



The Commonwealth

Discussion Note

Commonwealth Finance Ministers Meeting 2016

The 'Panama Papers' – A Commonwealth Conversation

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Abstract

The reporting that followed the release of the 'Panama Papers' has ensured that international tax and regulatory issues have remained at the forefront of the international economic agenda. This emphasises the importance of an inclusive global approach to addressing issues relating to illicit financial flows and international tax avoidance. Coming on top of an already ambitious international agenda to tackle these issues, the publication of the Panama Papers has led to new developments. These include new transparency initiatives around beneficial ownership and the prospect of new 'blacklists' for jurisdictions that fail to meet international standards.

This paper provides an overview of these developments and also of the historical role that

the Commonwealth and its Finance Ministers Meetings played when the blacklisting of predominantly Commonwealth jurisdictions became an issue in the early 2000s. The Commonwealth does not set international standards and nor does it monitor the implementation of those standards. However, as a community of equal and diverse nations that all have a stake in the international agenda, it can provide a forum to enhance the understanding of the different perspectives that different nations bring to this agenda. This paper seeks to draw out some of these roles and perspectives, providing an opportunity for ministers to reflect on some of the principles that should underpin international action and engagement in this area.

Guiding questions

- *How have members responded to the Panama Papers? What issues do they raise for different countries?*
- *What are the key messages that ministers would want to convey to other countries?*
- *Is there scope for the Commonwealth to play a further role in helping to promote a better understanding of different members' perspectives on the issues raised by the Panama Papers?*

1. Introduction

The release of the so-called Panama Papers and the subsequent reporting that it unleashed was a global event, emphasising the importance of global action to address global issues. Yet for varying groups of countries it meant different things. For many of the world's leading economies and their governments, it meant developing further responses domestically and through the G20 to address an already heightened public concern around the inequity of the international tax and regulatory framework. For developing countries, it again focused attention on illicit financial flows, the use of international financial centres (IFCs)² in facilitating these flows and the consequent developmental impacts. For many small states, having adopted the IFC model as a means of diversifying their economies, it meant once again seeking to justify their role in the international investment system and the steps they have taken to meet international standards.

There are a number of forums where these issues and perspectives can come to the fore. In addition to the role that the international media plays, the G20, international organisations such as the Organisation for Economic Co-operation and Development (OECD), the Financial Action Task Force (FATF), regional FATF-style bodies and the Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) all have a role to play in setting or monitoring the implementation of international standards. What these forums do not provide is a political-level forum in which these different perspectives can be brought together.

As it has in the past, and in the context of the development of blacklists of jurisdictions, which will unfold in the coming years, the Commonwealth can provide such a forum. As a values-based and voluntary association of 53 independent countries, the Commonwealth can help promote an understanding of the different perspectives that exist within the Commonwealth's membership on the global issues raised by the Panama Papers. In doing so, the Commonwealth can support the principles of international engagement in this area, one based on inclusiveness and on ensuring a level playing field for all. In addition, an articulation of shared commitments, such as those around the importance of transparency, can help give impetus to international efforts that are already under way.

The purpose of this paper is to help frame this 'Commonwealth conversation'. It does this by providing a short summary of the current context followed by a brief overview of the Commonwealth's engagement with these issues in the past. It then considers some of the perspectives that may exist within the Commonwealth before identifying a number of areas and principles in which there may be a shared understanding.

2. Putting the issues raised by the Panama Papers in context

The reporting that followed the release of the Panama Papers raised a range of issues relating to legal tax avoidance, criminal tax evasion and other illicit flows, the impact that this has on developing countries and also the role that IFCs play in the international tax and investment system. Overall, it highlighted once again the interconnectedness of national tax and regulatory regimes and the need for global solutions to global problems.

This is not a new revelation. The reform of the international tax system has been a central part of the G20's agenda in recent years. The G20/OECD Base Erosion and Profit Shifting (BEPS) Project, which seeks to address tax avoidance strategies that exploit gaps and mismatches in national tax rules to artificially shift profits, has now moved to the implementation stage. A number of Commonwealth countries, including 13 outside the G20 and OECD, have signed up to an inclusive implementation framework,³ and 4 others⁴ attended the June inaugural meeting in Kyoto as invitees. Although the development of the inclusive implementation framework has been broadly welcomed, concerns over the lack of inclusiveness of the process of 'setting the rules' was an issue that came to the fore at last year's Third UN Financing for Development Conference in Addis Ababa.⁵

The importance of building strong national regulatory systems in tackling evasion and other illicit activities has also been emphasised. In addition to the ongoing implementation of anti-money laundering and countering the financing of terrorism (AML/CFT) regulations, 27 members of the Commonwealth, and a further 11 territories and dependencies of Commonwealth members, have committed to implementing a new standard for the automatic exchange of tax information, to be monitored by the Global Forum. With

implementation commitments over the next two years, the timeframes are ambitious.

The release of the Panama Papers has also seen the development of new transparency initiatives. This includes a pilot for the automatic exchange of beneficial ownership information, a pilot with respect to which the United Kingdom has taken a leading role and which already involves over 50 jurisdictions.

Another development that has followed the release of the Panama Papers is a return to the creation of blacklists identifying jurisdictions that do not co-operate with the implementation of international standards, and the potential imposition of punitive measures against such jurisdictions. At their September summit, G20 leaders endorsed a three-fold criterion⁶ based on the implementation of the international tax transparency standards that have been developed under the auspices of the G20 (G20, 2016). A list based on this criterion will be developed in time for the 2017 G20 summit, to be hosted in Germany.

This G20 process sits alongside the work being undertaken by the European Commission as part of its Platform for Tax Good Governance. Following on from the issuing of a controversial 2015 blacklist, involving an aggregation of national country lists and including a number of Commonwealth members,⁷ the European Commission is developing a single criterion to identify unco-operative jurisdictions. This will involve a multiple-stage process, with an initial identification of jurisdictions for screening (due later this year), an assessment of a selection of these countries against the EU good governance criteria and the inclusion of 'problematic tax jurisdictions' on a common EU list against which common 'counter-measures' would be applied (European Commission, 2016).

The creation of blacklists is not a new development. The role of the Commonwealth and Commonwealth finance ministers in the context of the listing of Commonwealth jurisdictions as 'tax havens' as part of the OECD's Project on Harmful Tax Practices in the late 1990s and early 2000s is explored further below.

3. A role for the Commonwealth?

The Commonwealth has historically engaged with international taxation and related regulatory issues, focusing on small states hosting IFCs. An overview of this engagement is included in the

timeline forming Annex A, which also includes key relevant international developments.

Of particular relevance is the role that the Commonwealth played in the context of the OECD's Project on Harmful Tax Practices in the early 2000s. That project had a number of limbs, one of which involved the identification of 'tax havens' that were considered to have harmful tax regimes. Of the 35 jurisdictions first identified by the OECD, 26 were Commonwealth jurisdictions. Many of the jurisdictions identified raised concerns about the criteria used and the process by which they were identified – in particular regarding the lack of engagement, but also with regard to the fact that the criteria were not applied fairly to all jurisdictions.

Given the number of Commonwealth jurisdictions affected, it was not surprising that Commonwealth meetings provided a forum in which these issues were aired. This occurred during the Commonwealth Finance Ministers Meeting in 1999 and again in 2000, with the latter meeting involving ministers giving the Commonwealth Secretariat a mandate to work with bodies including the OECD to help to broker a dialogue between OECD and non-OECD jurisdictions. Among other things, that dialogue helped underscore the importance of multilateral forums, such as that which today exists in the form of the ever-expanding Global Forum, and the importance of international action resulting in a level playing field.

At last year's Commonwealth Finance Ministers Meeting, and in the context of a broader and much more ambitious international tax agenda, ministers again supported Commonwealth jurisdictions working more closely on international tax issues, where doing so would complement broader multilateral efforts.

In the wake of the release of the Panama Papers, this led, in June, to the Secretariat hosting a roundtable that brought together 22 officials from 18 small state Commonwealth jurisdictions that host IFCs under the theme 'Small State IFCs and a Strategic Response to the Panama Papers'. Senior officials from across the Caribbean, the Pacific, Africa and Europe were joined by a range of speakers and presenters, including representatives of the OECD, the Secretariat for the Global Forum, the UK Treasury and the Tax Justice Network.

As well as providing a unique forum for such jurisdictions to come together and reflect on

how they could be proactive in responding to international developments, the roundtable had a number of outcomes (the completed Outcome Statement forms Annex B). The roundtable has led to the development of a Secretariat work programme involving research to better understand the implications of recent developments for small state IFCs, as well as the continued building of networks between such Commonwealth jurisdictions.

Importantly, one of the clear messages coming from the roundtable was that there was a strong desire for the Commonwealth to help promote a dialogue on issues raised by the Panama Papers.

4. What different perspectives do Commonwealth members bring to these issues?

The Commonwealth's membership is diverse, economically and geographically, and seeking to

categorise members represents an unfortunate disregard for this rich diversity. Nonetheless, for the purposes of this paper and for the purpose of helping to frame a ministerial discussion, Table 1 provides an overview of the types of perspectives (and roles) that Commonwealth members bring to the issues raised by the Panama Papers by considering three broad categories: G20/OECD members, developing countries and small states hosting IFCs.

5. A Commonwealth dialogue

The Commonwealth is not a forum for standard setting or rule setting, and nor is it a forum for monitoring the implementation of rules or standards. Indeed, there are many issues raised by the Panama Papers that a Commonwealth conversation will not resolve.

A voluntary association of equal and sovereign states, the Commonwealth can provide a forum

Table 1 Perspectives of Commonwealth members

Category	Perspective/priorities on international action
<p>G20/OECD members – <i>global economic leaders</i></p> <p>Since the global financial crisis, the G20 has increasingly played a central role in global international economic and financial governance – including in relation to the international tax and regulatory agendas in partnership with organisations such as the OECD and the FATF.</p>	<ul style="list-style-type: none"> Working to shape the international financial architecture, and developing global economic policies to address global problems, but also having regard to national interests and priorities. Leading, by example, but also through encouragement (through championing initiatives) or through 'enforcement' (i.e. the prospect of blacklists).
<p>Developing countries – <i>leveraging the international agenda to support domestic resource mobilisation</i></p> <p>Although such costs are difficult to estimate, there is broad consensus that the costs of illicit financial flows to developing countries are significant and increasing (World Bank, 2016). Developing countries are also proportionally more reliant on corporate tax revenues, with BEPS-related issues as important to developing countries as they are to more advanced countries. One factor in this is the revenue losses associated with activities involving 'tax havens' (Crevelli et al., 2015).</p>	<ul style="list-style-type: none"> Ensuring that international action is effective and reflects an understanding of developing-country perspectives and capacities. Where relevant, allocating limited resources to implement international standards (e.g. those around AML/CFT) and participating in international consultative processes (e.g. BEPS consultations and implementation).
<p>Small states hosting IFCs – <i>identifying viable means of diversifying vulnerable economies and promoting a balanced dialogue on issues relating to IFCs</i></p> <p>Many of the Commonwealth's small states have sought to develop their IFCs in the context of broader efforts to diversify their economies to reduce reliance on industries such as agriculture (including fisheries) and tourism.</p>	<ul style="list-style-type: none"> Recognition of the importance of meeting international regulatory standards.⁸ Ensuring that international action is undertaken fairly, through consultative processes, and results in a level playing field. Desire for a balanced dialogue on the role that different IFCs play and recognition of the broader challenges faced by many small states (e.g. vulnerability, the unintended consequences of 'de-risking').

that promotes a greater understanding of the perspectives that different countries may bring to a particular set of issues. When issues such as those raised by the Panama Papers are at their heart about the manner in which one country's actions impact on another, developing this understanding is arguably important. When one group of countries raises the prospect of taking action against another group of countries, developing a greater understanding is arguably critical.

The Commonwealth, through its Finance Ministers Meetings and the subsequent work of the Secretariat, helped to provide such a forum in the early 2000s. It also helped to distil a set of principles for international engagement, including the importance of a truly multilateral and consultative engagement and of holding all jurisdictions, and not just small jurisdictions with limited political clout, to the same standards.

Since the early 2000s, the world has moved on in many ways. There is a much greater emphasis on multilateral and inclusive processes, if not in the setting of international rules and standards, then in their implementation. Nonetheless, the prospect of the development of blacklists, and the fact that the issues raised by the Panama Papers are likely to remain key issues on the international agenda, suggests that the time is right once again for the Commonwealth to play a role in helping to develop a greater understanding of the perspectives

that exist amongst its diverse membership and the principles that should form the basis of international action.

References

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Annex A

Timeline of key events impacting small state IFCs and the Commonwealth's engagement

(Commonwealth involvement in italics)

Year	Event
1998	OECD releases a report entitled <i>Harmful Tax Competition: An Emerging Global Issue</i> .
1999	<i>Concerns around OECD initiative and possible impact on Commonwealth members are first raised at Commonwealth Finance Ministers Meeting.</i>
2000	OECD releases the report <i>Towards Global Tax Cooperation</i> , which identifies 25 Commonwealth members/territories of members as meeting the 'tax haven' criteria. <i>The issue of the OECD's Project on Harmful Tax Practices and the listing of Commonwealth jurisdictions as 'tax havens' are raised at the Commonwealth Finance Ministers Meeting in Malta. Finance ministers mandate the Commonwealth Secretariat to facilitate a multilateral dialogue on harmful tax competition.</i>
2001	The Global Forum on Transparency and Exchange of Information for Tax Matters is established with participants drawn from OECD member countries and non-member offshore jurisdictions, to discuss transparency and tax information exchange issues. <i>Working with the OECD Secretariat, the Commonwealth Secretariat convenes high-level consultations between the OECD and affected Commonwealth members in Barbados. Agreement is reached at the meeting that non-OECD jurisdictions will commit to broad principles of transparency, exchange of information and non-discrimination and a joint working group is established to negotiate a way forward.</i>
2002	Release of the OECD Model Exchange of Information Agreement.
2004	G20 finance ministers issue a communiqué that, among other things, supports broad adoption of OECD Model Agreement. The OECD releases an updated progress report, identifying only five jurisdictions as 'tax havens' (none of which are Commonwealth jurisdictions).
2009	The Global Forum on Transparency and Exchange of Information for Tax Purposes is restructured as a consensus-based organisation where all members are on an equal footing.
2013	G20 leaders commit to the BEPS Project and the development of a new standard for the automatic exchange of tax information.
2015	G20 finance ministers and leaders agree to implement the BEPS Action Items, as well as the new tax information exchange standard, calling on all relevant jurisdictions to do the same. All jurisdictions identified as relevant (including all IFCs) begin to commit to implement the new standard. <i>The international tax agenda features on the Commonwealth Finance Ministers Meeting agenda in Peru, with representatives supporting closer engagement between Commonwealth members on international tax co-operation issues.</i>

Year	Event
2016	<p>The Panama Papers are released by the International Consortium of Investigative Journalists. Both the G20 and the European Commission commit to processes to identify uncooperative jurisdictions, and a new transparency initiative involving the automatic exchange of beneficial ownership information is developed.</p> <p><i>The Commonwealth Secretariat hosts the Commonwealth International Tax Roundtable for small state IFCs under the theme 'Small States and a Strategic Response to the Panama Papers'.</i></p>

Annex B

Outcome statement from the Commonwealth International Tax Roundtable

Commonwealth International Tax Roundtable Outcome Statement

London, 20–21 June 2016

- 1 Twenty-two representatives of eighteen small state Commonwealth jurisdictions that host international financial centres (IFCs) met in London on 20–21 June 2016 to discuss recent international taxation and related developments, their implications for small state IFCs and how jurisdictions can best respond to these developments. Participants from across the Caribbean, the Pacific, Africa and Europe were joined by a range of speakers and presenters including representatives of the Organisation for Economic Co-operation and Development, the Secretariat for the Global Forum on Transparency and Exchange of Information for Tax Purposes and the Tax Justice Network.
- 2 Delegates welcomed the forum, recognising that there were few opportunities where such jurisdictions could come together to discuss the international tax and related regulatory agenda and how it impacts them. The timeliness of the meeting was also acknowledged given the number and breadth of recent developments as well as the increased public scrutiny on the role of IFCs following the release of the 'Panama Papers'.
- 3 Delegates emphasised the important role that IFCs play in many small states, offering a means by which such jurisdictions can diversify their economies. They also highlighted the positive role that IFCs can play, in both small and large countries, in facilitating international investment flows. However, it was acknowledged that there are challenges in effectively communicating this positive role given the strong and often negative views that exist regarding the role of IFCs.
- 4 Presentations on current international initiatives to promote tax and broader regulatory transparency to combat tax evasion and other illicit activities were welcomed. There was broad support of international efforts in promoting greater international tax transparency, including greater collaboration between jurisdictions. All jurisdictions represented at the roundtable have committed to the agreed international tax transparency standards and are active members of the Global Forum.
- 5 Recent developments around public registers of beneficial ownership information and the automatic exchange of such information between authorities were also considered. This included an acknowledgement of the value of sharing such information between authorities. Discussions also highlighted the importance of balancing different public policy priorities, including privacy considerations in the context of public registers. A number of smaller jurisdictions noted the challenges in simply keeping up with these different developments. With the increased flow of information between jurisdictions, the importance of effective data management and data security was also emphasised.
- 6 The discussion on transparency initiatives, in particular those relating to beneficial ownership, highlighted the links between the international taxation and regulatory agendas. These were further explored in the roundtable, which included a presentation by the Commonwealth on its upcoming report

on 'de-risking' across the Commonwealth. The report, drawing on a pan-Commonwealth survey, highlighted the significant and increasing concerns of many Commonwealth members regarding the loss of correspondent banking relationships and the very real danger this poses to already vulnerable states should their access to the global financial system be further limited. Given that this access is crucial to the viability of a financial centre, 'de-risking' presents particular challenges to small state IFCs.

- 7 The level of resources required by small jurisdictions to meet international standards, including tax transparency and anti-money laundering and countering the financing of terrorism (AML/CFT) standards, was discussed. As well as the resources needed for ongoing monitoring and compliance, putting in place new systems, processes and frameworks to meet any new standards poses particular challenges for jurisdictions that may need to reallocate already scarce resources.
- 8 Delegates welcomed the presentation from the OECD on the G20/OECD Base Erosion and Profit Shifting (BEPS) Project, which aims at addressing multinational tax avoidance. As well as providing an overview of the project, the OECD also presented on the development of the inclusive implementation framework, which is open to all jurisdictions to participate in. As many of the jurisdictions represented had not been engaged in the BEPS project to date there was a strong desire to learn more about the project and the implications it would have for IFCs.
- 9 Whilst the invitation to participate in the implementation of the agenda was welcomed, concerns were raised regarding the lack of engagement in the development of the standards themselves. A number of delegates emphasised the importance of giving jurisdictions a voice in the development of international standards and rules, rather than expecting them to implement them once they had been determined. This was a similar sentiment to that expressed at the Commonwealth's 4th Global Biennial Conference on Small States, held in May in the Seychelles.
- 10 In addition to recent initiatives around beneficial ownership, other developments

that have followed the release of the 'Panama Papers' were discussed. This included the development of objective criteria by both the OECD (at the request of the G20) and the European Commission to identify 'unco-operative jurisdictions' with the prospect of measures being applied against such jurisdictions.

- 11 Given strong concerns by a number of jurisdictions around the publication of the European Union blacklist in 2015, the development of objective criteria based on agreed international standards was welcomed. The importance of giving jurisdictions an opportunity to comment on draft criteria was also emphasised. Moreover, there was a strong view that the development of any blacklists and the application of any measures had to be undertaken fairly, ensuring that they applied equally to all jurisdictions that did not meet the objective criteria.

Conclusion

12. Overall, delegates welcomed the discussions at the roundtable, noting the need to be proactive in responding to the international taxation and regulatory agendas.
13. Jurisdictions expressed a strong desire to work more closely with the Commonwealth Secretariat to gain a clearer understanding of recent developments and their implications for small states and their IFC models.
14. Delegates welcomed the opportunity to build relationships with like jurisdictions and agreed that there was value in ongoing collaboration both within regions and across the Commonwealth. A Commonwealth proposal to develop a virtual network to encourage this collaboration was welcomed.
15. More generally, delegates welcomed the Commonwealth's engagement in these issues and called on the Commonwealth to provide leadership and a voice for smaller states in international fora such as the G20 and the Global Forum. In addition, there was a strong recognition of the value in facilitating a dialogue on these and related issues amongst the broader Commonwealth membership to help identify common ground amongst jurisdictions that may bring different perspectives to the issues. Delegates agreed that the upcoming Commonwealth Finance

Ministers Meeting in October would provide a good opportunity to promote this dialogue.

Notes

- 1 Lucas Rutherford, Economic Adviser, Economic Policy Division (l.rutherford@commonwealth.int).
- 2 Although there is no firm definition of what constitutes an 'international financial centre', broadly an IFC can be regarded as any country or jurisdiction where there is a concentration of banks and other financial intermediaries providing a range of financial services (e.g. banking, investment, foreign exchange). Where the clients serviced are predominantly non-resident, the jurisdiction is often regarded as an 'offshore' financial centre. The Commonwealth has within its membership some of the world's largest and smallest IFCs, and there is in general significant diversity in the nature and size of Commonwealth countries' IFCs.
- 3 In addition to the Commonwealth's six G20/OECD countries (Australia, Canada, India, New Zealand, South Africa and the United Kingdom) this included Bangladesh, Brunei, Cameroon, Jamaica, Kenya, Malta, Nigeria, Pakistan, Papua New Guinea, Seychelles, Sierra Leone, Singapore and Sri Lanka.
- 4 Guyana, Malaysia, Mauritius and Zambia.
- 5 The G77 led a push to upgrade an existing UN tax committee to an intergovernmental body that could play a role in rule setting. This proposal was not adopted.
- 6 That is, a jurisdiction's (i) implementation of the information exchange on request (EOIR) standard (ii) commitment and implementation of the automatic exchange standards and (iii) joining the multilateral Convention for Mutual Administrative Assistance for Tax Matters or ensuring a sufficiently broad exchange network for both EOIR and automatic exchange of financial account information.
- 7 It included any country listed by ten or more EU members.
- 8 With respect to tax transparency standards, all of the Commonwealth's IFCs are members of the Global Forum and all have now committed to implementing the new standard for the automatic exchange of tax information.