



Deconstructing National Tax Blacklists

Removing Obstacles to Cross-Border Trade in Financial Services

A report prepared for the Society of Trust and Estate Practitioners

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Introduction

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Larger countries extol the consumer benefits of international competition. Yet many object to their citizens benefiting from the financial services and corporate structures offered by small states where taxes are lower. As a result, they seek to reduce demand and stifle cross-border competition by imposing punitive taxation or burdensome reporting obligations on their citizens who use 'offshore' financial services.

Barriers to competition can be imposed in different ways. Some are triggered by objective criteria: for example, if services are provided from a jurisdiction with tax rates lower than a prescribed level. Other barriers, known as 'blacklists', are more subjective and target individual competitor jurisdictions.

Arbitrary blacklisting has the *realpolitik* advantage of enabling countries to threaten weaker and smaller states while avoiding affront to competitors powerful enough to retaliate. Blacklists also fuel a convenient perception that there is something inherently immoral about using tax-efficient structures in smaller states.

Establishing a tax-free international business company (IBC) in a small blacklisted jurisdiction, for example, is often frowned upon. However establishing a similarly tax-free limited liability company (LLC) in the USA – never blacklisted because of its capacity to hit back – is seen as conventional. The perception is curious, as tax-free US LLCs are permitted to operate with undisclosed ownership and no obligation to maintain financial statements, while IBCs in smaller states are subject to much greater transparency requirements.

The Society of Trust and Estate Practitioners (STEP) has over 11,000 members that offer, and use, financial services in 55 large and small jurisdictions across the world. Through conferences, high-level discussions and occasional papers such as this, STEP takes an active role in fostering international thinking about the regulation of cross-border financial services. We believe in removing barriers, particularly arbitrary ones, and in ensuring a level playing field for the trade in financial services.

STEP's earlier report, *Towards a Level Playing Field*, published jointly with the International Trade and Investment Organisation (ITIO) in 2001 and reprinted a year later, responded to high demand for empirical research in this area. By providing a comprehensive analysis of the regulation of corporations, trusts and limited partnerships in 15 countries, it revealed that regulation was generally more stringent in principal non-Organisation for Economic Cooperation Development (OECD) financial centres than in key OECD member states.

Deconstructing National Tax Blacklists reveals that the lists operated by large and powerful countries against smaller competitors are frequently based on arbitrary criteria. Blacklists often draw a wiggly line, ignoring objective logic in separating jurisdictional participants in the market for international financial services. Blacklists may simply be copied between countries without revision or drawn from lists compiled by international organisations for other purposes. Even when initially based on a clear methodology, they are rarely updated to take account of changed circumstances.

The survey is authored by two Australian academics, Jason Sharman and Gregory Rawlings, who have researched widely into the regulation of cross-border financial services, the actions of international organisations and the impact on small states.

Deconstructing National Tax Blacklists should cause the exponents of blacklists to rethink their exclusionary approach. We encourage all jurisdictions to remove obstacles to global free trade in financial services and avoid discrimination against smaller states.

1. Executive Summary	04
2. What are national tax blacklists and why are they important?	05
3. Worldwide trends in national tax blacklists	10
4. How are the blacklists constructed?	11
5. Inconsistencies in national tax blacklists	17
6. Conclusions	

TABLES

Table 1: Product-based national tax blacklists	07
Table 2: Country-based national tax blacklists	08

APPENDICES

Appendix A: Individual Blacklists by Issuing Country	18
Appendix B: Selected Additional Countries with National Tax Blacklists	26
Appendix C: Selected National Tax Blacklists	
C.1 Argentina	27
C.2 Brazil	28
C.3 Mexico	29
C.4 Portugal	30
C.5 Spain	31
C.6 Venezuela	32
Appendix D: United States Informal List of Tax Havens	33
Appendix E: US Bills Introduced to Combat Corporate Inversion and Tax Haven-facilitated Avoidance from 2001	34



1. Executive summary

- ⁰¹ This report has three main aims: to identify which countries use national tax blacklists and which jurisdictions appear on these lists; to specify what consequences these blacklists entail; and, perhaps most importantly, to shed light on how these lists are compiled.
- ⁰² National tax blacklists are defined as legislation or regulations that prescribe negative treatment for certain transactions involving specified foreign jurisdictions. These blacklists create serious obstacles for the trade in international financial services, particularly when marketed from International Financial Centres (IFCs).
- ⁰³ The evidence we have gathered strongly suggests that a large proportion of the national tax blacklists, and probably a majority, is arbitrary and discriminatory. By 'arbitrary and discriminatory' we mean that blacklists are not compiled in line with any objective and consistently-applied set of rules or criteria (methodology). As such, they are in conflict with basic norms in the international trading system, such as non-discrimination and the most-favoured nation principle.

2. What are national tax blacklists and why are they important?

- ⁰⁴ Countries take a variety of approaches to guarding their national tax revenues. Many of the measures employed to this end affect the international trade in services. National tax blacklists are a common way for governments to try and limit tax losses at home by limiting or barring transactions carried out by their citizens or corporations with certain specified foreign jurisdictions. These national tax blacklists also have particularly serious consequences in restricting the trade in international financial services.
- ⁰⁵ In this report, we define national tax blacklists as legislation or regulations that prescribe negative treatment for certain transactions that involve specific listed foreign jurisdictions. Such blacklists are national in the sense that they are formulated and enforced by public authorities, rather than private firms or international organisations (sub-national blacklists are also possible, e.g. for State governments in the United States). The reference to tax blacklists is shorthand for lists of jurisdictions that may exist in many different aspects of onshore countries' tax codes and related laws and regulations. Finally, they are blacklists in that the specified consequences are negative: punitive taxes, more burdensome reporting requirements, and so on. When referring to IFCs we tend to use the term 'jurisdiction' in this report because many of the places on tax blacklists are dependent territories rather than fully sovereign states. However, those issuing these reports are all sovereign states and where appropriate these are referred as countries or states.
- ⁰⁶ The term 'greylists' is used to mean that jurisdictions are named in legislation, decrees, or regulations in a way that may entail negative legal consequences for particular types of transactions if certain other conditions are met.
- ⁰⁷ Aside from these lists, 'whitelists' are used to refer to lists of jurisdictions compiled by public authorities and located in tax codes that prescribe especially favourable treatment for transactions with listed jurisdictions. Similarly, informal blacklists name jurisdictions as 'tax havens' or similar, in legislation, decrees, regulations or other official publications in an illustrative way only that does not entail formal-legal consequences.
- ⁰⁸ To count as a blacklist for our report, the legislation or regulations must be based on or refer to lists of jurisdictions, rather than abstract objective criteria. So, for example, if a particular regulation specified negative treatment for transactions involving any and all jurisdictions with a corporate tax rate of less than 20 per cent, but made no reference to a list of particular jurisdictions, this would not count as a blacklist for our purposes. A rough rule of thumb is: no jurisdictions named, no national tax blacklist.
- ⁰⁹ In the real world things are obviously not this simple, and the decision as to what counts as a national tax blacklist and what does not can be a matter of judgement and debate.



What are national tax blacklists and why are they important?

Some jurisdictions mandate negative treatment for products closely associated with particular IFCs but do not actually contain a list of geographical entities (see product-based-blacklists in Table 1 right); and some create both jurisdiction-focused and product-focused lists.

- ¹⁰ This distinction between listing specific jurisdictions and using abstract objective criteria is important because the former tends to conflict with widely-held principles at the heart of the international trade system. Foremost among these is that which bars discrimination on national grounds, particularly the most-favoured nation principle. Most-favoured nation accords that goods and services from one foreign jurisdiction must be treated the same as those from any other foreign jurisdiction, or, conversely, that countries cannot discriminate among foreign trading partners on the basis of nationality alone. This principle is enshrined in Article II of the General Agreement on the Trade in Services (GATS) as a general obligation for all members, but also underlies the work of the World Trade Organisation (WTO) in general and all related agreements. More broadly, basing rules and regulations on objective and non-discriminatory criteria is essential for the rule of law at the domestic and international level.

What are national tax blacklists and why are they important?

Table 1: Product-based national tax blacklists¹

	Arg	Brazil	Germany	Italy	Mexico	Portugal	Spain	USA	Ven
CFC	Yes			Yes		Yes	Yes		Yes
Transfer	Yes	Yes							
Deductions	Yes			Yes	Yes	Yes	Yes		
Withholding		Yes					Yes		
Reporting		Yes			Yes		Yes		Yes
Product	IBC	Lease	Trust			Holding	CIS		
Residence			Yes	Yes					
Procurement								Yes	

Controlled Foreign Company (CFC), i.e. the domestic shareholders of companies and other entities incorporated in listed jurisdictions are taxed as if all profits from these entities had been distributed to them, even if this has not occurred.

Transfer: Transfer pricing, i.e. trading between associated entities across borders is automatically regarded as in violation of the 'arm's-length' principle when the transaction involves listed jurisdictions.

Deductions: Disallowance of deductions, i.e. tax deductions that would normally be allowed for individuals and companies are disallowed for transactions within or involving listed jurisdictions.

Withholding: Withholding taxes are automatically applied to transactions with listed jurisdictions and the onus is on taxpayers to demonstrate why some or all should be reimbursed.

Reporting: Special reporting requirements, i.e. taxpayers must provide domestic tax authorities with more information concerning transactions with listed jurisdiction or be charged with a criminal offence.

Product: Particular financial products from listed jurisdictions attract unfavourable treatment, e.g. International Business Companies (IBC), Leasing Companies (Lease), Property Holding Companies (Holding), Collective Investment Schemes (CIS).

Residence: Citizens moving to reside in a listed jurisdiction are still subject to some tax obligations from their home country even after they have left.

Procurement: Public procurement, i.e. companies incorporated in listed jurisdictions are barred from competing for government contracts.



What are national tax blacklists and why are they important?

- ¹¹ A huge variety of nearly 100 countries and territories appears on one national tax blacklist or other. Many of these countries and territories are not connected with the trade in international financial services and are not conventionally identified as IFCs. Nevertheless, an overlapping group of small state IFCs is particularly vulnerable to such treatment. Indeed, the blacklists maintained by the 14 onshore countries analysed affect 23 such IFCs (see Table 2 below).

Table 2: Country-based national tax blacklists²

Blacklisted	Arg	Aust	Braz	Can	Fran	Ger	Ind	Ital	Mex	Por	Spa	UK	USA	Ven
Anguilla	X	x	X		x	x		X	X	X	X		x	X
Bahamas	X	x	X		x	x		X	X	X	X		x	X
Barbados	X		X					X	X		X		x	
Bermuda	X	x	X		x	x		X	X	X	X		x	X
BVI	X	x	X		x			X	X	X	X		x	X
Cayman	X		X		x	x		X	X	X	X		x	X
Cyprus	X	x	X					X	X	X	X			X
Gibraltar	X	x	X		x	x		X	X	X	X	G	x	X
Guernsey	X	x	X		x	x		X	X	X	X	G		X
Hong Kong	X		X					X	X	X	X		x	X
Isle of Man	X	x	X		x	x		X	X	X	X	G		X
Jersey	X	x	X		x	x		X	X	X	X			X
Liechtenstein	X	x	X		x	x		X	X	X	X		x	X
Luxembourg										G	G	G	x	X
Malta	X		X					G	X		X	G		X
Mauritius	X		X					G	X	X	X			X
Monaco	X	x	X		x	x		G	X	X	X		x	X
Neth. Antilles	X	x	X					X	X	X	X			
Panama	X	x	X		x	x		G	X	X	X		x	X
St Lucia	X	x	X					X	X	X	X		x	
Singapore			X					X				G	x	X
Switzerland					x	x		X			X		x	X
Turks & Caicos	X	x	X		x	x		X	X	X	X		x	X

What are national tax blacklists and why are they important?

X= blacklist: Jurisdictions are named as tax havens in legislation, decrees or regulations in a way that entails negative formal-legal consequences for particular types of transactions.

G= greylist: Jurisdictions are named as potential tax havens in legislation, decrees, or regulations in a way that may entail negative formal-legal consequences for particular types of transactions if certain other conditions are met.

x= informal blacklist: Jurisdictions are named as tax havens in legislation, decrees, regulations or other official publications in an illustrative way that does not entail formal-legal consequences.

- ¹² Because of their small domestic markets for financial services, IFCs must have access to the markets of major onshore jurisdictions to prosper, or even to remain viable. National tax blacklists are one of the most important, if not the most important, barriers to the cross-border trade in financial services from IFCs.
- ¹³ No study in existence quantifies how much damage national tax blacklists cause IFCs, the financial services industry, or the global economy in general through distorting patterns of trade and investment. Coming up with an exact value would be extremely difficult. However, the fact that the public and private sectors in IFCs often express concerns about such lists, in international contexts, such as discussions within the Global Forum of the OECD and bilateral negotiations, indicates that blacklists have a major impact on the provision of financial services from IFCs.
- ¹⁴ Confidential interviews conducted by the authors with private and public-sector officials in Andorra, Antigua and Barbuda, Aruba, Barbados, the British Virgin Islands (BVI), the Cayman Islands, the Cook Islands, the Isle of Man, Jersey, Guernsey, Liechtenstein, Mauritius, Montserrat, Samoa, the Seychelles, St Kitts and Nevis and Vanuatu confirm that concerns about the impact and legitimacy of national tax blacklists are serious and widespread among IFCs.



3. Worldwide trends in national tax blacklists

- ¹⁵ There has been no generally observable worldwide trend either to adopt or to abolish national tax blacklists over the last few years. Some states have moved away from the use of such lists, such as Mexico, whereas others have introduced new lists, such as Italy and Portugal.
- ¹⁶ Policy has changed in response to trial-and-error experimentation by tax authorities, as well via emulation and diffusion between tax authorities in different countries, often facilitated or encouraged by international organisations at a regional or global level (for example, the Inter-American Centre of Tax Administrations (IACTA) or the OECD Committee on Fiscal Affairs).
- ¹⁷ The issue of national tax blacklists has also been pushed on to the political agenda in some countries by a surge of media interest, such as that following the ‘corporate inversion’ controversy in the United States from 2002. Since several high-profile firms shifted their place of incorporation and management from the United States to Bermuda, Barbados and other IFC jurisdictions, there has been a flurry of proposals at the Federal and State levels to target firms incorporated in certain IFCs (see Appendix E).
- ¹⁸ Perhaps the issue with the greatest potential for affecting the use of national tax blacklists is the OECD’s harmful tax competition initiative, launched in 1998 and later renamed the harmful tax practices initiative. This initiative has seen 33 participating IFC jurisdictions commit to exchange information on request relating to civil and criminal tax matters with OECD members. A crucial proviso to this commitment, however, is that all OECD member states and certain other non-OECD financial centres also agree to exchange tax information on the same terms (the ‘level playing field’ requirement).
- ¹⁹ This OECD process is now somewhat stalemated. The OECD has been unable to secure commitments to information exchange from all of its member states, but still insists that IFCs abide by their commitments to exchange information. If no way of breaking this impasse is found at the November 2005 meeting of all interested parties in the OECD’s Global Forum, the whole process may collapse. In turn, if this multilateral process does collapse, it appears highly likely that a large number of OECD states will introduce new national tax blacklists. Several OECD states, including Germany and Australia, are already considering their options in this area.
- ²⁰ Finally, in the shadow of the OECD initiative, many IFCs have been negotiating to be removed from such national blacklists in return for concluding bilateral tax information exchange agreements (TIEAs) with blacklisting states.

4. How are the blacklists constructed?

- ²¹ A key question is how such lists are compiled. Why do some jurisdictions end up on blacklists while others avoid this fate? The answer depends on the procedure, criteria or rules used by tax authorities in deciding which jurisdictions should be included in such a national tax blacklist, referred to in this study as the methodology. One simple rule or methodology might be that any jurisdiction with a corporate income tax of less than 20 per cent is placed on a blacklist.
- ²² The procedures that tax authorities use for drawing up national tax blacklists (and whitelists) are surprisingly opaque. Some countries simply do not have any formal procedure for drawing up such lists, or any rationale that explains why some jurisdictions are listed whereas others are not. Often, rather confusingly, countries do specify a formal methodology, but then do not actually use it in drawing up their lists. Then again, countries may have a formal methodology or rule for generating blacklists that was faithfully applied when the list was first created, but has since become out of date. Tax laws and tax rates are constantly changing. So unless there is a major commitment of time and resources to keeping such lists current by regularly re-evaluating scores of jurisdictions, lists quickly become obsolete and inaccurate.
- ²³ The evidence we present in this section on the methodologies used to compile national tax blacklists is circumstantial and suggestive rather than definitive or conclusive. To obtain definitive answers would take a much more ambitious study, with the full cooperation of all of the national tax administrations in the blacklisting states.
- ²⁴ Nevertheless, the evidence we have gathered, both empirically and from off-the-record conversations with tax authorities in some of the blacklisting countries themselves, strongly suggests that a large proportion of the national tax blacklists, and probably a majority, is ‘arbitrary and discriminatory’. By arbitrary and discriminatory we mean that blacklists are not based on a consistently applied objective methodology. Either there is no methodology, or there is a methodology but it is not actually used in compiling blacklists, or blacklists did reflect some objective methodology at some point in the past but (thanks to changing tax laws in foreign jurisdictions) do not at present. Thus, despite the tentative character of the evidence, we consider that the burden of proof rests with those who would seek to argue that national tax blacklists are accurately and consistently compiled in line with objective criteria.
- ²⁵ Tax blacklists are almost always efforts to compile lists of low-tax jurisdictions, often pejoratively labelled as ‘tax havens’. As such, these lists tend to suffer from the same problems as past efforts to define tax havens and distinguish them from non-tax haven jurisdictions. A 2004 review of the legal literature on defining what is a tax haven notes that ‘Almost every work dealing with tax havens begins with the author acknowledging the practical impossibility of clearly defining a tax haven’ (Orlov, “The Concept of Tax Haven: A Legal Analysis,” Intertax 2004).



How are the blacklists constructed?

- ²⁶ The OECD Committee on Fiscal Affairs made a similar observation in 1987: 'The concept of a "tax haven" is a relative one as any country can be a tax haven in relation to a particular operation or situation attempts to provide a single definition of a "tax haven" are bound to be unsuccessful. It can be argued that the "tax haven" concept is such a relative one that it would serve no useful purpose to make further attempts to define it.' (OECD 1987: 20-21)
- ²⁷ The OECD did nevertheless come up with its own (highly controversial) list of 35 'tax havens' in June 2000, but it has since backed away from the use of this term. This list was specifically not called a blacklist by the OECD. Its 2000 report stated that '[This] listing is intended to reflect the technical conclusions of the Committee only and it is not intended to be used as the basis for possible co-ordinated defensive measures' (OECD 2000: 17). It was thus a list of IFCs to be examined and potentially blacklisted if they did not comply with transparency and information exchange demands. By 2005 three of the 35 IFCs listed by the OECD had been removed (Tonga, Barbados and the Maldives), while most of the rest had entered into active dialogue with the OECD to negotiate areas of common concern, particularly the imperative of establishing a level playing field. The exceptions are the five jurisdictions listed by the OECD as 'uncooperative tax havens' (Andorra, Liberia, Liechtenstein, the Marshall Islands and Monaco). Thus only five countries have been effectively blacklisted by the OECD as 'uncooperative tax havens'. The remaining 27, together with six jurisdictions³ that issued 'advance commitments' to the OECD are now referred to as 'participating partners'.
- ²⁸ The OECD's methodology when drafting its initial listing was called into question because it omitted key IFCs, such as Singapore and Hong Kong, along with the organisation's own members, Switzerland and Luxembourg. The exclusion of these jurisdictions was seen as arbitrary and interviews carried out in selected IFCs suggested that Switzerland, Luxembourg, Hong Kong and Singapore have tended to secure a competitive advantage by managing to staying off both OECD 'listing categories' (both non-cooperative and participating partner lists), allowing them to remain 'under the radar', at least for the time being.
- ²⁹ As participating partners, IFC states have effectively been brought into talks with the OECD and in doing so have succeeded in modifying a number of OECD requirements. A comprehensive tax information exchange regime was to take effect from 1 January 2006. Given the lack of success in moving towards a level playing field within the OECD however, the organisation has agreed to suspend any moves towards coordinated measures. In the OECD's June 2004 Global Forum on Taxation, which brings participating partners and OECD members together, the partner IFC's achieved two results. The first was agreement that the imposition of defensive measures be suspended until a level playing field was achieved. The second was that the language used by the OECD was changed. Rather than being told they 'should' exchange information by 2006, countries are now 'encouraged' to exchange information by that date. One jurisdiction, St Vincent and the Grenadines, interpreted this by deciding not to exchange information until the issue of a level playing field was resolved.

How are the blacklists constructed?

- ³⁰ While multilateral listings have rapidly evolved to reflect changing circumstances and ongoing negotiations, their uptake at national level, often through legislation, has been more contingent and has varied considerably between countries. In some cases multilateral lists that have been devised as guides to categorise groups of jurisdictions have been converted into outright blacklists by national governments in a punitive and discriminatory manner.
- ³¹ The danger of using multilateral lists to construct national lists is that the latter tend to be static and unresponsive to changing circumstances, especially when codified in law. This danger is evident in the way that lists produced by the OECD and its affiliated organisation, the Financial Action Task Force (FATF), have been adopted by countries since their release in 2000. Multilateral lists can be used to inform public policy or as the basis for binding, restrictive and punitive legislation that severely curtails the ability of individuals and companies to use the services offered by IFCs.
- ³² For example, with Resolution 7 of 2003, amending section 124 of the Argentine *Companies Act*, Argentina adopted the FATF's list of Non-Cooperative Countries and Territories (NCCTs) without considering that this listing is subject to continual revision and updating. Argentina added seven listed NCCTs to its tax blacklist, including the Cook Islands, just as that jurisdiction was being removed from the FATF's list. Since that resolution was passed the number of NCCTs has been reduced to three, but Argentine legislation does not reflect these changes. Thus countries may effectively outsource the task of devising their national blacklists (even when some of them, such as the OECD's June 2000 listing, were never blacklists in the first place). They may then tend not to respond to changes in international listings or to other conditions and circumstances.
- ³³ For example, in the United States, legislation currently under consideration in the Senate (S 779) to amend the 1986 *Internal Revenue Service Code* would impose punitive Controlled Foreign Company (CFC) regulations on companies based in 'tax havens'. The list of 41 tax haven jurisdictions is taken directly from those approached by the OECD in connection with the harmful tax competition initiative. The proposed list thus does not distinguish between those jurisdictions that made an advance commitment to the OECD (see footnote 3), those which were subsequently removed from the OECD's list without having to make a (conditional) commitment to information exchange, the 33 'participating partner' jurisdictions, and those five which have been judged to be 'uncooperative tax havens' and the only ones effectively blacklisted by the OECD.
- ³⁴ A different approach is evident in Australia. Rather than use the OECD's list as a legal basis for disallowing deductions and monitoring transactions, the Australian Taxation Office (ATO) issued a public report in 2004 advising individuals and companies to exercise caution when dealing with selected IFCs. It discussed the work of the OECD and used its listing for its report. This contained subtle but salient modifications. Before publishing its informal consumer and taxpayer awareness list, the ATO removed Barbados, the Maldives and Tonga from the original listing, just as the OECD had done. It also noted details such as the fact that Malta had a double taxation agreement with Australia.

³ The six jurisdictions that issued advance commitments to the OECD were: Bermuda, the Cayman Islands, Cyprus, Malta, Mauritius and San Marino.



- ³⁵ There are thus substantial differences between the way countries adopt multilateral listings as the basis of their listings. They can be flexible and responsive, issued as cautionary statements, or they can be punitive and discriminatory when written into national law, overlooking changes made by the multilateral bodies themselves while at the same time barring individuals and companies – residents and non-residents alike – from accessing the many sophisticated financial services offered by IFCs.
- ³⁶ Probably the most straightforward admission of how countries come up with lists of tax havens was contained in a report from the US Internal Revenue Service, known as the *Gordon Report*. Despite the *Gordon Report* being written more than 20 years ago, it still seems the most succinct description of how current lists have been compiled. The methodology applied is described as the ‘smell test’ or ‘reputation test’: ‘a country is a tax haven if it looks like one and if it is considered to be one by those who care’. Of course the smell test is a highly subjective, arbitrary rule, that also tends to build in a circular logic: once a jurisdiction is on one country’s or organisation’s list, rightly or wrongly, it is quickly added to others’ lists. It also tends to build in obsolescence, in that reputations may lag or be completely detached from the realities of particular tax codes.

5. Inconsistencies in national tax blacklists

- ³⁷ The claim that tax blacklists are arbitrary and discriminatory is a claim that is energetically supported by those in IFCs. However, it could be objected that private and public-sector officials in IFCs have a clear ulterior motive for discrediting national tax blacklists. It is more significant that off-the-record interviews with tax officials in onshore jurisdictions confirm this picture of the arbitrary and discriminatory nature of national tax blacklists. More specific evidence is presented below.
- ³⁸ In addition to naming several Pacific island countries, the blacklists of at least four countries (Argentina, Mexico, Portugal and Venezuela) contain the entry ‘Pacific islands’, without further detailing which jurisdictions are to be included. This is in contrast to a general entry for the Channel Islands, which then goes on to specify by name those included (Jersey, Guernsey, Alderney, Sark, etc.).
- ³⁹ The problem with a general ‘Pacific islands’ entry is that it does not refer to a juridical or fiscal entity. Instead it is a general geographical term that includes a huge variety of countries, territories and, most importantly, tax regimes. Because the Pacific islands are not a legal or fiscal entity, including them on a blacklist makes about as much sense as an entry for ‘Western Europe’ or ‘the Southern hemisphere’. The Spanish blacklist of 5 July 1991 has a similar problem in listing ‘Windward Islands’, which has not been a juridical or fiscal entity since 1960 but is a geographical term for the island group that includes half-a-dozen sovereign states and the French *département* of Martinique. It does not make sense to include vague geographical descriptors. Such entries call into question the whole methodology employed in creating these countries’ lists.
- ⁴⁰ The Pacific islands, so small, distant and unfamiliar to those outside the region, seem to have posed other problems for those compiling national tax blacklists. Once more, individual mistakes call into question the rigour with which the lists were compiled. From 1996 the Mexican list has included the entity ‘Patau’. There is no such territory or country as ‘Patau’, the closest being Palau, a Pacific island state that obtained independence in 1994 after being a United States-administered United Nations trust territory. In 2003 Argentina copied the same list, incorporating the same mythical island.
- ⁴¹ Another example is the state of St Kitts and Nevis, a confederation of two islands, each of which sets its own offshore laws and regulations. Constitutionally, the island of St Kitts is also known as St Christopher. Yet Venezuela reportedly delisted St Kitts while at the same time adding St Christopher to their national tax blacklist, despite the fact that the two names refer to exactly the same fiscal and geographical entity. This error might be comparable to mistaking ‘the United Kingdom’ and ‘Great Britain and Northern Ireland’ for two separate countries, and trying to apply different tax treatments to each.



Inconsistencies in national tax blacklists

- ⁴² Similar again is the inclusion in the 1991 Spanish list of both 'Fiji', the South Pacific republic comprised of over 100 islands, and 'Vanua Levu', the second-largest island in this archipelago. The island of Vanua Levu has neither a separate administrative nor fiscal status in the Fijian Republic. It seems probable that those compiling the list confused Vanua Levu with Vanuatu, a South Pacific country 1,000km to the West that (unlike Fiji) is known as an IFC. This relatively simple mistake was only corrected 12 years later.
- ⁴³ Although the French *General Tax Code* Article 238A notes of 9 October 1975 have been updated from time to time, they continue to list the Gilbert and Ellice Islands, even though these island chains were partitioned as Kiribati and Tuvalu, achieving independence in 1978 (Tuvalu) and 1979 (Kiribati). Neither of these countries is known as an IFC. The tendency for simple typographical errors and non-existent jurisdictions to find their way into tax blacklists casts doubt on the care and attention devoted to compiling them, and the overall confidence that should be placed in them.
- ⁴⁴ Some lists include jurisdictions that, according to the methodology formally used to compile the lists, simply should not be included. In the Indian Ocean, the Australian territories of Christmas Island and Cocos (Keeling) Islands are included on the Argentine, Mexican, Portuguese and Venezuelan lists, despite the fact that these territories are not IFCs, and do not enjoy any special exceptions on corporate law, corporate income tax rates or tax information exchange.
- ⁴⁵ There was evidence that at least one of these territories, the Cocos (Keeling) islands, was being used as a small IFC in the 1970s. However, the Australian government blocked this development through constitutional means. In a United Nations supervised referendum held in 1984 the population of the islands then voted for full integration with Australia, ending any hope of it becoming a fully-fledged IFC. Like the French in relation to the Gilbert and Ellice Islands, with respect to the Cocos (Keeling) islands, the Argentine, Mexican, Portuguese and Venezuelan lists are more than 20 years out of date. It is not logical that these territories are included on lists ostensibly compiled on low-tax and confidentiality grounds when Australia as a whole is not on these lists.
- ⁴⁶ In the Atlantic Ocean, the British territories of St Helena and Ascension Island appear on the same four countries' blacklists. These two jurisdictions make unlikely IFCs. Previous to April 2004 neither island had a single bank. St Helena has a corporate tax rate of 30 per cent. When the Mexican list, which seems to have been the basis for the Argentine, Portuguese and Venezuelan lists, was compiled in 1996 both islands' financial and company law was simply that of the UK (this has changed since April 2001). The lack of legal separation between the islands and the UK proper for banking and financial purposes again means it does not make sense to list these two territories while excluding the UK itself. The same logic applies to Tristan da Cunha, also in the Atlantic and also on the same lists.

Inconsistencies in national tax blacklists

- ⁴⁷ Foreign tax authorities may also mistake concessionary tax treatment extended to certain foreign investors as representative of the general tax code. For example, in blacklisting Barbados, Chilean tax authorities assumed that the special 2.5 per cent tax rate extended to certain foreign corporations was the general tax rate for all Barbadian corporations, which is in fact 15 times as high. With the exception of Luxembourg 1929 holding companies and Uruguayan *Sociedades Anonimas Fincancieras de Inversion*, blacklisting countries generally fail to distinguish between exceptional tax concessions and the general tax rates and code that apply in blacklisted jurisdictions.
- ⁴⁸ The allegation that national tax blacklists are compiled by 'cutting and pasting' from already extant lists, rather than independent research, seems credible given the mistakes described above and is widely alluded to in off-the-record interviews with key stakeholders in both blacklisted and blacklisting jurisdictions. One story told us informally by several independent interview sources reinforces this. Reputedly, one Latin American country constructed its own national tax blacklist by incorporating a neighbour's list into its tax code. Only later did it realise that it figured on the neighbour's list and had inadvertently blacklisted itself.



6. Conclusions

- ⁴⁹ National tax blacklists suffer from inherent problems. Such lists tend to become out of date, as tax laws change quickly but government legislation and regulations only change slowly. Placing a jurisdiction on such a blacklist is a public negative judgement on their laws, and thus may also cause diplomatic friction. Yet, whatever their failings, there is no sign at present of national tax blacklists going out of fashion. Indeed, depending on the fate of the OECD harmful tax practices initiative, they may become much more common in the next couple of years. Geographically, those countries using tax blacklists are concentrated in Southern Europe and Latin America. The most common types of blacklists are those associated with Controlled Foreign Company (CFC) legislation, and those that deny tax deductions that would ordinarily be available. A very large number and an improbably wide range of countries and territories are featured on such lists, but small state IFCs are particularly targeted in this regard.
- ⁵⁰ Perhaps the most important question is how such blacklists are compiled and why some jurisdictions are included, whereas others with very similar tax systems are left out. The evidence on methodologies in this report does not claim to be definitive, but it does claim to be a significant advance on the (very few) previous comparative studies of national tax blacklists. We find strong indications that many, and perhaps most, national tax blacklists are drawn up in an arbitrary and discriminatory manner. This is to say that such blacklists are often not drawn up or maintained in line with consistently applied objective standards.
- ⁵¹ The evidence for this claim comes from anomalies contained in lists that cast doubt upon the whole. The examples we have cited extend to the inclusion of non-existent places (Patau), the inclusion of regions that are mere expressions of geography rather than fiscal-legal entities (the Pacific islands), the inclusion of islands that do not have a separate fiscal existence (Christmas and Cocos (Keeling) Islands, St Helena and Ascension Island), the mistaking of one country with two names for two separate countries (St Kitts/St Christopher and Nevis), confusing different places with similar names (Vanua Levu and Vanuatu), the identification of jurisdictions that have long since been dissolved (Gilbert and Ellice Islands, Windward Islands), along with the misuse of FATF and OECD lists. We believe that further investigation of these blacklists would turn up additional errors.
- ⁵² Adding to doubts concerning the reliability of these lists is the tendency for individual mistakes to recur from one list to another. This suggests that tax authorities are simply 'cutting and pasting' from foreign lists, and have not conducted independent research on the jurisdictions they are singling out for unfavourable treatment. If true, the ultimate example of this would be Venezuela copying a Mexican blacklist (as seems also to have been done by Argentina and Portugal) and inadvertently blacklisting itself. Tax authorities in Argentina, Australia and the United States have explicitly premised their lists on those of the OECD or FATF.
- ⁵³ Blacklists can damage small countries' economies. The rule of law at the domestic and international level requires that they be developed on the clear basis of objective, non-discriminatory and consistently-applied criteria. The evidence set out here stands as a warning to any country that has already introduced a blacklist or is considering doing so to be rigorous in ensuring that this list is objectively justified and is capable of being updated as circumstances change.

APPENDIX A: Individual blacklists by issuing country

Below we present information on national tax blacklists for 20 countries (note that some countries have more than one national tax blacklist). The information for each country is organised as follows. The first heading (Type) refers to the type of negative consequences that apply in general terms (transfer pricing, withholding tax, etc.). Each of these terms is defined under Table 1 above. The second heading (Source) provides the legislation and regulations that both contain the blacklist and specify the negative tax treatment that applies to transactions with listed jurisdictions. These provisions are often cross-referenced, so Law X of 2005 may impose a special withholding tax on transfers to 'tax haven' jurisdictions, the list of which is contained in Law Y of 1995. The third heading (Number) gives the number of jurisdictions on the list. The fourth heading (Methodology) summarises the formal criteria or methodology apparently used in compiling the list, where these are provided. Finally, we summarise briefly the negative outcomes of being on a list (Consequences).

Argentina:

Transfer pricing blacklist

Source: *Decree 1037/2000* of 14 November 2000, *Law No. 25,239*, *Law 25,784*, *Law 25,795*

Number: 88 jurisdictions

Methodology: Jurisdictions with financial secrecy, minimum reporting requirements, ring-fencing, discretionary tax privileges, allowing ownership to be held in trust, no registry of companies and partnerships, no taxes on dividends and interests payments to non-residents. Countries with tax information exchange agreements are delisted.

Consequences: All transactions with listed transactions are automatically regarded as between related parties (arm's length is disallowed), unless proven otherwise.

Controlled Foreign Company rules

Source: *Decree 1037/2000* of 14 November 2000, *Law No. 25,239*, modified *Decree 115/2003* of 23 January 2003

Number: 88 jurisdictions

Methodology: As above

Consequences: All companies based in listed jurisdictions with 50 per cent of net income from non-operating income are deemed to have distributed all income regardless of whether the income was remitted. Passive income in the Decree is defined as sale of shares, derivatives transactions, interests, sale of funds, bond interest, dividends, royalties, real estate leasing.

Disallowance of deductions blacklist

Source: *Decree 1037/2000* of 14 November 2000, *Law No. 25,239*

Number: 88 jurisdictions

Methodology: As above

Consequences: No foreign tax credits are generated by companies resident in listed jurisdictions



Appendix A

Products blacklist

Source: Section 124 of *Companies Act* of 2003 Resolution 7

Number: 88 jurisdictions plus Financial Action Task Force (FATF) Non Cooperative Countries and Territories list (Cook Islands, Philippines, Indonesia, Myanmar, Nauru, Nigeria)

Methodology: Low-tax jurisdictions or those labelled as 'uncooperative' in the fight against money laundering by the Argentine Financial Intelligence Unit, Central Bank, or the FATF.

Consequences: Companies that are not able to practise the full range of corporate functions in the jurisdictions of their incorporation (i.e. an anti-ring fencing provision), will not be accepted on the Argentine registry, unless they can prove real business activity in their place of incorporation.

Australia:

No formal tax blacklist. Controlled Foreign Company whitelist of seven Broad Exemption Listed Countries, copied from New Zealand. There is also a 54-country Foreign Investment Fund – whitelist copied from Canada. Informal consumer and taxpayer awareness campaign that lists 38 jurisdictions and is explicitly based on June 2000 OECD list published as *Tax Havens* and *Tax Administration*, February 2004, with notes for the Australian context.

Brazil:**Transfer pricing blacklist**

Source: SRF *Normative instruction*.33 30 of November 2001; *Law* 9,430/96 of 30 December 1996; Article 4 *Law* 10,451/02; *Normative instruction* 33 of 30 March 2001, modified by *Normative instruction* 188/02 6 of August 2002; *Law* 10,833 of 29 December 2003

Number: 53 jurisdictions

Methodology: Jurisdictions with no income tax or income tax less than 20 per cent, or with secrecy laws on corporate ownership.

Consequences: Sales to companies in tax havens whether related or not are not eligible for methods of simplified transfer pricing calculation. Transactions are automatically assumed to be between related parties.

Withholding tax blacklist

Source: *Law* 9,430/96 of 30 December 1996, *Normative instruction* 33 of 30 March 2001, modified by *Normative instruction* 188/02

Number: 53 jurisdictions

Methodology: As above

Consequences: A withholding tax of 25 per cent applies to all payments to residents of listed jurisdictions.

Product blacklist

Source: *Law* 9,779/99 of 19 January 1999

Number: 53 jurisdictions

Methodology: As above

Consequences: The zero tax on shipping and aircraft leasing payments is replaced with a 25 per cent withholding tax.

Appendix A

Canada:

No formal tax blacklist. Whitelist of jurisdictions for the taxation of dividends received by Canadian corporations from foreign entities that are at least 10 per cent Canadian owned. A long Foreign Investment Fund whitelist.

France:

No formal tax blacklist. Informal, illustrative blacklist of 37 jurisdictions contained in General Tax Code Article 238A, notes of 9 October 1975 relating to Controlled Foreign Companies.

Germany:**Residency blacklist**

Source: *Aussensteuergesetz*, 1972, Parts 2,3 and 5 modified by Annex 1 and 2 of the *Circular Regarding the Application of the Foreign Tax Act* of 14 May 2004

Number: An illustrative list of 18 jurisdictions

Methodology: Statutory tax rate of below 25 per cent or at the discretion of the Ministry of Finance

Consequences: Citizens who re-locate to 'zero- or low-tax areas' are still liable for German income taxes on German source income for 10 years after leaving Germany and are deemed to have sold any major shareholdings

Product blacklist

Source: *Aussensteuergesetz*, 1972, Parts 2,3 and 5 modified by Annex 1 and 2 of the *Circular Regarding the Application of the Foreign Tax Act* Act of 14 May 2004

Number: As above

Methodology: As above

Consequences: The income and assets of a foreign trust are automatically credited to the settlor if in Germany, or if not the German resident beneficiaries

Italy:**Controlled Foreign Company rules**

Source: *Ministerial Decree* of 21 November 2001, modified by *Legislative Decree* of 12 December 2003, No.344

Number: 66 jurisdictions

Methodology: Countries with lower taxes than Italy and lack of effective information exchange, influenced by OECD June 2000 list. Includes companies controlled by or affiliated with (at least 20 per cent share ownership) Italians.

Consequences: The list is sub-divided into three sections: offshore jurisdictions; jurisdictions with generally offshore regime, excluding certain activities; onshore jurisdictions that nevertheless have some offshore provisions subject to Controlled Foreign Company rules.



Appendix A

Disallowance of deduction blacklist

Source: Article 96(1-bis) and 76(7-bis) of *Income Tax Code*, Ministerial Decree of 23 January 2002

Number: 67 jurisdictions

Methodology: Zero tax or a rate that is lower than that determined by the Ministries of Finance and Treasury, influenced by OECD June 2000 blacklist

Consequences: The 60 per cent participation exemption for dividends from foreign companies is disallowed. Limits deductions for expenses between Italian-resident individuals and corporations in listed jurisdictions unless real business activity is shown to have taken place.

Residency blacklist

Source: Decree of the Ministry of Finance of 4 May 1999, Ministerial Decree of 23 January 2002

Number: 59 jurisdictions

Methodology: As above

Consequences: Individuals that have moved to listed jurisdictions are still taxed as Italian residents unless they can prove otherwise (reversal of the burden of proof).

Mexico:**Controlled Foreign Company blacklist**

Source: List of Territories with Preferential Tax Regimes, subparagraph VI Artículo Transitorio Unico of *Income Tax Law*, 1996, modified by Articles 212-215 *Income Tax Law*, 2005

Number: 90 jurisdictions

Methodology: Where effective tax is less than 75 per cent of that in Mexico, and for fiscally transparent entities. Delisting procedure specified in legislation as dependent on Tax Information Exchange Agreement

Consequences: Applied to trusts and companies, taxpayers must identify income from entities in listed countries separately, and this is taxed at 40 per cent. Modified 1 January 2005, the list became suggestive rather than legally binding. A clarification was issued 30 May 2005.

Disallowance of deductions list

Source: as above

Number: 90 jurisdictions

Methodology: As above

Consequences: Payments to entities in listed jurisdictions are not deductible, nor can losses be amortised, unless proven to be arm's length

Special reporting requirement

Source: Article 214 (1), *Income Tax Law* of 1 January 2005

Number: 90 jurisdictions

Methodology: As above

Consequences: Taxpayers must file an annual declaration reporting investments in listed jurisdictions and relevant bank information. Failure to do so within three months of due date is a criminal offence.

Appendix A

Portugal:**Controlled Foreign Company blacklist**

Source: *Potaria* No.150/2004 of 13 February 2004

Number: 83 jurisdictions

Methodology: List devised on the basis of no equivalent to Portuguese corporate or income tax, or that the amount of tax payable in the listed jurisdiction would be less than 60 per cent of that which would be paid in Portugal

Consequences: Shareholders in companies incorporated in listed jurisdictions are taxed on the deemed profits of those companies whether or not these profits have been repatriated.

Disallowance of Deduction list

Source: Article 59 of *Corporate Income Tax Law*

Number: 83 jurisdictions

Methodology: As above

Consequences: Some payments by Portuguese individuals and companies to individuals or companies in listed jurisdictions are barred from claiming the usual tax deductions unless it is proven that they took place at arm's length. Transactions with listed jurisdictions are not eligible for the standard exemptions from stamp duty, or interest earned on treasury bonds, or capital gains on sale of shares.

Product blacklist

Source: *Reforma do Património* of 30 July 2003

Number: 83 jurisdictions

Methodology: As above

Consequences: For property owned by companies from listed jurisdictions there is a Municipal Transfer Tax of 15 per cent at sale, a 5 per cent Municipal tax on the value of the property, tax of 25 per cent of deemed rent calculated as 1/15th of the value of the property, as well as 25 per cent capital gains tax.

Spain:**Controlled Foreign Company rules.**

Source: *Royal Decree* 1080/1991 of 5 July, modified by *Royal Decree* 116/2003 of 31 January, Art. 107.12 of *Corporation Tax Law* and article 92.11 of *Personal Income Tax Law*

Number: 49 jurisdictions

Methodology: If the effective corporate tax in the jurisdiction is less than 26.75 per cent (i.e. less than 75 per cent of the Spanish rate). Delisting is provided for in Article 2 *Royal Decree* 1080/1991 5 July as modified by *Royal Decree* 116/2003 for listed jurisdictions that conclude a Tax Information Exchange Agreement with Spain.

Consequences: All income is assumed to be passive, and for tax purposes a minimum income of 15 per cent of the value of the participating interest is assumed



Appendix A

Disallowance of Deduction list

Source: *Royal Decree* 1080/1991 of 5 July, modified by *Royal Decree* 116/2003 of 31 January, Articles 21 and 117 of *Corporation Tax Law* and Article 14.2 of *Non-Resident Income Tax Law*

Number: 49 jurisdictions

Methodology: As above

Consequences: Disallows participation exemption on income, dividends and capital gains for entities in listed jurisdictions. Disallows deductions for payments of services carried out by residents of listed jurisdictions unless these are shown to be for valid economic reasons.

Special reporting requirements blacklist

Source: D A 13 *Personal Income Tax Law*

Number: 49 jurisdictions

Methodology: As above

Consequences: Special reporting rules for taxpayers who have property or shares in listed jurisdictions.

Withholding tax blacklist

Source: Article 118.4 of *Corporation Tax Law*, Article 39 of *Non-Resident Income Tax Law*

Number: 49 jurisdictions

Methodology: As above

Consequences: Dividends from a Spanish holding company have a withholding tax applied if they are paid to residents on listed jurisdictions. The same withholding tax is applied to the sale of shares in a Spanish holding company if paid to a resident in a listed country. Payments made to a fiscally transparent partnership in a listed jurisdiction are subject to withholding tax regardless of the residency of the partners.

Product

Source: Articles 60 and 74 of *Corporation Tax Law*, Article 96 of *Personal Income Tax Law*

Number: 49 jurisdictions

Consequences: Spanish investors in collective investment schemes are deemed to gain income worth 15 per cent of the investment unless proven otherwise.

United Kingdom:

Controlled Foreign Company white and greylists

Source: Sections 747 to 756 and Schedules 24,25 and 26 of the *Income and Corporation Taxes Act* of 1988, *Finance Act*, 2000.

Number: 49 jurisdictions on white list, 28 on greylist

Methodology: Paying less than 75 per cent of the amount of tax due if UK resident unless covered by one of five exemptions.

Consequences: Profits of the subsidiary company are taxed at the level of the UK parent company.

Appendix A

United States:

No general list under Controlled Foreign Company provisions but a suggestive blacklist of 29 jurisdictions published by Treasury in 1994. The USA *Patriot Act* (October 2001) that modifies the US *General Code* Section 5381A defines the criteria for 'tax havens and offshore secrecy havens' as those jurisdictions aiming to attract foreign clients with ring-fenced tax and regulatory concessions, a large financial sector relative to the rest of the economy, and jurisdictions identified as such by multilateral groups.

There have been numerous attempts to pass public procurement bans at Federal and State level to prevent companies that have performed 'corporate inversions' from bidding for public contracts such as general appropriations bills for the Departments of Defense, Homeland Security, Transportation, Energy and Treasury (see Appendix E). Thus far, the only attempt that has become Federal law is a procurement blacklist relating to the 2004 budget for the Department of Homeland Security (p.L. 108-334).

The *Tax Shelter and Tax Haven Reform Act* of 2005 (S 1565), introduced to the Senate on 29 July 2005, would authorise Treasury to construct a list of 'uncooperative tax havens' and would involve denial of deductions and extra reporting requirements for those transferring money to listed jurisdictions. The Treasury has been authorised to construct such a list before, in the *Patriot Act* and as far back as the Kerry amendment in the late 1980s. Legislation currently under consideration in the Senate (S 779) to amend the 1986 *Internal Revenue Service Code* would impose punitive Controlled Foreign Company regulations on companies based in 41 'tax havens'. The list is taken directly from those jurisdictions approached by the OECD in connection with the harmful tax competition initiative, with provision for Treasury to delist.

Venezuela:

Controlled Foreign Corporation rules.

Source: *Resolution SENIAT* of 19 March 2001, modified 15 January 2003

Number: 84 jurisdictions

Methodology: A corporate tax rate of less than 20 per cent, unless these jurisdictions have signed a Double Tax Agreement with information exchange provisions.

Consequences: Taxation of deemed distribution of dividends from companies in listed jurisdictions owned by Venezuelan citizens.

Reporting

Source: As above

Number: 84 jurisdictions

Methodology: As above

Consequences: The Resolution applies to trusts, companies and investment funds. Income from entities in listed jurisdictions must be identified separately on tax returns.



Appendix B

APPENDIX B: Selected Additional Countries with National Tax Blacklists

Belgium:

Royal Decree of 13 February 2003

Chile:

Decree 628 24 of July 2003, *Internal Revenue Service Decision 5412* of 11 December 2000, *Law 19,480* of 3 December 2003

Colombia:

Taxation Reform Act of 1 January 2004

Greece:

Circular Interpretation Letter No. 1021764/5 of March 2003, pol.1041

Hungary:

Ministry of Finance Information Note 8007/2003

Peru:

Article 12 DS 045 of 16 March 2001

Appendix C

APPENDIX C: Selected National Tax Blacklists

C.1 Argentina⁴

Albania	Greenland	Puerto Rico
American Samoa	Guam	Qatar
Andorra	Guyana	Qeshm Island
Angola	Hong Kong	Saint Kitts and Nevis
Anguilla	Isle of Man	Saint Pierre and Miquelon
Antigua and Barbuda	Norfolk Island	Saint Vincent and the Grenadines
Aruba	Jordan	Saint Helena
Ascension Island	Kiribati	Saint Lucia
Azores	Kuwait	San Marino
Bahamas	Labuan	Seychelles
Bahrain	Liechtenstein	Solomons
Barbados	Liberia	Sri Lanka
Belize	Luxembourg (1929 Holding Companies only)	Svalbard
Bermuda	Macao	Swaziland
British Virgin Islands	Madeira	Tokelau
Brunei	Maldives	Tonga
Campione d'Italia	Malta	Trieste
Cayman Islands	Marshall Islands	Trinidad and Tobago
Channel Islands (Guernsey, Jersey, Alderney, Great Sark, Herm, Little Sark, Brechou, Jethou, Lihou)	Mauritius	Tristan da Cunha
Christmas Island	Monaco	Tunisia
Cocos (Keeling) Islands	Montserrat	Turks and Caicos
Cyprus	Nauru	Tuvalu
Djibouti	Netherlands Antilles	United Arab Emirates
Dominica	Niue	Uruguay (SAFIs only)
French Polynesia	Oman	United States
Gibraltar	Ostrava Free Zone	Virgin Islands
Grenada	Pacific islands	Vanuatu
Cape Verde	Panama	Western Samoa
	Patau	Yemen
	Pitcairn Island	

⁴ Source: Decree 1037/2000 of 14 November 2000



Appendix C

C.2 Brazil⁵

American Samoa	Liechtenstein
Andorra	Luxembourg
Anguilla	Macau
Antigua and Barbuda	Madeira
Aruba	Maldives
Bahamas	Malta
Bahrain	Marshall Islands
Barbados	Mauritius
Belize	Monaco
Bermuda	Montserrat
British Virgin Islands	Nauru
Campione d'Italia	Netherlands Antilles
Channel Islands (Alderney, Guernsey, Jersey and Sark)	Niue
Cayman Islands	Oman
Cyprus	Panama
Cook Islands	St Kitts and Nevis
Costa Rica	San Marino
Djibouti	Saint Vincent and the Grenadines
Dominica	Saint Lucia
Gibraltar	Seychelles
Grenada	Singapore
Hong Kong	Tonga
Isle of Man	Turks and Caicos
Labuan	United Arab Emirates
Lebanon	US Virgin Islands
Liberia	Vanuatu
	Western Samoa

⁵ Source: Normative Instruction 188/02 of 06 August 2002.

Appendix C

C.3 Mexico⁶

American Samoa	Liechtenstein
Andorra	Luxembourg
Anguilla	Macau
Antigua and Barbuda	Madeira
Aruba	Maldives
Bahamas	Malta
Bahrain	Marshall Islands
Barbados	Mauritius
Belize	Monaco
Bermuda	Montserrat
British Virgin Islands	Nauru
Campione d'Italia	Netherlands Antilles
Channel Islands (Alderney, Guernsey, Jersey and Sark)	Niue
Cayman Islands	Oman
Cyprus	Panama
Cook Islands	Saint Kitts and Nevis
Costa Rica	Saintt Vincent and the Grenadines
Djibouti	Saint Lucia
Dominica	San Marino
Gibraltar	Seychelles
Grenada	Singapore
Hong Kong	Tonga
Isle of Man	Turks and Caicos
Labuan	United Arab Emirates
Lebanon	US Virgin Islands
Liberia	Vanuatu
	Western Samoa

⁶ Source: Subparagraph VI Artículo Transitorio Unico of, Income Tax Law of 1996.



Appendix C

C.4 Portugal⁷

American Samoa	Grenada	Panama
Andorra	Guam	Pitcairn Island
Anguilla	Guyana	Puerto Rico
Antigua and Barbuda	Honduras	Qatar
Aruba	Hong Kong	Qeshm Island
Ascension	Isle of Man	Saint Helena
Bahamas	Jamaica	Saint Kitts and Nevis
Bahrain	Jordan	Saint Lucia
Belize	Kiribati	Saint Pierre and Miquelon
Bermuda	Kuwait	Saint Vincent and the Grenadines
Bolivia	Labuan	Samoa
British Virgin Islands	Lebanon	San Marino
Brunei	Liberia	Seychelles
Cayman Islands	Liechtenstein	Solomon Islands
Channel Islands Alderney, Guernsey, Jersey, Sark	Luxembourg (1929 Holding Companies)	Svalbard
Christmas Island	Maldives	Swaziland
Cocos (Keeling) Islands	Marshall Islands	Tokelau
Cook Islands	Mauritius	Tonga
Costa Rica	Monaco	Trinidad and Tobago
Cyprus	Montserrat	Tristan da Cunha (SAFIs)
Djibouti	Nauru	Turks and Caicos
Dominica	Netherlands Antilles	Tuvalu
Falkland Islands	Niue	United Arab Emirates
Fiji	Norfolk Island	Uruguay
French Polynesia	Northern Marianas	US Virgin Islands
Gambia	Oman	Vanuatu
Gibraltar	Pacific Islands	Yemen
	Palau	

⁷ Source: Portaria No. 150/2004

Appendix C

C.5 Spain⁸

Andorra	Liberia
Anguilla	Liechtenstein
Antigua and Barbuda	Luxembourg (1929 Holding Companies)
Aruba	Macao
Bahamas	Malta
Bahrain	Mauritius
Barbados	Monaco
Berruda	Montserrat
British Virgin Islands	Nauru
Brunei	Netherlands Antilles
Cayman Islands	Northern Marianas
Channel Islands Alderney, Guernsey, Jersey, Sark	Oman
Cook Islands	Panama
Cyprus	Saint Lucia
Dominica	Saint Vincent and the Grenadines
Falkland Islands	San Marino
Fiji	Seychelles
Gibraltar	Singapore
Grenada	Solomon Islands
Hong Kong	Trinidad and Tobago
Isle of Man	Turks and Caicos
Jamaica	United Arab Emirates
Jordan	US Virgin Islands
Lebanon	Vanuatu

⁸ Source: Royal Decree 1080/1991 of 5 July 1991 as modified by Royal Decree 116/2003 of 31 January 2003.



Appendix C

C.6 Venezuela⁹

Albania	French Polynesia	Pacific Islands
Angola	Gabon	Palau
American Samoa	Gibraltar	Panama
Andorra	Greenland	Pitcairn Island
Anguilla	Grenada	Puerto Rico
Antigua and Barbuda	Guam	Qatar
Aruba	Guyana	Qeshm Island
Ascension Island	Honduras	Saint Christopher and Nevis
Bahamas	Hong Kong	Saint Helena
Bahrain	Isle of Man	Saint Pierre and Miquelon
Belize	Jordan	Saint Vincent and the Grenadines
Bermuda	Kiribati	San Marino
British Virgin Islands	Kuwait	Seychelles
Brunei	Labuan	Solomon Islands
Campione d'Italia	Lebanon	Sri Lanka
Canary Islands	Liberia	Svalbard
Cape Verde	Liechtenstein	Swaziland
Cayman Islands	Luxembourg	Tokelau
Channel Islands Alderney, Guernsey, Jersey, Sark	Macao	Tristan da Cunha
Christmas Island	Malta	Tunisia
Cocos (Keeling) Islands	Marshall Islands	Turks and Caicos
Cook Islands	Mauritius	Tuvalu
Cyprus	Monaco	United Arab Emirates
Djibouti	Montserrat	Uruguay
Dominica	Nauru	US Virgin Islands
Dominican Republic	Niue	Vanuatu
Falkland Islands	Norfolk Island	Western Samoa
	Oman	Yemen
	Ostrava	

Appendix D

**APPENDIX D:
United States Informal list of Tax Havens¹⁰**

Anguilla
 Antigua and Barbuda
 Aruba
 Austria
 Bahamas
 Bahrain
 Barbados
 Belize
 Bermuda
 British Virgin Islands
 Cayman Islands
 Costa Rica
 Dominica
 Gibraltar
 Grenada
 Hong Kong
 Liberia
 Liechtenstein
 Luxembourg
 Monaco
 Montserrat
 Netherlands Antilles
 Panama
 Saint Christopher and Nevis
 Saint Lucia
 Saint Vincent and the Grenadines
 Singapore
 Switzerland
 Turks and Caicos

⁹ Source: Resolution SENIAT of 19 March 2001, modified 15 January 2003

¹⁰ Used for IRS statistical purposes, 1994.



APPENDIX E: US Bills Introduced to Combat Corporate Inversions and Tax Haven – Facilitated Avoidance

Corporate inversion bills (tax loophole and contract-related bills):

HR 1619 Amendment to Internal Revenue Code of 1986. (inversions provision)
HR 2143 Permanent Death Tax Repeal Act (inversions provision)
HR 3857/S 2050 Tax Code treatment of inversion transactions
HR 3884 The Corporate Patriot Enforcement Act
HR 3922 Save America's Jobs Act (inversions provision)
HR 4756 Uncle Sam Wants You Act (inversions)
HR 4831 Patriotic Purchasing Act (inversion)
HR 4931 Retirement Savings Security Act. (inversions provision)
HR 4993 No Tax Breaks for Corporations Renouncing America Act
HR 5095 American Competitiveness and Corporate Accountability Act
HR 5005 Homeland Security Act of 2002
HR 5010 Department of Defense 2003 Appropriations
HR 5120 Treasury and General Government Appropriations Act, 2003 (inversion amendments)
HR 5263 Agriculture, Rural Development, FDA and Related Agencies Appropriations 2003 (inversions)
S 2119 Reversing the Expatriation of Profits Offshore Act
HR 2/S 1054 Jobs and Growth Tax Relief Reconciliation Act of 2003
HR 737/S 384 The Corporate Patriot Enforcement Act
HR 878 Armed Forces Tax Fairness Act of 2003
HR 1308 Tax Relief, Simplification, and Equity Act of 2003 (corp. expatriate provisions) HR 1355/S 29/S 134 Wellstone Memorial Stop Corporate Expatriates Act. (Bar corporate expats from DHS contracts)
HR 6/HR 1531 Energy Tax Policy Act
HR 1769 Jobs Protection Act of 2003
HR 1837 Services Acquisition Reform Act of 2003
HR 2122 Project Bioshield Act of 2003 (corporate inversions provisions)
HR 2184 Fairness and Accountability in International Taxation Act
HR 2555 Homeland Security Department 2004 Appropriations

HR 2658 and **S 1382** Department of Defense Appropriations Act of 2004 (contracts) HR 2673 Consolidated Appropriations Act 2004
HR 2799 Departments of Commerce, Justice, State 2004 Appropriations -inversions/contract ban
HR 2896/S 1637 American Jobs Creation Act! Jumpstart Our Business Strength (JOBS) Act
HR 2989 Transportation & Treasury 2004 Appropriations
HR 4200/S 2400 Defense Department 2005 Authorization
HR 4228 Acquisition System Improvement Act
HR 4503/S 14 Energy Policy Act of 2004 – corporate inversion
HR 4520 American Jobs Creation Act
HR 4567/S 2537 Homeland Security Appropriations Act of 2005
HR 4613/S 2559 Defense Department 2005 Appropriations. HR 5025/S 2806 Transportation, Treasury, and Independent Agencies 2005 Appropriations
HJ Res. 2 Consolidated Appropriations Resolution of 2004
S 135 Dayton Fair Tax Cut Act
S 272 Charity, Aid, Recovery and Empowerment (CARE) Act of 2003 (inversions provision)
S 513 The Corporate Tax Fairness and Shareholder Rights Act of 2003 (to require that shareholders be notified of the move)
S 1149 Energy Tax Incentives Act
HR 1303 Fairness and Accountability in International Taxation Act of 2005

Other bills related to tax havens, shelters, etc.:

HR 2520 Abusive Tax Shelter Shutdown Act
HR 4192 Provisions related to 'reinsurance and foreign persons and treatment under U.S. tax laws'
HR 1755 Provisions related to 'reinsurance and foreign persons and treatment under U.S. tax laws'
S 2210 The Tax Shelter and Tax Haven Reform Act (108th Congress – has a section that would eliminate tax breaks involving 'uncooperative tax havens')
S 779 Would eliminate tax benefits for controlled foreign corporations organized by U.S. owners in designated tax havens
S 2235 (section that would thwart use of tax havens)
S 2339 Tax Haven and Abusive Shelter Reform Act of 2002
S 1511 International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001
S 398 International Counter-Money Laundering and Foreign Anticorruption Act of 2001 S 1565 Tax Shelter and Tax Haven Act of 2005

Deconstructing National Tax Blacklists reveals that the blacklists operated by large and powerful countries against smaller and weaker ones are often based on arbitrary criteria and not objectively justified. Blacklists may simply be copied between countries without revision or drawn from lists compiled by international organisations for other purposes; and even when initially based on a clear methodology, they are rarely updated to take account of changed circumstances.

Deconstructing National Tax Blacklists should cause the exponents of blacklists to rethink their approach and end discrimination against smaller states.

About STEP

STEP is a professional body providing education, training, representation, and networking for over 11,000 members who are professionals specialising in trusts and estates, executorship, will writing, administration and related taxes.

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