

# Tax Havens

Guess who is #2?

The Tax Justice Network just released their 2018 Financial Secrecy Index. In this report, The Tax Justice Network estimates that \$21 Trillion to \$32 Trillion are hidden in lightly taxed or no tax jurisdictions<sup>1</sup>. As part of the report they provide a ranking of tax havens, available at:

<https://www.financialsecrecyindex.com/introduction/fsi-2018-results>

Can you guess which country is ranked the number one tax haven? Many people would likely correctly guess Switzerland. However, number two on the list comes as a bit of surprise to many, but not those in-the-know: The United States of America. Despite all the chest thumping and accusations of “off shore tax havens”, US politicians need look no further than their own country.

Anyone can easily go online to setup a company in a US state such as Delaware or Nevada, states that are especially friendly to quickly and easily incorporate. These companies can be setup without having to show up in person. Once established, the owners can use that company to open a bank account. Make no mistake: this is done by design. The US Government, for all its harping about tax havens, wants to be a tax haven. The US wants people around the world to move money into US financial institutions. And due to its size, the US can largely get away with it.

As an example, there is a tax exchange setup by the OECD called the Common Reporting Standard (CRS), which is being used by 102 countries, including China and Russia. The legal underpinnings of CRS is the Multilateral Competent Authority Agreement (MCAA), a multilateral agreement between members for the automatic exchange of tax information. With CRS, individual account holders or the substantial owners of an investment entity are exchanged fairly.

The US chose not to join the Common Reporting Standard, but rather uses its own FATCA program. The US FATCA program threatens a 30% withholding for any Financial Institutions that fail to join their “voluntary” program. Almost 300,000 Foreign Financial Institutions have been strong-armed into “volunteering” to report US tax payer data<sup>2</sup>. To maintain sovereignty, 113 countries have negotiated Inter Governmental Agreements<sup>3</sup> (IGAs) where the reporting of US Citizen tax data is enshrined in local law. The template for these IGAs was provided by the US Government and are either unilateral, where foreign financial institutions provide US data, but don’t receive tax data in return; or bilateral where there is an exchange of tax data. Using Cyprus as a typical example of a bilateral agreement (for other bilateral agreements, only the country name changes), there is the following definition of a Cyprus Reportable Account:

The term “Cyprus Reportable Account” means a Financial Account maintained by a Reporting U.S. Financial Institution if: (i) in the case of a Depository Account, the account is held by an individual resident in Cyprus and more than \$10 of interest is paid to such account in any given calendar year; or (ii) in the case of a Financial Account other than a Depository Account, the Account Holder

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<sup>1</sup> <https://www.financialsecrecyindex.com/introduction/introducing-the-fsi>

<sup>2</sup> <https://apps.irs.gov/app/fatcaFfiList/flu.jsf>

<sup>3</sup> <https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>

is a resident of Cyprus, including an Entity that certifies that it is resident in Cyprus for tax purposes, with respect to which U.S. source income that is subject to reporting under chapter 3 of subtitle A or chapter 61 of subtitle F of the U.S. Internal Revenue Code is paid or credited.

And the US Reportable account definition:

The term “U.S. Reportable Account” means a Financial Account maintained by a Reporting Cyprus Financial Institution and held by one or more Specified U.S. Persons or by a Non-U.S. Entity with one or more Controlling Persons that is a Specified U.S. Person. Notwithstanding the foregoing, an account shall not be treated as a U.S. Reportable Account if such account is not identified as a U.S. Reportable Account after application of the due diligence procedures in Annex I.

Notice anything? Cyprus has to identify US Citizen substantial owners of entities such as holding and investment companies. However, US Banks don't have to identify Cyprian substantial owners. This means a non-US Citizen can easily hide assets by simply creating a US holding company in Delaware or Nevada and place assets in that US holding company. And the ownership of these assets never get reported to their local tax authority.

The bottom line is that the next time you hear “tax haven”, you might want to think twice before assuming it is a palm fringed Caribbean Island.

**About David Olenzak:**

David Olenzak is the founder and President of Trans World Compliance, Inc. a provider of the FATCA One line of compliance software for Financial Institutions and Tax Authorities to support US FATCA, UK FATCA, and Common Reporting Standard regulations. David Olenzak is a serial entrepreneur with a background in IT and spent fifteen years in Compliance and RegTech.