

# The lives of others

**WILLIAM AHERN** EXAMINES THE CONCEPT OF PRIVACY, ITS CONSOLATIONS, THE THREAT THE COMMON REPORTING STANDARD POSES TO IT AND WHAT WE SHOULD DO ABOUT IT

**Why do we collectively** and individually want to know so much about the lives of others?<sup>1</sup> Why do we ‘others’ seek to resist this so strongly? How should we best resolve this inevitable tension? And why should we care?

Privacy defines who gets to know what and when about each individual. Each individual or group of individuals prefers to have control over setting these boundaries.

Privacy has many benefits. It allows individuals to comfortably test new ideas. Choosing whom we confide in and when enables us to build intimacy and trust over time. Privacy helps protect our property and even our personal security.

Now consider the downsides of governments losing control of the detailed data they intend to collect and automatically exchange annually with over 90 governments worldwide, under the OECD’s Common Reporting Standard (CRS). And lose it, or abuse it, they most certainly will.

This data in the hands of our children could disincentivise them to pursue rewarding careers. It could reveal that a sibling has received greater financial support, which may promote family disharmony. In the hands of business competitors, it could result in unfair competitive advantages. Unscrupulous governments could, and will, use it to wrongly confiscate property or as a basis for trumped-up charges, such as tax fraud. Criminals will use it for a host of nefarious purposes, including kidnapping.

The personal and societal benefits of keeping personal information private, including financial data, are clear – so much so that the desire for privacy became a demand, which became a law (e.g. data-protection laws), which became a right and, since 1948, an internationally recognised human right, as articulated by article 12 of the UN’s *Universal Declaration of Human Rights*.

Like almost all rights, it is not absolute. Total privacy – the complete control of what all others know about all aspects of our lives – does not and should not exist.

Privacy can promote corruption, hypocrisy and crime (including tax cheating). It can also threaten national security. Therefore, a host of competing laws correctly override the right to privacy. How, then, to resolve this tension?

In the case of personal financial data, we are told that ‘if you have nothing to hide, you have nothing to fear’ – i.e. that the immediate assumption to be made of those seeking such privacy is that their

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motives are corrupt. This is a de facto reversal of the presumption of innocence. If privacy of financial data is a valid desire and in fact a legal right, the case for overriding it must be strong, and the manner of doing so proportional.

Is there a strong enough case to support the CRS? Cross-border tax cheating was widespread and, despite numerous offshore tax amnesties, a certain legacy remains. But it is my experience that new cross-border tax cheating is finished. A combination of anti-money laundering (AML) and customer due diligence regulation, tax cheating as an AML predicate offence, the much broadened and strengthened modern global double-tax agreement and tax information exchange agreement network, and the fallout from the tax scandals that have enveloped many prestigious global private banks and their customers, have had a marked effect.

These factors have caused a sea change in attitudes, not just in the intermediary community but among customers themselves. Intermediaries are now not only highly motivated, but well equipped to spot tax-cheating practices, and have the processes to stop or at least report them. We are now effectively state agents in this respect. We, and our clients, have got the message loud and clear.

Automatic exchange of information (AEOI) via the CRS is like taking a sledgehammer to an already cracked nut. Collecting detailed financial data on hundreds of thousands of tax-compliant individuals and having it career around the ether annually, automatically, is an unchecked and unprecedented mass-surveillance exercise on predominantly innocent people.

## A CALL TO ACTION

Our goals should be to secure the individual’s right to privacy by working with governments to better protect the data at the gathering point (both by intermediaries and governments), to better screen and monitor AEOI partners for their ability to protect the data exchanged, and to rationalise the administrative burdens imposed by the CRS. I urge STEP members to engage in a positive and constructive manner at all levels open to them to achieve these goals. If enough of us say things that are right, well enough, for long enough, we will be heard.

<sup>1</sup> This article’s title is taken from the 2006 film about the corrosive effects of Stasi surveillance on both the observed and observers