed as a result of international pressure. Van Fossen, *supra*, at 36 (Niue IFC wound up in 2006); Anne Davies & Ben Doherty, *Corruption, Incompetence and a Musical: Nauru's Cursed History*, GUARDIAN (Sept. 3, 2018), https://www.theguardian.com/world/2018/sep/04/corruption-incompetence-and-a-musical-naurus-riches-to-rags-tale. A number of jurisdictions simply disallow transactions involving particular jurisdictions from obtaining tax relief under domestic law for things like interest payments. *See* UNITED NATIONS, *Protecting the Tax Base of Developing Countries Against Base-eroding Payments: Interest and Other Financing Expenses*, (2017), https://www.un.org/esa/ffd/wp-content/uploads/2017/03/PP_Interest.pdf.

[89] The answer, Langer concluded, was that as "[m]uch as they would like to do so they can not, at least not without destroying their own capital markets." LANGER, HOW TO USE, *supra* note 47, at 4. *See also* GRUNDY, TAX HAVENS (1987 ed.), *supra* note 44, at 6 ("Washington appears to recognize that the Bahamas serves to channel business and investment into the United States—the country having the use to the United States which Jersey has to Britain or Hong Kong to China, and has never pressed for any change in its tax haven status."). As Grundy also noted,

> it is characteristic of high-tax jurisdictions that they offer various fiscal incentives, whether in their domestic law, or by way of provisions in the tax treaties to which they are party, to encourage the inflow of capital and expertise, and if there is good commercial reason for introducing these from outside, a group of related enterprises may well find it possible to reduce highly taxed income while increasing lowly-taxed income.

GRUNDY, OFFSHORE BUSINESS CENTRES (1997 ed.), *supra* note 79, at 189; Andrew P. Morriss, *The Impact of International Financial Centers*, CATO INST., DEFENDING GLOBALIZATION: ECON. (Aug. 27, 2024), https://www.cato.org/publications/impact-international-financial-centers#:~:text=International%20financial%20centers%20provide%20outsized,business%20laws%20around%20the%20world.. Many anti-IFC interests prefer a more conspiratorial account of why onshore governments have not shut IFCs down. *See, e.g.*, Jansky et al., *supra* note 27, at 689 (suggesting that the UK and Netherlands protect their former and current colonial possessions).

[90] GRUNDY, OFFSHORE BUSINESS CENTRES (1997 ed.), *supra* note 79, at viii.

[91] John Dixon, *UK Revenue Investigations in International Tax Matters*, *in* TOLLEY, *supra* note 64, at 34-01

> (In the 1970s it could be sufficient for someone to simply invoice a UK company via an offshore company for such an evasion to be successful, since the UK Revenue would not look at the actual ownership of that offshore company. This is no longer the case today and there are many organs of the UK Revenue now involved in the international aspect of tax investigations.).

Confidentiality Relationships (Preservation) Law, which made government officials and financial and legal professionals criminally liable if they disclosed "information concerning any property which the recipient is not, otherwise than in the normal course of business, authorized by the principal to divulge" without authorization of the Cayman Grand Court or information being disclosed to Caymanian legal authorities or regulators.[92] Under Cayman case law, a consent to disclosure made by principals pursuant to the order of a foreign court was not valid as an authorization for release.[93] By the early 1980s, Cayman had struck an informal agreement with United States to exchange information in criminal matters, although "[b]ecause of its informality and lack of statutory protection to banks disclosing information, the agreement did not work particularly well."[94] Cayman then formalized its powers to disclose information in the Narcotics Drugs (Evidence) (United States of America) Law 1984, giving effect to a 1984 agreement between the UK, on behalf of Cayman, and the United States and allowed intergovernmental cooperation in criminal matters relating to narcotics.[95] In 1986, the UK, again on behalf of Cayman, and United States signed the Mutual Legal Assistance Treaty and Cayman promptly passed implementing legislation, although the United States did not ratify it until 1990.[96]

Although the Cayman-U.S. MLAT specifically excluded taxes from covered matters, it made an exception for cases involving the use of "false or fraudulent pretenses or statements" to

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[92] Law 16 of 1976, §§ 2, 4 (Cayman Is.). Such provisions were not unusual in tax havens.

> Most tax havens do not have tax treaties and for those that do, the network is limited and such treaties provide for no, or very limited, exchanges of information or that no information is provided in practice. Because of the combination of treaty benefits granted by the treaty partner and favourable internal provisions in the tax haven, these jurisdictions may be particularly attractive for certain kinds of transactions.

Malcolm J. Finney, *Tax Havens: Measures to Prevent Abuse by Taxpayers*, *in* TOLLEY, *supra* note 64, at 27-04.

[93] Timothy Ridley, *Confidentiality Under Cayman Islands Law*, Speech to the International Union of Advocates, Interlaken, Switzerland 4 (Aug. 1989). We thank Mr. Ridley for sharing the printed version of his remarks, which were invaluable in tracing the evolution of Cayman's confidentiality laws in the 1980s. He was a partner at Maples & Calder in Cayman during the 1980s and beyond. Even before this, Caymanian financial professionals could rely on the 1924 English case of *Tournier v National Provincial and Union Bank of England* [1924] 1 KB 461 as a basis for a common law right of financial privacy.

[94] Ridley, *supra* note 91, at 5.

[95] Law 17 of 1984, §§ 2, 3, 8 (Cayman Is.); Ridley, *supra* note 91, at 5.

[96] Law 16 of 1986 (Cayman Is.); OFF. TREATY AFFS., *United Kingdom Concerning the Cayman Islands (90-319) Treaty on Mutual Legal Assistance in Criminal Matters*, U.S. DEP'T STATE (Mar. 19, 1990), https://www.state.gov/90-319. The treaty was signed on July 3, 1986, sent by the President to the Senate on August 4, 1987, reported favorably by the Senate Committee on Foreign Relations on July 25, 1989, ratified by the Senate on October 24, 1989, ratified by the President on January 2, 1990, and ratified by the United Kingdom on January 9, 1990, and entered into force on March 19, 1990. The slow pace of U.S. action on the MLAT suggests that demand for information exchange was not a high priority for the United States at this time.

This brief history of Cayman's efforts undermines claims like Young's that Cayman did not take steps to develop anti-money laundering infrastructure. *See, e.g.,* Young, *supra* note 34, at 7 ("regulatory authorities struggle to gain access to bank and client account information when conducting criminal investigations."). Young does not appear to have talked with people in the industry or regulators in Cayman (no citations to interviews appear in her book) and she makes numerous errors concerning Cayman geography (there are not "numerous cays" surrounding Cayman, so there are no air drops of drugs made on them), Cayman regulators have considerable access to information held by financial firms (which risk their licenses if they do not comply with regulators' directives), and so on. Instead, she relies heavily on formalistic analyses of a small number of statutes (mostly the Confidential Relationships (Preservation) Law 1976) without any mention of the information sharing arrangements Cayman has entered into.

obtain money, property, or valuable securities and "wilfully or dishonestly making false statements…to government tax authorities…with respect to any tax matter arising from the unlawful proceeds of any criminal offense" covered by the treaty.[97] The system was further expanded in 1989 when the Misuse of Drugs Law 1973 was amended to allow disclosure to Cayman Islands police when the person disclosing believed that customer's funds or investments were derived from drug trafficking within or outside the Cayman Islands.[98] Thus over 14 years, the Cayman Islands went from a place from which getting information was quite difficult if not impossible (as Caymanian professionals were threatened with prison if they disclosed information without a Caymanian court order to do so although there was never a prosecution of anyone for doing so) to being one with well-established, if limited in subject matter, channels for exchanging information with U.S. law enforcement agencies—a remarkable change in a short time. Cayman's financial industry continued to thrive, suggesting it had not been relying on secrecy-dependent business.[99]

Of course, the creation of onshore countermeasures did not mean that there stopped being ways for taxpayers to structure investments to minimize tax, including within large economies. Those seeking to reduce tax bills found new methods, such as one 1990s guidebook's suggestion of "new strategies using Jordanian, Tunisian, and Philippine specialist entities to take advantage of specific but narrower tax provisions."[100] Unlike the earlier strategies, however, these adaptations often fit only niche needs and could require extraordinary efforts, narrowing the number of opportunities for widespread avoidance.[101] Despite such adaptations, the dominant trends starting in the mid-1970s were: (i) the imposition of ever-stricter anti-avoidance rules in onshore jurisdictions that progressively eliminated most of the straightforward offshore tax strategies;[102](ii) the creation of anti-money laundering requirements on the foundation of anti-

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[97] Law 16 of 1986, *supra* note 94, at §§ 3(1), 19(3)(d), 19(3)(e). The US-Cayman MLAT, like most, required "dual criminality" (e.g. that the offense being investigated was a crime in both jurisdictions) and descriptions of specific criminal activity.

[98] Misuse of Drugs (Amendment) Law, 1989 (Law 3 of 1989), § 4; Ridley, *supra* note 91, at 4.

[99] Freyer & Morriss, *supra* note 79, at 1362–70.

[100] STARCHILD, TAX HAVEN REPORT, *supra* note 81, at 209–13.

[101] For example, a Latin American with a $1 million per year income from a business in his home country with high corporate income tax and no capital gains tax in which he had a minimal basis, was advised to sell the business there to a SRL he owns, which would be a pass-through entity in the eyes of the IRS but a corporation for home country tax purposes. This is treated as a liquidation of the existing entity by the Latin American tax authorities, so get a step-in basis to current fair market value. Then the owner moves to the United States, making his income non-resident (and so non-taxable) at home. The taxes paid in the former home country are treated in the US as partnership taxes, providing a US tax credit. This protects the new US resident from capital gains tax in the US if he later disposes of his ownership interest. MARSHALL J. LANGER, THE TAX EXILE REPORT 143 (5th ed. 1996). Similarly, a businesswoman moved her family to the Northern Marianas for a year in an unsuccessful effort to avoid U.S. capital gains tax on her $5.2 million payout from the sale of the family business. *Preece v. Commissioner,* 95 T.C. 41 (1990). Another approach in some IFCs was to offer enhanced secrecy for a price. For example, a tax avoidance guide advised that Liechtenstein banks offered in the 1990s, for a fee, to keep customers' names out of the banks' computers and allow them to be known to only two employees. REINHARD M. STERN & LEE ANNE KESTLER, THE AUSTRIA AND LIECHTENSTEIN REPORT 109 (1994). This relied on clients' willingness to engage in criminal behavior in their home jurisdictions and to successfully keep their use of an offshore account secret from authorities, a problem when disgruntled ex-business and romantic partners were often willing to share information with tax authorities.

[102] For example, the UK adopted CFC rules in 1984 which had the "simple objective" of stopping "the avoidance of UK corporation tax on the profits of low taxed foreign resident but UK controlled companies." Malcolm J. Finney, *Controlled Foreign Companies*, *in* TOLLEY, *supra* note 64, at 6-01. The Inland Revenue also began issuing lists of

avoidance measures, which brought both increased internal regulation within IFCs and created international platforms for promoting increased regulation; and (iii) the expansion of the treaty network's information exchange provisions (discussed in more detail below). These generally took the form of ever more complex rules within onshore tax legislation aimed at blocking both specific strategies and creating general tools enabling recharacterization of transactions for tax purposes.[103]

The impact of the development of anti-money laundering efforts in the late 1970s and early 1980s transformed both offshore jurisdictions and the international environment. For example, Grundy described Anguilla's transformation from a place with "phoney banks" into a more regulated environment in which "such abuses are a thing of the past."[104] More generally, he noted in 1997 that offshore jurisdictions were now boasting "about their measures against money-laundering, their treaty network and their ability to provide every kind of vehicle the competitors are providing. Especially do they boast about their regulatory authorities" rather than "their beaches, airline services and communications systems," each seeking to persuade others that "its financial sector is more regulated than anybody else's."[105] Thus one key result of onshore anti-avoidance and AML efforts were spillover effects within offshore jurisdictions, as the evolution of Cayman confidentiality law described earlier illustrates.

The market for tax avoidance also changed in important ways. By 1991, the ordinary income and capital gains rate began to diverge in many countries after having converged in some large economies in the 1980s. For example, the combination of the Clinton tax hike (1993) and Congress cutting the capital gains rate (1997) in the United States created the demand for new strategies to shift income to capital gains, sparking a second wave of new tax shelters often with international dimensions.[106] Similarly, with the implementation of European Economic Community and European Union requirements of freedom of movement of capital, particularly the adoption of Directive 88/361/EEC, the transactions costs of taxpayers openly "flying his/her earnings off to another country so as to enjoy a sensible lower taxation" dropped significantly.[107]

"safe" countries in which companies could be resident and not be covered by the CFC rules, which were all high tax jurisdictions. *Id.* at 6-09. In the late 1960s, the British discussed "the radical new provisions affecting the taxation of controlled non-resident companies which the Americans introduced in 1962" but concluded it was premature to attempt something similar in the UK, in part because they did not believe Parliament would allow the level of information seeking powers the U.S. approach required. *Working Party on Balance of Payments Aspects of Tax Questions: American Taxation of the Undistributed Profits of Controlled Non-Resident Companies, Memorandum by the Inland Revenue* (n.d.), IR 40/16744 – Review of Tax Havens, British Archives.

[103] Rebecca Prebble and John Prebble, *General Anti-Avoidance Rules and the Rule of Law*, *in* ROUTLEDGE COMPANION, *supra* note 41, at 63 ("Typically, governments combat avoidance by adding specific and often very detailed rules to tax legislation….").

[104] GRUNDY, OFFSHORE BUSINESS CENTRES (1997 ed.), *supra* note 79, at 7.

[105] GRUNDY, OFFSHORE BUSINESS CENTRES (1997 ed.), *supra* note 79, at ix.

[106] The divergence reshaped the incentives for high-net-worth individuals and corporate actors, fostering new offshore and onshore tax strategies. Reuven S. Avi-Yonah & Amir Pichhadze, *Formulating a General Anti-Abuse Rule (GAAR) in Tax Legislation (Insights and recommendations)*, *in* ROUTLEDGE COMPANION, *supra* note 41, at 123.

[107] Salvatore Cosentino, *The Council Directive on Taxation of Savings Income in the Form of Interest Payments (2003/48/EC)*, *in* EXCHANGE OF INFORMATION FOR TAX PURPOSES 283 (Oliver-Christoph Gunther & Nicole Tuchler eds., 2013). Cosentino further notes that full liberalization of capital movements between Member States and third countries and the introduction of the single currency for many Members, made "every Member State … a tax haven in respect of the savings of the residents of fellow Member States." *Id.* at 284 (quoting M. Gerard, *Don't Run After*

The key distinguishing feature of the second wave tax shelters is, in contrast to earlier mass-marketed schemes, that they were targeted at corporations and a select group of high-net-worth individuals.[108] Moreover, while the tax shelters in the 1970s and 1980s were devised and marketed by small promoters like Grundy (legitimate ones) and Starchild (less legitimate ones), most of the tax shelters of the 1990s cycle were devised and promoted by major accounting firms, who earned their fees by designing and helping their clients use tax shelters.[109] Not all such strategies were legitimate, but there were many arbitrage opportunities created by normal differences in tax systems.[110] Further, the 1980s "liability crisis" in the United States sparked interest among professionals at risk of lawsuits in asset protection strategies involving offshore jurisdictions.[111]

These strategies evolved toward sophisticated and bespoke strategies tailored to the needs of specific wealthy individuals and large business entities.[112] This change in the type of tax shelters and type of clients for tax avoidance strategies meant that new strategies were needed by the onshore jurisdictions resisting them. This led to both an increase in formal means of collaboration between onshore and offshore jurisdictions and the beginnings of a more robust international legal framework, to which we turn to next.

II. Jurisdiction-by-Jurisdiction Efforts to Build a Network

The late 1970s and early 1980s marked a critical turning point in global efforts to regulate international financial flows with respect to money laundering and tax evasion. These efforts came after the breakdown of the previous exchange control regimes that had attempted to restrict financial flows in support of fixed exchange rates through complex systems of permits, permissions, and multiple exchange rates. Those efforts at exchange control had, ironically, spurred the development of many of the techniques that ultimately were used to avoid taxes

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Bankers' Imaginations—An Economist's Reflections on Potential Regimes for Capital Income Taxation, 63 BULL. FOR INT'L TAX'N 474–75 (2009).).

[108] *See* Harold Handler, *What Drove the 1990s Tax Shelter Epidemic?*, FRONTLINE (Feb. 19, 2024), https://www.pbs.org/wgbh/pages/frontline/shows/tax/shelter/1990s.html ("What happened -- post the change in the tax law in 1986 -- was the development of somewhat artificial transactions. … A client would call with a transaction that was being promoted for purposes only to reduce taxes, having no business reality.").

[109] Reuven S. Avi-Yonah & Amir Pichhadze, *Formulating a General Anti-Abuse Rule (GAAR) in Tax Legislation (Insights and recommendations)*, *in* ROUTLEDGE COMPANION, *supra* note 41, at 123; [or Avi-Yonah &Pichhadze, *supra* note 104, at 123;] TANINA ROSTAIN & MILTON C. REGAN, CONFIDENCE GAMES: LAWYERS, ACCOUNTANTS, AND THE TAX SHELTER INDUSTRY 52 (2014) (arguing that in 1990s consultants were "single-mindedly devoted to marketing [tax shelters] as widely as possible before enforcement agencies got wind of them and shut them down.").

[110] *See* Tulio Rosembuj, *International Tax Arbitrage*, 39 INTERTAX 158 (2011) (defining tax arbitrage).

[111] *See* MILTON GRUNDY, JOHN BRIGGS & JOSEPH FIELD, ASSET PROTECTION TRUSTS 31 (3d ed. 1997)

> (In the last decade, no fewer than nineteen offshore jurisdictions have brought in legislation designed to limit the power of creditors to set aside transfers of assets into trust. These jurisdictions are Anguilla, Bahamas, Barbados, Belize, Bermuda, Cayman, Cook Islands, Cyprus, Gibraltar, Grenada, Labuan, Marshall Islands, Mauritius, Montserrat, Niue, St. Kitts, Seychelles, Turks & Caicos, Western Samoa.).

[112] *See, e.g.*, *Why High-Net-Worth Individuals and Family Offices Choose Customized Tax Plans*, ADOCYO (Nov. 11, 2024), https://www.adocyo.com/post/why-high-net-worth-individuals-and-family-offices-choose-customized-tax-plans ("At Adocyo, we specialize in creating bespoke tax strategies that minimize liabilities, maximize opportunities, and provide the financial clarity and control needed to preserve and grow wealth for generations to come.").

through IFC-connected transactions.[113] These earlier failures to give governments control over financial flows do not appear to have influenced the development of anti-money laundering methods, although those might be more effective had their drafters paid attention to the problems of exchange control regimes.

Faced with rising concerns over tax avoidance, evasion, and money laundering, onshore jurisdictions initiated efforts at collaboration with their offshore counterparts, ultimately reshaping the regulatory landscape. While informal cooperation and pressures shaped early responses to tax avoidance, the establishment of MLATs in the 1980s marked a formalization of these efforts, providing structured channels for information exchange. In some respects, cooperation between onshore and offshore governments was nothing new. For example, there was cooperation between UK authorities and Channel Islands governments starting in the 1920s to restrict the use of the Islands for tax avoidance.[114] But even if few offshore governments during the tax haven era went as far as the Cayman Islands' Trust Law 1967 in deliberately seeking to thwart UK tax law,[115] many offshore governments had been quite willing to tolerate tax avoidance elsewhere using their jurisdictions.[116] Unsurprisingly, this had sometimes led to less-than-whole-hearted cooperation with onshore authorities.

As offshore jurisdictions worked their way up the value chain in the types of transactions they sought, their interest in high-volume, low-margin businesses of providing simple discretionary trusts and holding companies declined. New customers, such as Harvard University in the Cayman Islands, where it formed an offshore captive insurance company, wanted the jurisdictions to keep out disreputable clients that might harm reputable clients' reputations.[117] As a result, the top-end IFCs soon began to focus more on their reputations and to build regulatory infrastructure to protect it. Jersey was among the jurisdictions worried about reputation quite

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[113] Dilip K. Ghosh & Edgar Ortiz, *Introduction*, *in* THE GLOBAL STRUCTURE OF FINANCIAL MARKETS: AN OVERVIEW 7 (Dilip K. Ghosh & Edgar Ortiz eds., 1997) ("Most of the swap deals that came into existence in the early 1980s onward are virtually extensions of back-to-back loans and parallel loans, which became popular in the United Kingdom in the 1970s as a device to circumvent foreign exchange controls to stem British capital outflows.").

[114] Informal pressure also led to the restriction of the 1920s use of Jersey companies to avoid UK estate duty, with Jersey agreeing to require what became known as the "Baliff's clause" in corporate charters (which were individually granted by the Royal Court at that time) and which provided that

> The company shall not purchase, acquire or hold any investment which, according to the laws of the United Kingdom of Great Britain and Northern Ireland would, if held by a British subject whose domicile is outside the United Kingdom of Great Britain and Northern Ireland, be liable on the death of such an individual to Estate Duty in the United Kingdom of Great Britain and Northern Ireland.

This was not removed until 1972. COLIN POWELL, THE HISTORY OF JERSEY AS AN INTERNATIONAL FINANCIAL CENTRE 18–19 (2023).

[115] *Tax Havens and Tax Concessions – Note of a meeting held in the Foreign and Commonwealth Office on 25 March, 1969*, in IR 40/16744 – Review of Tax Havens, British Archives ("Inland Revenue were particularly concerned about the Cayman Islands Trust Law, 1967, which was designed to combat a particular piece of anti-avoidance legislation in U.K.").

[116] *See, e.g.*, *Letter, T.J. O'Brien, FCO, from J.E. Rednall, 2 May 1969, Tax Havens and Tax Concessions*, *in* T 295/588 – Overseas Tax Havens: Balance of Payments and Tax Problems, British Archives ("It can be argued that tax havens which are mainly aimed at North American companies may have little adverse effect on the United Kingdom and could even benefit sterling area reserves.").

[117] Freyer & Morriss, *supra* note 79, at 1344–46.

early and this drove its 1972 decision to allow only the top 500 banks in the world to receive Jersey banking licenses.[118] Such attitudes began to spread more widely in the 1980s and 1990s.

There were two key developments in this period. First was the IFCs' signing of MLATs with onshore governments, which established channels of communication by which the onshore governments could request information from the offshore governments. The second was creation and expansion of international regulatory networks through which offshore regulators became part of the international regulatory community, gaining both a voice in the development of standards and the responsibility to see those standards implemented at home.

A. MLATs

Governments have always been able to request information from one another (through letters rogatory between courts, for example) but the process can be cumbersome, time consuming, and often requires judicial procedures.[119] Particularly because of the general rule that countries did not enforce one another's tax laws, this was also problematic with respect to tax cases. Differences in privacy protections and bank secrecy among jurisdictions also complicated such matters. Importantly, these differences were not between all-encompassing secrecy and full disclosure. Under the 1924 UK judgment in *Tournier v National Provincial and Union Bank of England,* most common law jurisdictions provided a considerable degree of financial privacy.[120] As we described above, some jurisdictions, like the Cayman Islands, adopted their own statutory confidentiality laws, expanding the protection of financial information to include criminal penalties.[121] As onshore jurisdictions expanded their efforts to block tax avoidance and tax evasion, conflicts with IFCs developed, leading the United States to seize offshore firms' representatives as they transited through the United States and to fine some U.S. entities related to offshore entities for failure to produce information held offshore.[122]

A major step in broadening cooperation was bilateral agreements creating informal and formal channels by which criminal and/or tax authorities could share information, including the development of MLATs. The first MLAT the United States signed with a Caribbean jurisdiction was with the Cayman Islands (technically with the United Kingdom on behalf of Cayman).[123] As Elizabeth Davies noted,

[118] Powell, *supra* note 112, at 32.

[119] TIM BENNETT, INTERNATIONAL INITIATIVES AFFECTING FINANCIAL HAVENS 143–44 (2d ed. 2002)

> (since requests have to be routed through diplomatic channels, the procedure of a Letter Rogatory can be very slow, as it passes 'out' and 'back' through numerous government departments in the two countries concerned. In addition the outcome can be uncertain, as government departments may reject the request, and the request may be opposed by those against whom the information is sought.).

[120] [1924] 1 K.B. 461.

[121] Confidential Relationships (Preservation) Law (Law 16 of 1976) (Cayman Is.), https://www.caymanlawschool.ky/n0c-storage/legislation2/confidential_relationships_preservation_law_1976.pdf. No one was ever prosecuted for violating it. *How the Cayman Islands Updated its Confidentiality Law*, APPLEBY (Feb. 2, 2017), https://www.applebyglobal.com/publications/how-the-cayman-islands-updated-its-confidentiality-law/. Cayman did away with the statute with the Confidential Information Disclosure Law 2016, a change reported to be "widely welcomed by Cayman's legal and financial services community." *Id.*

[122] *See, e.g.*, In Re Grand Jury Proceedings, U.S. v. Bank of Nova Scotia, 691 F.2d 1384 (11th Cir. 1982), cert. den., 462 U.S. 1119 (1983).

[123] ELIZABETH W. DAVIES, THE LEGAL STATUS OF BRITISH DEPENDENT TERRITORIES: THE WEST INDIES AND NORTH ATLANTIC REGION 321 (1995). Ironically, MLATs generally evolved out of requests by Japan to the United States

> The rather rapid succession from the *Bank of Nova Scotia* case to the Narco Agreement 1984, and later the MLAT 1986, appears to show two large powers (the US and the UK) getting together to resolve a problem which the US, and perhaps the UK, saw this dependent territory as creating. The participation of CI representatives in the MLAT negotiations and their signing of that treaty show a move from the more distant, superior executive action of the Narco Agreement days towards one of greater involvement by the DT [dependent territory].[124]

By the time such agreements were being made, even a promoter of aggressive tax avoidance and evasion strategies like Starchild conceded this was not problematic, recognizing that criminal elements' presence harmed the legitimate businesses using IFCs.[125] Onshore jurisdictions were able to persuade many IFCs to sign on to MLATs because they were able to condition access to their financial systems on agreeing to do so. For example, Liechtenstein's desire for its banks to obtain "qualified intermediary" status with the U.S. motivated its agreement to an MLAT with the United States.[126]

Although MLATs represent a significant step forward in facilitating international cooperation, they have limitations from an onshore law enforcement agency perspective. Requests require formal channels (e.g. a request from the U.S. Attorney General) and specific identification of individuals, making broad investigations difficult. There are also often subject matter limitations like those in the Cayman MLAT described earlier. Thus, a prosecutor in a particular case would still have to seek assistance from the designated authorities in his or her own jurisdiction to make a request to a foreign jurisdiction under an MLAT. And, of course, MLATs do not allow fishing expeditions,[127] so the requesting party has to specify the person about whom they want information, restricting their use to cases where the onshore jurisdiction already had some information perhaps indicating potential wrongdoing by the party in question. Despite these limitations, the agreements eased the burden of information requests, enough so that jurisdictions without MLATs became attractive for those seeking secrecy.[128]

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for information on the U.S. investigation into the Lockheed bribery scandal. TIM BENNETT, INTERNATIONAL INITIATIVES AFFECTING FINANCIAL HAVENS 143, n. 1 (2d ed. 2002).

[124] DAVIES, LEGAL STATUS, *supra* note 121, at 322.

[125] ADAM STARCHILD, FINANCIAL FREEDOM, *supra* note 48, at 10

> (Many consumers of tax haven services would be surprised to learn that many tax haven service providers do not consider [MLATs] to be major issues. In many cases they feel that enforcement of such agreements tends to keep away the criminal elements and bring in the real business that is more suitable for long-term business relationships. Since banks and fund managers depend on maintaining a high reputation, they don't want dirty money, and are doing more investigation of who their clients are before accepting them.).

[126] DAVID BEATTIE, LIECHTENSTEIN: A MODERN HISTORY 333 (2004).

[127] The term is defined in some agreements. For example, the CIAT in its Manual for implementation defines them as "requests for speculative information that are unrelated to any investigation or examination in process." Miguel Angel Torres Jimenez, *The Extent of Exchange of Information Under Article 26 OECD Model (Article 26(1) OECD Model)*, *in* EXCHANGE OF INFORMATION FOR TAX PURPOSES 84 (Oliver-Christoph Gunther & Nicole Tuchler eds., 2013). The OECD Model Convention Commentary notes that providing specific names of taxpayers is not necessary to avoid being categorized as a fishing expedition, as "the requesting State must include other information sufficient to identify the taxpayer." OECD, *Commentary*, *supra* note 15, at 1833.

[128] BENNETT, INTERNATIONAL INITIATIVES, *supra* note 117, at 143 ("An MLAT provides a streamlined procedure for obtaining assistance, and may remove the need for judicial authorization. In practice, however, exchange of information under MLATs may be hampered by delays."). *See, e.g.*, ROBERT E. BAUMAN, WHERE TO STASH YOUR

Table 2 illustrates the network of MLATs established between the U.S., UK, and various IFCs, reflecting the growing web of formal agreements aimed at information exchange. (Many other jurisdictions also have signed MLATs with particular IFCs; we provide the US and UK lists as a means of illustration).[129] Note also that some of the jurisdictions without an MLAT have subsequently signed TIEAs with the U.S. or UK, opening another channel for information exchange.[130] For the MLATs with the US, the cluster of agreements coming into force in 1999/2000 – eleven out of twenty-seven is noteworthy to show how rapidly MLATs became prevailing practice

Table 2 - US & UK MLATs with IFCs[131]

Jurisdiction	Entry into Force of MLAT with United States	Entry into Force of MLAT with United Kingdom
Anguilla	1990	--
Antigua & Barbuda	1999	2004
Bahamas	1990	1990
Bahrain	--	1994
Barbados	2000	1993
Belize	2003	--
Bermuda	2012	Overseas Territory*
British Virgin Islands	1990	Overseas Territory*
Cayman Islands	1990	Overseas Territory*
Cyprus	2002	--
Dominica	2000	--
Grenada	--	2001
Guernsey	--	Crown Dependency*
Hong Kong SAR	2000[132]	2002
Isle of Man	2009	Crown Dependency*
Jersey	--	Crown Dependency*
Liechtenstein	2003	--
Luxembourg	2001	--

CASH LEGALLY: OFFSHORE FINANCIAL CENTERS OF THE WORLD 311 (4th ed. 2009) (recommending Dubai for not having an MLAT or TIEA with the United States).

[129] Panama has MLATs with Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua as well as the United States, for example, ROBERT E. BAUMAN, PANAMA MONEY SECRETS 80 (2d ed. 2007).

[130] For example, Guernsey signed a TIEA with the United States in 2002. *Agreement Between the Government of the United States of America and the Government of the States of Guernsey for the Exchange of Information Relating to Taxes*, U.S. DEP'T STATE (Sept. 19, 2022), *https://www.state.gov/wp-content/uploads/2019/02/06-330-Guernsey-Taxation-Information-Exchange.done_.pdf*.

[131] OFF. INT'L AFFS., CRIM. DIV., *Mutual Legal Assistance Treaties of the United States*, U.S. DEP'T STATE (Apr. 2022), https://www.justice.gov/d9/pages/attachments/2022/05/04/mutual-legal-assistance-treaties-of-the-united-states.pdf; UK NAT'L ARCHIVES, *Bilateral Agreements on Mutual Legal Assistance in Criminal Matters*, https://webarchive.nationalarchives.gov.uk/ukgwa/20121212135632/http://www.fco.gov.uk/resources/en/pdf/3706546/10773698/FCO-Tr-MLA.

[132] Suspended in 2020. *Hong Kong Will Suspend Some Legal Cooperation with U.S., China Says*, REUTERS (Aug. 20, 2020), https://www.reuters.com/article/us-hongkong-security-legal/hong-kong-will-suspend-some-legal-cooperation-with-us-china-says-idUSKBN25G0O2/.

Jurisdiction	Entry into Force of MLAT with United States	Entry into Force of MLAT with United Kingdom
Montserrat	1990	Overseas Territory*
Netherlands & Netherlands Antilles	1983	--
Panama	1995	2001
St. Lucia	2000	--
St. Vincent & the Grenadines	1999	--
Switzerland	1977	--
Turks & Caicos	1990	Overseas Territory*
United Arab Emirates	--	2008
United Kingdom	1996	NA
United States	NA	1996

* The UK had separate arrangements with its overseas territories and crown dependencies.

MLATs are significant because they marked the creation of official channels of communication among law enforcement authorities in onshore and IFC governments in conceptually similar matters across multiple jurisdictions. While built out of bilateral agreements, together these growing linkages of cooperation contributed to the reconceptualization of secrecy rules into privacy rules (which allowed broader law enforcement access) in expanding future cooperation. For example, Cayman's *Mutual Legal Assistance (United States of America) Law 1986* granted the Chief Justice of the Cayman Grand Court extremely broad powers to give effect to the MLAT, including powers to compel testimony, produce documents, and forbid disclosure of requests. Additionally, the MLAT applied criminal penalties to failure to comply with such orders and exempted disclosures from the confidentiality statute.[133] Formalizing such channels and authority facilitated the later expansion of information exchange beyond responses to requests.

B. Regulatory Networks

International regulatory networks—"a range of acronym laden clubs" —emerged as regulators took more notice of the impact of international trends on domestic financial conditions.[134] Since the 1980s, IFCs have deepened their participation in international regulatory networks, collaborating with onshore jurisdictions to develop and implement regulatory standards. IFC regulators bring a different perspective to discussions in such bodies, reflecting not only their jurisdictions' interests in a freer global financial system, but also their experience in "working at the coal face" in international finance.[135] They have information from their day-

[133] Law 16 of 1986 (Cayman Is.), https://www.caymanlawschool.ky/n0c-storage/legislation2/mutual_legal_assistance_united_states_of_america_law_1986.pdf.

[134] Chris Brummer & Matt Smallcomb, *The International Architecture*, *in* HANDBOOK OF FINANCIAL REGULATION, *supra* note 40, at 141.

[135] Ku & Morriss, *IFC Regulatory Innovation*, *supra* note 26. We argued that

> IFC regulators are different in kind from large jurisdiction regulators in three important ways. First, today they have a much greater degree of private sector experience than most large jurisdiction regulators. This experience gives a greater degree of insight into how transactions work, enabling IFC regulators to understand the points of vulnerability. Second, IFC regulators themselves work far more collaboratively with regulated entities than is possible for large jurisdiction regulators. Because the regulated professionals within IFCs have a strong interest in

to-day involvement in regulated entities' activities in their jurisdictions that onshore regulators lack and they can maintain focus without the task of simultaneously enforcing an array of consumer protection measures in large economies.[136] Table 2 highlights some of the regulatory networks in which IFCs participate, reflecting their integration into the global regulatory community. By building regulatory capacity and fostering cross-border cooperation, IFCs have shifted from being solely objects of regulation (and neo-colonial control)[137] to becoming (at least in part) active players in financial regulation. This transformation, driven in part by reputational concerns and economic incentives, created new domestic dynamics within IFCs, giving rise to a constituency advocating for high standards of compliance. In addition to these, most IFCs participate in peer reviews with the FATF and its allied bodies.

Table 3 - IFC Membership in Regulatory Networks

	IAIS	GIFCS	IOSCO	GFIN	IADI	Egmont Group
Andorra	x	x	x			x
Anguilla				x		x
Antigua & Barbuda		x				x
Aruba	x	x				x
Bahamas	x	x	x	x	x	x
Bahrain	x		x	x		x
Barbados	x	x	x		x	x
Belize	x					x
Bermuda	x	x	x	x	x	x
BVI	x	x	x			x
Brunei	x		x		x	x
Cayman	x	x	x	x		x
Cook Islands		x				x
Curacao	x	x		x		x

> the IFC continuing to thrive – as their future income stream is tied to its continuing ability to attract clients – they are able to credibly commit to provide information to the regulators. Third, IFC regulators generally have far fewer formal legal constraints on their powers than do large jurisdiction regulators. In a small jurisdiction, informal constraints operate more effectively than do complex procedures.

Id.

[136] *See, e.g.*, *The Cayman Islands: A Guide for Hedge Fund Managers*, MOURANT (Feb. 2017), https://www.mourant.com/file-library/media---2017/2017-guides/the-cayman-islands---a-guide-for-hedge-fund-managers.pdf ("There are no restrictions imposed by the Cayman regime on investment strategies of hedge funds, or their use of leverage, shorting or other 'alternative' techniques. There is no concept of an 'eligible investor' in a Cayman-registered fund.").

[137] Jakub A. Bartoszewski & Andrew P. Morriss, *An Archipelago of Contrasts: Blacklists, Caribbean Autonomy, and the New Tax Colonialism*, IFC REV. (June 17, 2020), https://www.ifcreview.com/articles/2020/june/an-archipelago-of-contrasts-blacklists-caribbean-autonomy-and-the-new-tax-colonialism/

> (Large economies find blacklists an attractive tool with which to coerce smaller ones to adopt the policies the big countries prefer. Not only does the Council of the EU have its "List of Noncooperative Jurisdictions" but there are also national lists maintained by multiple European states. By attempting to force small jurisdictions into "one size fits all" regulatory and tax regimes, the EU and European states are repeating the mistakes of the colonial era.).

	IAIS	GIFCS	IOSCO	GFIN	IADI	Egmont Group
Cyprus			x			x
Sint Maarten	x	x		x		x
Gibraltar	x	x	x	x		x
Guernsey	x	x	x	x		x
Hong Kong			x	x	x	x
Isle of Man	x	x	x	x		x
Jersey	x	x	x			x
Labuan		x				x
Liechtenstein	x		x			x
Luxembourg	x		x	x		x
Macao		x				x
Malta	x			x		x
Marshall Islands						x
Mauritius		x	x	x		x
Monaco			x			x
Niue						x
Panama	x		x			
Samoa	x	x				x
San Marino						x
Seychelles		x		x		x
St. Kitts & Nevis						x
St. Lucia						x
St. Vincent & the Grenadines						x
Switzerland			x			x
Turks & Caicos	x	x	x			x
UAE – DFSA	x		x	x		x
Vanuatu	x	x				x

If we visualize this as a network, with the organizations as nodes (sized by total IFC membership) and the number of joint IFC members as edges (thickness proportionate to the number of joint members), we get a clear picture of connectedness of the overall global financial regulatory network. Figure 1 displays the network.

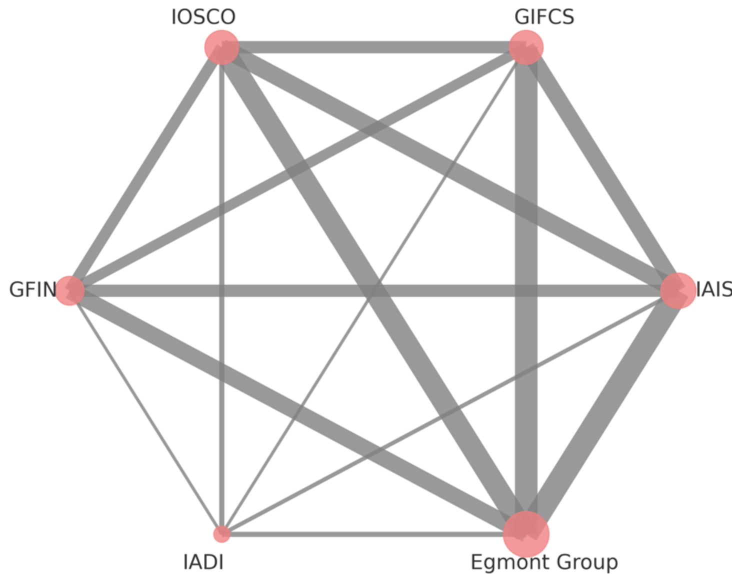

Figure 1 - the IFC/Regulatory Network

Regulators in offshore jurisdictions gained increasing independence over time as well. Table 4 lists the date independent regulators were created in various IFCs. All but three of the jurisdictions listed in Table 1 have done so (Andorra, Aruba, and San Marino, all negligible IFCs today.) The creation of these bodies was a significant step for IFCs.[138] Most importantly for our purposes, regulatory and promotion activities were separated and the new independent regulators frequently recruited directors and staff from outside as well as inside the jurisdiction, giving these bodies expertise and an orientation toward coordinating across jurisdictional boundaries.[139] Further, they are staffed at comparable levels to onshore regulators, given the size of the population of regulated entities they oversee.[140]

Table 4 - Creation of Independent Regulators

Jurisdiction	Independent Regulator Statute	Jurisdiction	Independent Regulator Statute
Anguilla	2003	Jersey	1998
Antigua & Barbuda	2013	Labuan	1996
Bahamas	1974	Liechtenstein	2005
Barbados	2011	Luxembourg	1998
Belize	2013	Malta	1989
Bermuda	1969	Marshall Islands	2000
Brunei	2011	Mauritius	2001

[138] *See* Freyer & Morriss, *supra* note 79, at 1368–70 (discussing Cayman's creation of CIMA).
[139] Andrew P. Morriss & Clifford C. Henson, *Regulatory Effectiveness & Offshore Financial Centers*, 53 VA. J. INT'L L. 417, 448–49 (2013).
[140] *See* Morriss & Henson, *supra* note 139, at 154–57.

Jurisdiction	Independent Regulator Statute	Jurisdiction	Independent Regulator Statute
BVI	2001	Monaco	2007
Cayman Islands	1997	Montserrat	2001
Cook Islands	2003	Panama	1998
Curacao	2008	Samoa	2005
Cyprus	2002	Seychelles	2014
Dominica	2008	Singapore	1970
Dubai IFC (UAE)	2004	Sint Maarten	2008
Gibraltar	1989	St Kitts & Nevis	2009
Grenada	2008	St Lucia	2011
Guernsey	1987	St Vincent & the Grenadines	2011
Hong Kong	1989	Switzerland	2009
Isle of Man	1983	Turks & Caicos	2001
		Vanuatu	1993

Our contention is that by becoming part of global regulatory networks by joining international networks and creating their own independent regulators, IFCs built regulatory capacity and changed the dynamic domestically, creating an internal interest group that could advocate for higher compliance as a strategy. By contrast, in the early stages of tax haven activity, the primary interests weighing in on regulatory policy questions were tax haven promoters and local politicians eager for revenue.

The developments outlined in this section reflect a transformative period in the regulation of offshore financial centers. The emergence of regulatory networks integrated IFCs into the broader international regulatory community, fostering a shift towards greater transparency and compliance. Together, these measures disrupted the most egregious forms of money laundering and tax evasion and connected law enforcement agencies offshore with those onshore, laying the groundwork for a future with a more collaborative legal framework for information exchange. These changes mattered because they changed both the internal discussions about information exchange within offshore jurisdictions and created legal frameworks upon which future expansions of information exchange could build.

In Part III, we turn our attention to the evolution of double taxation agreements (DTAs) and tax information exchange agreements (TIEAs). These agreements expanded the international network for information sharing and tax cooperation, evolving beyond their original purposes to address new challenges in the global economy. We explore how this expanding treaty network further transformed the regulatory environment for IFCs, and how it influenced both their strategies and the broader dynamics of international cooperation in information exchange.

III. Treaty Network Development

The third component of the modern information exchange regime is the evolution of the network of information exchange agreements from a singular focus on the avoidance of double taxation to incorporating information exchange and the deterrence of tax avoidance/evasion as important goals as well. Through the 1990s, bilateral tax treaties ("double taxation agreements" or "DTAs") were the primary component of this network.[141] Over time, the treaty network has grown to include a number of additional agreements that focus on tax administration and information exchange, including Tax Information Exchange Agreements (TIEAs), the OECD Convention on Mutual Administrative Assistance in Tax Matters (CMAAT), the European Union's Savings Directives, the Common Reporting Standard (CRS), FATCA Intergovernmental Agreements (IGAs), and the so-called "Son of FATCA" agreements in addition to the various DTAs built on the OECD, UN, or national models. Together these agreements create a web of information sharing channels that neither businesses nor individuals can easily avoid, making both tax avoidance/evasion and money laundering far more difficult. In this section we trace the evolution of these networks.

Our discussion goes beyond the existence of *more* treaties and agreements (although there were many more). As the network has become denser, with greater volumes of information flowing and a shift toward information sharing that goes beyond individual requests concerning specific individuals or entities, the more extensive the information sharing institutions within the jurisdictions that are parties to these agreements must be. To take one example, the Cayman Islands created the Department for International Tax Cooperation in 2005 and it now has 19 staff (and several vacancies as of this writing)—an extensive and expensive commitment for a small jurisdiction.[142] In addition, the independent regulator devotes resources to international cooperation.[143] The staff in such offices not only become institutional voices for information exchange's value to the jurisdiction, but are available for further development of additional measures. It is not simply the information exchanged under any particular agreement that matters but the cumulative effect of institution building, staffing, and practice that widens and deepens the channels through which information flows.

A. The Evolution of Information Exchange Treaty Networks

Initially focused solely on preventing the double taxation of income, the global tax treaty network evolved over decades to address increasingly broad information exchange and anti-avoidance measures. Since similar information is needed to address money laundering as is necessary for addressing tax evasion and avoidance (it would be the rare criminal foolish enough to file tax returns on the proceeds of crime), the expansion of each channel offers opportunities to address the other need as well, particularly after fiscal crimes were added to the list of predicate offenses for money laundering.[144] This transformation, driven by economic

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[141] Philippe Malherbe & Marjolein Beynsberger, *2011: The Year of Implementation of the Standards?*, *in* EXCHANGE OF INFORMATION AND BANK SECRECY 119 (Alexander Rust & Eric Fort eds., 2012).
[142] Tax Information Authority Act (2021 Revision) (Law 1 of 2005) (Cayman Is.); email from Louise Somers, Head of Tax Reporting & Client AML Services, Mourant Governance Servs., Cayman Is., (Jan. 31, 2025, TIME CST) (on file with author) (staff levels).
[143] CAYMAN IS. MONETARY AUTH., *International Agreements*, https://www.cima.ky/international-agreements (listing 71 international agreements CIMA has signed with other jurisdictions).
[144] Alan Binnington, *Money Laundering and Tax Evasion – The Bankers' Dilemma*, JERSEY L. REV., https://www.jerseylaw.je/publications/jglr/Pages/JLR0102_the_difficulties_binnington.aspx (Dec. 15, 2015) (noting

globalization and onshore regulatory pressures, has led to a complex web of agreements designed to curb tax evasion and money laundering. These agreements arose in the context of the environment created by the rise of tax havens, the creation of the MLATs and other arrangements for information exchange, and the evolution of tax avoidance strategies described above. The shift to wanting DTAs to be tools for tax law enforcement rather than merely a method of preventing double taxation can be seen in a 1977 comment by a British civil servant that "I must say it came as a surprise to me to learn that we still have extant treaties with St Vincent and suchlike and I would be interested to know whether any steps are in contemplation about ridding ourselves of these impediments."[145]

Double taxation agreements initially focused on preventing double taxation, as their name suggests. While there were some DTAs signed before World War II and some in the immediate post-war period, we begin our discussion of DTAs in 1963 with the publication of the first OECD Model Convention.[146] The 1963 Model provided for information exchange on request. Its "main rule" was that "the competent authorities of the Contracting States shall exchange such information as is necessary in order to secure the correct application of the articles of the Convention and also of the internal laws of the Contracting States concerning taxes covered by the Convention."[147] The rule "presupposes that information shall be exchanged only on application."[148] Exchange was also limited so that signatories did not need to do more than required by their own laws and administrative practice in collecting information.[149] This framework remained in place until the 1977 Model.

Figure 2 depicts the structure of the DTA network as it existed in 1963, highlighting the central roles of France and the United Kingdom in the initial network, as each created treaties with former colonies after they became independent and with those of their affiliated territories with sufficient autonomy to require more than central direction from the metropolitan capital. (We omit country labels for legibility.) Node size is proportional to the number of treaties (degree centrality) and nodes are colored by continent.

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that the UK Proceeds of Crime Act 1988 was originally not thought to cover tax evasion but this changed within two years of passage).

[145] *Memo, to Mr. Whitear, from B Pollard, Treaties with Tax Haven Territories,* (1977) in IR 40/16744 – Review of Tax Havens, British Archives.

[146] For the pre-1963 history of DTA information exchange provisions, *see* Francesco Cannas, *The Historical Development of the Exchange of Information for Tax Purposes*, *in* EXCHANGE OF INFORMATION FOR TAX PURPOSES 15 (Oliver-Christoph Gunther & Nicole Tuchler eds., 2013).

[147] ORG. ECON. COOP. & DEV., *Draft Double Taxation Convention on Income and Capital*, 157 (1963), https://www.oecd.org/content/dam/oecd/en/publications/reports/1963/10/draft-double-taxation-convention-on-income-and-capital-1963_g1g96efe/9789264073241-en.pdf; Art. 26(1). [Art. 26(1) referring to ?: ORG. FOR ECON.COOP. DEV., MODEL DOUBLE TAXATION CONVENTION ON INCOME AND ON CAPITAL Art. 26(1) (1977), https://www.oecd.org/en/publications/model-double-taxation-convention-on-income-and-capital_9789264055919-en.html]

[148] OECD, *Draft Double Taxation Convention*, *supra* note 145, at 158; Art. 26(1). [referring to ?: ORG. FOR ECON.COOP. DEV., MODEL DOUBLE TAXATION CONVENTION ON INCOME AND ON CAPITAL Art. 26(1) (1977), https://www.oecd.org/en/publications/model-double-taxation-convention-on-income-and-capital_9789264055919-en.html]

[149] OECD, *Draft Double Taxation Convention*, *supra* note 145, at 159; Art. 26(2). *See also* Cannas, *supra* note 144, at 20 (noting limitations of 1963 Model Article 26); Jimenez, *supra* note 127, at 79 ("The 1963 version of the Model had a very narrow scope."). Despite its limitations, Switzerland lodged an objection. Cannas, *supra* note 144, at 21.

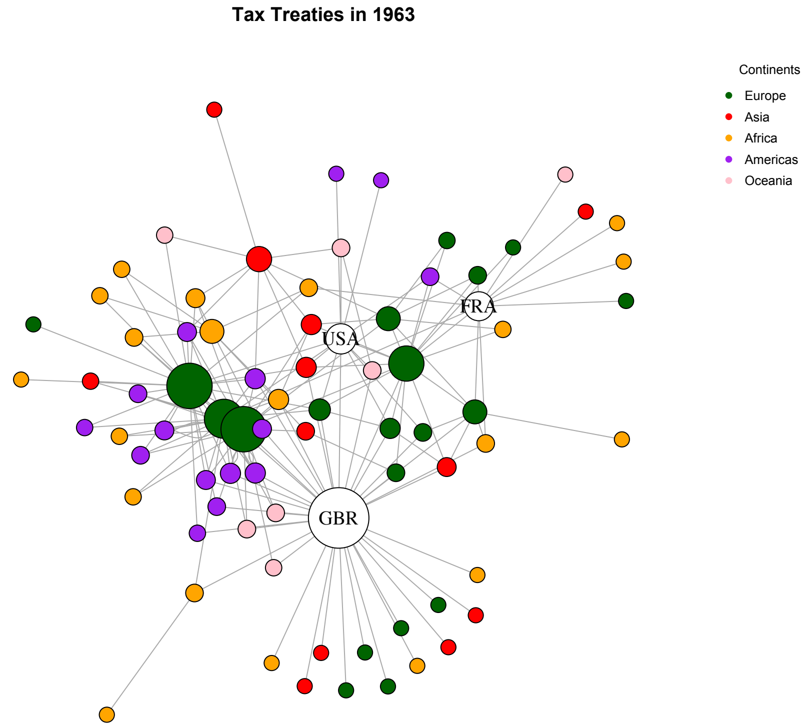

Figure 2 - 1963 DTA Network

Figure 3 shows the same network visualized as a matrix of connections, which is the way we will visualize subsequent treaty networks. (We again omit country labels for legibility.) Filled in squares indicate the existence of a treaty between the country on the horizontal axis and the country on the vertical axis.[150] (Although Figure 3 doesn't convey the network structure as well, it has the advantage of being legible. As the treaty network grows denser, visualizations in the style of Figure 2 become simply large blobs. We present both formats here so readers can compare the two visualizations.) This network, while providing some limited avenues for information exchange, was largely characterized by relatively sparse connectivity, reliance on colonial ties, and information exchange provisions focused on the information needed for treaty implementation purposes. This network has three important features.

[150] Country labels are omitted for legibility as the point is the density of the network, not particular treaty-pairs' existence.

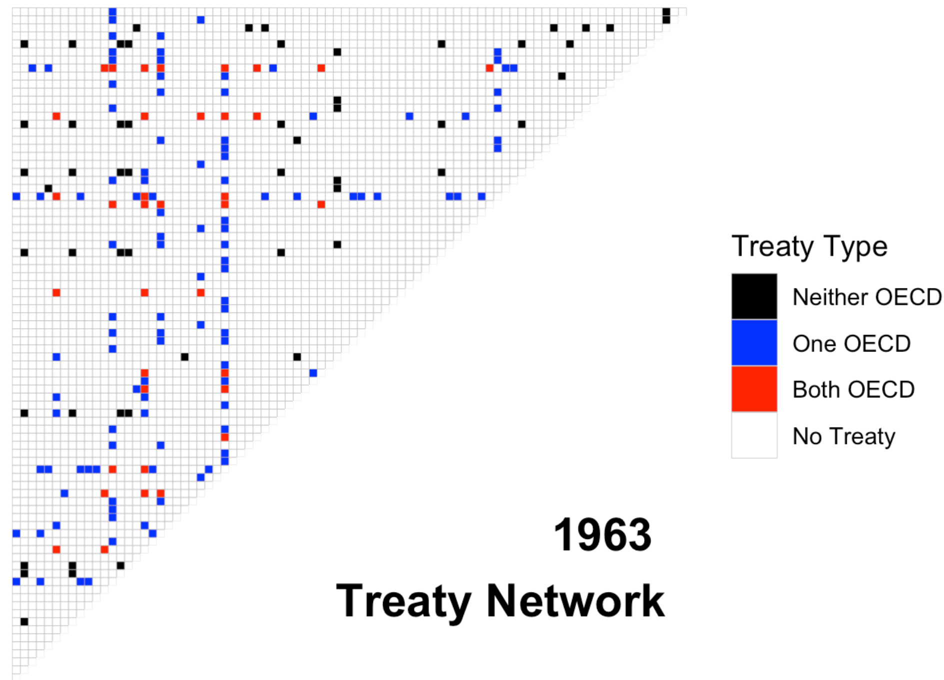

Figure 3 - 1963 Treaty Network Matrix

First the central positions of France (FRA) and the United Kingdom (GBR) are evident in Figure 2, with both serving as key connections between their former colonial possessions and the rest of the world. Keeping in mind that many colonies had not yet obtained independence, this understates the degree to which there were connections between these two and the rest of the world, since they retained control over tax information exchange with those jurisdictions that were still colonies. This central position persists for decades, a testament to the enduring influence of colonial ties.

Second, there is a dense cluster at the center of the network of highly connected jurisdictions, which are primarily OECD members. Outside of commodities, the largest share of the world's trade once Europe and Japan recovered from the devastation of World War II and prior to the opening of the Chinese and Indian economies later in the century, was between industrialized countries.[151] Thus from the start of the modern tax treaty era, these jurisdictions had in place a legal framework on which they later built information exchange and other AML and anti-avoidance measures. In **Figure 3** this can be seen in the predominance of red and blue squares (OECD member-OECD member and OECD Member-Nonmember treaties, respectively) over black squares (nonmember treaties with other nonmembers).

Third, outside the core, there are minimal connections between individual jurisdictions and the rest of the world. Both France's and Britain's networks are dominated by dyads in which the treaty partners are unconnected to each other. Indeed, taking into account just the 77 jurisdictions existing in 1963 who had at least one treaty relationship, there were just 171

[151] Esteban Ortiz-Ospina, Diana Belteklan & Max Roser, *Trade and Globalization*, OUR WORLD DATA, https://ourworldindata.org/trade-and-globalization (Apr. 2024) (Share of Global Exports by Income Level of the Trade Partners).

treaties, only 5.84% of the potential 2,926 treaties possible if every jurisdiction had had a DTA with every other one.[152] To the extent these treaties contained meaningful information exchange provisions (early treaties with Switzerland, for example, had extremely sparse information exchange provisions)[153] they were usually limited to exchanges necessary for treaty purposes, so that the global exchange of information through tax treaties likely benefited few jurisdictions beyond those few who served as hubs for treaties.

The treaty network continued to grow but so did the number of jurisdictions. By 1976, just before a new OECD model with enhanced information exchange provisions was released, the treaty network had grown to include 132 countries with 439 DTAs, a drop to 5.08% of the potential total, illustrated in Figure 4.

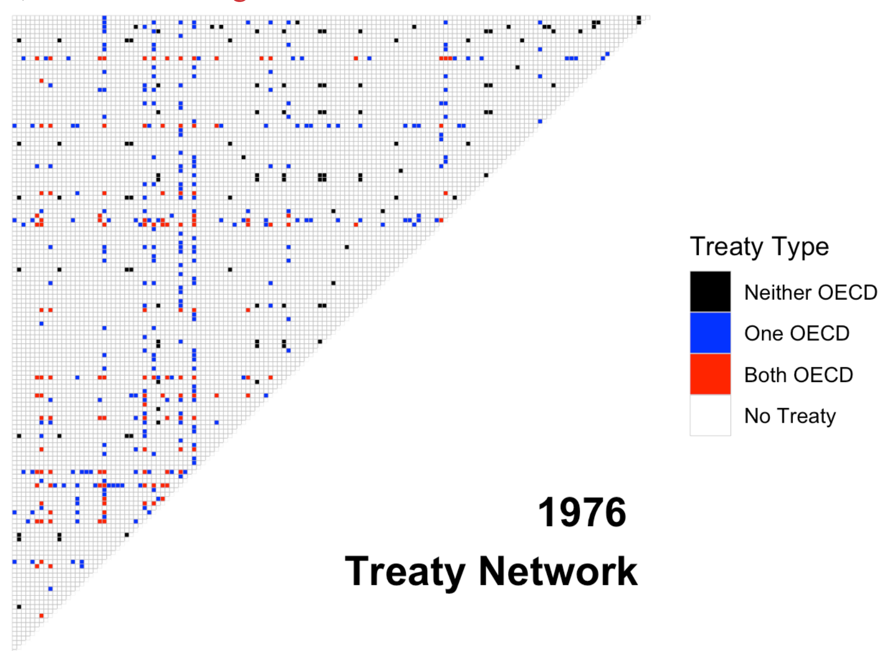

Figure 4 - 1976 DTA Network

This is a denser network than the 1963 network (there are many more squares filled in) but it retains the same structure (albeit in a sufficiently dense form that a standard network visualization is illegible). The data show that once again France and Britain (now joined by the United States, which had begun to sign DTAs with more jurisdictions in the 1960s) are key connecting points for subgroups of jurisdictions on the periphery. These peripheries remain unconnected with each other, both within their own subgroup and with jurisdictions outside the subgroup. (This can be seen from the relative paucity of black squares.) Once again there is a dense core of tightly interconnected jurisdictions and a periphery of jurisdictions that are connected to the core only through specific jurisdictions like Britain, France, and the United States. While still limited, the 1976 expansion foreshadowed a more interconnected network.

We can unpack the core a bit by focusing on the portion of the treaty network involving OECD members, where the expansion was concentrated (Figure 5), where there are 129

[152] Jurisdictions with zero treaties are excluded, so the total theoretically possible is higher.
[153] Dourado, *supra* note 11, at 1865–66.

connections among the 24 OECD members in 1976. Thus, just before the dawn of the modern information exchange era in DTAs and other agreements, there was a dense core of highly-interconnected developed economies. These were (as the earlier figures showed) connected to a periphery of developing economies, often through a treaty network focused on former colonial powers as key hubs. We argue elsewhere (together with others) that the DTA network's role in providing tax certainty encouraged the use of treaty partners to structure investments by giving those making foreign investments confidence that their investments (which usually yielded a permanent establishment if successful) would not be eroded by tax rules biased against them.[154] It is not surprising that developed economies were among the first to sign DTAs with each other, since much of their trade and foreign investment occurred within the developed world. Several developed economies, most notably the Netherlands, played (and continue to play) key roles in cross-border business through their treaty networks and domestic rules that facilitate the use of entities for organizing international investments.[155]

Figure 5 - OECD Member DTA Network 1976

The 1977 Model Convention, whose changes also tended to be followed by those countries using their own model treaties,[156] expanded the information exchange provisions in two important ways. First, it modified the absolute secrecy protection for information exchanged, creating a "relative secrecy protection rule" in which the requesting state's law governed the

[154] Raymond Robertson, Charlotte Ku, Andrew Morriss, & Jakub Bartoszewski, *Networks & Resilience in International Financial Networks* (working paper).

[155] *See, e.g.*, Inssaf Maatougui, *The Netherlands: Tax Haven on Earth? An Analysis of Key Characteristics of the Dutch Corporate Tax System*, TILBURG UNIV. 3 (2017), https://arno.uvt.nl/show.cgi?fid=143847

> (The Dutch participation exemption … provides a full exemption from Dutch corporate income tax for dividends and/or capital gains or losses derived from qualified shareholdings. … [It] is also one of the reasons for foreign companies to structure their business through the Netherlands by establishing a Dutch holding company as their European head office.).

[156] *See, e.g.*, Sudarshan Kasturirangan, *The United Nations Tax Committee as a Player in the International Tax Policy Dispute*, *in* SPECIAL FEATURES OF THE UN MODEL CONVENTION 23 (Anna Binder & Viktoria Wöhrer eds., 2019) (UN model is "modelled primarily" on OECD model); Reuven S. Avi-Yonah & M.B. Tittle, *The New United States Model Income Tax Convention*, 61 BULL. FOR INT'L TAX'N 224, 224 (2007) (discussing influence of OECD Model).

protection of the information it received rather than the requested state's law.[157] If State A received information from State B, it was now both State A and State B's laws that determined if State A's tax office could share that information with other law enforcement agencies in State A, not only State B's.[158] Second, information exchange was no longer limited by Article 1's purpose clause, as that now included prevention of tax avoidance and evasion as among the treaty's purposes.[159] It thus became possible to exchange information about individuals and entities not subject to taxation as well as residents of third jurisdictions for purposes other than implementing the treaty (although still limited to tax-related issues but, importantly, not necessarily to tax issues covered by the treaty).[160] These two changes together meant more information could be exchanged (still on request) about more individuals and entities for more reasons and shared more broadly. That this mattered can be seen from the growing attention to the absence of a DTA as an advantage in the less-reputable offshore guidebooks.[161]

The treaty network grew significantly after the introduction of the 1977 Model Convention, adding or replacing 1,426 DTAs by 2000, with more than 80% of the network's DTAs being ones signed after the OECD Model Convention added the enhanced information sharing provisions.[162] Total coverage more than doubled as well, with the 2000 network covering just over 11% of all potential DTAs. (There had been only minor changes to the OECD Model's information exchange language from 1977 to 2000.)[163]

Figure 6 provides a visualization of the DTA network in 2000. It shows increasing density in the core (more complete columns) and a continued periphery (sparsely populated columns), with subgroups connected only to a single node within the core. Figure 7 illustrates this by showing how dense the OECD Member-OECD Member network had become, even with the continued expansion of OECD members. The year 2000 is significant as the date of the creation of the Global Forum on Transparency and Exchange of Information, in part at the instigation of the OECD.[164] The OECD had begun an effort to curb tax competition with its 1998

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[157] XAVIER OBERSON, INTERNATIONAL EXCHANGE OF INFORMATION IN TAX MATTERS 33 (3d ed. 2023); Cannas, *supra* note 144, at 21–22. Switzerland again made a reservation on similar grounds to its objection in 1963. Cannas, *supra* note 144*,* at 22.

[158] GARBARINO, *supra* note 10, at 583.

[159] OECD, *Commentary*, *supra* note 15, at 1831 ("The text of the Article [26] makes it clear that the exchange of information is not restricted by Article 1 and 2, so that the information may include particulars about non-residents and may relate to the administration or enforcement of taxes not referred to in Article 2.").

[160] ORG. FOR ECON.COOP. DEV., MODEL DOUBLE TAXATION CONVENTION ON INCOME AND ON CAPITAL Art. 26(2) (1977), https://www.oecd.org/en/publications/model-double-taxation-convention-on-income-and-capital_9789264055919-en.html; Oberson, *supra* note 153, at 33; In addition, the OECD interpreted this to require that the obligation to provide information not be restricted "by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested." Jimenez, *supra* note 127, at 77, 78. The 1977 Model introduced a much broader scope to Article 26, allowing exchange of information relating to "taxes of every kind and description." *See* Jimenez, *supra* note 127, at 78.

[161] *See, e.g.*, STERN & KESTLER, *supra* note 99, at 110 (noting lack of DTAs except between Liechtenstein and Austria and even that one lacked information sharing provisions); LANGER, SWISS REPORT, *supra* note 44, at 70 (noting Swiss-US DTA was not certified by US as having satisfactory information exchange provisions in 1987).

[162] Authors' calculations.

[163] Cannas, *supra* note 144, at 25–26.

[164] Dourado*, supra* note 11, at 1864–65 (describing the creation of the Global Forum).

report *Harmful Tax Competition – An Emerging Global Issue.*[165] This group led the push for TIEAs, discussed below.[166] Although the Global Forum has a membership broader than the OECD, it requires commitment to a "high standard" of information exchange to join and joining it implies a commitment by members to "abolish those of their regulations that do not comply with the OECD standard."[167] To join the Global Forum is thus to effectively handover a significant portion of a nation's international tax policy to the OECD.

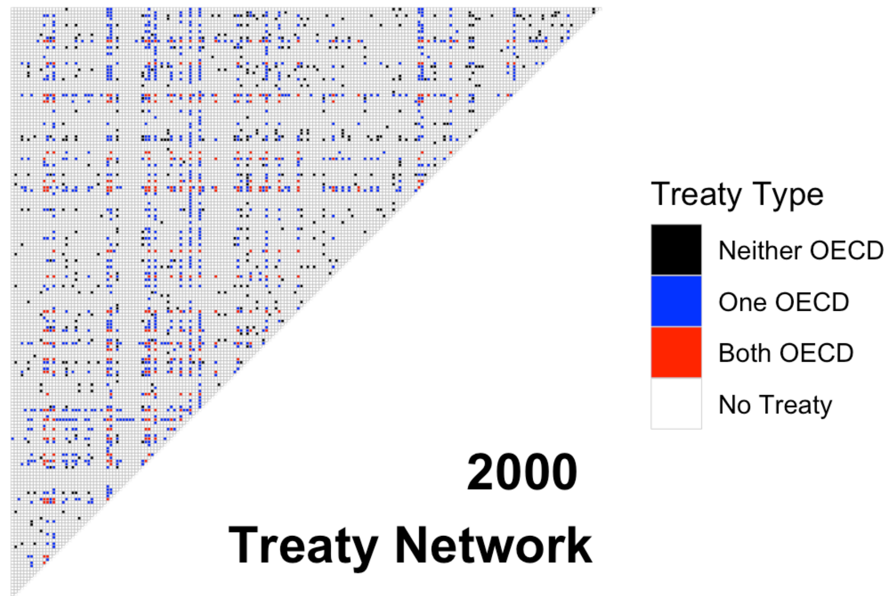

Figure 6 - 2000 DTA Network

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[165] Cannas, *supra* note 144, at 22–24; *see also* Andrew P. Morriss & Lotta Moberg, *Cartelizing Taxes: Understanding the OECD's Campaign Against Harmful Tax Competition*, 4 COLUM. J. TAX L. 1 (2012); Andrew P. Morriss, *Forward Down the Road to Serfdom: International Tax Law as a Means of Central Planning*, 17.3 J. L., ECON. & POL'Y 454 (2022).
[166] Cannas, *supra* note 144, at 24.
[167] Romy Afandi, *The Role and Work of the Global Forum on Transparency and Exchange of Information for Tax Purposes*, *in* EXCHANGE OF INFORMATION FOR TAX PURPOSES 38, 51 (Oliver-Christoph Gunther & Nicole Tuchler eds., 2013).

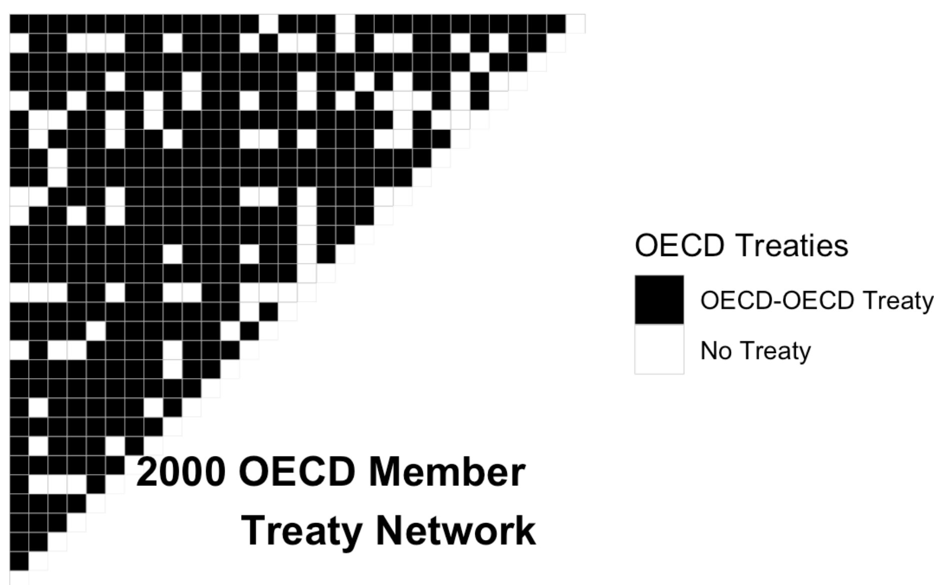


Figure 7 - OECD-OECD Network 2000

The OECD Model continued to evolve after 2000. The 2005 version expanded Article 26 to make clear that states could not refuse a request for information merely because they had no interest in a particular tax or, in effect, because of domestic rules on bank secrecy.[168] The 2012 revision amended Article 26 "to allow the competent authorities to use information received for other purposes provided such use is allowed under the laws of both States and the competent authority of the supplying State authorizes such use," moving an optional provision from the Commentary to the text of the Model Convention.[169] The "foreseeable relevance" standard replaced the prior "necessity" standard "to provide for exchange of information in tax matters to the widest possible extent."[170] New agreements joined DTAs in expanding the information exchange network as well, including the addition of TIEAs, the EU Savings Directives, CMAAT, and various other agreements. These had a dramatic impact on the density of the network. Figure 8 illustrates how the OECD Member-OECD Member network was completed during the next ten years, with every OECD Member having some agreement on information sharing with every other member by 2020.

[168] Karina Novis, *The Limits of Exchange of Information under Article 26 OECD Model (Article 26(3) to (5) OECD Model)*, *in* Jimenez, *The Extent of Exchange of Information under Article 26 OECD Model (Article 26(1) OECD Model)*, *in* EXCHANGE OF INFORMATION FOR TAX PURPOSES 117 (Oliver-Christoph Gunther & Nicole Tuchler eds., 2013); Dourado*, supra* note 11, at 1835, 1844 (discussing expansions of exchange of information); ORG. FOR ECON. COOP. DEV., MODEL TAX CONVENTION ON INCOME AND CAPITAL: CONDENSED VERSION 2005 Arts. 26(4), (5) (2005), https://www.oecd.org/en/publications/2005/09/model-tax-convention-on-income-and-on-capital-condensed-version-2005_g1gh5bb0.html.
[169] OECD, *Commentary*, *supra* note 15, at 1831.
[170] OECD, *Commentary*, *supra* note 15, at 1832; Dourado*, supra* note 11, at 1867.

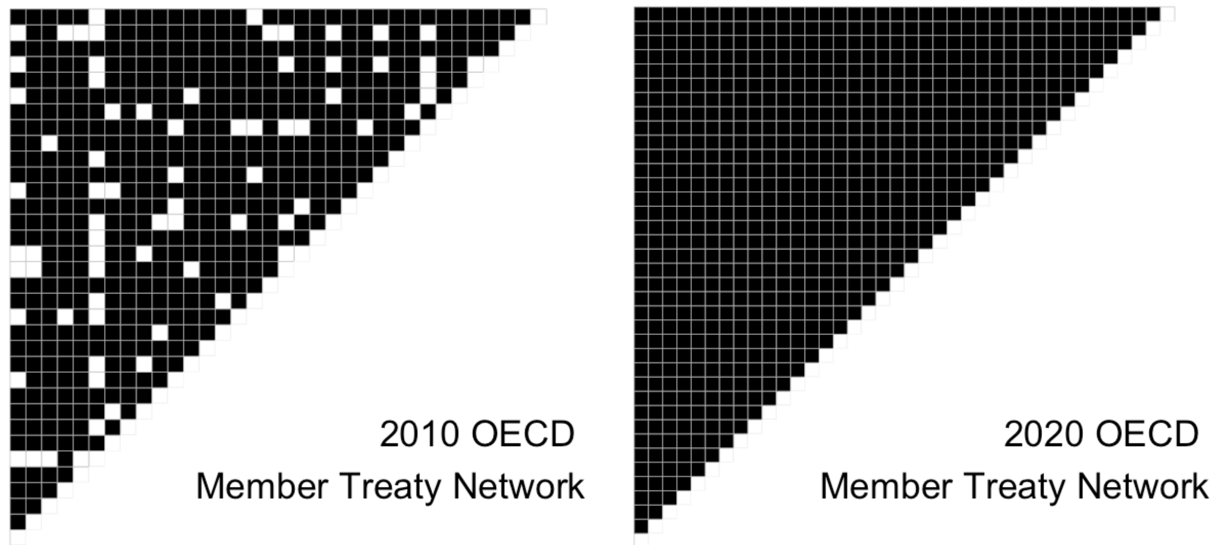


Figure 8 – OECD Network 2010 & 2020

More broadly, Figure 9 illustrates how the global network also filled out during this time.

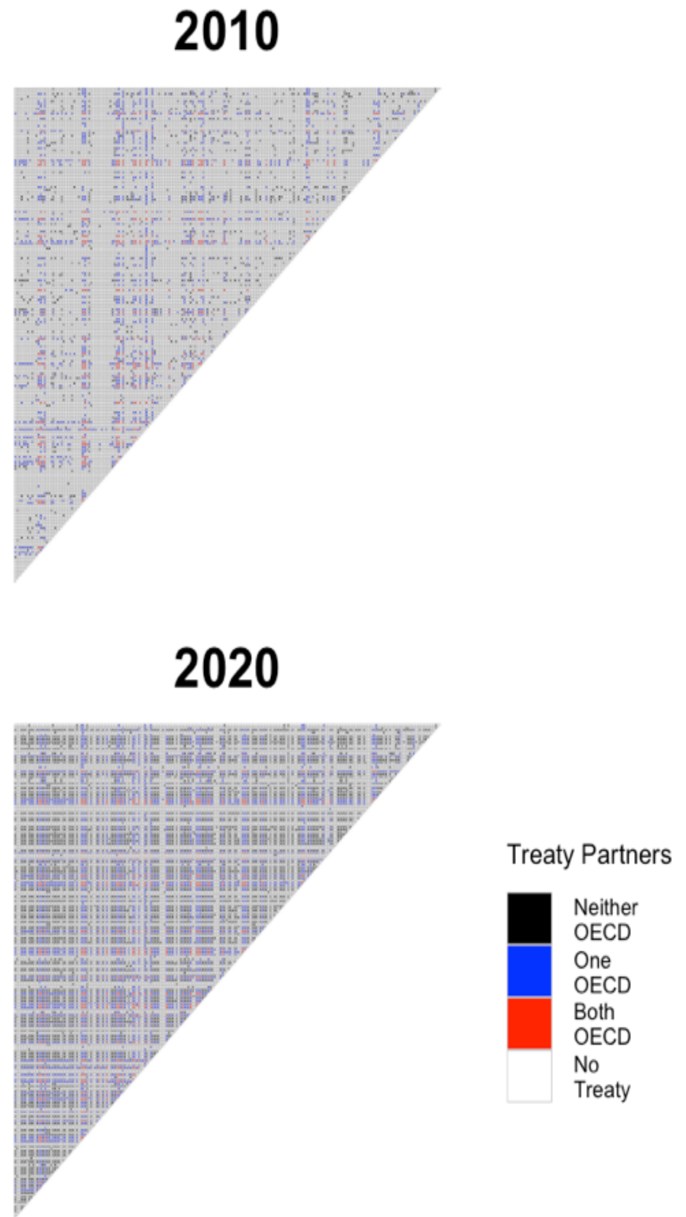
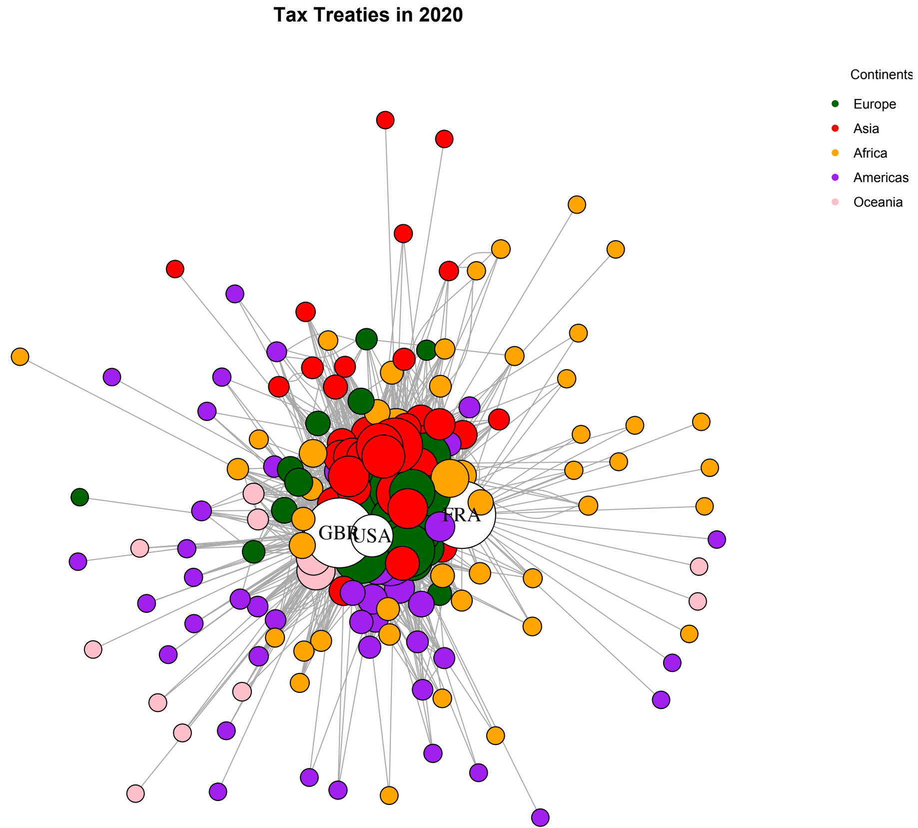


Figure 9 – Global Treaty Network 2010 & 2020

Although it is difficult to interpret, we provide a standard network diagram of the 2020 global network of just DTAs, as it illustrates the dramatic extent of changes in the network (Figure 10).

Figure 10 - 2020 DTA Network



Visualizing the entire network of all agreements in 2020 produces an overwhelming image which conveys the density of the connectedness of virtually all countries in the "neutron star" of the core visible in Figure 11.

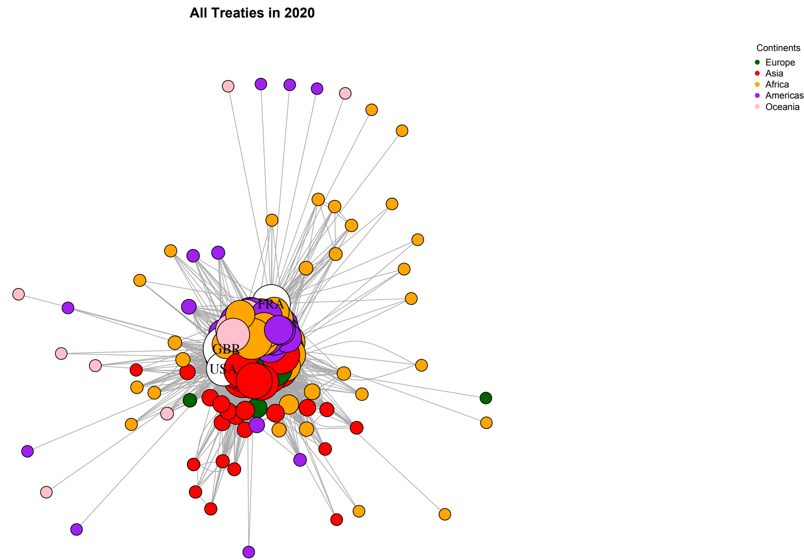


Figure 11- 2020 - All Treaty Network

Some examples of changes in individual country networks is also illustrative. If we look at two African countries with (Nigeria) and without (Ghana) substantial natural resources wealth, we can see that both significantly advanced their treaty networks' completeness as Table 5 illustrates. This growth in density is largely from both countries signing on to CMAAT.

Table 5 – Selected African Treaty Network Statistics

Year	African Treaty Networks	
	Ghana	Nigeria
1970	1	2
2000	2	11
2020	210	187

A second way to attempt to cut through the blob-like nature of these dense treaty networks is to examine the subnetworks between IFCs and non-IFCs. In 1970, the United States had treaties covering information exchange only with two IFCs (Luxembourg and Switzerland), and these treaties provided relatively minimal coverage. By 2000, this had expanded slightly but remains sparse enough that we can use traditional network visualizations (Figure 12). By 2020, this was much denser and included virtually every significant IFC.

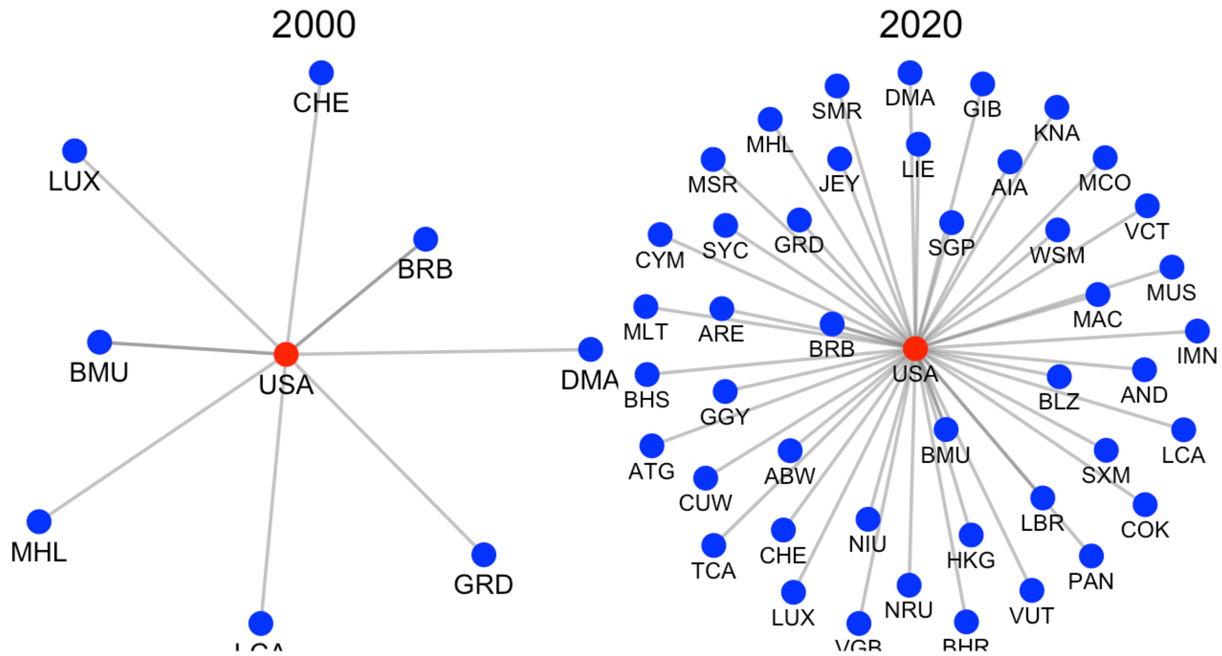


Figure 12 - US Treaty Network with IFCs, 2020

The evolution of the British network with IFCs is similar (Figure 13).

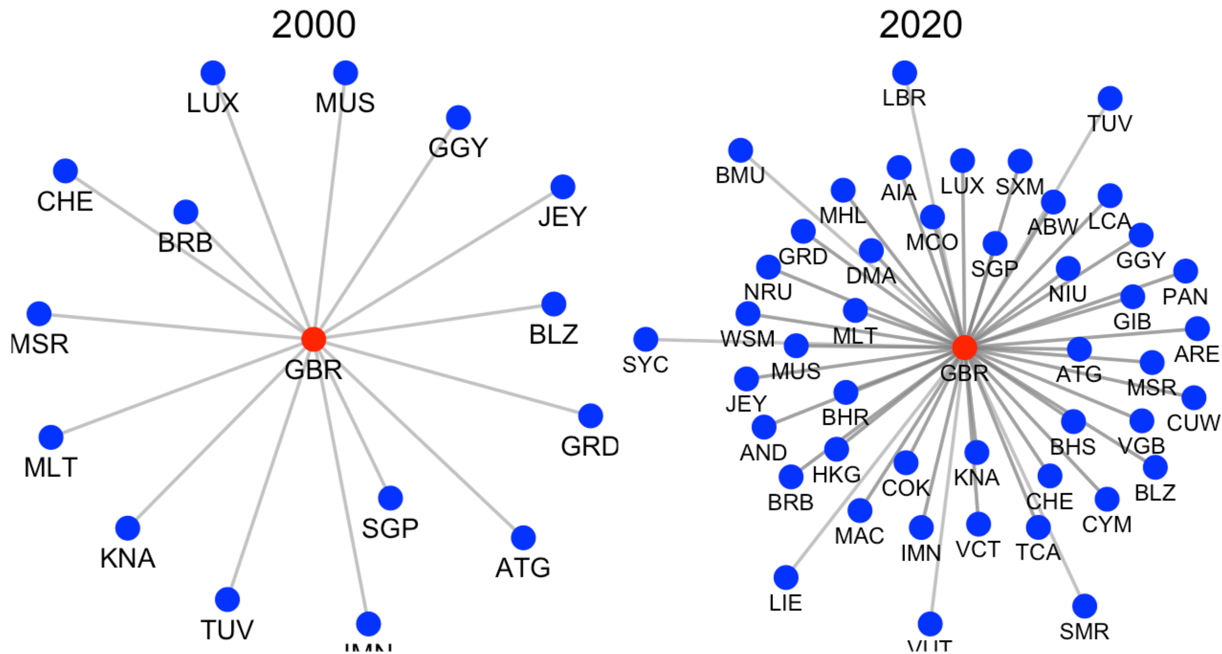


Figure 13 - UK Treaty Network with IFCs 2000 & 2020

This is not limited to interconnections between former colonial powers and IFCs. The evolution of the Norwegian network with IFCs (Figure 14) is also similar.

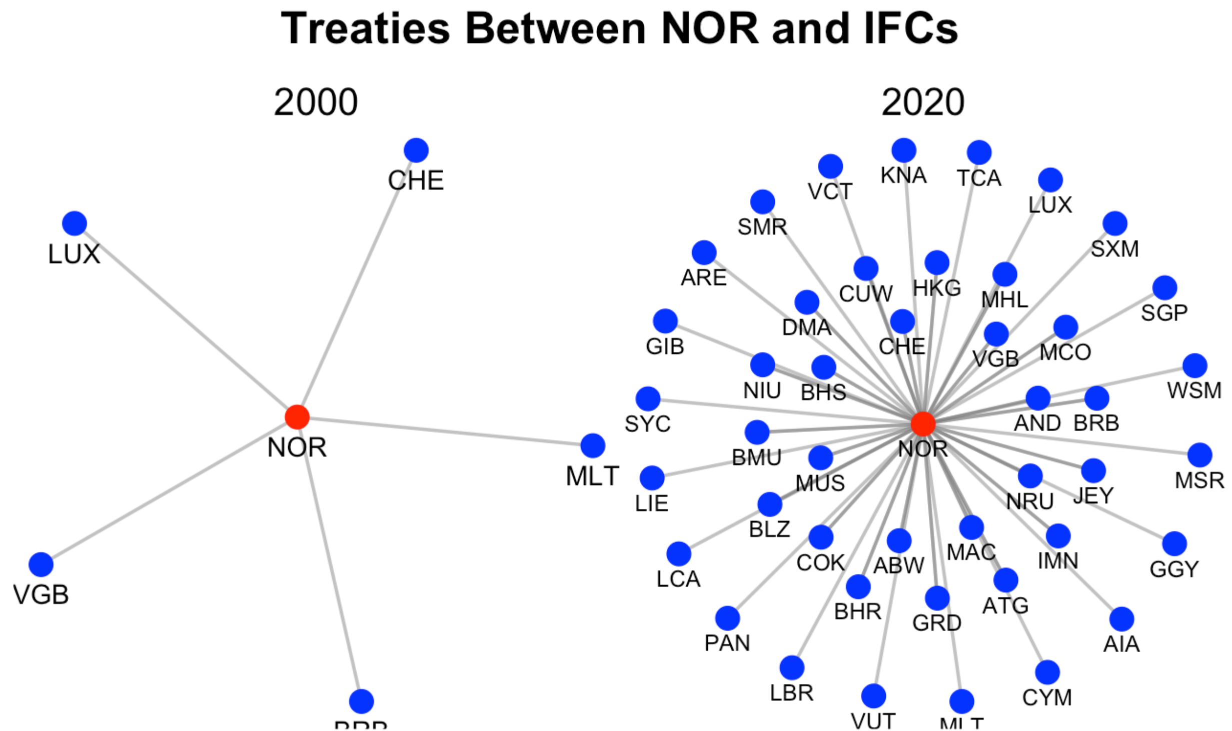


Figure 14 - Norway-IFC Treaty Network, 2000 & 2020

One of the things these examples highlight is the importance of looking beyond DTAs. Between 1977 (when the first was signed between the United States and Bermuda) and 2000, the United States signed 16 TIEAs and Spain signed two. In 2002, the OECD published a Model TIEA.[171] By 2023, there were 806 TIEAs in total. The dramatic increase came about when the OECD made having at least twelve TIEAs a necessary condition for IFCs to avoid its blacklist in 2008.[172] Unsurprisingly, a large number of treaties and protocols were quickly signed.[173] TIEAs generally require only information on request but permit automatic exchange.[174] They also govern the use of information exchanged, making sharing with law enforcement outside the tax context, possible only where the country providing the information permits such sharing under its law.[175]

In addition, multilateral member organizations which included tax information exchange created additional channels. For example, the EU's Savings Directive included requirements for

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[171] Marta Pankiv, *Tax Information Exchange Agreements*, *in* EXCHANGE OF INFORMATION FOR TAX PURPOSES 157 (Oliver-Christoph Gunther & Nicole Tuchler eds., 2013).
[172] The OECD's standard more broadly requires sufficient agreements to provide for information exchange with all relevant partners, which is likely to require more than 12 agreements. Afandi, *supra* note 163, at 46.
[173] Cannas, *supra* note 144, at 28–29. Four OECD members (Austria, Belgium, Luxembourg, and Switzerland) also removed their reservations to Article 26. *Id.* at 29. *See also* Afandi, *supra* note 163, at 47 (attributing the increase to "international political pressure based on the white/grey and black listing of countries.").
[174] Pankiv, *supra* note 167, at 161.
[175] Pankiv, *supra* note 167, at 166.

automatic information exchange from its start in 2003.[176] It later expanded to require those paying entities subject to AML regulation to use information gathered in compliance with AML rules to determine beneficial ownership for purposes of the Savings Directive.[177] Adding those parties in expands the amount of information exchange relationships. Figure 15 illustrates the growth of the combination of DTAs, TIEAs, and multilateral treaties over time, showing a gradual but persistent trend towards greater connectivity and information sharing. While DTAs provided an early framework for bilateral cooperation, the emergence of TIEAs and multilateral instruments such as the CMAAT vastly expanded the scope of information exchange, making it harder for individuals and businesses to shield assets from scrutiny.

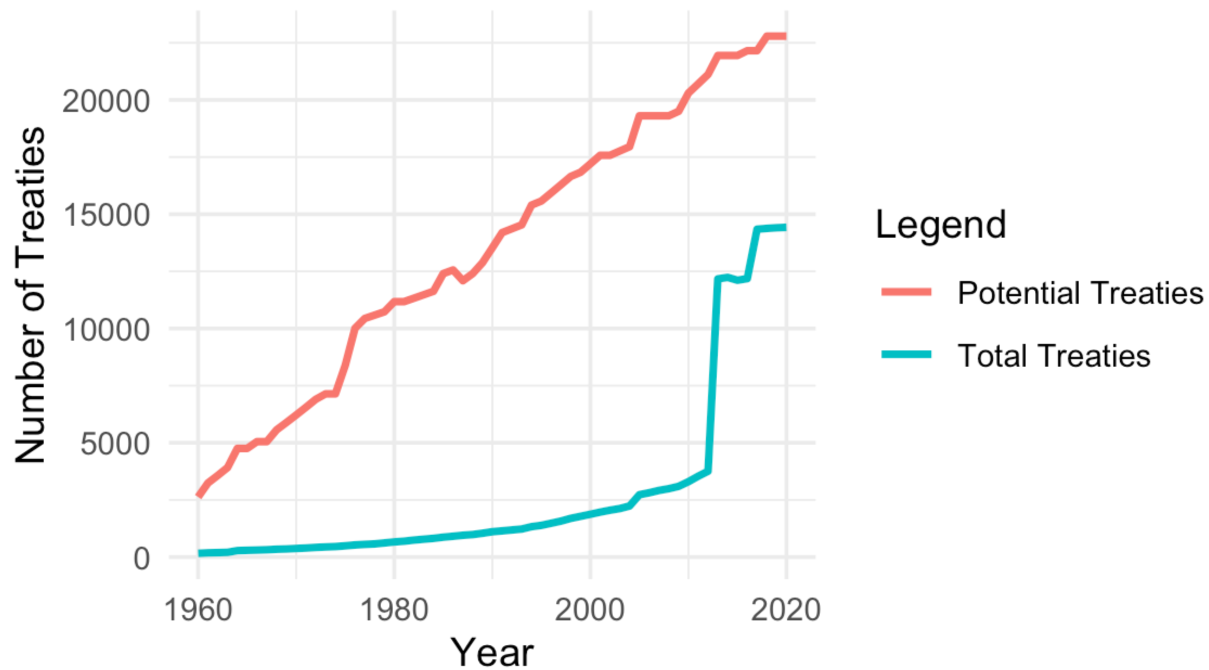

Figure 15 – Actual and Potential Network sizes

In addition, there are a variety of smaller scale agreements: FATCA IGAs, "Son of FATCA" IGAs, and treaty extensions to cover dependent territories. FATCA illustrates how one move to expand information sharing can, even if unintentionally, lead to further moves. With FATCA, the United States created a unilateral regime that "was not compliant with the usual international assistance rules and mechanisms: besides being unilateral, FATCA implied foreign financial institutions to overcome their own laws and authorities and to directly report to the US authorities."[178] Few governments, even those sympathetic to the goals of increasing tax compliance, were happy about a unilateral measure that effectively coopted their financial institutions to be instrumentalities of the U.S. government. FATCA's tool of conditioning access to the U.S. financial system was too potent to resist, however, so

[176] Cosentino, *supra* note 105, at 295–96; Council Directive 2003/48/EC of 3 June 2003, OFF. J. EUR. UNION Arts. 8, 9, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:157:0038:0048:en:PDF.
[177] *See* Jens Schroder, *Savings Taxation and Banking Secrecy*, *in* EXCHANGE OF INFORMATION AND BANK SECRECY 69 (Alexander Rust & Eric Fort eds., 2012).
[178] Dourado, *supra* note 11, at 1867.

> a compromise was take[n] to overcome the difficulties in applying the aforementioned FATCA regime: the United States and the finance ministries of France, Germany, Italy, Spain, and the United Kingdom (G-5) issued a joint statement announcing an intergovernmental agreement for implementing FATCA. The framework adopted is inspired by the EU Savings Directive: the financial institutions report the required information to the tax authorities where they are located on the basis of reciprocity. Moreover, the reporting and due diligence standards are less burdensome that [sic] FATCA regulations. By July 2012, the US Treasury and the G-5 concluded a detailed model intergovernmental agreement (Model I IGA) based on reciprocal information exchange.[179]

Various governments then built on the foundations of this with the various "Son of FATCA" measures of their own.[180]

Further, the OECD Convention on Mutual Administrative Assistance in Tax Matters (CMAAT), first published in 1988 and available only to OECD and Council of Europe members, initially went into force in 1995.[181] It was opened to non-OECD members in 2010.[182] It provides a framework for automatic exchange of information which states can opt into as well as provisions for information exchange on request.[183] CMAAT has extraordinarily broad scope:

> It covers every type of tax imposed, including social security contributions, on behalf of a Party and on behalf of political subdivisions or local authorities of a Party, but excluding customs duties for which a separate multilateral convention already exists (Article 2); it contains rules on exchange of information on request, spontaneous exchange of information, simultaneous examinations, tax examinations abroad, service of documents, assistance in recovery of tax claims and measures of conservancy. Automatic exchange of information can be foreseen in a preliminary agreement between/among the competent authorities.[184]

In addition, as a multilateral agreement there is little room for variation across countries.[185] Most importantly, because CMAAT is a multilateral agreement, it vastly expands the network. When just 27 countries had ratified it by 2010, it was the equivalent to 351 bilateral treaties.[186] When we add in these additional links created when more countries signed on, coverage expands

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[179] Dourado, *supra* note 11, at 1869.
[180] *See, e.g.*, *UK FATCA and the Automatic Exchange of Information*, L. SOC'Y (Nov. 25, 2015), https://communities.lawsociety.org.uk/events/uk-fatca-and-the-automatic-exchange-of-information/5052394.article (advertising webinar on the then-new UK's "son of FATCA" regime for crown dependencies and overseas territories).
[181] Kornelia Wittmann, *The CoE/OECD Convention on Mutual Administrative Assistance in Tax Matters*, *in* EXCHANGE OF INFORMATION FOR TAX PURPOSES 178 (Oliver-Christoph Gunther & Nicole Tuchler eds., 2013).
[182] Wittmann, *supra* note 177, at 178. [or *Id.*] The expansion included a Protocol "providing that bank secrecy and a domestic tax interest requirement should not prevent a country from exchanging information for tax purposes." Dourado, *supra* note 11, at 1886.
[183] Wittmann, *supra* note 177, at 182.
[184] Dourado, *supra* note 11, at 1886.
[185] Wittmann, *supra* note 177, at 195. [or *Id.* at 195].
[186] Wittmann, *supra* note 177, at 180.

dramatically, as Figure 15 illustrates. The cumulative expansion of these treaty networks not only restricted opportunities for tax evasion but also shifted the role of IFCs from secrecy havens to increasingly regulated and cooperative financial centers. (The dramatic spike in 2013 illustrated in Figure 15 reflects the widespread adoption of CMAAT and CRS, which as multilateral instruments created a large number of additional relationships each time a jurisdiction joined one.)

If we focus only on treaties involving IFCs and the development of that network over time, we can unpack some of the density in the overall diagrams. Table 6 summarizes the growth of IFC treaty participation.

Table 6 - IFC Network Statistics

Year	Jurisdictions	Treaties
1970	49	87
2000	119	295
2020	185	7,014

The evolution of treaty networks from bilateral DTAs focused on double taxation to a comprehensive system incorporating TIEAs, multilateral instruments, and other robust information-sharing mechanisms represents a fundamental shift in international cooperation involving information sharing. This transformation has created an intricate web that makes tax evasion and money laundering significantly more challenging to accomplish, aligning with broader global transparency goals. In the next section, we explore how these networks intersect with regulatory and enforcement strategies to further disrupt tax avoidance and ensure compliance across jurisdictions.

B. The Networked World of Information Exchange

As seen in the preceding section, the development of tax treaty networks and related instruments established a robust legal framework for information exchange across the vast majority of the global economy. By significantly expanding the reach and interconnectedness of jurisdictions, these treaties have made it increasingly difficult for individuals and entities to hide assets or evade scrutiny by using foreign jurisdictions, including IFCs. The evolution of these networks has been driven by large economies, particularly OECD members. The networks have impact beyond any single agreement. The Global Forum, for example, holds peer reviews of members, enabling it to have influence over their domestic legal frameworks as well.[187] Further, membership implies agreement to comply with "high implementation standards" even if the jurisdiction has passed its peer review and met the international standard.[188]

Nonetheless, while these treaty networks have achieved substantial coverage of the global economy, gaps persist in certain regions of the world. These gaps are often found in less economically significant jurisdictions, many of which lack the resources or incentives to fully participate in global information-sharing initiatives. Critics may argue that these gaps deserve heightened scrutiny, as they often involve vulnerable populations and corrupt leadership. For

[187] Afandi, *supra* note 163, at 38–39. The peer review "deals with public scrutiny, and the impact of all the above on domestic public opinion, national administrations, and policy makers." *Id.* at 48.
[188] Afandi, *supra* note 163, at 40. [or *Id.* at 40.]

example, cases involving politically exposed persons (PEPs), such as the governing family of Equatorial Guinea, illustrate the disproportionate impact corruption can have on impoverished populations.[189] However, addressing such issues does not require expansion of the present array of complex legal frameworks. It requires targeted, decisive action from jurisdictions with influence over global financial systems.

The existence of legal instruments, while necessary, is not itself sufficient to eliminate financial crimes or corruption. Effective enforcement requires political will, coordinated action, and mechanisms such as registries of PEPs. Without these, even the most comprehensive treaty networks will fall short of intended goals. We next explore how this networked approach intersects with other regulatory and enforcement measures, shaping the capabilities of both onshore and offshore jurisdictions to combat financial crimes.

The growth of African states' individual treaty networks is seen in Figure 16. We can see that—particularly after they began to sign on to CMAAT—the average African nation became part of a relatively dense network with over 100 treaties. This growth was not even, with some African countries remaining isolated. The Central African Republic, South Sudan, Sao Tome and Principe, the Democratic Republic of the Congo, Comoros, Madagascar, Angola, Republic of the Congo, and Guinea are all poorly connected, with single digit treaty totals, while South Africa, Morocco, Tunisia, Mauritius, Seychelles, Senegal, Kenya, Nigeria, Uganda, and Ghana outpace the rest, with between 276 and 369 treaty connections each in 2020.

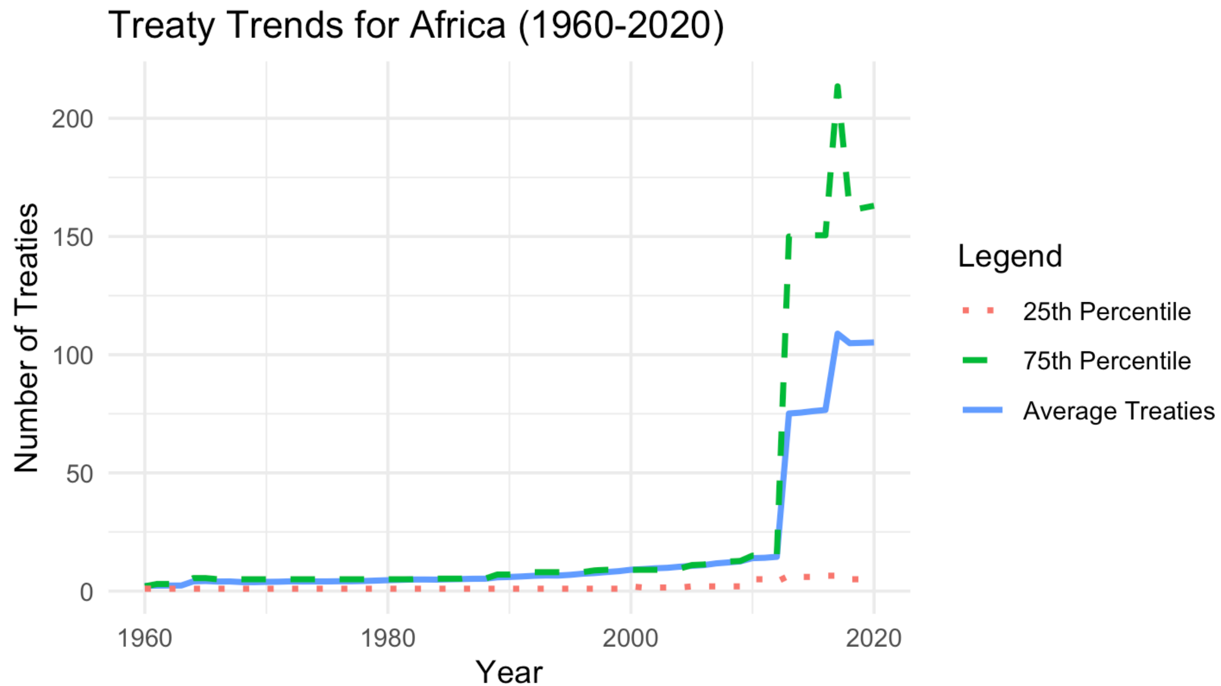

Figure 16 - African Treaty Network, 2000

[189] *Corruption and Its Consequences in Equatorial Guinea*, OPEN SOC'Y JUST. INITIATIVE (Mar. 2010), https://www.justiceinitiative.org/publications/corruption-and-its-consequences-equatorial-guinea.

Finally, we can examine the networks considering only treaties involving IFCs and non-IFC jurisdictions. We first look at the network of IFC-OECD member treaties.

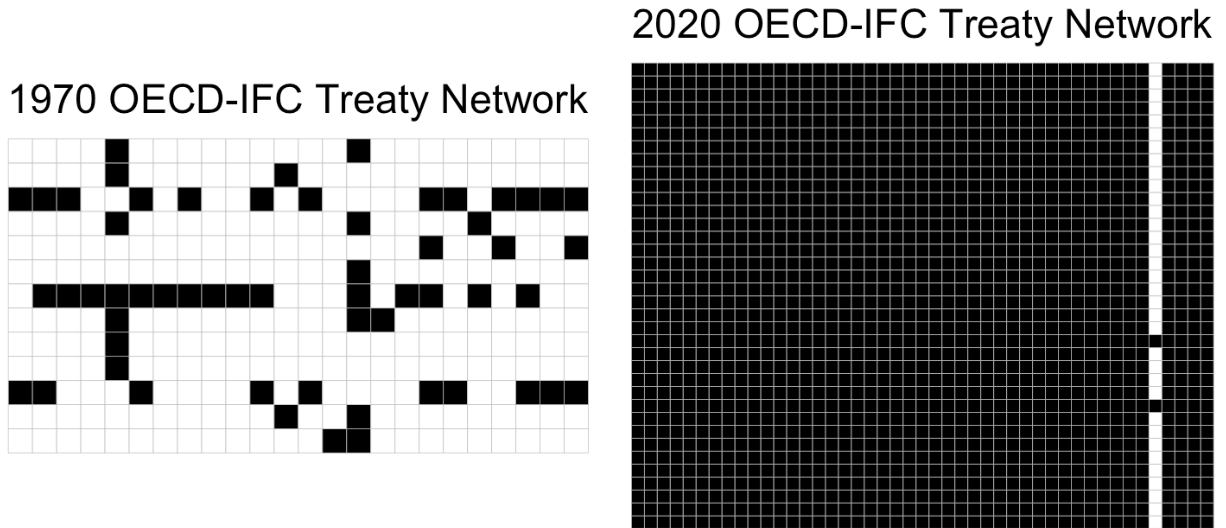

Figure 17 shows those networks at the start of the tax haven era (1970) and after information channels had matured (2020), with the same pattern of evolution from a limited network to a densely packed network. (Labeling the countries is impossible to do legibly on diagrams of this size; the holdout IFC in 2020 panel is the failed finance center of Tuvalu.)

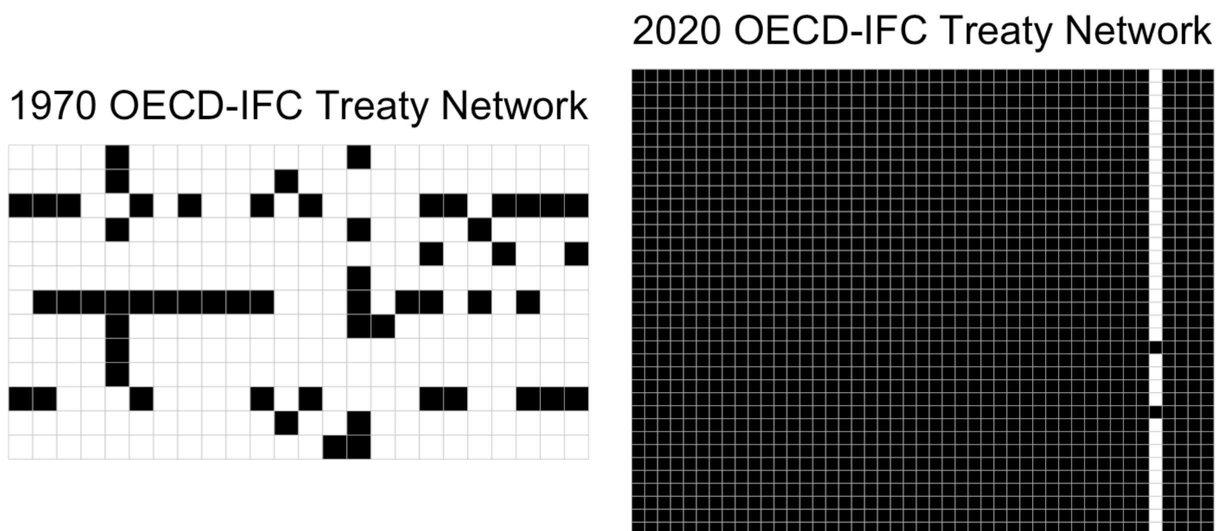

Figure 17 - OECD-IFC Treaty Network, 1970

Table 7 summarizes this diagram.

Table 7 – OECD-IFC Treaty Networks

Year	Jurisdictions	Treaties
1970	37	61
2000	58	131
2020	81	2,204

What about the rest of the world? Opponents of IFCs sometimes suggest that developing countries are uniquely victimized by IFCs.[190] Again we use Africa as an example. Figure 18 shows African-IFC treaties for 1970 and 2020. These figures illustrate the rapid evolution of the African treaty network with IFCs from relatively sparse in 1970 to relatively dense in 2020. While not as dense as the OECD-IFC networks in those years pictured above, these are developing in the same pattern. African jurisdictions may be behind OECD members in building the legal infrastructure to connect to IFCs, but they are quickly catching up.

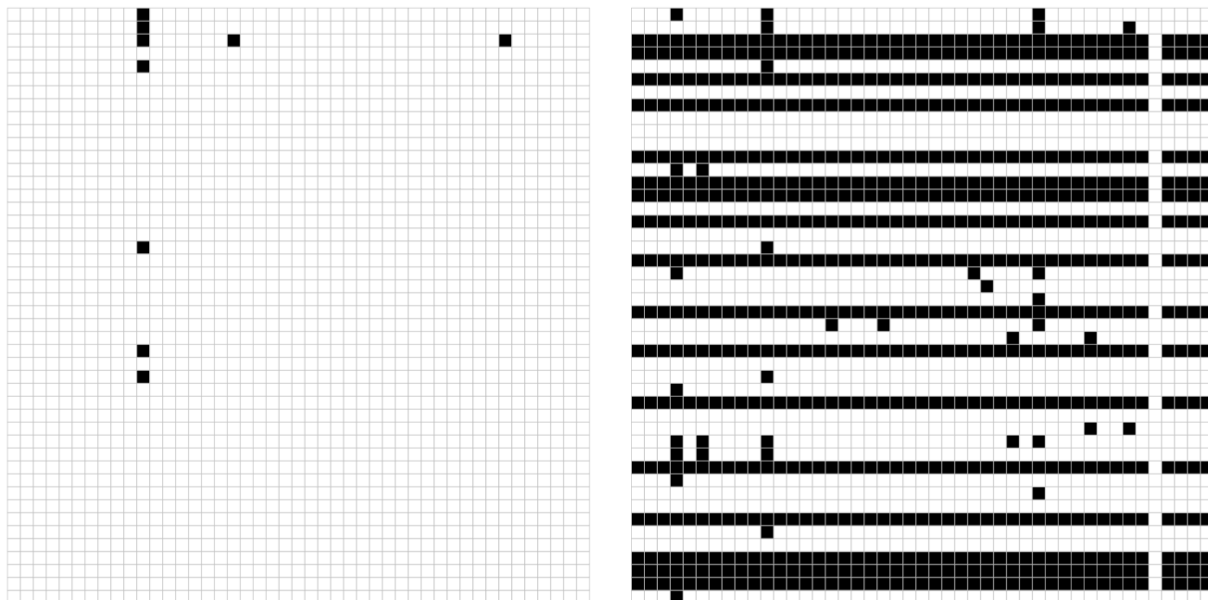

Figure 18 - IFC-African Treaty Networks, 1970 & 2020

A world heavily networked with a legal framework for information exchange is not the world of the early 1970s, when tax avoidance and evasion or the concealment of criminal proceeds could be accomplished simply by relocating the legal ownership of assets to another jurisdiction and keeping quiet about it. The places where assets can be concealed from

[190] *See, e.g.*, *Trick or Treat(y): Kenya's Tax Treaty Giveaways to Tax Havens*, TAX JUST. NETWORK AFRICA, https://taxjusticeafrica.net/sites/default/files/publications/TJNA-DTA-Analysis-FA7.pdf.

regulators, tax authorities, and law enforcement and are safe and accessible (thus ruling out areas of severe political turmoil and armed conflict) are becoming virtually nonexistent. This infrastructure is increasingly being implemented in conjunction with considerable regulatory control over financial professionals in offshore jurisdictions. The next section discusses the impact of increasing internal regulatory control over these professionals as a function of the deepening international tax information sharing and exchange network.

IV. Regulators & Licensing

The regulatory landscape of international financial centers has undergone profound and transformative changes over the past few decades, moving from largely unregulated environments to jurisdictions with sophisticated oversight mechanisms and licensing regimes. These changes reflect both external pressures from onshore jurisdictions and the internal drive of IFCs to maintain reputational integrity, improve compliance, and attract legitimate business. It further reflected the commitment made in many offshore jurisdictions to build the requisite human infrastructure and capacity and to become active players in the world of financial regulation. This integration gave these jurisdictions a stake in a sound global financial system in two ways. The first was to maintain their place in the market for financial services and products. The second was to incentivize ongoing innovation and development by assuring ready access both to regulatory networks and to worldwide markets for new products and services. By doing so, these jurisdictions have added value not only to their economies, but also to the global economy and its regulatory resilience.

Historically, offshore jurisdictions often allowed financial services businesses, including trust companies and company management firms, to operate with minimal oversight. As Grundy noted in 2001, somewhat disapprovingly,

> [t]here is one very significant respect in which I have noticed a change in the offshore trust business, and that is in the increasing requirement for regulation. I am not thinking here of precautions against money-laundering – which have had a number of effects, not least an increase in the cost of running a trust company, but more of the requirement for a licence or other form of government permission for the operation of a trust company. This is now so accepted, that it is almost embarrassing these days to recall occasions in the past when an offshore trust company could be established, without the need for any licence, and with an issued capital of £2 divided into two shares of £1 each. Such a thing is of course now unthinkable in virtually any offshore jurisdiction (though perfectly possible in the United Kingdom).[191]

This illustrates the transformative impact of licensing requirements on the offshore industry. Whereas trust and company service providers (TCSPs) once operated with virtually no barriers to entry, today's environment requires compliance with a broad range of regulatory standards.[192]

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[191] GRUNDY, ESSAYS, *supra* note 47, at 24–25.
[192] *See, e.g.*, Financial Services (Jersey) Law, 1998 (2024 consolidated version), https://www.jerseylaw.je/laws/current/l_32_1998 (describing various regulatory requirements for these businesses).

Licensing has become a mechanism not only to protect public interests but also to exert greater control over who can operate in the sector and how.

Further, independent regulatory authorities now oversee most IFCs, enhancing transparency and international cooperation. These bodies often enforce rules on corporate governance, anti-money laundering compliance, and operational standards. Table 4 provided the dates of creation for independent regulators; Table 8 provides an overview of when licensing requirements were introduced across various jurisdictions.

Table 8 - Licensing of Service Providers

Jurisdiction	Regulation of Company Management, Trustees, etc.	Jurisdiction	Regulation of Company Management, Trustees, etc.
Anguilla	2000	Isle of Man	2000
Antigua & Barbuda	2008	Jersey	1998
Bahamas	1992	Labuan	1990
Barbados	1982	Liechtenstein	2011
Belize	2007	Luxembourg	--
Bermuda	1981	Malta	2013
Brunei	2010	Marshall Islands	--
BVI	1990	Mauritius	2001
Cayman Islands	1999	Monaco	2001
Cook Islands	1984	Montserrat	2001
Curacao	2001	Panama	--
Sint Maarten	2001	Samoa	1987
Cyprus	2012	Seychelles	2003
Dominica	--	St. Kitts & Nevis	2021
UAE (DIFC)	--	St. Lucia	
Gibraltar	1989	St. Vincent & the Grenadines	1994
Grenada	1996	Turks & Caicos Islands	--
Guernsey	2001	Vanuatu	--
Hong Kong SAR	2018		

Regulation through licensing has, in many cases, been framed as a means of protecting the public from financial misdeeds.[193] However, as the Grundy quote highlights, licensing also provides governments with a powerful tool to shape their financial sectors. For example, Grundy explained the degree of control licensing gives regulators as follows:

[193] *See, e.g.*, SEC. & EXCH. COMM'N, *Regulation of Investment Advisers by the U.S. Securities and Exchange Commission*, (Mar. 2013), https://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf (contending that regulation of investment advisers in the US is done "to eliminate, or at least expose, all conflicts of interest that might cause advisers, either consciously or unconsciously, to render advice that is not disinterested").

> [p]eople who are in favour of licenses always tell us that they are necessary in order to protect the public – even though it is quite apparent that the granting of licenses is a good way of raising revenue for government. But what is, perhaps, not quite so apparent is the way that the power for a government to grant – or withhold – a licence is a power for government to enforce its policies, whether its policies have been made clear to the public or not. If what a jurisdiction wants to do is to make sure that its trust companies are directly or indirectly owned by large international banks, a licensing system is a very good way of separating those it wants from those it does not want. [194]

This observation underscores the dual nature of licensing systems. While they enhance regulatory oversight and transparency, they can also consolidate market power among large, well-capitalized firms, sidelining smaller entities. This is where deeper engagement with international regulatory bodies change the policy choices jurisdictions have to make from determining degrees of compliance with outside standards to ones of making resource allocations and pursuing particular market and social values within the jurisdictions. This means the deepening and widening integration within jurisdictions and across sectors of their laws, standards, and behaviors that may have originally started as the necessary ticket for entry into the global financial market.

Examining the history of the evolution of the tax information exchange network has shown us how bilateral tax treaties and information exchange agreements created a network of information exchange and sharing pathways including for gathering financial intelligence. The reach of this initial system increased dramatically by connections through international agreements and arrangements that created CRS, CMATT, the EU reporting system, and FATF. These international arrangements reinforced the reporting and information sharing requirements of the earlier bilateral agreements and solidified the internal practices needed for effective implementation. By doing so, parties to these arrangements did more than simply agree to sets of standards and practices. As we saw above, the cumulative effect of institution-building and staffing deepened the channels for information flows in jurisdictions large and small that has allowed for speedier and more sophisticated adoption of new obligations and requirements. In this way, within twenty years, we went from a global tax treaty network that started by accounting for double taxation to reporting and information sharing for purposes of controlling tax avoidance and now to combat financial crime and money laundering. By doing so, this network has evolved from one of specifying tax reporting requirements on an individual basis to a more generalized one of creating and permitting the use of increasingly automated information exchange systems to collect particular information so long as it does not violate the domestic law of either the requesting or sending parties. This dramatically expands the coverage of such information exchange systems even though there are built in safeguards, i.e. domestic law, for participating jurisdictions. This is an example of powerful agreement design that encourages and incentivizes participation by allowing for individualized opt outs.[195]

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[194] GRUNDY, ESSAYS, *supra* note 47, at 24–25. This contradicts claims like Young's that IFC governments lack enforcement powers. *See* Young, *supra* note 34, at 7 ("regulatory authorities struggle to gain access to bank and client account information when conducting criminal investigations.").

[195] Kal Raustiala, *Form and Substance in International Agreements*, 99 AM. J. INT'L L. 581 (2005).

This history provides insight into the dynamic relationship between onshore and offshore jurisdictions that has evolved into a shared commitment in the financial sectors of the world's economies to build a strong, safe, and secure financial system. The reach and resulting strength of the commitment can be seen in the numbers of treaties signed and organizations joined as we show in the web of connections presented above. However, the depth of the commitment can only be recognized by looking internally at the political interests created by the financial sector and the importance to them of compliance with international standards. The stronger their voice and interest, the deeper and more enduring the commitment to compliance with international standards even if they are not always set out in formal agreements or treaties.[196] For this reason, the coordination and peer review approach to regulation used by the Financial Action Task Force are thought to be examples of soft law where behavior is regularly monitored and changed based on agreed upon recommendations rather than binding obligations.[197]

Practices like review processes further have the benefit of drawing on offshore regulators to lend their expertise and to contribute to the core work of organizations like the FATF by participating in peer reviews. It also allows them the opportunity to shape conduct and policy during the reviews. This has the double benefit of creating an advocate for maintaining good standards and practices internally and an advocate externally for nuanced approaches to assessing compliance based on a jurisdiction's size and risk profile. One size does not fit all in the world of financial regulation. Calibrating expectations can build confidence in and generate incentive to comply with international standards and agreements – hard or soft. This further provides evidence that "extensive international cooperation does not always require legalization."[198] What is crucial to the maintaining of a deep commitment in the absence of a formal agreement are the ties and relationships among individual regulators, professionals including lawyers and accountants, and entrepreneurs that agree to behave consistent with relevant standards. The payoff for doing so is a more resilient system with "deeper, clearer, more ambitious, or more effectively monitored commitments" creating potential advantages for all who play by the rules.[199]

This shows the significance of any initial personal contacts made even as a result of a more restrictive MLAT as a step towards creating a wider internal habit of cooperation and compliance with outside requests for information even as the requests expand in scope and reach. This happens because contacts over time create trust between those working in the systems to respond to external requests and can become internal pressure points advocating for the benefits of compliance with international standards. Such contacts and relationships are frequently strengthened through participation in international organizations – public and private – that regularly bring responsible parties together to share experiences and practices. These gatherings can produce commonly agreed to understandings, best practices, and recommendations that are then readily available for application to new policy standards or legal requirements enhancing the world's regulatory capacity and enabling more sophisticated and complicated systems.

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[196] Raustiala, *supra* note 195, at 603.
[197] *See* Beth Simmons, *International Efforts against Money Laundering*, in COMMITMENT AND COMPLIANCE: THE ROLE OF NON-BINDING NORMS IN THE INTERNATIONAL LEGAL SYSTEM 245 (Dinah Shelton, ed.) (2000).
[198] Judith Goldstein & Lisa L. Martin, *Legalization, Trade Liberalization, and Domestic Politics: A Cautionary Note*, 54 INT'L ORG. 622 (2000).
[199] Raustiala, *supra* note 195, at 611.

The other factor underpinning this human network is the socialization and acculturation that occurs as groups interact on a regular basis. Whether this is for scheduled meetings in international organizations or participation in peer review missions, frequent interactions expose participants to "normative processes that can shape their identities as participants in the regime and may promote the formation of collective identities."[200] This, in turn, can facilitate the acceptance of "more stringent commitments to achieve group goals."[201] We saw this in the information exchange and reporting system where the existence of available pathways and comfort using them made it more acceptable to expand the information gathered and its use.

"Co-operation as a principle and as an obligation that is promoted by an institutional structure is at the heart of modern international regulatory systems."[202] However, the willingness of jurisdictions to live within these structures cannot be taken for granted and has to be actively nurtured and maintained as a political priority. This will require a delicate balance within IFCs as they strive to maintain competitive financial sectors while aligning with international standards. The challenge is ensuring robust regulation without stifling innovation or marginalizing smaller market participants. Over time, this has led many IFCs to adopt differentiated licensing systems or tailored regulatory regimes that cater to diverse market needs while upholding high compliance standards.

By demonstrating that differentiation does not have to degrade a robust regulatory system, IFCs contribute to its maintenance and perfect new tools to address unexpected developments in the global economy. To do so effectively, however, requires that they remain in good standing with the global regulatory community that in turn allows these jurisdictions the flexibility to address emerging issues in innovative ways at their levels. The evolution of the global information exchange network shows the promise of layering commitments and policy initiatives to create a web of cooperation. Key to sustaining and advancing this cooperation will be ongoing support for the individual regulators, officials, professionals, and private persons who develop and implement these standards both onshore and offshore.

V. Conclusion

The development of the global information exchange network has fundamentally altered the role of international financial centers in the global economy. What was once primarily regarded as a "tax haven" facilitating secrecy and financial misconduct has evolved into a more regulated, integrated, and cooperative part of the international financial system. Through a combination of treaties, regulatory enhancements, and participation in global networks, IFCs today operate with significantly higher levels of transparency and compliance. This transformation has been shaped by numerous factors and developments, developments that provide lessons for the development of robust and resilient regulatory regimes and conditions for their maintenance.

The transformation of IFCs has been driven by several interconnected developments. The expansion of treaty networks represents a fundamental shift, with bilateral and multilateral

[200] Jutta Brunnée, *COPing with Consent: Law-Making Under Multilateral Environmental Agreements*, LEIDEN 15 J. INT'L L. 1, 36-37 (2002).
[201] Laurence R. Helfer, *Nonconsensual Lawmaking*, 2008 U. ILL. L. REV. 71, 103 (2008).
[202] Nele Matz-Lueck, *Framework Conventions as Regulatory Tools*, 1 GOETTINGEN J. INT'L L. 440, 444 (2009).

agreements including DTAs, TIEAs, the CMAAT, and frameworks such as CRS establishing a comprehensive global framework for tax cooperation and information sharing. Treaties have evolved beyond DTAs' original focus on preventing double taxation to broaden agreements that have become essential tools in combating tax avoidance, evasion, and money laundering.

This evolution is best understood within its historical context. IFCs initially emerged as a response to rising tax rates in onshore jurisdictions, developing mechanisms for reducing tax liabilities through structures like trusts and holding companies. However, beginning in the mid-20th century, onshore governments implemented countermeasures that gradually restricted these schemes' effectiveness, fostering a more regulated and cooperative offshore environment.

A crucial element in this transformation was the decision made in many offshore jurisdictions to respond by setting up licensing systems and independent regulation. These requirements have become defining features of modern IFCs, substantially enhancing transparency, compliance, and regulatory oversight. This development marked a significant shift in the role of IFCs from simple tax shelters to sophisticated financial centers with robust compliance mechanisms and regulatory frameworks. That adopting such measures did not negatively impact business as the Cayman Islands accepted more stringent reporting requirements in the 1980s showed that it was not relying heavily on hidden assets for business and that a reputation for good compliance would attract more substantial clients with the potential of greater returns.

The creation and strengthening of various cooperation frameworks further advanced this evolution. Formal bilateral agreements like MLATs, DTAs, and TIEAs established clear channels for cross-border cooperation in law enforcement, tax compliance, and information sharing. Multilateral frameworks like CMAAT further enhanced regulatory cooperation as does participation in international regulatory networks, integrating IFCs into the global regulatory framework with sophisticated and experienced personnel. As Simon Deakin notes, "The law is an 'embedded technology' which depends on linking to its environment or context if it is to function effectively."[203] IFCs are critical players in establishing and maintaining those links. The visualizations of the networks in this Article demonstrated the increasing density of the treaty networks and show the pull the formal international requirements and frameworks have on jurisdictions as they become active in the global financial system. In this way, we see how international agreements and institutions can serve as nodes to connect jurisdictions not only to each other but to regulatory frameworks and communities more widely.

Increased IFC participation in international regulatory networks, such as the Financial Action Task Force, has strengthened their capacity to combat financial crime internally while improving cross-border regulatory standards externally. This engagement with global regulatory bodies represents a crucial step in the continued evolution of IFCs as responsible and contributing participants in the international financial system.

In sum, the evolution of the global information exchange network represents a major step toward a more transparent, cooperative, and efficient international financial system. Through

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[203] Simon Deakin, *The Evolution of Theory and Method in Law and Finance*, *in* HANDBOOK OF FINANCIAL REGULATION, *supra* note 40, at 16.

initial efforts to address tax avoidance, onshore jurisdictions incentivized and enabled the development of strong legal and regulatory infrastructure within IFCs. Brought in from the outside or from within an IFC, personnel working in compliance and regulation became an interest group and political force that embedded a culture of compliance within IFC governments. This in turn allowed IFCs to climb the value chain attracting a more substantial and significant client base. Having IFCs integrated into the international financial system not only provides onshore jurisdictions with necessary information, but also knowledge about local conditions and practices to inform more balanced and nuanced regulation that can be readily implemented by IFC regulators and law enforcement. The move away from walling themselves off to integration with the global financial system was facilitated and supported by the onshore need for information. At times unintentionally, the legal and regulatory progress of the past decades has reshaped IFCs from enablers of secrecy to critical participants in the global effort to combat financial crime and enhance tax compliance. Continued fostering of this collaboration will be essential to maintain and build upon this progress.

Significant progress has been made in promoting transparency and limiting financial crime across the global financial system. However, important gaps persist, particularly in less economically significant jurisdictions that remain outside the reach of international oversight mechanisms. The existence of legal instruments alone cannot guarantee effective enforcement. Success in combating financial crime ultimately depends on sustained political will, coordinated action among jurisdictions, and an ongoing commitment from both onshore and offshore authorities to maintain and strengthen their cooperative frameworks and human infrastructure.

The evolution of international tax cooperation may have yielded benefits beyond its initial aim of preventing tax avoidance and evasion. Two potential secondary effects warrant consideration: the development of more effective and efficient tax reporting systems, and the emergence of common standards in areas like documentation and information exchange. These developments could have broader economic implications. The adoption of consistent reporting practices and shared administrative procedures, particularly visible in regional contexts like the European Union, might help facilitate cross-border trade and investment by reducing compliance complexity and transaction costs. Similarly, standardized information-sharing mechanisms may be creating more predictable operating conditions for international business while helping to identify and deter improper practices in cross-border commerce. While maintaining the important diversity of national tax systems, these practical improvements in administrative cooperation could be fostering more efficient international markets and more resilient regulation. The evolution of the global tax information exchange network shows the potential of the linking and layering of legal commitments to generate capacity and to create common purpose among diverse economies. It does so by interactively harnessing the unique perspectives and capabilities of all members of the global economy – large and small, onshore and offshore – to create opportunity and to provide stability for all.