



Onshore secrecy, offshore transparency

Jason Sharman presents the key findings of his recent research on financial anonymity and crime, which involved forming anonymous shell companies in on and offshore jurisdictions



ABOUT THE AUTHOR

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In the wake of the London G20 Summit earlier this year, leaders on both sides of the Atlantic have denounced 'tax havens' in ever stronger terms. Despite the lack of an obvious link to the current economic crisis, 'tax havens' are said to undermine global financial transparency and stability while facilitating a range of criminal activities. The crux of the issue is information, or the extent to which actors and transactions can be cloaked in a veil of financial secrecy. But contrary to conventional wisdom, it seems that Organisation for Economic Co-operation and Development (OECD) countries, and in particular Britain and the United States, are far worse offenders in relation to global standards mandating financial transparency than the small countries usually labelled as 'tax havens'. Specifically, the US, the UK and other OECD states do a much worse job collecting information on the owners of shell companies than offshore financial centres. Because the former collect little or no information on those behind shell companies, they provide the kind of de facto financial anonymity that is widely held to facilitate money laundering, tax evasion, grand corruption and the financing of terrorism.

Too often claims and counter-claims concerning 'tax havens' and 'the dark of side of globalisation' more generally have been made without evidence. To address this deficit, the author's study sought to

violate recent global standards prohibiting anonymous participation in the international financial system. These standards have been propagated by various international organisations dominated by the G20 countries: the Financial Action Task Force (FATF), the OECD, the Financial Stability Forum, and so on. In particular, these bodies have emphasised the requirement to find the real (beneficial) owner in control of corporate vehicles. Shell companies that obscure the real owner 'behind the corporate veil' (to use the OECD's phrase) have been identified in a series of reports by the World Bank, United Nations, European Union and others to be the most common elements in major cross-border financial crime.

Shopping for anonymous shell companies

In this context, the author undertook a study, entitled *Behind the Corporate Veil: A Participant Study of Financial Anonymity and Crime*. The aim of the study's 'rule-testing by rule-breaking' strategy was two-fold: first to test how effective these standards were overall, second to find out which sorts of countries were more rigorous or lax in applying them. The project was based on attempting to found anonymous corporate vehicles that conceal the author's identity, and then establish corporate bank accounts for these vehicles. The research involved electronically soliciting offers of anonymous corporate vehicles from 45 different corporate service providers in 22 different countries, and collating the various responses. Anonymous shell companies in isolation can sometimes be useful in disguising financial crime, but generally depend on associated bank accounts. And so the next step was trying to set up bank accounts linked to

these shell companies. To the extent that the shell companies are anonymous (that is, where the beneficial owner remains unknown), the bank account will also be de facto anonymous.

Seventeen of the 45 attempts to solicit anonymous corporate vehicles met with success. Of these, 13 of 17 successful approaches were to service providers in OECD countries (seven in the UK, four in the United States, one in Spain, and one in Canada). This compared with only four service providers of 28 willing to provide anonymous shell companies in countries often identified as 'tax havens' (Hong Kong, Singapore, Belize and Uruguay). Corporate service providers in jurisdictions like Bermuda, the Bahamas, British Virgin Islands, Cayman Islands, Liechtenstein, Seychelles and Panama were punctilious in their customer due diligence. The same was true even of smaller centres like Dominica and Nauru.

The determination of whether or not the companies on offer were anonymous (and thus whether the corporate service providers were compliant or in violation of international rules) depended on the supporting documentation required by the corporate service providers. Where it was necessary to provide a notarised copy of a passport together with utility bills, the shell companies would not be anonymous. The company's existence and activities could be traced back to the real owner. But where it was only necessary to type in a name, address and credit card details on to a web dialogue form to establish the company, and no supporting documentation was required, it became impossible for any outsider to establish the real owner. Although the cost varied, in all cases establishing an anonymous shell corporation is a cheap proposition, ranging from USD800 to USD3,000 as an up-front cost followed by a slightly smaller amount on an

annual basis. To follow the exercise through to its logical conclusion, the author purchased an anonymous England and Wales company for GBP515, incorporated within a day. As corporate service providers are only too happy to point out, a shell company from an onshore jurisdiction not only can provide greater secrecy, but also avoids the taint associated with offshore venues.

Having 17 offers of anonymous shell companies, the next step was to assess whether bank accounts could be set up for these entities while preserving their anonymity. Soliciting accounts proved to be more difficult, as banks were rarely willing to open a corporate account without having the kind of 'know your customer' documentation listed above. But although the absolute level of international compliance here was higher, in terms of the leaders and laggards in the field the same patterns applied: on average, the US and UK have a worse record of compliance than offshore financial centres.

In particular, until 2007, service providers in the UK would link anonymous England and Wales companies with equally anonymous Latvian bank accounts. Even worse, in Wyoming until 2008, as a non-resident it was possible to establish a Limited Liability Company with associated bank account without providing any identity documentation at all. The accommodating service providers in that state were also willing to rent out their employees' Social Security Numbers to prospective customers to facilitate the process. Nor have these deficiencies been entirely fixed. In 2009, the author was able to create a Nevada company and then open an account at one of America's most prominent banks with only a scanned copy of a driver's licence. In contrast, when the author bought a Seychellois



International Business Company with a Cypriot bank account at the same point in time, this was dependent on the full suite of notarised passport copies, utility bills, bank references plus a long questionnaire.

Thus, although compliance with international due diligence standards onshore is better than it was a few years ago, the United States in particular still lags significantly behind every one of the offshore centres surveyed, including even the failed state of Somalia. These findings suggest that the problem of financial opacity is one for which the G7 countries, particularly the United States and Britain, are responsible, much more so than palm-fringed tropical islands.

International standards?

A further issue is why this pattern of deficiencies has not been picked up by the

international organisations responsible for monitoring adherence to the relevant rules. Too often, these bodies have limited their attention to assessing the legislation on the books, rather than investigating the conduct and behaviours that obtain in practice. Although these institutions have been successful in ratcheting-up standards among the non-member jurisdictions, targeted by various blacklisting exercises over the last decade, they have apparently been far more gentle with those inside the relevant clubs.

The G20 and OECD have fixated on the problem of the willingness to exchange financial information between countries. This ignores the prior issue that unless countries enforce the obligation to collect information on those entering the financial system, there will simply be no information to exchange. It is hardly credible to say that major OECD centres lack the means to enforce the 'know your customer' standards they have designed, committed to and imposed on others. Instead, it seems that these countries have simply chosen not to comply with important international benchmarks, or, in what amounts to the same thing, have not summoned the political will to face down domestic constituencies resisting tighter financial regulation. It is thus indicative that these governments of many onshore financial centres have failed to regulate corporate service providers. In sum, directly testing the effectiveness of international rules mandating financial transparency and barring secrecy indicates that onshore centres are significantly behind their offshore competitors. ■

For the full version of the study please contact Jason Sharman at j.sharman@griffith.edu.au