



**Prepared Testimony for the U.S. Senate Committee on the Budget
“Sunny Places for Shady People: Offshore Tax Evasion by the Wealthy and Corporations”**

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April 10, 2024

Chairman Whitehouse, Ranking Member Grassley, Members of the Committee:

Thank you for inviting me today to share my views on offshore tax evasion and common sense solutions to the problem. I am here on behalf of the Financial Accountability and Corporate Transparency, or FACT, Coalition. We’re a broad, nonpartisan alliance of more than 100 civil society, business, and labor organizations working toward a fair tax system that addresses the challenges of a global economy and promoting policies to combat the harmful impacts of corrupt financial practices.

Problem: Offshore Tax Evasion Hurts Us All

Right now, many Americans are working to meet their tax obligations and file their tax returns before Tax Day. Most of us want to do the right thing. We’re the honest, law-abiding majority, but there’s a small, dishonest minority of individuals and businesses who are breaking the law and dodging their taxes, very often by stashing their money abroad and hiding it from the IRS.

Put simply, offshore tax evasion is a crime. And it’s far from a victimless crime, because it unfairly advantages businesses and individuals using illegal accounting schemes and secret offshore accounts over those who play by the rules. And when some of us fail to pay what they owe, that takes away money from everyone else. It might lead to higher taxes. It might lead to ballooning budget deficits. And it robs us of the resources needed for shared national priorities like defense, healthcare, infrastructure, and education. At a time when we are facing growing federal budget deficits and unsustainable government debt, our annual “tax gap”, defined as the estimated revenue shortfall due to taxes that are legally due but not paid, has swollen to \$688 billion.¹ That figure does not fully account for offshore tax evasion, and the IRS and Treasury should continue to work to improve these tax gap estimates.²

¹ Internal Revenue Service (October 12, 2023), “IRS updates tax gap projections for 2020, 2021; projected annual gap rises to \$688 billion,”

<https://www.irs.gov/newsroom/irs-updates-tax-gap-projections-for-2020-2021-projected-annual-gap-rises-to-688-billion>

² Id. The IRS notes that “[t]he projections cannot fully represent noncompliance in some components of the tax system including offshore activities, issues involving digital assets and cryptocurrency as well as corporate income tax, income from flow-through entities and illegal activities because data are lacking.” See also, Treasury Inspector General for Tax Administration (March 23, 2023), “Actions Are Needed to Improve the Completeness, Development, and Review of IRS Tax Gap Estimates,”

<https://www.tigta.gov/sites/default/files/reports/2023-03/202310016fr.pdf>

We know that offshore tax evasion is an enormous problem: \$4 trillion in U.S. individual wealth is stashed overseas, around one half of it in tax havens, and the main culprits are a relative handful of extremely wealthy Americans.³ According to recent research, nearly two-thirds of foreign assets are held by those in the top 1%, and more than 60% of those in the top 0.01% of the income distribution own foreign accounts, the vast majority in tax havens.⁴ Research also shows that the wealthiest 1% of Americans are evading about 20% of their tax obligation, amounting to hundreds of billions in lost revenues annually.⁵

These tax evaders employ a variety of schemes: from secret Swiss bank accounts and anonymous shell companies, to complex offshore structures. At times, these activities blur the line between legal avoidance and illegal evasion. But with complex rules and secrecy, who's to spot the difference? The good news is, the U.S. is starting to crack down on them. But to get the job done, it will take resources and determination.

I'd like to recommend four solutions:

1. Improve FATCA Enforcement

First, we need to better enforce our financial transparency laws, because tax dodging thrives in secrecy. A turning point in our fight against offshore evasion was the 2010 passage of the Foreign Account Tax Compliance Act, known as FATCA, which was prompted by a Senate investigation that estimated that international tax evasion was costing the U.S. Treasury up to a hundred billion dollars a year.⁶ FATCA has been in effect since 2015, and requires foreign banks and other financial firms to send to the IRS data on accounts held by U.S. taxpayers, or else face a steep 30% withholding tax. FATCA is often implemented through bilateral agreements with other governments. Research shows that FATCA has helped to reduce deposits by U.S. citizens in tax havens, and that offshore tax evasion has declined by a factor of about three over the last 10 years.⁷ But, unfortunately, we still see brazen violations.

For example, recently, a Florida businessman, Dan Rotta, was arrested and indicted for hiding more than \$20 million in Credit Suisse and other secret Swiss bank accounts.⁸ The Senate Finance Committee has uncovered how Credit Suisse bankers failed to comply with FATCA and with Credit Suisse's plea deal

³ Niels Johannesen et al. (March 2023), "The Offshore World According to FATCA: New Evidence on the Foreign Wealth of U.S. Households," National Bureau of Economic Research, <https://www.nber.org/papers/w31055>

⁴ Id.

⁵ Daniel Reck et. al. (October 20, 2023), "Tax Evasion at the Top of the Income Distribution: Theory and Evidence," <https://gabriel-zucman.eu/files/GLRRZ2023.pdf>

⁶ Elise J. Bean (2018), Financial Exposure: Carl Levin's Senate Investigations into Finance and Tax Abuse.

⁷ Lisa De Simone and Bridget Stomberg (2023), "Has FATCA succeeded in reducing tax evasion through foreign accounts?" Oxford Review of Economic Policy 39(3), 550–564. EU Tax Observatory, "Global Tax Evasion Report 2024," <https://www.taxobservatory.eu/publication/global-tax-evasion-report-2024>

⁸ David Voreacos (March 11, 2024), "Ex-Credit Suisse Client Charged in Tax Scam, US Says," Bloomberg, <https://www.bloomberg.com/news/articles/2024-03-11/ex-credit-suisse-client-arrested-in-35-year-tax-scheme-us-says>

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with the Department of Justice.⁹ Thanks to whistleblowers, over \$300 million in secret offshore accounts held at Credit Suisse and other financial institutions came to light.¹⁰ The Finance Committee has also made public how another, smaller Swiss bank, Pictet, helped U.S. citizens hide more than \$5 billion in offshore accounts, including one instance in which it helped a U.S. billionaire make an offshore transfer of \$255 million.¹¹

We applaud the IRS and DOJ for bringing to justice those who flaunt the law and fail to file FATCA reports. But these known cases might be just the tip of the iceberg. To make the most of FATCA's power to deter tax cheats, the IRS needs to be faster in detecting noncompliance and tougher in imposing fines. According to a report by the Treasury Inspector General for Tax Administration, because the IRS was "slow to identify" non-filers, it missed out on \$3.3 billion in fines for failure to file (330,000 non-filers at \$10,000 per fine).¹²

We also need to make sure that the IRS has the resources to fully leverage the data reported under FATCA to collect the taxes that are owed. The main problem here is one of resourcing. As former IRS Commissioner Charles Rettig told the Senate Finance Committee, "we are often left with manual processes to analyze reporting information we receive...Congress enacted FATCA in 2010, but [the IRS] have yet to be appropriated any significant funding for its implementation. This situation is compounded by the fact that when we do detect potential non-compliance or fraudulent behavior through manually generated FATCA reports, we seldom have sufficient funding to pursue the information and ensure proper compliance."¹³

It's also worth noting that the IRS is facing new challenges as tax evaders increasingly choose to stash their wealth in illiquid assets, most notably digital assets (along with art and antiquities). The use of digital assets to evade taxes is a large and growing problem. At least half of the taxes owed on cryptocurrency transactions go unpaid, costing at least \$50 billion per year in lost tax revenues, according to an independent estimate by Barclays PLC.¹⁴ As the Treasury Department has explained, "Since the industry is entirely digital, taxpayers can transact with offshore digital asset exchanges and wallet

⁹ U.S. Senate Committee on Finance (March 29, 2023), "Wyden Investigation Finds Credit Suisse Complicit in Ongoing Tax Evasion by Ultra-Wealthy Americans,"

<https://www.finance.senate.gov/chairmans-news/wyden-investigation-finds-credit-suisse-complicit-in-ongoing-tax-evasion-by-ultra-wealthy-americans>

¹⁰ Id.

¹¹ Eamon Javers (March 21, 2024), "5-hour Energy billionaire named in Senate Swiss bank tax probe," CNBC,

<https://www.cnbc.com/2024/03/21/five-hour-energy-billionaire-named-in-senate-swiss-bank-tax-probe-source.html>

¹² Treasury Inspector General for Tax Administration (April 7, 2022), "Additional Actions Are Needed to Address Non-Filing and Non-Reporting Compliance Under the Foreign Account Tax Compliance Act,"

<https://www.tigta.gov/sites/default/files/reports/2022-06/202230019fr.pdf>

¹³ Charles P. Rettig (April 7, 2022), "Written Testimony Before the Senate Finance Committee on the Filing Season and the IRS Budget," Internal Revenue Service,

<https://www.finance.senate.gov/imo/media/doc/IRS%20Commissioner%20CPR%20testimony%20SFC%20filing%20season%20040722%20.pdf>

¹⁴ Nicolas Vega (May 18, 2022), "The IRS may be missing out on \$50 billion a year in unpaid crypto taxes—and a crackdown is underway," CNBC,

<https://www.cnbc.com/2022/05/18/irs-may-be-missing-out-on-50-billion-dollars-a-year-in-unpaid-crypto-taxes.html>.

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providers without leaving the United States. The global nature of the digital asset market offers opportunities for U.S. taxpayers to conceal assets and taxable income by using offshore digital asset exchanges and wallet providers.”¹⁵

Digital assets are not currently reportable by foreign financial institutions under FATCA, but the Treasury Department has proposed to change that in its latest budget request. This change would be in line with the globally agreed upon “Crypto Asset Reporting Framework” (CARF) that will start in 2027, but the Treasury Department still needs additional authority from Congress to fully implement CARF.¹⁶ Experts in digital asset taxation have highlighted the need for international cooperation and universal standards, particularly to combat evasion through transactions made on decentralized exchanges and peer-to-peer networks: “the highly mobile nature of digital assets requires international cooperation on tax reporting standards to ensure digital asset income faces appropriate taxation.”¹⁷ As digital asset reporting comes on line, the IRS will require additional resources to build technical expertise in this area.

Beyond our borders, FATCA has had a dramatic global effect, galvanizing more than 100 other countries to join forces to automatically exchange bank account information. FATCA is the most recent example of what Professor Avi Yonah has called “constructive unilateralism” in which the United States unilaterally adopts a rule that is then adopted by the rest of the world.¹⁸ But in this case, the US is not a part of that global standard, and, as a result, risks becoming a tax haven for foreign tax cheats. We should do more to ensure that collected information flows both ways. Such reciprocity would not only help our partner countries – it would also be in our national interest. The Treasury Department has recognized that other countries’ willingness to share information with the US depends on our willingness and ability to reciprocate.¹⁹

¹⁵ U.S. Department of the Treasury (March 11, 2024), “General Explanations of the Administration’s Fiscal Year 2025 Revenue Proposals,” pp. 225-8, <https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf>

¹⁶ U.S. Department of the Treasury (November 10, 2023), “Collective Engagement to Implement the Crypto-Asset Reporting Framework,” <https://home.treasury.gov/news/press-releases/jy1895>. Nathan J. Richman (January 30, 2023), “Treasury Needs Help to Implement OECD Cryptoasset Framework,” Tax Notes, <https://www.taxnotes.com/tax-notes-federal/common-reporting-standard-crs/treasury-needs-help-implement-oecd-cryptoasset-framework/2023/01/30/7fws1>.

¹⁷ “The opacity of digital assets has facilitated their use in illicit activities around the world, including money laundering and terrorist financing, in addition to tax evasion. International organizations have started to develop legal frameworks that will mitigate these concerns, including the [Financial Action Task Force] recommendations and CARF, which provides for the automatic international exchange of tax information in crypto-assets.” Tax Law Center at NYU Law (November 14, 2023), Comment re Broker Reporting of Digital Asset Transactions, <https://www.regulations.gov/comment/IRS-2023-0041-44319>

¹⁸ Reuven Avi-Yonah (2016), “Constructive Unilateralism: U.S. Leadership and International Taxation,” 42 Int’l Tax J. 17.

¹⁹ U.S. Department of the Treasury (March 11, 2024), “General Explanations of the Administration’s Fiscal Year 2025 Revenue Proposals,” p. 225:

“The United States has established a broad network of information exchange relationships with other jurisdictions based on established international standards. The information obtained through those information exchange relationships has been central to recent successful IRS enforcement efforts against offshore tax evasion. The strength of those information exchange relationships depends, however, on cooperation and reciprocity. Further, as the IRS has gained more experience with exchange of tax information on an automatic basis with appropriate partner jurisdictions, it has become clear that a jurisdiction’s willingness to share information on an automatic basis with the United States often depends on the United States’ willingness and ability to reciprocate by exchanging comparable information.”

<https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf>

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It is also time for the United States to stop restricting access to FATCA data to the IRS and to grant access, upon request, to law enforcement agencies fighting drug cartels, corruption, sanctions violations, human trafficking, and other major crimes. Fighting financial crime is all about following the money, and FATCA data would give investigators a useful new mechanism to track where money is hidden offshore.

2. Using the Corporate Transparency Act for Tax Purposes

Second, in addition to FATCA, Congress has created a valuable new transparency tool – the bipartisan Corporate Transparency Act – which gives the IRS access to a new database identifying the true owners of many U.S. corporations, limited liability companies (LLCs), and other legal entities.²⁰ Ownership transparency is important because shell companies are a significant conduit for tax evasion. A Treasury study based on IRS data found that legal entities were used in a “substantial portion” of cases to commit tax evasion and fraud.²¹ Many such cases also involve other crimes such as fraud or money laundering. For example, a Florida developer defrauded investors out of more than \$30 million while evading \$2.75 million in U.S. income taxes and penalties, and laundered the proceeds of his scheme by using shell companies, including a Delaware LLC.²² For tax as well as anti money laundering enforcement purposes, the government must continue to vigorously defend the CTA against unfounded legal challenges.²³

Treasury’s Financial Crimes Enforcement Network, or FinCEN, should facilitate uncomplicated access for the IRS, as well as for foreign tax and law enforcement authorities, as contemplated by the statute. FinCEN should also ensure that the reported information is “adequate, accurate, and up-to-date” in line with international standards.²⁴ To deliver on these and other priorities, FinCEN must be properly resourced and staffed.²⁵ FinCEN officials have publicly noted that key priorities, including verification for reported beneficial ownership information, may be contingent on additional funding.²⁶

²⁰ Sophia Yan (April 12, 2022), “How Strengthening the Corporate Transparency Act Can Help the IRS Follow the Money,” Just Security,

<https://www.justsecurity.org/81008/how-strengthening-the-corporate-transparency-act-can-help-the-irs-follow-the-money>

²¹ U.S. Department of the Treasury (2020), “National Strategy for Combating Terrorist and Other Illicit Financing,”

<https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf>

²² U.S. Attorney's Office, District of Connecticut (July 31, 2023), “Real Estate Developer Sentenced for Investment Fraud, Bank Fraud, Money Laundering, and Tax Evasion Schemes,”

<https://www.justice.gov/usao-ct/pr/real-estate-developer-sentenced-investment-fraud-bank-fraud-money-laundering-and-tax>

²³ Zorka Milin (March 20, 2024), “Corporate Transparency Act Ruling Misses Mark on Congress’ Power,” Bloomberg Law,

<https://news.bloomberglaw.com/us-law-week/corporate-transparency-act-ruling-misses-mark-on-congress-power>

²⁴ Financial Action Task Force (March 10, 2023), “Guidance on Beneficial Ownership of Legal Persons,”

<https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-Beneficial-Ownership-Legal-Persons.html>

²⁵ Though the funding deal for FY2024 reached by Congress last month kept FinCEN funding stable with enacted levels for FY2023, it fell short of the \$229 million requested in the President’s budget. FACT Coalition (March 11, 2024), “President’s Budget Boosts Funds for Nation’s Financial Crime Fighters,”

<https://thefactcoalition.org/presidents-budget-boosts-funds-for-nations-financial-crime-fighters>

²⁶ See e.g., House Financial Services Committee, Subcommittee on National Security, Illicit Finance, and International Financial Institutions (April 27, 2023), “Hearing Entitled: ‘Oversight of the Financial Crimes Enforcement Network (FinCEN) and the Office of Terrorism and Financial Intelligence (TFI)’,”

<https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408719>

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3. Improve Corporate Tax Transparency to Deter Aggressive Transfer Pricing

Third, we also need to crack down on tax dodging by large multinational corporations, through better, tougher enforcement of our current transfer pricing regulations. Right now, it's too easy for big corporations to go beyond the law with few repercussions. The IRS needs more resources so it can investigate potentially illegal complex transfer pricing schemes by companies such as Microsoft and Coca Cola. Mr. Curtis's testimony discusses in more detail how the IRS can address that problem.

Transfer pricing presents huge financial risks for investors. To protect investors from such risks, the Securities and Exchange Commission should mandate tax reporting by U.S.-listed issuers for each country of operation, in line with the Global Reporting Initiative standards.²⁷ While companies have been filing similar country-by-country information with the IRS since 2018, investors remain in the dark about the significant and growing risks of aggressive corporate profit shifting.²⁸ Members of this Committee have introduced and supported bills that require public country-by-country reporting, including the Disclosure of Tax Havens Act (S. 638), as well as the Stop Tax Haven Abuse Act.²⁹ Public country-by-country reporting would build on tax disclosure improvements that were recently approved by the independent U.S. accounting standard-setter, the Financial Accounting Standards Board (FASB).³⁰

Investor scrutiny would help to deter some of the most aggressive and illegal transfer pricing practices. As Professor Kim Clausing told this Committee in a recent hearing, “[public country-by-country reporting] really forces companies to be transparent. If they’re going to earn most of their income in an offshore location where they have almost no employment, then they should be willing to say that out loud to their investors, to their workers, to their consumers, and to the American public, because what they’re doing is effectively putting those tax burdens on others.”³¹

4. Repeal Check-the-Box Election

Fourth, current Treasury rules allow corporations to check a box on a form to effectively make an offshore subsidiary disappear. This provision, known as “check-the-box” election, was first put in place by the Treasury Department in 1997, with the intent of simplifying entity classification. But the change has made it too easy for multinational corporations to avoid tax liability by making the otherwise taxable

²⁷ FACT Coalition (July 2022), “A Material Concern: The Investor Case for Public Country-by-Country Tax Reporting,”

<https://thefactcoalition.org/report/a-material-concern-the-investor-case-for-public-country-by-country-tax-reporting>

²⁸ <https://www.irs.gov/businesses/international-businesses/us-multinational-enterprises>

²⁹ FACT Coalition (March 2, 2023), “FACT Welcomes Reintroduction of Legislation to Shine a Light on Corporate Tax Dodging Practices,”

<https://thefactcoalition.org/fact-welcomes-reintroduction-of-legislation-to-shine-a-light-on-corporate-tax-dodging-practices>

³⁰ FACT Coalition (August 31, 2023), “Approved Proposal will Dramatically Improve Disclosures Surrounding the Global Tax Practices of U.S. Multinationals,”

<https://thefactcoalition.org/u-s-accounting-standard-setters-unanimously-approve-new-tax-transparency-measures>

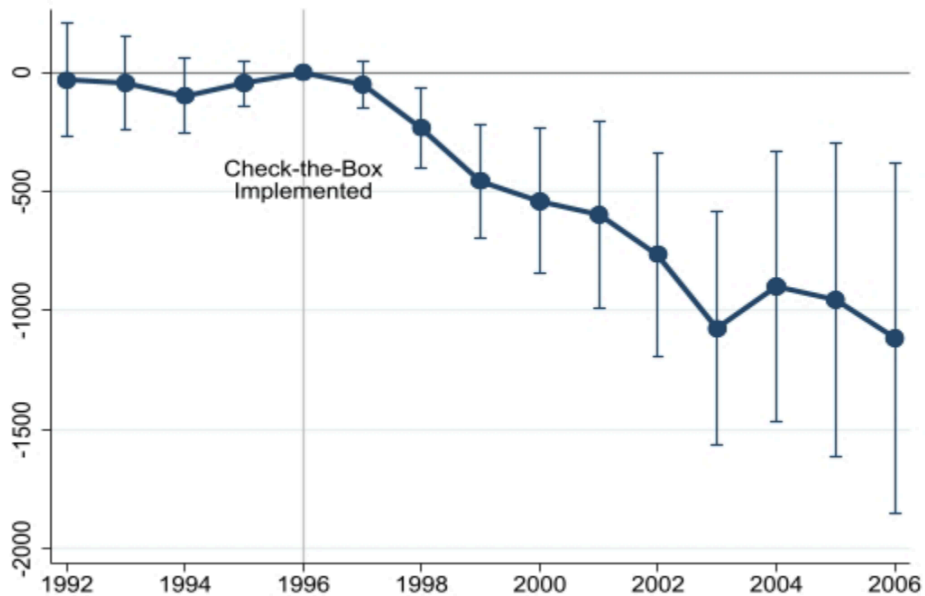
³¹ FACT Coalition (January 18, 2024), “Senate Hearing Outlines Need for Public Country-by-Country Reporting, Among other Tax Reforms,”

<https://thefactcoalition.org/senate-hearing-outlines-need-for-public-country-by-country-reporting-among-other-tax-reforms>

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income of certain offshore subsidiaries effectively invisible for U.S. tax purposes. By pulling off the magic trick of so-called “hybrid” entities, corporations can tell foreign countries that profits of certain offshore subsidiaries are earned in a tax haven, while at the same time telling the United States that these tax-haven subsidiaries don’t exist.

Figure 2: Change in Jobs Due to Check-the-Box (100,000s)



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While technically legal, the practice has led to substantial losses to our economy, including through offshoring of jobs and profits, to the tune of more than a million American jobs and more than \$40 billion per year in lost domestic business earnings, according to a recent Brookings analysis (see figure above).³³ Treasury should put a stop to these losses and repeal the check-the-box election rule with respect to certain foreign subsidiaries, as called for in the Stop Tax Haven Abuse Act. The Joint Committee on Taxation has estimated that a repeal would raise tens of billions in new revenues over ten years.³⁴

Conclusion

I want to thank the Members and staff of the Senate Budget Committee for holding this important hearing today, and I welcome your questions.

³² Daniel Garrett, Eric Ohm, and Juan Carlos Suárez Serrato (March 14, 2024), “Effects of international tax provisions on domestic labor markets,” Brookings Institute,

<https://www.brookings.edu/articles/effects-of-international-tax-provisions-on-domestic-labor-markets>

³³ Id.

³⁴ Sheldon Whitehouse and Lloyd Doggett (April 5, 2017), “Stop Tax Haven Abuse Act,” Office of Senator Sheldon Whitehouse, <https://www.whitehouse.senate.gov/wp-content/uploads/imo/media/doc/Stop%20Tax%20Haven%20Abuse%20Act%20115th%20summary.pdf>

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