<u>Blockchain havens: the Taxcast transcript, April 2024</u>

Naomi Fowler: Hello and welcome to the Taxcast from the Tax Justice Network. I'm Naomi Fowler. You can find us on your podcast app and you can find all our podcasts on our website podcasts.taxjustice.net

This is my twelfth year covering tax havenry and corruption on the Taxcast, and I've seen how the tax justice movement has slowly managed to squeeze the financial secrecy services business everywhere, pushing for more transparency and regulatory breakthroughs. That means secrecy jurisdictions are looking for alternative business models, always, and I've been watching the setting up of blockchain hubs for years now, with increasing concern. But every time I've been preparing to cover crypto and blockchain on the Taxcast, things were changing so fast, I've put things on pause. Now lawyer and offshore structuring specialist Paul Beckett has released a book that really sounds the alarm. His book is called "An Anatomy of Tax Havens: Europe, the Caribbean and the United States of America." In it he covers a lot of ground, looking at the future of tax havenry. And what Paul has to say about 'blockchain havens' is pretty gobsmacking.

Paul Beckett: tax havens don't exist only in the physical world, like me sitting here in Ramsey, in the Isle of Man, they don't have to have a geographical presence or even a government to rule them. And the ones that don't are the super tax havens. These operate, and this is the one I think that is little understood, little understood, certainly by regulators and by politicians who still think of palm fringed beaches. They operate in virtual reality, interface through portals provided through blockchain havens.

So there's two points. The first point is cryptocurrency and transactions through the blockchain are tax havens in themselves. Full stop. but also they touch down on earth into the bricks and mortar world through the blockchain havens. And obviously the supertax havens are created by manipulating, basically cryptocurrencies and entities that are available through using, the use of blockchain technology.

About five or six years ago, we were talking about engineered structures in the real world, the Bahamas Executive Enterprise, the, the, the Nevis Multiform Foundation, weird trusts coming out of Cayman and what have you. *This* will supersede them all.

Naomi Fowler: As I say, secrecy jurisdictions everywhere are busily setting up specialist blockchain hubs. Yet someone told me that they recently interviewed the relevant minister of a well known jurisdiction where they've set up a blockchain hub who told him he couldn't answer questions about crypto and blockchain policy because he didn't understand it! So, here's a nice explanation of blockchain, before we get stuck in:

Paul Beckett: The best analogy I've heard for the blockchain to make it clear is from the, the First Nations or the Native Americans, First Nations Canada, Native Americans, United States own code system, which was in use for centuries. The, the idea of Wampum, which Western settlers thought was a form of money, but it was nothing of the kind. Wampum is a strip of leather with a series of colored beads. And each bead represents a transaction or a sequence of transactions. And then when there's another transaction, you put another row of coloured beads on. So you've always got a record of all previous transactions and the current transaction in place. It's incredibly sophisticated coding. And that's what the blockchain is.

Naomi Fowler: Yes, so blockchain is Wampum, only in electronic form. Before we get fully alarmed by the dangers, what are the genuinely useful aspects of blockchain to people - and I also mean *socially* useful? Here's Bob Michel of the Tax Justice Network.

Bob Michel: Is there a good use? You know, you have to distinguish private blockchains and public blockchains. And private blockchains can be very useful. It's private because the access to the blockchain, to the network, is restricted. So in a, in a company context, this can be very useful. You know, you can have a, a multinational with lots of, you know, lots of subsidiaries and lots of subcontractors and they have a, a value chain, a product cycle. They can use a blockchain to kind of real-life monitor where parts are going and, and stuff like that. Very useful I guess.

But we are talking about the public blockchain and the public blockchain, that's the cryptocurrency technology and there the access is open, it's unrestricted. So that means that every person in the world with a computer and with an internet connection can actually make an address that figures on the blockchain so that there can be transactions recorded associated with that address. And every person in the world can become a validator of transactions. So in Bitcoin terms can become a miner in, uh, Ethereum terms can become a staker, and if a person takes that job he uses his computer or a computer to do this validation and gets rewarded in coins, in kind of tokens that have the value of a, you know, of a currency in that network. And then the, the, the validator can sell the tokens to interested parties. And that's how the whole monetary kind of infrastructure starts.

Now, the question is, is that useful? And I think the answer depends on where you're sitting. If you're sitting in, let's say, a developed country with a stable fiat currency, where your wages are earned in, you know, in a, in a, in a store of value in a fiat currency, dollar or euro or pounds, that is not subject to inflation, then, you know, the, the reason why people go to cryptocurrencies is it's, it's for speculation because they're interested in the gains, the quick gains or the long-term gains and the fact that it's very difficult for the tax authorities to trace it. So speculation and probably

evasion or, you know, the gray zone there, that's not a very beautiful use case for cryptocurrencies.

But I think if you're sitting in a developing country, the situation is a little different. You can see from all the statistics where crypto is really taking on, these are countries with galloping inflation, you know, Argentina, Turkey, Nigeria, you know, they're, they're people are looking for a store of value that is more stable.

And also in developing countries remittances are also very important, so people working abroad and sending money to their families home. And that's often the only source of income for these families back home. And in some countries, remittances are more important than foreign direct investment by companies so remittances are a super important source of revenue in these countries. And crypto has completely disrupted the payment structure in this remittance industry so that's completely made it much cheaper for people to send home money. So that's also why it's so popular in those countries. Now, is this a good use case? For the individuals, yes, because the individuals can shelter their money from inflation or can remit income home. But for the local government, it's a drama because it means that they lose kind of the monetary policies they have to shield their currency from inflation is losing their teeth because people can simply have their own plan to avoid and ultimately also the tax risk, of course, because if these cryptos are not declared and a country storing lots of its wealth in crypto, then there is a huge pressure on the tax gap because the government, governments will not be able to, to collect the taxes on income because part of the income is now in a kind of a ghost circuit of crypto. And this means too little funds for, for public spending, for public means, for public services. So that's, that's why it's not so useful. So in conclusion, useful for society? Mixed, mixed bag, mixed bag.

Naomi Fowler: Yeah. I know that the, the whole remittance industry is really dominated by a few big players and that should have been addressed a long time ago uh, and you could sort of say it's a bit like a cartel, punishing the poor sending really small amounts of money back, which is now why they've moved over to the crypto space, which you can completely understand.

Bob Michel: I think also the fact that crypto was so disruptive on the remittance industry, it's not just because like you say, the cartel, like the fees being too high, but also because unlike normal paying payments processors or financial institutions, crypto was not subject to any know your customer and due diligence, which made it simply cheaper to operate these payments services by these crypto firms so once that is equalized with the financial institutions, then this kind of disruptive power of crypto becomes much less, because they are fighting at equal terms, they still will disrupt the cartel, but they will not, you know, they don't have an unfair advantage of

not being burdened by this compliance cost, so that's I think in the end it will taper off a little bit, the disruption.

Naomi Fowler: The big question about blockchain transactions that's argued over endlessly by defenders of blockchain, and its detractors is about its visibility. But there are many levels to visibility, as Paul Beckett explains.

Paul Beckett: Identities are anonymized. The anonymization of identity is from the outside looking in, which I think is quite important. Between participants in the blockchain, identities are not necessarily unknown. The parties to a blockchain transaction need to know with whom they are dealing, and they do know each other, each other are, because they're basically in a peer to peer contractual relationship, or if not a contractual relationship, a peer to peer relationship. And I know that it's common knowledge to say the blockchain can be, it can be checked, every transaction can be checked. Of course it can, but who's checking it? Where are the staff? Where are the resources for these billions and billions? Yes, everyone can go to the Ritz, but not everyone can afford it.

Naomi Fowler: The resources and the systems needed for proper regulation and enforcement for transactions of value of any kind are always a challenge. And they need political will. But politicians and regulators need to actually *understand* blockchain and its dangers, as well as its potential. But there are huge differences in how governments are tackling things like tax abuse, compared to how they're *trying* to regulate blockchain transactions and trades. Here's Paul Beckett quoting Professor Omri Marian, the person who coined the phrase 'blockchain havens,' and had a lot of foresight years ago when thinking about how blockchain would develop:

Paul Beckett: Governments around the world target the financial intermediaries through which tax evaders traditionally operate, rather than by targeting the tax haven jurisdictions that host the financial intermediaries. Financial intermediaries such as banks, are gradually becoming agents in the service of tax authorities. These financial institutions face increased governmental pressure to deliver information about account holders, to withhold taxes from earnings accumulating in financial accounts, and to remit such taxes to taxing authorities around the world.

Naomi Fowler: This, in many ways is one of the - slow - successes of the tax justice movement and of media exposes like the Panama Papers and other offshore leaks. And we're still far from getting to the kind of financial transparency *we'd* like to see. But, regulating blockchain and cryptocurrencies is different. There's often no intermediary to target.

Paul Beckett: Cryptocurrencies possess one added value. Their operation is not dependent on the existence of financial institutions. That is the key to the present

failure of most regulatory initiatives." They're regulating me as an advocate, or someone as a banker, but they can't, by definition, regulate a thing, an item of cryptocurrency, a transaction, a blockchain. It's like trying to say you could regulate fax. It's just not possible. So "while cryptocurrencies can be used for legitimate purposes, they're also well suited to support illicit transactions."

And the commercial work in the offshore havens is diminishing. The number of incorporations everywhere, particularly in places in the Caribbean, is falling, partly because of the substance rules that have been adopted, but partly because people don't need them anymore. I mean, the proof of the pudding is in the eating. They don't need them anymore.

We have governments waking up to the realization that there is tax revenue to be gained from virtual trading, seeking to regulate and tax the businesses which service virtual transactions. But the more they do that, the more those businesses will be driven towards relocating their activities in, or expanding their offshore presences to include, the tax havens, which have shown no intention of taxing gains or income derived from crypto activities. You see, there's this crossover. You could just stay in crypto or blockchain, which are the super tax havens, or you could find a friendly jurisdiction.

Naomi Fowler: And there are plenty of jurisdictions out there who are very friendly, very friendly indeed. They're happy to be outdoing each other to offer regulatory refuge. And that's what they've always been about.

Paul Beckett: The tax havens themselves are aware of the fact that they're falling out of favor, the physical tax havens, and they're not done. So they're fighting back. Just a few examples of the blockchain havens and the names they have chosen for themselves: Gibraltar will henceforth be, this is all their own names, will henceforth be known as Blockchain Rock. Malta will be Blockchain Island, as I put in my book, deftly stealing a march in the rebranding stakes on all the other blockchain islands. Switzerland, of course, has the canton of Zug, and Zug has dubbed itself Crypto Valley. However, there's always competition. And Wyoming, Wyoming is being spoken of as America's Crypto Valley. So we have a Swiss Crypto Valley, America's Crypto Valley, and then the Isle of Man. We're very understated in the Isle of Man. The Isle of Man is worthy but dull , and so it calls itself Digital Isle of Man.

Naomi Fowler: There are lots more examples out there. And in the end, all these crypto and blockchain traders and investors want to surface on the ground, in the physical world, in currencies that are State-backed and State-protected. So what are jurisdictions doing to accommodate those requirements? Paul's looked at two well known secrecy jurisdictions in the US - Delaware and Wyoming and what *they've* been getting up to:

Paul Beckett: Obviously, we all are familiar with Delaware. Its division of corporations on its present website says, "The State of Delaware is a leading domicile for U.S. and international corporations. More than one million business entities have made Delaware their legal home. More than 66 percent of the Fortune 500 have chosen Delaware as their legal home. The Delaware General Corporation Law is the most flexible business formation statute in the nation." And they wrote that without blushing.

They set up in 2016 something called the Delaware Blockchain Initiative. And, cutting to the chase, it allows share transactions for Delaware corporations to be transacted solely in the blockchain. You know, stop transfer forms and everything else, not necessary because, you know, on the blockchain, you know where everything has come from.

But something strange has happened in Delaware. When they changed their section, it's Section 224, title eight of the Delaware Code, everything of course, is codified, corporations, chapter one, general Corporation Law, it was amended in 2017 to allow for this idea of of blockchain transactions. What it did, and it's very difficult to spot, was from the original section 2.2.4., it deleted all reference to corporate officers. So I'm just reading my own notes, absent from the text is now any reference to officers of a corporation having to be in charge of the securities register, or of records having to be maintained by the corporation itself. The reference to record, the reference in this section to records, quotes, administered by or on behalf of a corporation, close quotes, ensures that blockchain technology can be used for these purposes *instead* of relying on a corporate officer. In short, private corporations in Delaware are now empowered to track using the blockchain.

Well, there's no guidance in this new Delaware law on whether public *permissionless* blockchains or private *permissioned* blockchains are indicated. If it's permissionless, then all interested parties could view changes to a corporation's share ownership in real time. And registered ownership would be transparent, it's permissionless, anyone can look inside. However, if it's, if it's permissioned, and let's face it, it's going to be - if it's permissioned, the owner of Delaware, the ownership of Delaware corporations availing themselves of this new facility will become opaque and accessible only to those within the corporation itself, or to authorized employees of the blockchain service providers. This is replicated at a stroke, all those tax havens that wouldn't make their corporate registers public. It goes way beyond even the minimum beneficial ownership declarations that we make at the moment, that are recorded so that the authorities, the police, the government can see them and the public can't.

"The implications for ownership transparency are obvious, but merit repeating. There is every possibility that ownership of stocks and shares in such a corporation will be

transient. There will be no involvement of the corporation's officers and no opportunity for a proposed transfer to be rejected as not being in the corporation's best commercial interests. Shareholders will have unrestricted liberty to trade their shares, for all practical purposes, unobserved. If challenged whether they own shares, a person can confidently reply that they did so ten minutes ago, and they may do so again ten minutes from now, but for the moment, they do not. This is neither a natural nor a necessary concomitant of blockchain share registers."

On the surface, what's wrong with maintaining registers on the blockchain? It's the deletion, the deliberate deletion of corporate oversight. It's just slipped in there that's caused this huge possibility for a lack of transparency. And I say in the book I say 'perhaps unwittingly,' I doubt if it was unwitting, 'perhaps unwittingly, Delaware has handed to ultimate beneficial owners who wish to distance themselves from registered ownership an ever changing, readily available cast of nominees available at a moment's notice, and without restraint, to pass the baton one to another. So what seemed to be a very bland thing from 2017, it hasn't really attracted much in the way of comment, is an enormous black hole for transparency purposes. Impenetrable.

Naomi Fowler: So that's Delaware and the advances they've been making. Before we get to what Wyoming is up to in this field, we need to talk about DAOs - Decentralised Autonomous Organisations.

Paul Beckett: It's easier to say what a, what a DAO *isn't* than what it is. It's not a company. It's not a general limited partnership. It's not a limited liability company. But hold that thought about not being a limited liability company because that's where Wyoming comes in, in a moment. It's, it's a collection, I'll read from my notes, a collection of individuals linked by software on the blockchain. They call themselves members or contributors, but in fact the DAO is simply them themselves. There's no structure, it's them themselves. The DAO has no existence in law separate from its members, so there's no similarity with shareholders in a company. There are no managers or directors and no staff. It has no real world presence at all, it needs no bank account, it keeps no real world accounting records. Its rules of governance and what enables it to make decisions or limits what it can do, is encoded in the blockchain software on which it runs. So, it's pre-coded to be able to do *a thing*. That thing can be vastly important, that thing can be, buy an acre of real estate, buy a luxury yacht. And the money comes in, and the so called 'smart contract,' what I call smart contract fallacy, there's no such thing as a smart contract. It's not a contract.

But, it can, the DAO is pre programmed to do anything, and they raise eye-watering amounts of money to achieve these ends. So instead of issuing shares or allocating a partnership percentage, it sells tokens, digital assets, which may take the form of a

named cryptocurrency, or more often are simply created by the DAO itself and have no existence in any other context.

You can see where I'm going with this in terms of money laundering and, and, and illicit funds, the fiat currencies, dollars, sterling, Euro and so forth are the cow. The tokens are the magic beans given in return, beanstalks leading to a store of giants' gold are not guaranteed to Jack or Jill. So you give hard money to this thing, and it gives you tokens which it made this morning, and you're happy.

Freedom from conventional legal structuring brings with it enormous exposure to misrule, outright fraud, and loss, not least through hacked and corrupted software. It has no legal personality, so you can't bring a legal action against it. There are no directors or managers to be held to account. The membership is so shifting that from moment to moment, no member can be sure of whom they have alongside them. There is no check mechanism to see whether its liabilities exceed its assets, or how it's to be wound up. And by whom. If it functions as a collective investment, and if its activities in the real world bring it within the ambit of an investment regulator, the regulator is powerless to impose any authority on a DAO.

A DAO has no more legal substance than a crowd at a baseball game. And I think of it this way. Think of it as a chat room with a bank account. Although the DAO doesn't need a bank account, it just needs your money, and somebody will, at some point take it away. So, very, very, very useful to the sort of people that you've built your professional careers trying to stop.

Naomi Fowler: And when it comes to DAOs, Wyoming's been busy, another major secrecy jurisdiction.

Paul Beckett: Wyoming, I say that the genius, and it *is* genius, the genius of the Wyoming State legislators has been to rescue the DAO from legal limbo. Back in 1977, it was Wyoming that invented the LLC. A lot of countries, including the Isle of Man slavishly copied the LLC Legislation, Limited Liability Company Legislation of Wyoming. Well, what they've done now is to further amend their state bill and the legislation now provides that DAOs are LLCs in Wyoming, full stop. There isn't time now, there isn't time now to go into the pages and pages of that legislation, but once a DAO declares itself, oh, hello, Wyoming. It doesn't matter why it was formed. Oh, hello, Wyoming. We want to be an LLC. Wyoming says, welcome. It's an LLC. That's a means of getting the money out. That's the siphon that gets the money out of the DAO. And then if somebody wants to complain, if a member, a contributor, whatever they call themselves, wants to complain, then the, the authorities in Wyoming can say, well, you, you have certain rights as a contributor to an LLC. Those rights are not the unlimited vague rights that the DAO is designed to have. So there's a classic blockchain haven, the classic blockchain haven, where something which exists, can

only exist as a blockchain transaction, touches to earth, and is treated as a traditional structure in a traditional bricks and mortar tax haven. Won't be the last because just as the last time Wyoming was copied by so many jurisdictions with its LLC legislation, I wouldn't be slightly surprised if Luxembourg, the Netherlands, Malta, within the next 12 months or so doesn't do exactly the same thing, I mean, just watch this space.

Naomi Fowler: So, if you want to pass easily between the virtual, crypto/blockchain world and the physical world, the global economy, without scrutiny, your options are multiplying fast. And regulators really need to understand that policies aimed at 'transparifying' tax havens are ineffective in the blockchain context. So, how are the regulators doing? There's the OECD's Crypto-Asset Reporting Framework, CARF and the EU's Markets in Crypto-Assets Regulation, or MiCA, both implemented fairly recently. Here's Paul's take on the EU's regulation:

Paul Beckett: I think this illustrates how regulation is falling short. There are important, and shall we say probably unintended, because you don't know, we're dealing with politicians, probably unintended loopholes in this. There are three weaknesses. So this came in on 16th, May, 2023, in the official journal of the European Union, 9th of June, 23, so it's brand new. It's colossal, 149 articles. It's comprehensive. But it has three serious weaknesses. The first is that it regulates crypto asset service providers, CASPs. The second is that it doesn't regulate non fungible tokens. And the third is that it doesn't regulate decentralized autonomous organizations. Now why it doesn't do this, well, we'll see.

Naomi Fowler: OK, so let's take them one by one. The Crypto Asset Service Providers or CASPs - they're intermediaries. But, as we heard earlier, jurisdictions developing blockchain hubs are passing regulations that are pretty quickly removing CASPs from the equation. The key word here is 'disintermediation' - the removal of intermediaries from the supply chain, that's the intention. And Artificial Intelligence is moving so fast too, that's another way to take CASPs out of the mix.

Paul Beckett: Unlike in traditional finance, intermediaries, the CASPs, are not indispensable for users to own crypto assets or undertake exchange transactions. Self hosted wallet users can easily trade crypto assets by relying on peer to peer trades or by relying on fully decentralized applications, such as the DAO. So, the regulation points at crypto asset service providers. Fine. But they have a very limited use. Very, very limited use. And certainly wouldn't be used by money launderers or people on the dark side. They're there for Joe Public, who wants to buy and sell a few coins, a few tokens.

Naomi Fowler: Let's look at the second weakness - no regulation of non-fungible tokens - or NFTs. You might have seen those bizarrely overpriced monkey GIFs in the news:

Paul Beckett: non fungible tokens. Now, these, you know, you buy, you buy a fraction of a painting online, or you buy a small percentage of some electronically generated piece of artwork, or something of that nature. Well, when you sell an non-fungible token, the current thinking is that the token that you buy is not the token that was sold. Isn't that counterintuitive? That in fact what you buy is new, has no history, there's been no transfer of ownership, it just re-forms like Doctor Who, re-forms, regenerates in a completely new form. Well, the European Union didn't even get that far. The European Union said that they only pose limited risk to holders to the financial system. And what Regulation 10 of the new regulation says is, "while unique and non fungible crypto assets might be traded on the marketplace and be accumulated speculatively," well, yes, "they are not readily interchangeable and the relative value of one such crypto-asset in relation to another, each being unique, cannot be ascertained by means of comparison to an existing market or equivalent asset." Strikes me as being completely irrelevant.

"Such features limit the extent to which those cryptoassets can have a financial use." They're not there for financial use, they're there for laundering money! "Thus limiting risks to holders in the financial system and justifying their exclusion from the scope of this regulation." To which you can imagine them running out of the room going, phew, thank God for that, we don't have to look at these terrible things!

I know that the values of NFTs have fallen, but as we all know in money laundering, if you want to launder four million and you get away with a million clean money, you're perfectly happy. And that's exactly what NFTs can be used for, and they're excluded from this regulation.

Naomi Fowler: And the third weakness Paul identifies: no regulation of Decentralised Autonomous Organisations, or DAOs in the EU - believe it or not!

Paul Beckett: They're not regulated. So all the internal tax havens within the European Union, and we know how many there are within the European Union, are free to promote these as if they were *not* tax haven implements because they say, regulation 22 says, "where crypto asset services are provided in a fully decentralized manner, without an intermediary, they should not fall within the scope of this regulation." See, it actually goes back to the thinking about concentrating on crypto asset service providers. So there's no intermediary, so we don't, we don't regulate them. But they're raising, DAOs are raising billions upon billions of dollars.

Naomi Fowler: OK. So, regulations implemented so far aren't grappling properly with the huge dangers around fast-changing crypto and blockchain. And then there's a question of resources. Wealthier countries can afford to protect themselves *somewhat* with these weak regulations, they can at least do that. But how do poorer countries try to protect themselves and their economies when they can't invest the massive resources needed? We heard earlier from Bob how countries with unstable currencies are particularly vulnerable. This mismatch in terms of lack of resources presents yet more danger. As we know, with tax havens everywhere, there's always a certain amount of jurisdiction-shopping, where people flit from one location to another as one place out-does another place with their secrecy offerings. So, *unintentionally* becoming a kind of vortex for blockchain havenry is yet another worry for poorer countries. And even if they find the resources to implement the OECD's weak Crypto Asset Reporting Framework, or CARF, it's really challenging. Here's Bob Michel again of the Tax Justice Network:

Bob Michel: The CARF is very resource intensive for, for tax administrations to follow the OECD rules for automatic exchange of information in crypto. To get the information, they have to comply also sending information out, even if they have just one local operator, they have to comply, so it's very resource intensive and countries have to choose, these countries have to choose, they cannot do everything. They have to choose their battles. So they have to know how much crypto activity there is in their jurisdiction. And how do they know how much flows there are going across the border, fiat currency and return to crypto and vice versa?

Naomi Fowler: How indeed! By far the best data and analysis out there is done by a company called Chainalysis that researches blockchain and provides data, software, services to government agencies, exchanges, financial institutions, and insurance and cybersecurity companies. It says something that Chainalysis is *the* place to consult, even for huge institutions like the IMF. So, back to the question about the challenges in terms of how much money is crossing a nation's borders, and crossing in and out of crypto, here's Bob again:

Bob Michel: Normally in, in, in ordinary finance, you would just go to the IMF and look at the balance of payment statistics, and then you would get an idea of the major trading partners. But the IMF statistics department, they have been working on this problem for years now, what to do with crypto flows. And their answer is really shocking because they said either you have to rely on Chainalysis, you have to rely on Chainalysis, or you have to rely on tax information because we don't have, we cannot have information. So a, a country that is thinking about its tax policy, wanting to know what is going on, gets the answer from the IMF saying, look at the tax information. This is this, this shows how difficult it is. And with the Chainalysis data, it's remarkable, every year they publish the report, but every year now they're kind of caveat gets stronger and stronger that their data is not representative because it only

covers, kind of they only estimate transactions based on that involve centralized operators that involve CASPs, so decentralized aspects are completely out of their, out of their work.

Naomi Fowler: So: the quality of information is already poor because the data isn't being properly captured. Regulations are weak, even if you can afford to implement them. And we already know how unequal information exchange between wealthier and poorer countries can be. The Swiss approach to information exchange with global south countries is just being replicated when it comes to crypto and blockchain. Here's Paul again:

Paul Beckett: Think, think of the situation, you, so you are a poorer country, a smaller country, and you invest all your so many resources and introducing this legislation. You're still going to be pushed back. You look at the, the Swiss approach has been, particularly to Africa, Switzerland says, of course, we'll show you everything we have, you just show us everything you have with the same level of detail that we are going to provide to you. And no one can. And the Swiss say, oh, isn't that a shame, it's such a shame. When you've got an infrastructure that matches our infrastructure, and you can give us information in the form and the detail that we require, we'll give you some. That's never happened. Well, the same will happen if these small countries introduce CARF. If MiCA, if they want to start pushing that into other jurisdictions, if they don't have the same, and they're not going to have the same, we couldn't in the Isle of Man , we haven't got that sort of resource. If we, if we had to have that level of sophistication, we might as well forget it because we're going to ask questions and be told, I'm sorry, you're not clever enough, resourced enough for us to even bother giving you that information because you couldn't reciprocate. So what's the answer? The answer is that the people we are trying to stop, the people we're trying to stop, go to the poor countries that can't afford to put the legislation in place.

Naomi Fowler: So, how to regulate this stuff more effectively? We've heard how there aren't 'intermediaries' with blockchain and crypto in the same way as with other financial transactions BUT when it comes to the crossover from the non-physical world to the physical, what Paul calls 'touching down into the bricks and mortar world' - there's what's known as an 'on-ramping and off-ramping' moment when fiat currency or physical assets are exchanged into cryptocurrency or vice versa - that's the moment that a common reporting standard, or a CRS, could try to target.

Naomi Fowler: I'm assuming that's, that you're going to tell me that the ways that we're going to target legislation would be at some of these players at these points, these crossover points?

Bob Michel: Yeah, that's, that's, that's exactly, that's exactly the crux. I think we are focusing on the wrong intermediary. We are copying what we are doing with bank accounts into crypto land. Because, you know, a service provider like Binance or Coinbase, they are like banks, so let's just, you know, create a CRS for crypto. That's, that's the whole idea. I think that's wrong.

Every person in the world with a computer and with an internet connection can actually make an address that figures on the blockchain so that there can be transactions recorded associated with that address. And every person in the world can become a validator of transactions. So, in Bitcoin terms can become a miner in, uh, Ethereum terms can become a staker, and if a person takes that job he uses his computer or her computer to do this validation and gets rewarded in coins, in kind of tokens that have the value of a, you know, of a currency in that network. And then the, the, the validator can sell the tokens to interested parties and that's how the whole monetary kind of infrastructure starts.

I think the only indispensable intermediary is the miner and the staker. There, I think, the crux of the matter lays, because they are the ones that are validating transactions. And if we could have a system that they can only validate transactions of which they know that they somewhere have been reported by a government, then we have some kind of, you know, then we can have some kind of reporting system.

And actually with the Ukraine war, the sanctions by the U. S. authorities on certain Russian crypto addresses, they were forcing the stakers of Ethereum to not validate transactions involving known Russian addresses on the blockchain. Meaning that there is a way to kind of know which are good transactions and which are bad transactions. So, so the U.S. created a list of kind of blacklisted addresses, crypto addresses, which they knew were held by Russian owners and the Office for Foreign Asset Control, they issued a, uh, decision saying that all, all blockchain validators that validate transactions involving these addresses, they will be criminally, uh, prosecuted. So the Americans, they just, they just issued the regulations focusing on the miners or the stakers that said you have to look at what you validate and if it's wrong if it's if it's an illegal or If it's if we think it's a bad transaction, then you cannot, then you cannot, or you face liability.

Naomi Fowler: There are possibilities with that idea of targeting miners and stakers, according to Paul Beckett too, but we all know there are challenges there too.

Paul Beckett: In practical terms, you come to me as a lawyer and you say, oh, the Americans have told me, I'm a miner and the Americans have told me that I've done a bad thing. Um, criminal liability, is is founded in having the thing in mind, the mens rea and the actus rea, having the thing in mind and committing the crime. There can be no crime if, well, you do not intend to commit a crime. How could you possibly, as

a, as a, as, as a miner, possibly evaluate the nature of the transactions, which are flashing across your screen in split seconds? It can't be done. How in God's name can they expect that to be effective extraterritorially, extra-jurisdictionally, and in practice, how on earth would they prove it? And how many judges do we have? They can't come in as a dictator and say, you know, I'm going to arrest you for being a bad person, they have to go through the due process and it won't be possible, there won't be the resources.

There is that old, that old saying that we've got that fear drives out greed. So I suppose if you could make the, make the miners *believe* they might be caught, if you can put a fear into the miners that they will in due course, don't play the odds, miners, you will in due course be caught. You will be sanctioned. Perhaps that would be sufficient to give them pause for thought. But then you've got the greed element and that fear has got to be really tangible before the greed will be driven out.

Naomi Fowler: Here's Bob again:

Bob Michel: Now this will, you know, people will say, or people in favor of crypto will say that this will kill the whole idea of anonymity and decentralization. But I think that's, you know, that, okay, it's that or very radical steps. But I think that the industry itself, you know, the people that are designing these crypto protocols, they have to be, you know, they have to be aware that they have to work together with governments for the sake of the future of this whole Web 3, you know, universe, because otherwise it's not going to go well.

Naomi Fowler: No, it's not going to go well. And, So how do they defend, how do poorer countries defend themselves when they can't possibly match wealthier countries who in themselves are not doing a very good job at dealing with this?

Bob Michel: A tricky question! So I think five years ago, the instinctive reaction in these countries has been, let's block it. Let's try to prohibit either by a general prohibition on, you know, crypto ownership being completely banned or doing indirect bans, so, so prohibit banks from off ramping on ramping transactions because there you need a bank account too, you know, so if, if there was like a payment from a service provider of fiat currency to an individual, then this bank was prohibited to do that. And this, this, this indirect ban has kind of worked a little bit in, in many countries, but also there you're pushing people to have bank accounts, they will shop for bank accounts elsewhere. Uh, and a total ban, there are stories about total bans, I think in Egypt, Egypt is a, it's a huge economy in Africa, also subject to huge inflation. Egypt had bans, full ban on crypto, I think in 2018 or 19. The government said we cannot control this. It's too resource intensive. There are, there are major risks. Let's just ban it. And in the next year, there was a report by the biggest crypto analytical data analytical company indicating that in the African region,

that Egypt, the Egyptian crypto market market was the fastest growing market of the region. So showing that the ban is completely, it's an illusion to think that you can ban it. And there are other problems. There is a case, it was a case in Pakistan, I've also tried to ban it and there was a case of Bitcoin theft. You know, a case between two individuals in Pakistan, went to criminal court and the court said, there is no theft because nobody can own Bitcoin in Pakistan because it's, you know, it doesn't exist in Pakistan, it's illegal. So the case was dropped. So you create all kinds of problems by wanting to ban it legally, but in reality people are dealing with it so, you know, society needs the rules, you know, society moves on, ban or no ban. Then Pakistan also had, you know, the Pakistani central bank realized that they had to reconsider because the people were transacting with it and there were cases of theft and so banning is not an option.

Naomi Fowler: Yes, and in fact Graham Barrow of the Dark Money Files podcast told me that when China tried to ban crypto there was a surge of new companies set up in Companies House in the UK from China. So yeah, you'd have to ban the internet everywhere, which obviously isn't happening! Here's Bob again:

Bob Michel: Um, what countries have been, have been doing is trying to force the crypto providers to incorporate locally. That's what happened in the US with, with, you know, with the biggest ones with Binance and Coinbase, you have Binance International and you have Binance US and you have Coinbase US and Coinbase international. So if a country can force the service provider to incorporate locally, it can also force to have all the local clients via the local entity, and then the country can just use its traditional instruments to issue an order for information on all the accounts held by the local customers. You know, then you don't need to cross the border. Whenever you need to cross the border to get information, then it becomes difficult because then there are all these rules, there is a reciprocity requirement, then it doesn't work anymore. So if you can have them locally, it's easier. But the problem is that small developing countries do not have the leverage of the market to say to a big crypto giant, you have to incorporate or you lose access. The crypto giants will probably say, well, then let's lose access and we just move. That's the drama.

In Europe, in the EU, I have to say this, this strategy has been kind of institutionalized because the whole internal market is now applying this strategy. There has been a regulation, the MiCA regulation, which says that if you have a third country service provider, crypto service provider, that wants to be active in whichever EU country, with whichever EU residence, there needs to be a local agent or a local incorporation, and that entity will be responsible for all the regulatory requirements so, shielding the market, unless there is presence, is one strategy.

And the other strategy: if automatic exchange of information is too difficult and too cost intensive because of the reciprocity requirements, meaning that local service providers will have to comply to all the very advanced standards, even if you have just one little local company that provides crypto services, they all have to comply, which is a very big ask. Alternative is to rely, I think, on existing instruments, um, kind of nudge other countries to do spontaneous exchange of information, because that's also something the UK and the US have been doing. You know, these are countries that are advanced, but they talk to each other and they say, the UK says to the US, 'I have a suspicion that you have a lot of service providers with UK clients,' nudge nudge, and the US will exchange spontaneously the information on the UK clients to the, to the US to the UK government. But that's, you know, that's pure diplomacy. And for a country like Pakistan, it does not have this diplomatic leverage, you know, it's, it's much more difficult. And here, I think there is a huge gap in, in, in the regulation, in, in, in the efforts, for instance, by the OECD, because these, these instruments exist, they're used by countries in the global North, but there should be much more effort and much more kind of leeway given to countries in the global South to use the same kind of instruments to US or UK, whichever, whichever country it is, you know, live up to your obligations. And if you, if you can, if you have this information because you collect all the information from your local providers and you see that there are lots of clients in developing countries, for the love of God, spontaneously exchange information or nudge the countries and say, we think we have a provider here and we have the information, you know, do you want it? You know, help other countries too, you know, don't, don't play this diplomatic game like, ah, we are good allies and we, we have special kind of bond of transparency between the two of us. Come on, I mean, this is, this is ridiculous. You know, if, if you want an inclusive and a global kind of, community of states, then, you know, do your job and, and, and, you know, tap Nigeria on the shoulder if you see that there are billions of crypto stored in the local company, a crypto service provider with a Nigerian address, you know, come on! I mean, this for me, it's a no brainer, but I think, yeah, that the world of diplomacy doesn't work like that.

Naomi Fowler: Lots of challenges there to think about. Paul Beckett's book is called "An Anatomy of Tax Havens: Europe, the Caribbean and the United States of America." The link is in the show notes.

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