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Destructive Overreach

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Imagine a fellow who lives in a dry county in Mississippi (where alcohol is not sold or served) goes to a friend's bar in New York and has a drink. Shortly thereafter, the bartender visits his friend in that dry county in Mississippi. The local sheriff arrests both the bartender and his friend for an act committed in New York.

Most people, quite properly so, would argue the Mississippi sheriff has no business arresting people for a legal act committed in New York, even though it would have been illegal if committed in Mississippi.

Unfortunately, some prosecutors in the U.S. federal government are now acting like the rogue Mississippi sheriff described above when it comes to gambling, securities and tax laws in foreign countries.

Each country has the right to make its own laws which cover its own territory, but it does not have the right, absent a specific treaty or agreement, to enforce its laws on legal acts committed elsewhere. The United States has rankled other governments and has been accused of violating human rights by using agreements to share information on terrorism to prosecute individuals for other crimes that are not necessarily crimes outside the United States.

The United States has many tax treaties and legal assistance agreements (MLATs) that specify what information may be shared between countries, for what purposes, and under what conditions. However, now the United States is accused of greatly overstepping the bounds. Much of the current row stems from the alleged misuse of passenger manifest lists the U.S. demands from airlines flying into the United States.

Examples of overreach are plentiful. Internet gambling is legal in the United Kingdom, but that did not stop U.S. government officials from detaining U.K. gambling company executives who were just visiting - not doing business in - the United States. These executives had been engaged in legal activities in their own country. If some in the United States have decided to play on the London Internet, rather in U.S. casinos, that is an issue for U.S. authorities and their own residents, and should not involve London-based companies that were not specifically targeting the U.S. market.

UBS, a global bank, has recently warned its private bankers not to travel to the United States, because a Swiss private banker for UBS was detained by U.S. authorities as part of a broad tax evasion probe. Switzerland and other countries have different tax laws than the United States and different criteria as to what constitutes a tax felony.

The U.S. has no business going after bankers in Switzerland who have not committed felonies in the U.S. The legality of their actions in Switzerland is up to Swiss authorities to decide. The extent to which U.S. citizens or residents are engaged in illegal tax evasion is an issue between them and the U.S. government. The U.S. Justice Department is now also trying to force UBS to reveal the names of 20,000 of its clients, which could put UBS in violation of Swiss bank secrecy laws.

There are many good reasons for Switzerland and other jurisdictions to have bank secrecy laws. The Swiss originally passed them to protect German Jews and other anti-Nazi Germans from inquiries made by the Gestapo. Over the years, many who live under repressive regimes have been able to protect themselves and their property only because there were places outside their own countries with bank secrecy.

Swiss bank secrecy is not absolute, and the Swiss authorities do make the information known if there is probable cause to believe a specific mutually agreed crime has occurred and the proper legal procedures followed.

If the United States continues to unreasonably pressure the Swiss and other banks located in reasonably cooperative jurisdictions, many account holders will merely move their accounts to less cooperative jurisdictions, which will only benefit the terrorists and real criminals.

U.S. banks and U.S. government authorities normally do not engage in blanket financial information sharing with foreign governments - despite the demands of the French and some others. Most foreigners are not subject to U.S. withholding or taxes on their portfolio interest, dividends and capital gains earned in the United States - nor should they be, because to do so would drive needed foreign capital out of the United States.

Blanket financial information sharing among governments is subject to enormous abuse. As is well known, even the most competent governments frequently lose, or have stolen from them, confidential data, which is misused by thugs within governments and criminal groups in general.

The U.S. government is certainly not on the moral high ground on taxes, as long as it continues to tax gains only due to inflation (caused by the government) and not on real income; tax people on their global rather than U.S. income; tax those who live outside the country on non-U.S. income; and demand compliance with a tax code so long, complex, and contradictory no one can understand it or even be sure he or she is in compliance with it.

The United States needs the cooperation of the United Kingdom, Switzerland, and most other governments in the war on terrorism, but if it uses sensitive information it obtains to prosecute other crimes, particularly those where there is not dual-criminality, it may destroy the necessary cooperative relationships. This destructive overreaching puts everyone at greater risk.

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