Narrative Report on United States of America

PART 1: NARRATIVE REPORT

The United States is ranked second on the 2020 Financial Secrecy Index, based on a secrecy score of 63 combined with a huge scale weighting due to the fact that the US accounts for 21.37 per cent of the global market in offshore financial services.

The United States as a secrecy jurisdiction

The US provides a wide array of secrecy and tax-free facilities for non-residents, both at a Federal level and at the level of individual states. Many of the main Federal-level facilities were originally crafted with official tolerance or approval, in some cases to help with the US balance of payments difficulties during the Vietnam War;[1] however some facilities – such as tolerance by states like Delaware or Nevada of highly secretive anonymous shell companies – are more the fruit of a race to the bottom between individual states on standards of corporate governance and transparency.

While the United States has pioneered powerful ways to defend itself against foreign tax havens, it has not seriously addressed its own role in attracting illicit financial flows and supporting tax evasion. It is currently a jurisdiction of extreme concern for global transparency initiatives. The global standard for automatic exchange of financial information, the OECD's Common Reporting Standard (CRS), only became politically feasible after the US adopted a similar model unilaterally (FATCA, see below). But after initially agreeing to multilateral information exchange, the US made a rapid U-turn and has since refused to provide information to most other jurisdictions – despite continuing to insist, with menaces, on receiving information from others. This approach leaves the US responsible for what it not so much a crack as a chasm in the international system of efforts to crack down on tax evasion, money laundering and financial crime.

The US has the largest share of the global market for offshore financial services; its main rival is the City of London. However, unlike the City, which built its strength on overseas empire and has historically been an outward-focused (hence heavily offshore) financial centre, the financial markets of the United States were always rather more domestically focused, and the influence of the US financial industry is diluted in a relatively much larger economy.

Financial secrecy provided by the US has caused untold harm to the ordinary citizens of foreign countries, whose elites have used the United States as a bolt-hole for looted wealth.

Early beginnings: the Federal level

The United States has long been a secrecy jurisdiction or tax haven at the Federal US-wide level. The 1921 Revenue Act exempted interest income[2] on bank deposits owned by non-US residents, and this was explicitly justified at the time as a measure to attract (tax-evading) foreign capital to the US: a clear statement of tax haven intent. As the US House Ways & Means Committee put it, this "would encourage non-resident alien individuals and foreign corporations to transact financial business through institutions located in the United States".[3]

Rank: 2 of 133

The United States accounts for 21.37 per cent of the global market for offshore financial services. This makes it a huge player compared to other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.

Full data is available here: http://www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit

http://www.financialsecrecyindex.com.

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Information-sharing arrangements with other countries were rudimentary in the early decades of the last century. After the Second World War, John Maynard Keynes and Harry Dexter White, the main architects of the Bretton Woods agreements that brought into being the IMF and World Bank, sought to boost cross-border transparency by requiring the US to inform European governments about the assets and income of their respective citizens, to help those war-ravaged countries raise sufficient tax revenues to rebuild. These proposals, driven by concerns that an economic crisis could deliver European countries into Soviet hands, were eviscerated by the American Bankers' Association:[4] in the IMF's Articles of Association, co-operation on capital flight would no longer be 'required' as Keynes and White wanted, but merely 'permitted'. A significant portion of the world's wealth subsequently flowed through this loophole, beyond the reach of law enforcement. Tax evaders could park money in the US and earn income on their deposits, tax-free and in secret.

In 1966 the tax-exemption stance was officially reconsidered but no action was taken on the grounds that it might, as one Senate report put it: "have a substantial adverse effect on our balance of payments." A draft memo circulated among Chase Manhattan staff that year highlighted that powerful interests were keen to go far further. It said:

> "The US is probably the second major flight money center in the world, but with little probability of rivalling Switzerland for the foreseeable future. Like Switzerland, flight money probably flows to the US from every country in the world [...] [However,] US-based and US-controlled entities are badly penalized in competing for flight money with the Swiss or other foreign flight money centers over the long run." [5]

The memo went on to outline a list of reasons why the US was being 'penalised', including

> "the ability of the US Treasury, Justice Department, CIA and FBI to subpoena client records, attach client accounts, and force testimony from US officers of US-controlled entities… restrictive US investment and brokerage regulations and policies, which limit the flexibility and secrecy of investment activity… the US estate tax and US withholding tax on foreign investments […]"

From then on, over the succeeding decades, the political power of the financial sector grew and many of these defences would be partly or wholly rolled back.

Another factor influencing policy makers in the 1960s and 1970s was the Vietnam War, which led to growing balance of payments deficits – after a long history of surpluses. The US increasingly needed foreign loans to finance these deficits and it did so, in significant part, by attracting the proceeds of tax evasion and other illicit foreign money. Foreigners invested in the US for many reasons, not least the fact of the US dollar being the global reserve currency - but secrecy and tax-free treatment were also key attractions.

The tax haven principle of using secrecy and tax exemptions to attract capital was re-affirmed in the Tax Reform Act of 1976: in the preceding debates a Florida Senator, Dick Stone, stated,[6] in defence of the exemption, that in Miami around a third of all bank deposits came from Latin Americans. Tax Notes International summarised the reiteration of the US' desire to be a tax haven:

> "The 1976 Senate hearings clearly indicated that many senators felt that the imposition of tax on such bank deposit interest could result in a substantial outflow of funds away from US banks to foreign competitors."[7]

With no cross-border sharing of information to speak of, this continued to mean that foreigners' ability to evade their home-country taxes via US banks was almost fool proof.

From the Reagan era onwards, ever larger amounts of money flowed in. Advances in communications technology – initially the telex, then the fax, then email - accelerated cross-border financial flows, and these flows, alongside changing ideologies, began to undermine New Deal regulations which had kept financial interests in check following the Great Depression and had delivered unprecedented prosperity. Meanwhile, foreign tax havens increasingly began to serve as unregulated and secretive conduits for financial inflows into and out of Wall Street, further boosting its power and reach.

In 1981 the US introduced a new mechanism in the field of financial regulation: the International Banking Facility. This allowed banks in the US, which had previously needed to go offshore (particularly to London) to get around domestic financial regulations, to keep a separate set of books that effectively allowed them to obtain these exemptions while remaining at home.[8] This attracted still more funds out of foreign tax havens and marked a further

step offshore for the United States.

In ongoing efforts to fill the deficits, Washington started to expand US borrowers' access to the Eurobond markets by exempting foreigners who bought US corporate and government bonds from the normal 30 per cent withholding taxes on the bond interest payments. Initially this was achieved by grudgingly tolerating a convoluted loophole involving the Netherlands Antilles, but this messy mechanism was replaced in 1984 with a more direct tax haven offering: the so-called Portfolio Interest Exemption,[9] under which non-residents could invest directly in US bonds and receive interest payments tax-free, and nearly always in secrecy. Time Magazine,[10] catching on a little late, summed up this move: "Suddenly America has become the largest and possibly the most alluring tax haven in the world."

The 1986 Tax Reform Act solidified[11] the rule for interest on bank deposits held by non-resident foreigners (or "aliens" as they call it): previously, this income had been exempted from tax by treating it as foreign-source income; the 1986 Act treated it as US-sourced income but with an explicit tax exemption.

During the 1990s the Clinton administration became increasingly concerned about offshore tax leakage to foreign tax havens, but did relatively little to curb the US role as a tax haven. In January 2001, in the administration's last days, federal-level regulations were introduced that would have required banks in the US to inform the US Internal Revenue Service (IRS) about all bank interest paid to non-resident individuals: reporting that was already required for residents of the US and Canada. Had this become law, these minimal transparency requirements would still have been pretty narrow: the regulations did not require the US to share the information with other foreign countries, merely to have it available themselves. Furthermore, the regulations only involved bank interest paid to individuals; other forms of investment income were excluded.

Under the George W. Bush administration, even these limited measures were swamped in a new anti-tax hysteria, encapsulated in the words of Treasury Secretary Paul O'Neill – who, when asked to respond to estimates that fewer than 6,000 of over 1.1 million offshore accounts and businesses were properly disclosed, responded:[12] "I find it amusing." The Bush Treasury withdrew the narrow Clinton-era proposed regulations and replaced them with even narrower ones that only required this information to be reported for residents of 16 mostly European countries[13] which had indicated a willingness to exchange information reciprocally with the US. Even these were never implemented, though a reporting requirement for Canadian depositors was introduced.

Defending against foreign tax havens, while being a tax haven for foreigners

While mostly content to allow foreigners to use the United States as a tax haven, the US authorities were growing increasingly concerned that US taxpayers might evade taxes by pretending to be foreigners – disguising their identities through offshore tax havens or otherwise – and thus evade US taxes. In 2001, the United States enacted the so-called Qualified Intermediary (QI) programme: a devious piece of secrecy legislation, designed to help the US government ferret out US tax cheats, while preserving the US as a secrecy jurisdiction for foreigners.

If the legislation had required foreign financial institutions to report on all income originating in the US, then the administration would have received a lot of information not only about potential US tax cheats, but also about foreign tax cheats. Once they had access to such information, they might have found themselves obliged by existing treaty arrangements to share the information with some foreign governments, which would make the US far less attractive as a tax haven to stash money.

Instead the US administration outsourced the collection of information to banks and other financial institutions. In theory, the banks would collect the information (not just bank interest income this time, but a wider range of income-generating assets;) and pass only the information about US residents to the US authorities, while screening out all the information on foreigners. This way the US would not receive information it might be required to share with others, and so could curb its own revenue losses from tax evasion while preserving its reputation as a secrecy jurisdiction welcoming the world's dirty money. This was classic, deliberate, carefully crafted tax haven behaviour. David Rosenbloom, a top tax lawyer with inside knowledge of the drafting of this legislation, explained his view of the original intent:

> "'It's not clear to me that the QI program is well adapted to the objective of ferreting out Americans – that is not how it started at all. The program was not aimed at identifying Americans. The program was aimed at protecting the identity of foreigners while allowing them to invest in the US,' he said.

> 'Making sure that Americans weren't in the picture was part of it, but the real focus was on this competitive aspect abroad."[14]

The programme functioned poorly even on its own terms, for the simple reason that financial institutions could not be trusted: subsequent criminal probes into UBS and other Swiss banks in the 2000s revealed that banks were simply deceiving the I.R.S. and hiding their tax-evading US customers.

The global financial crisis shakes things up

After the global financial crisis, it became politically possible to talk about new approaches in many countries, including the US. By 2012, Itai Grinberg of Georgetown University (and formerly of the US Treasury), was talking of an "evolutionary moment in cross-border tax cooperation".[15]

Most significantly, the QI program was overtaken by the so-called Foreign Account Tax Compliance Act (FATCA, see here),[16] enacted into law in March 2010 and which came into force on July 1, 2014. This was originally designed as a tightened-up version of the QI programme, preserving the essential tax haven structure described above, while expanding its scope and giving the I.R.S. stronger teeth in the effort to ferret out US tax cheats. However, some foreign countries were outraged by the unilateral, non-reciprocal nature of FATCA and eventually the US conceded to sign up to bilateral Intergovernmental Agreements (IGAs) to provide some measure of reciprocity to certain other countries under FATCA.

When FATCA was introduced it was, while still originally designed as a unilateral self-protection mechanism, a major step forwards for international transparency efforts: at the time the 'internationally recognised global standard' of cross-border information exchange was the OECD's bilateral "on request" system: you had to know the information you were looking for before you requested the tax haven (or other jurisdiction) for confirmation of that information, on a case by case basis. This was only slightly better than useless.

A far stronger principle was *automatic* information exchange, where countries share this information across borders as a matter of routine. The European Union already had such a scheme up and running for 42 European and affiliated territories, but it was riddled with loopholes and narrow definitions, and it was collecting little.

FATCA was much stronger, technically speaking. It requires foreign financial institutions to be the ones to ferret out the required information, and it subjects them and other foreign entities investing their funds or clients' funds in the US to a 30 per cent withholding tax on US-source income, unless they agreed to disclose to the US Government information about US persons' foreign financial accounts. This is a version of automatic exchange of information - not between governments, but between financial institutions and the US government. It also covered a far wider scope of income than just bank interest. As a result of its greater strength, it has encountered enormous opposition from foreign governments and Wall Street, but also from many US citizens resident abroad for whom it represents a large compliance burden. Senator Carl Levin said in July 2011 that foreign banks were engaging in a "massive lobbying effort" to dilute it.

FATCA also has clashed in some cases with foreign laws (such as banking secrecy laws), which has required Washington to adopt a more co-operative bilateral approach. As a result, the original version of FATCA has been modified in several ways, particularly with its Intergovernmental Agreement (IGA, see box).

Box 1: FATCA, foreign governments and the IGAs.

Two FATCA Intergovernmental Agreements (IGAs) were developed to help FATCA fit with international laws. Under Model 1 IGA, foreign financial institutions report relevant information to their home authorities, which then passes this on to the US IRS. (Model 1 has two versions: 1A, the most common, which is reciprocal; and 1B, which is non-reciprocal.) Under the Model II IGA, by contrast, foreign financial institutions report not to their home government but directly to the IRS. By December 11, 2019, 99 jurisdictions had signed[16] Model 1 IGAs (nearly all reciprocal), while 14 had signed Model 2s. However, the reciprocity is highly unbalanced, with the US getting far more information from overseas than foreign governments or institutions will provide to the US.

New legislation introduced in September 2013 under Senator Levin's Stop Tax Haven Abuse Act,[18] was aimed at further tightening up FATCA by, among other things, establishing legal presumptions to overcome secrecy barriers, closing loopholes, allowing a range of sanctions against non-cooperative jurisdictions; introducing country-by-country reporting requirements for transnational corporations; strengthening penalties against promoters of abusive schemes; and creating a tougher environment for those doing business with foreign banks that reject FATCA. Crucially, the Act

would have allowed the US Treasury to take action against financial institutions by extending anti-money laundering tools into the tax area. Sadly, this failed to gain traction.

FATCA and the CRS: gaping holes in international transparency initiatives

While the US has been rolling out FATCA, the OECD, a club of rich countries which dominates international rule-making in this area, was developing its own programme, the Common Reporting Standards (CRS). From a technical perspective the CRS was modelled on the FATCA Model 1 IGA, though with some differences: it is adapted to a multilateral context (FATCA relies on an array of bilateral agreements); it relies on residency rather than nationality; but it lacks FATCA's powerful 30 per cent withholding tax to spur financial institutions to act.[19]

But a rather large fly has appeared in this ointment. Whereas the European Union was in the process of incorporating the OECD technical standards into EU law, in cut-and-paste fashion, the US government made a U-turn between May and October 2014 on its initial support for the CRS, and has since taken the position that since FATCA is technically similar to the CRS, the US therefore does not need to join the CRS.[20] Reciprocity with the rest of the world, it argues, comes via its IGAs.

And this is where the problems emerge. Until May 2016, the US was entirely unable to reciprocate because under its domestic law its banks were not required to collect beneficial ownership information. Without that information there was no data to share with FATCA partner countries. However, in May 2016 a new bank regulation was adopted which required certain financial institutions, including banks, to collect a form of beneficial ownership information for its client companies as well as for trusts. The new regulation contained a number of large loopholes, however, including allowing a senior manager of the company to be identified as the beneficial owner if there is no person who directly or indirectly owns more than 25% of the bank's corporate client. Furthermore, banks can simply rely on the beneficial ownership information provided by the representative of the client, who does not have to certify that the information is correct and merely has to supply the information to the best of their knowledge. So if the company sends an administrative assistant to fill out the paperwork and the administrative assistant doesn't know or understand the corporate structure enough to know who the beneficial owners are, he or she can simply indicate that there are no beneficial owners or guess and write down incorrect information and neither the bank nor the company is responsible for the incorrect information. Finally, everything in the past would be ignored by these proposals: only future activity would be covered.

What is more, a close study of the FATCA IGAs shows that reciprocity is heavily unbalanced, as this table shows.[21]

Category	German Banks' reporting obligations (on US perons)	US Banks' reporting obligations (on German residents)
Type of Account	All financial accounts (Art.1,1,dd)	All financial accounts, but depositary accounts only if held by individuals (Art.1,1,cc)
Look-through of entity account holders to identify controlling persons	Yes: Identify controlling person of passive NFE and Non-US entities (Art.1,1,dd; Art.2,2,a),1; and Annex I, IV, C)	No: No reference to German controlling persons (neither of passive NFEs nor of non-German entities)
Type of Information	"All" (Art. 2,2,a)	"All" except for account balance, gross proceeds from sale or redemption of property and controlling persons' identity. Moreover, "interest" paid (not if credited) only to depositrary accounts. (Art.2,2,b)

Worse, the legislation required to tackle all these different issues is all over the place, in different legislative nooks and crannies, and proposals to strengthen the rules face the combined lobbying power of Big Four accounting firms and Wall Street Banks, the likes of US libertarian Senator Rand Paul,[22] and many other vested interests, some of whom are challenging some of FATCA's core requirements on grounds of illegality.

In short, the US FATCA programme is, for all intents and purposes, a strong unilateral mechanism that will, unless things change, do little to dent the US' role as a global tax haven – and instead gives it a 'competitive' advantage over other secrecy jurisdictions, by requiring greater, one-way transparency from them. Without meaningful reciprocity, this poses a serious threat to the entire global project.

State-level facilities: shell corporations and more

Alongside this history of US Federal-level secrecy, individual US states have been hosting the formation of secretive shell companies: a particularly sleazy add-on to the Federal-level facilities.

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Measures relating to forming companies in the US are governed by state, rather than federal law, and as a result several states have engaged in a race to the bottom to outbid one other in offering ever more egregious secrecy facilities.

There is no exact time or date when this shell company business started: by and large it has simply been the result of omission: a permanent, prolonged failure to enact legislation that would require transparency, and the exploitation of these gaps by private operators. A few states such as Delaware, Wyoming and Nevada took an early lead in offshore secret incorporations, and remain leaders today.

Here is how it works. A wealthy Ukrainian, say, sets up a Delaware shell company using a local company formation agent. That Delaware agent will provide nominee officers and directors (typically lawyers) to serve as fronts for the real owners, and their details and photocopies of their passports can be made public but that gets you no closer to who the genuine Ukrainian owner of that company is: if the nominees are lawyers they are bound by attorney-client privilege not to reveal the information (if they even have it: the owner of that shell company may be another secretive shell company or trust somewhere else). The company can run millions through its bank account but nobody – whether domestic or foreign law enforcement – can crack through that form of secrecy in any efficient or effective way. In the words of Dennis Lormel, the first chief of the FBI's Terrorist Financing Operations Section and a retired 28-year Bureau veteran, "Terrorists, organized crime groups, and pariah states need access to the international banking system. Shell firms are how they get it." [23]

From the states' perspectives, the end game is to raise revenue for the state by creaming off fees from large numbers of companies incorporating there – and the consequences for everyone else are not considered: a typical offshore attitude. As the Financial Action Task Force notes about Nevada:

> "In discussions with the state authorities, it was clear that there was a realization of the threats posed by the current "light-touch" incorporation procedures [...] However, the states primarily see this activity as a revenue raising enterprise to substitute in part for their partial tax-free environment, and the company formation agents represent a powerful lobby to protect the status quo."[24]

The lobbying and the revenue-raising potential, and the lack of strong democratic counterweights in small states, mean that these places can be fairly described as "captured states."

Box 2: Delaware, Nevada and captured states.

Three US states – Delaware, Nevada, and Wyoming -- are routinely named23 as the most aggressive in this area, and in each case they did so by displaying clear characteristics of financially 'captured states,' where decisions about relevant legislation are taken between lawmakers and financial services interests behind closed doors, ring-fenced from complex democratic processes (see the "Ratchet" chapter of Treasure Islands24 for a history of how this 'capture' happened in Delaware.)

Political capture is much easier in small states than in large ones, as the *New York Times* reported[25] on the rise of such secrecy facilities in some states, but not in larger states:

" 'Surprisingly,' notes one legal study, ''much of the difficulty of these large states appears to be [...] because of their legislatures.'' The large states persist in viewing corporation laws as complex moral and political problems rather than - as in happy Delaware - a way of making everybody rich."

This 'captured state' dynamic has seen individual states offering other facilities with an 'offshore' flavour. Vermont, for instance, has been setting itself up as an offshore captive insurance jurisdiction in an attempt to compete directly with the likes of Bermuda or the Cayman Islands. A New York Times story26 about it notes that Vermont is:

"offering a refuge from other states' insurance rules. [...] this has given rise to concern that a shadow insurance industry is emerging, with less regulation and more potential debt than policyholders know [...] critics say this is much like the shadow banking system that contributed to the financial crisis."

This race to the bottom on standards in the world's insurance industry could not only pose immense risks for financial stability, but also contribute to the fact, well known in the industry, that insurance schemes can serve as classic tax evasion vehicles.

State officials, notably from Delaware, began seriously marketing corporate secrecy facilities internationally from the period of globalisation in the 1970s and 1980s (see here[29] for an example of

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Delaware's proselytising for secrecy in Asia in 1986, with slogans such as "we protect you from politics"), and it was this era when US shell company business began contributing properly to Tax Haven USA. John Cassara, a US Treasury financial crimes investigator who has been involved in many cross-border collaborations explained:

> "I observed many formal requests for assistance having to do with companies associated with Delaware, Nevada or Wyoming. These states have a tawdry image: they have become nearly synonymous with underground financing, tax evasion and other bad deeds facilitated by anonymous shell companies — or by companies lacking information on their "beneficial owners," the person or entity that actually controls the company, not the (often meaningless) name under which the company is registered." [30]

Almost two million corporations and limited liability companies (LLCs) are formed in US states each year, many by foreigners, without the states ever asking for the identity of the ultimate beneficial owners.[31] Many serve legitimate purposes but some, in the words of Senator Carl Levin,[32] "function as conduits for organised crime, money laundering, securities fraud, tax evasion, and other misconduct." As long ago as 2006, Senator Norm Coleman highlighted the findings of a Department of Justice report revealing that anonymously-held shell companies in Pennsylvania and Delaware were used to unlawfully divert millions in international aid intended to upgrade the safety of former Soviet nuclear plants.[33] The same year, the Financial Action Task Force published a Delaware case study, observing:[34]

> "In many respects, registered agents in Delaware are in competition for business with Trust and Company Service Providers operating in traditional offshore financial centers (OFCs). The style of advertising by many tends to portray an image that the standards of secrecy offered are greater than those in most OFCs."

Company formation businesses boast of being able to set up anonymous companies in hours, sometimes for as little as $100, with no meaningful review. One widely referenced 2012 study[35] estimated that Delaware was the world's second easiest place to set up a shell company, after Kenya.

The range of abusive facilities can be stunning. States offer artificially aged "shelf companies" – which you can buy off the shelf with a supposedly long-established history and impeccable credit record, providing a aura of respectability. Company agents offer local telephone listings and live receptionists, to give a veneer of probity and solidity. US Republican Senator Norm Coleman summarises:

> "These formation and support services rival those offered in some of the most notorious offshore tax and financial secrecy havens." [36]

Limited progress has been made in tackling these arrangements. Bearer shares were outlawed in the last two US states (Nevada and Wyoming) only in February 2007, following concerns about terrorist financing. Bipartisan bills proposing to crack down on anonymous US shell companies have repeatedly failed to pass.

Nevada[37] and Wyoming, two of the biggest offenders in this area, indicated[38] in late 2011 that they intended to crack down on secrecy business run out of their states. No relevant actions have yet been seen, however. Delaware had also promised some reforms – and indeed it seems that there have been some Delaware legislators becoming concerned[39] about crimes and abuses involving companies registered in their state - but the reforms in Delaware so far have been dismissed[40] as "window dressing" by observers.

Over the past several years, a number of bi-partisan bills have been introduced at a Federal level to reform shell company legislation which would, if enacted, either require US states to obtain appropriate and updated beneficial ownership information about companies formed under state laws, and provide it under a subpoena or summons, or require FinCEN to collect the same. One such bill (the Corporate Transparency Act)[41] passed the US House of Representatives in October 2019 and along with other similar bills is under consideration in the US Senate as of January, 2020. Until it becomes law, Tax Haven USA remains wide open, at both the Federal and the state levels.

With thanks to Lakshmi Kumar, Policy Director, Global Financial Integrity and to (FACT) Coalition

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Further Reading

- Loophole USA: the vortex-shaped hole in global financial transparency,[42] Jan 2015, highlights problems with FATCA and its failure to engage seriously with international transparency schemes.
- Setting Up a Bogus Shell Corporation Is Really Easy,[43] Ken Silverstein, Vice Magazine, Dec 2014
- See Treasure Islands, particularly pp124-146 of the UK edition,[44] and pp107-128 of the US edition,[45] for more detailed information about how the United States became a secrecy jurisdiction. The chapter "Ratchet" looking at Delaware (and Jersey) also explores the wide range of different 'offshore' aspects that some US states have deliberately created.
- Any number of stories exist about the US being used as a secrecy jurisdiction by foreigners. For example, the case of US bank Wachovia in helping Mexican drugs gangs launder hundreds of billions of dollars: read about it here[46] and here.[47] See Ken Silverstein's 2013 article in The Nation[48], outlining Miami's role in attracting dirty money; and the New York Times' 2015 investigation[49] into how US real estate is being used as a tax haven facility for foreign wealth. Reuters has provided some useful case studies of state-level secrecy arrangements in its Shell Games series: see their stories on Chinese Reverse Mergers,[50] on Medicare fraud[51] (Georgia and Florida,) on Wyoming,[52] and on Arizona and Nevada.[53]

Endnotes

1 For a description of how these facilities emerged, see chapter entitled "The Fall of America" in Nicholas Shaxson's 2011 book, *Treasure Islands: Tax Havens and the Men who Stole the World*, London: Palgrave Macmillan.

2 Per the judgement of the US Tax Court in Isidro Martin-Montis Trust vs Commissioner, 1980, "Section 861 [of the then-relevant IRS legislation] specifically excludes from gross income from sources within the United States interest earned on US bank deposits received by a nonresident alien. This exclusion originated in the Revenue Act of 1921, sec.217(a)(1)(A), 42 Stat.227, 243. The original purpose of the exclusion was to encourage bank deposits in the United States by nonresident aliens and generally to aid foreign and international trade." https://www.casemine.com/judgement/us/59149226add7b04934594688; 13.1.2020. See also National City Company, *United States revenue act of 1921, annotated and indexed,* New York: The National city company: https://babel.hathitrust.org/cgi/pt?id=mdp.39015056084141;view=1up;seq=3; 13.1.2020.

3 https://books.google.co.za/books?id=phc3AQAAIAAJ&lpg=PA139&ots=-Z4Y6Dn5-Og&dq=%22would%20encourage%20non-resident%20alien%20individuals%20and%20foreign%20corporations%20to%20transact%20financial%20business%20through%20institutions%20located%20in%20the%20United%20States%22&pg=PA139#v=onepage&q=%22would%20encourage%20non-resident%20alien%20individuals%20and%20foreign%20corporations%20to%20transact%20financial%20business%20through%20institutions%20located%20in%20the%20United%20States%22&f=false; p.139; 04.02.2020.

4 See pp.74-76 of Nicholas Shaxson's 2011 book, *Treasure Islands: Tax Havens and the Men who Stole the World*, London: Palgrave Macmillan.

5 R. T. Naylor, 2004, *Hot Money and the Politics of Debt* (third edition), Montreal: McGill-Queen's University Press, pp.33-34: https://books.google.co.uk/books?id=z9C5bA5xN84C&pg=PA34&lpg=PA34&dsource=bl&ots=Sqa-Q9UhvhA&sig=ACfU3U2qedfqUAyZP8GqGN-P46QzzKgijwg&hl=en&sa=X&ved=2ahUKE-wii6ZSg2fbmAhUBTBUIHQk4BioQ6AEwDnoE-CAkQAQ#v=onepage&q&f=false; 13.1.2020.

6 Marshall Langer, 2001, 'Proposed Interest Reporting Regulations Could Cause Massive Outflow of Funds', *Tax Notes International* 19 March, via https://archive.freedomandprosperity.org/Articles/tni03-19-01/tni03-19-01.shtml; 13.1.2020. A few years after Stone's comments, an article for the Federal Reserve Bank of St Louis puzzled over why Florida and other states should compete for IBFs (International Banking Facilities, or 'Onshore Offshore Banks' as the article refers to them): "The reason for the favorable tax treatment for IBFs in states like Florida is not clear. There is no doubt that Florida has tried to encourage its development as an international financial center. The benefits from encouragement of IBFs per se, however, are hard to see. For example, the employment gains are probably trivial…" p.6, K. Alec Chrystal, 1984, 'International Banking Facilities', *FRB St Louis Review* 4: https://files.stlouisfed.org/files/htdocs/publications/review/84/04/International_Apr1984.pdf; 13.1.2020.

7 Marshall Langer, 2001, 'Proposed Interest Reporting Regulations Could Cause Massive Outflow of Funds', *Tax Notes International* 19 March, via https://archive.freedomandprosperity.org/Articles/tni03-19-01/tni03-19-01.shtml; 13.1.2020.

8 https://files.stlouisfed.org/files/htdocs/publications/review/84/04/International_Apr1984.pdf; 13.1.2020.

9 Citizens for Tax Justice, 2009, 'Testimony of Michael J. McIntyre and Robert S. McIntyre On Banking Secrecy Practices and Wealthy American Taxpayers Before the US House Committee on Ways and Means Subcommittee on Select Revenue Measures' March 31,: http://www.ctj.org/pdf/mcintyresw&mtestimony20090331.pdf; 13.1.2020. A flavor of the testimony (pp.4-5): "Congress and the Treasury Department were aware that many of the purchasers of portfolio-interest bonds sold on the Eurobond market would be tax cheats. Indeed, the portfolio-interest rules were designed to facilitate tax evasion by investors in portfolio-interest bonds. As noted above, the beneficial owners of the bonds were not required to identify themselves to the bond issuers. In addition, the beneficial owners of portfolio-interest bonds were allowed to invest in those bonds through so-called "qualified intermediaries." A qualified intermediary typically was a bank or other financial intermediary that consolidated the investments of various tax cheats and purchased the portfolio-interest bonds on their behalf. The rules were designed to make it difficult for the US government to learn who the tax cheats were. Such ignorance was important because the United States is obligated to provide information about the investment income of residents of countries having a tax treaty with the United States under the treaty's exchange-of-information article."

10 http://content.time.com/time/magazine/article/0,9171,926782,00.html; 17.1.2020.

11 Daniel Mitchell, 2003, 'Who Writes the Law: Congress or the IRS?', *Prosperitas* III(I): http://freedomandprosperity.org/2003/publications/who-writes-the-law-congress-or-the-irs/; 13.1.2020.

12 David Cay Johnston, 2001, 'Treasury Chief: Tax Evasion Is on the Rise', *New York Times* 19 July: http://www.nytimes.com/2001/07/19/business/treasury-chief-tax-evasion-is-on-the-rise.html; 13.1.2020.

13 Australia, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden and the UK.

14 P.136, Nicholas Shaxson, 2011, *Treasure Islands: Tax Havens and the Men who Stole the World*, London: Palgrave Macmillan.

15 Tax Justice Network, 2012, 'The global battle to tax offshore accounts: we call on OECD, FATF', 15 April: http://taxjustice.blogspot.lu/2012/04/global-battle-to-tax-offshore-accounts.html; 13.1.2020.

16 David Spencer, 2010, 'Memorandum On The US Foreign Account Tax Compliance Act', *Tax Justice Briefing*: http://www.taxjustice.net/cms/upload/pdf/FATCA_1004_TJN_Briefing_Paper.pdf; 13.1.2020.

17 https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx; 13.1.2020.

18 https://www.congress.gov/bill/113th-congress/senate-bill/1533; 13.1.2020.

19 For an exploration of the technical details of the CRS and FATCA, see " Andres Knobel & Markus Meinzer, 2014, *The end of bank secrecy"? Bridging the gap to effective automatic information exchange An Evaluation of OECD's Common Reporting Standard (CRS) and its alternatives*, , London: Tax Justice Network: http://www.taxjustice.net/wp-content/uploads/2013/04/TJN-141124-CRS-AIE-End-of-Banking-Secrecy.pdf; 13.1.2020.

20 Alex Cobham, 2014, 'Has the United States U-Turned on Tax Information Exchange?' Center for Global Development: https://www.cgdev.org/blog/has-united-states-u-turned-tax-information-exchange; 13.1.2020. See also, on how this U-turn (as opposed to initial refusal) implies that the OECD has wrongly evaluated US compliance, which has implications among other things for the EU non-cooperative jurisdictions 'blacklist': Andres Knobel, 2018, 'Blacklist, whitewashed: How the OECD bent its rules to help tax haven USA', Tax Justice Network: https://www.taxjustice.net/2018/07/27/blacklist-whitewashed-how-the-oecd-bent-its-rules-to-help-tax-haven-usa/; 13.1.2020/

21 Analysis and table drawn from Nicholas Shaxson, 2015, 'Loophole USA: the vortex-shaped hole in global financial transparency', Tax Justice Network: https://www.taxjustice.net/2015/01/26/loophole-usa-vortex-shaped-hole-global-financial-transparency-2/; 13.1.2020.

22 http://repealfatca.com/; 13.1.2020.

23 https://www.vice.com/en_us/article/nn-qgj8/setting-up-a-bogus-shell-corporation-is-really-easy-1215; 17.1.2020.

24 www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf; 04.02.2020.

25 https://www.incorp.com/start-a-business/where-to-incorporate; 16.1.2020.

26 http://treasureislands.org/; 16.1.2020.

27 http://www.nytimes.com/1988/06/05/magazine/delaware-inc.html?pagewanted=all; 16.1.2020.

28 http://treasureislands.org/nytimes-on-the-new-shadow-insurance-system/; 16.1.2020.

29 http://www.nytimes.com/1988/06/05/magazine/delaware-inc.html?pagewanted=all; 16.1.2020.

30 http://www.nytimes.com/2013/11/02/opinion/delaware-den-of-thieves.html?_r=0; 16.1.2020.

31 https://www.gpo.gov/fdsys/pkg/CHRG-109shrg32353/pdf/CHRG-109shrg32353.pdf; 16.1.2020.

32 https://www.gpo.gov/fdsys/pkg/CHRG-109shrg32353/pdf/CHRG-109shrg32353.pdf (p.4); 16.1.2020.

33 https://www.hsgac.senate.gov/imo/media/doc/OPENINGCOLEMANFinal0.pdf?attempt=2 (p.1); 16.1.2020.

34 http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf (p.233); 16.1.2020.

35 http://www.michael-findley.com/uploads/2/0/4/5/20455799/oct2012-global-shell-games.media-summary.10oct12.pdf; 17.1.2020.

36 https://www.gpo.gov/fdsys/pkg/CHRG-109shrg32353/pdf/CHRG-109shrg32353.pdf (p.3); 17.1.2020.

37 http://treasureislands.org/nevada-wins-race-to-the-bottom-on-u-s-corporate-governance-yuk/; 17.1.2020.

38 http://taxjustice.blogspot.lu/2011/09/nevada-to-crack-down-on-offshore.html; 17.1.2020.

39 https://www.icij.org/blog/2014/09/anti-shell-corporation-bill-gets-support-unlikely-us-state/; 17.1.2020.

40 https://www.icij.org/blog/2014/06/lobby-groups-see-right-through-us-states-financial-transparency-attempt/; 17.1.2020.

41 H.R. 2513 — 116th Congress: Corporate Transparency Act of 2019: https://www.govtrack.us/congress/bills/116/hr2513; 17.1.2020.

42 http://www.taxjustice.net/2015/01/26/loophole-usa-vortex-shaped-hole-global-financial-transparency-2/; 17.1.2020.

43 https://www.vice.com/en_us/article/nn-qgj8/setting-up-a-bogus-shell-corporation-is-really-easy-1215; 17.1.2020.

44 https://www.amazon.co.uk/Treasure-Islands-Havens-Stole-World/dp/1847921108/ref=sr_1_1?s=books&ie=UTF8&qid=1294155747&sr=1-1; 17.1.2020.

45 https://www.amazon.com/Treasure-Islands-Uncovering-Offshore-Banking/dp/0230105017/ref=sr_1_1?ie=UTF8&qid=1299621250&sr=8-1; 17.1.2020.

46 https://www.theguardian.com/world/2011/apr/03/us-bank-mexico-drug-gangs; 17.1.2020.

47 https://www.bloomberg.com/news/articles/2010-06-29/banks-financing-mexico-s-drug-cartels-admitted-in-wells-fargo-s-u-s-deal; 17.1.2020.

48 https://www.thenation.com/article/miami-where-luxury-real-estate-meets-dirty-money/; 17.1.2020.

49 https://www.nytimes.com/2015/02/08/nyregion/stream-of-foreign-wealth-flows-to-time-warner-condos.html; 17.1.2020.

50 https://www.reuters.com/article/us-shell-china/special-report-chinas-short-cut-to-wall-street-idUSTRE7702S520110801; 17.1.2020.

51 https://www.reuters.com/article/us-shell-games-medicare-resistance/shell-games-states-resist-steps-to-find-medicare-fraud-idUSTRE7BK0QM20111221; 17.1.2020.

52 https://www.reuters.com/article/us-usa-shell-companies/special-report-a-little-house-of-secrets-on-the-great-plains-idUSTRE75R20Z20110628; 17.1.2020.

53 https://in.reuters.com/article/us-phantom-bond/special-report-the-bonds-that-turned-to-dust-idINTRE77E1ST20110815; 17.1.2020.

United States of America

PART 2: SECRECY SCORE

OWNERSHIP REGISTRATION

30	1. Banking Secrecy
100	2. Trust and Foundations Register
100	3. Recorded Company Ownership
100	4. Other Wealth Ownership
100	5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

100	6. Public Company Ownership
100	7. Public Company Accounts
100	8. Country-by-Country Reporting
90	9. Corporate Tax Disclosure
75	10. Legal Entity Identifier

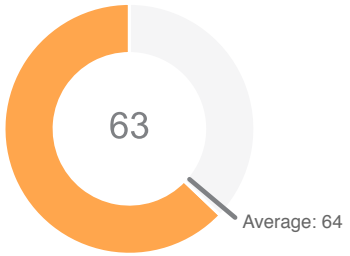
INTEGRITY OF TAX AND FINANCIAL REGULATION

15	11. Tax Administration Capacity
0	12. Consistent Personal Income Tax
30	13. Avoids Promoting Tax Evasion
50	14. Tax Court Secrecy
50	15. Harmful Structures
20	16. Public Statistics

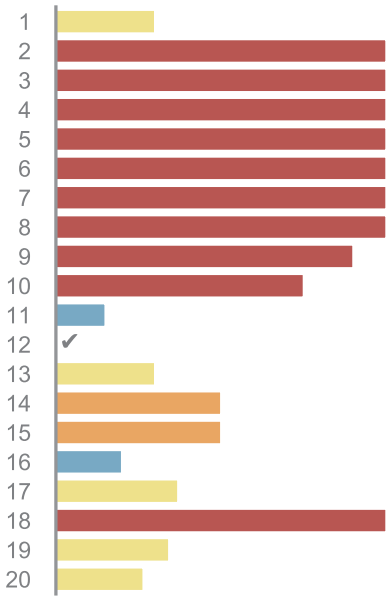
INTERNATIONAL STANDARDS AND COOPERATION

37	17. Anti-Money Laundering
100	18. Automatic Information Exchange
34	19. Bilateral Treaties
27	20. International Legal Cooperation

Secrecy Score



Key Financial Secrecy Indicators



Notes and Sources

The FSI ranking is based on a combination of a country's secrecy score and global scale weighting (click here to see our full methodology).

The secrecy score is calculated as an arithmetic average of the 20 Key Financial Secrecy Indicators (KFSI), listed on the right. Each indicator is explained in more detail in the links accessible by clicking on the name of the KFSI.

A grey tick in the chart above indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This report draws on data sources that include regulatory reports, legislation, regulation and news available as of 30 September 2019 (or later in some cases).

Full data is available here: http://www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit http://www.financialsecrecyindex.com.