What Should India Take Away From the ‘Mauritius Leaks’?

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Despite tax treaties and attempts at plugging loopholes, the idyllic island nation continues to play a major role in contributing towards the global illicit economy.

A new investigation called Mauritius Leaks’ was released by the International Consortium of Investigative Journalists (ICIJ) earlier this week.

Based on 2,00,000 confidential records obtained from the Mauritius office of the Bermuda-based offshore law firm Conyers Dill & Pearman, the leaks reveal how the island nation’s sophisticated financial and legal systems facilitate tax abuse by diverting tax revenue from developing African, Arab and Asian countries to line the pockets of powerful multinational corporations and oligarchs – while simultaneously benefitting Mauritius.

The Mauritius Leaks come at a time when there is an outcry against the inherent rot in the global financial system that affords a tight lid of secrecy to multinational corporations and the elite as they sidestep their social responsibility to avoid taxes and violate regulations and norms. Secrecy jurisdictions like Mauritius commodify the reach of their own national sovereignty to undermine and diminish the sovereignty of other nations.

In India, the Vodafone tax avoidance case threw up the role played by some of the world’s most devious tax havens, including Mauritius, in helping companies avoid taxes payable to the Indian state. Moreover, Mauritius’s significant role in serving as a key jurisdiction for routing foreign direct investment (FDI), as well as round-tripping Indian funds back into India, to mask their origin is well documented too.

About 22% of the total entities – after adjusting data for defunct entities – disclosed by the Mauritius Leaks have India as their only or one of the countries of activity.

This includes high-profile names like GMR Holdings, Apollo Hospitals, Jindal Steel and Power and Kolte-Patil Developers. In statements put out on Wednesday, the companies have pointed out that all their corporate structuring was done in compliance with Indian law and regulation.

Making the offshore leap

From being an idyllic island nation, Mauritius made a concerted decision to follow in the footsteps of numerous British Crown Dependencies and transformed itself into an offshore financial centre starting in 1989. Seeking to diversify its largely agrarian economy, Mauritius positioned itself as a jurisdiction of choice for multinational corporations and investors looking to invest in Africa.

Through the enactment of the Mauritius Offshore Business Activity Act (1992) to govern the country’s offshore financial services sector, it paved the way for foreign companies to incorporate subsidiaries with the limited public disclosure, extremely low tax rates and a high degree of secrecy and asset protection.

By creating an intricate network of bilateral investment, tax and trade treaties with mostly developing countries, Mauritius proceeded to build one of the most aggressive offshore regimes in Africa, thus monopolising investment flows into the continent.

Along with offering low taxes, the network of Investment Promotion and Protection Agreements (IPPAs), commonly known as Bilateral Investment Treaties (BITs), essentially protects and allows foreign-owned holding companies to become Mauritian resident companies. This incentivises businesses and investors to invest in other regions, mainly Africa and Asia, while operating under the garb of the Mauritian flag.

Often detailing taxing rights, these treaties constrict the taxing rights of developing countries, as profits are shifted to low-tax jurisdictions such as Mauritius – thus depriving developing countries of the revenue they rightfully deserve. The IPPA network provides measures against any efforts towards expropriation and nationalisation by partner countries. Due to the very nature of IPPAs, countries often end up losing money by way of litigation, penalties and compensation if the investors are unable to recover the investment made.

Despite evidence that double taxation agreements (DTAs) cause considerable and unnecessary loss of revenue from developing countries, resource-strapped low-income countries are especially forced into entering unfair and unjust treaties to attract FDI in the absence of any alternatives.

Because of how tax agreements are generally negotiated, residence country (usually a developed country) ends up receiving a larger chunk of taxing profits against the country where economic value is actually created (usually a developing country). It is common for multinational corporations to indulge in treaty shopping to avoid their tax liabilities, as is showcased in the leaks too.

Challenging the broken system

For the first time in history, there is global momentum to crackdown on nefarious activities that enable financial secrecy and tax abuse. Mauritius has been under immense international pressure to reinvent its image as a “treaty-centric” jurisdiction, since being implicated in various leaks over the years and being targeted in tax haven lists.

However, offshore trusts in Mauritius for example, are still not mandated to disclose annual financial reports which are a major instrument used for obscuring ownership, dodging taxes and hiding undisclosed wealth.

What we can see clearly is that it continues to play a major role in contributing toward the global illicit economy despite claims of being a transparent regime. This is corroborated not only by the secrecy score of 72.3 out of 100 it received in the Financial Secrecy Index of 2018 but the Corporate Tax Haven Index of 2019 also ranked Mauritius at 14 out of 64 jurisdictions which ranks world’s most important tax havens.

While the leaks are of particular importance because of their targeted and disproportionate impact on developing countries in Africa, Arab and Asia, singling out Mauritius is not the answer to challenging this broken financial system.

The loss of revenue through illicit activities has serious implications for developing countries and cannot be achieved without a fair and transparent system that works for everyone. It is, therefore, imperative to level this uneven playing field with an intergovernmental tax commission where developing countries are able to negotiate, inform and operate rules on international tax on an equal footing.

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