

In depth

The amazing development of exchange of information in tax matters: from double tax treaties to FATCA and the CRS

Henry Christensen III* and Jean-Marc Tirard†

Abstract

This article provides an overview of the development of international tax and financial reporting, and examines modern approaches to compelling the disclosure of offshore financial accounts, comparing tax information exchange agreements to the comprehensive bilateral reporting agreements of the USA under the Foreign Account Tax Compliance Act (FATCA), and to the recently released OECD Common Reporting Standard (CRS). Beginning with FATCA, and expanding through the CRS and bilateral automatic reporting treaties, the trend is towards ever more transparency.

shows no signs of slowing—the amount of wealth in tax havens has increased by 25% in the last five years.² The authors have done no research on the amount of money deposited offshore, and have long thought the estimates of unreported offshore income³ to be exaggerated. Clearly, however, there has been substantial under-reporting of income and in an age where all governments are dealing with revenue shortfalls; it is understandable that they look to offshore accounts as a partial answer to covering their budget deficits. The very recent publicity about accounts set up in Panama for foreign clients by the law firm of Mossack Fonseca has only stoked the flames arising from concerns of offshore hidden assets.

Although movements towards exchange of tax information have taken place between nations since at least the mid-1800s, the trend has accelerated as budget deficits have grown, capital has become more mobile and information about overseas bank accounts, including information taken from the LGT Group,⁴ UBS,⁵ HSBC⁶, and others, made public in judicial proceedings resulting in large civil fines of banks for assisting in non-payment of taxes and guilty pleas by

Introduction

Recent estimates show that at least 8% of the world's wealth, \$7.6 trillion dollars, is held in offshore tax havens.¹ Tax evasion by individuals may cost governments \$200 billion in lost tax revenues each year and

* Henry Christensen III, Partner, McDermott Will and Emery LLC, New York, USA.

† Jean-Marc Tirard, Partner, McDermott Will and Emery, London, UK. The authors wish to acknowledge the invaluable assistance of their associate, Chris Nason, in preparing this article.

1. Gabriel Zucman, *The Hidden Wealth of Nations: The Scourge of Tax Havens* (2015). University of Chicago Press.

2. *ibid.* These figures include individual and corporate assets held in low-tax jurisdictions.

3. In urging the passage of FATCA Senator Carl Levin said: '[S]ending the Hiring Incentives to Restore Employment Act to the President's desk would also mark a significant victory for law-abiding U.S. taxpayers. Right now, thousands of U.S. tax dodgers conceal billions of dollars in assets within secrecy-shrouded foreign banks, dodging taxes and penalizing those of us who pay the taxes we owe. The Permanent Subcommittee on Investigations, which I chair, has estimated that these tax-dodging schemes cost the Federal Treasury \$100 billion a year.' Congressional Record, S1636 (17 March 2010).

4. 'Stolen Data Spur Tax Probes' *The Wall Street Journal* (19 February 2008) A4. New York. We note that many of these accounts are perfectly legal and reported.

5. 'Justice Dept. chastises UBS chairman over IRS fraud probe' *Investment News* (3 March 2009). New York

6. See eg 'Swiss Leaks: Murky Cash Sheltered by Bank Secrecy' *International Consortium of Investigative Journalists* <<http://www.icij.org/project/swiss-leaks>>. accessed 6 June 2016.