

MONTANA DEPARTMENT OF REVENUE

Tax Havens

9/18/2014

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WHAT ARE TAX HAVEN COUNTRIES?

■ Definition (Wikipedia)

- Tax haven - is a state, country, or territory where certain taxes are levied at a low rate or not at all

■ OECD (Organization for Economic Co-operation and Development)

■ Tax Haven Criteria (1998)

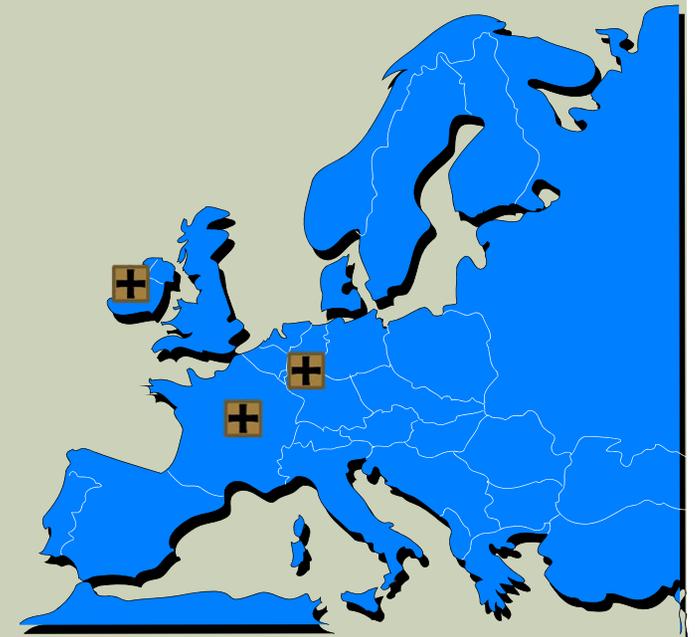
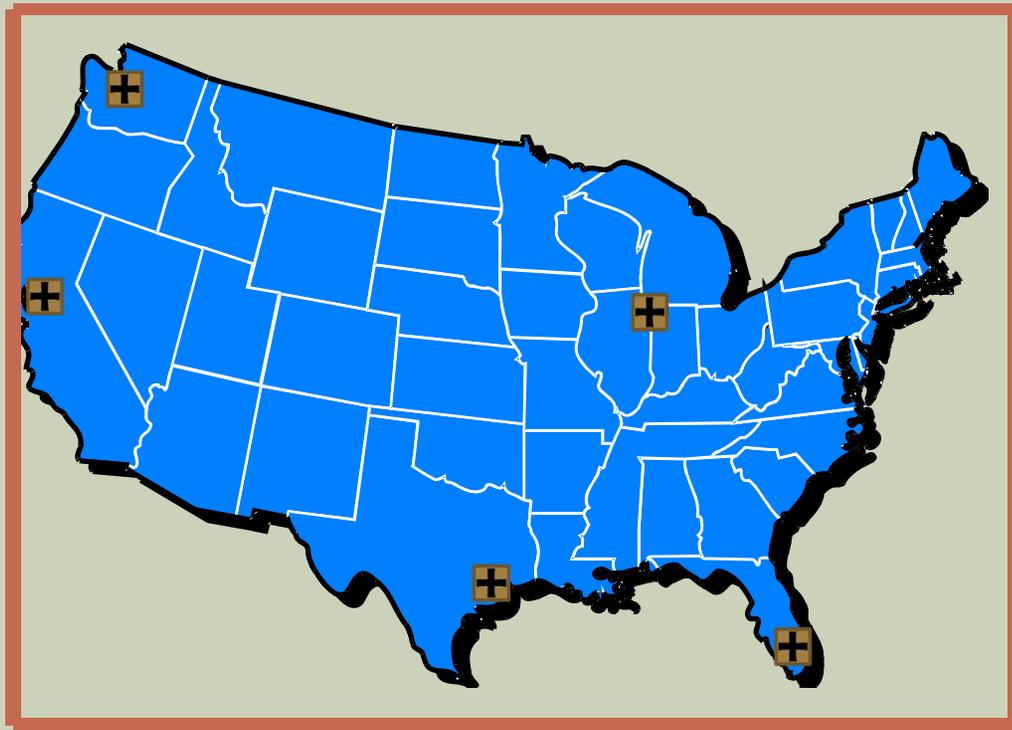
- No or nominal tax on relevant income;
- Lack of effective exchange of information;
- Lack of transparency;
- No substantial activities

■ MTC

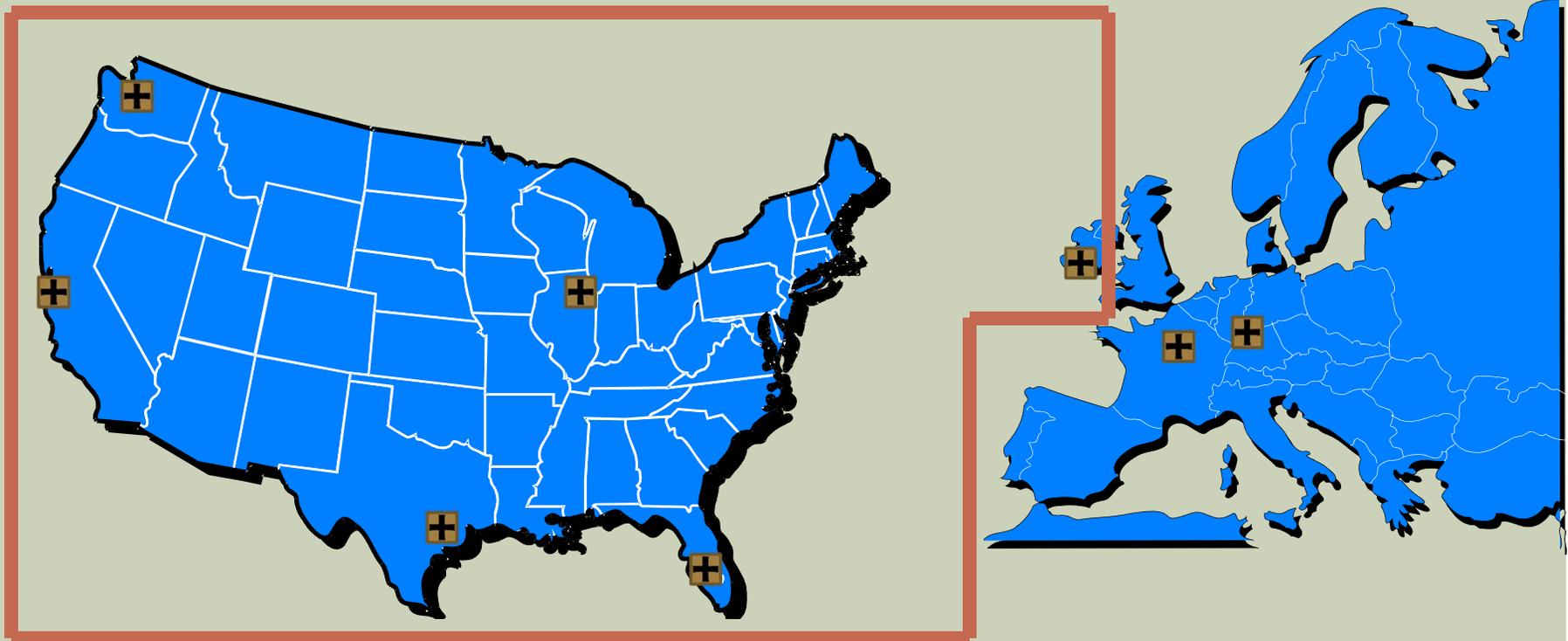
■ Tax Haven Criteria

- (i) has laws or practices that prevent effective exchange of information for tax purposes with other governments on taxpayers benefiting from the tax regime;
- (ii) has tax regime which lacks transparency. A tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open and apparent or are not consistently applied among similarly situated taxpayers, or if the information needed by tax authorities to determine a taxpayer's correct tax liability, such as accounting records and underlying documentation, is not adequately available;
- (iii) facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy;
- (iv) explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking advantage of the tax regime's benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction's domestic market; or
- (v) has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial/other services sector relative to its overall economy.

WATER'S EDGE ELECTION



TAX HAVEN LISTED COUNTRY



IDENTIFYING TRANSFER PRICING/INCOME SHIFTING

- Helpful Schedules
 - Schedule M

| A Federal Employer Identification Number | B Name of affiliate | C Percentage of Ownership | D Included in this Montana Unitary Filing | | E Doing Business in Montana | | F Mark if filing Montana Form CLT-4 Separate from this Unitary Filing |
|------------------------------------------------------|---------------------------|---------------------------------|----------------------------------------------------------|----|--------------------------------------|----|--------------------------------------------------------------------------------------------|
| | | | Yes | No | Yes | No | |
| 11 1111111 | Affiliate A (US) | 0% | x | | | | |
| 33 3333333 | Affiliate B | 0% | | | | | |
| 44 4444444 | Affiliate C | 0% | | x | | | |
| 56 5656565 | Affiliate D (US) | 0% | x | | | | |
| 55 5555555 | Affiliate E | 0% | | x | | | |
| 12 1212121 | Affiliate G Holding Inter | 0% | | x | | | |
| 77 7777777 | Affiliate H Dev | 0% | | | | | |

IDENTIFYING TRANSFER PRICING/INCOME SHIFTING

■ Helpful Schedules

■ Schedule K

| Schedule K - Combined for Montana CLT - 4 | | | | |
|-------------------------------------------|---------------------|-----------------|------------------------|--------|
| | A | Entity Activity | B | C |
| | Everywhere Activity | | Grand Total of Montana | Factor |
| 1) Property Factor | | | | |
| (1a) Land | \$ 11,111,111,111 | | \$ 55,555 | |
| (1b) Building | \$ 222,222,222 | | \$ 121,321,231 | |
| (1c) Machinery | \$ 3,333,333 | | | |
| 2) Payroll Factor | | | | |
| (1a) Compensation Officers | \$ 44,444,444 | | \$ 212,221 | |
| (1b) Salary and wages | \$ 55,555 | | \$ 21,211 | |
| 3) Sales Factor | | | | |
| (1a) Gross sales | \$ 44,444,444 | | | |
| (1b) Net gains | \$ 55,555 | | | |

INTERIM REPORT

- **Periodic update**
 - Required for tax haven list
 - Report to legislative interim committee
- **Update Content**
 - **Review countries on the list**
 - Should they still be considered tax havens
 - European Union seems to be putting pressure on countries
 - Still some holdouts
 - **What we found**
 - Monaco
 - Business profits tax of 33.33%
 - Companies liable for this tax are industrial or commercial and earn 25% or more revenue from sources outside of Monaco
 - Companies earning 75% of their revenue within Monaco are not liable for this tax
 - New companies may be exempted
 - No pure holding companies allowed
 - Take off list
 - Netherlands Antilles
 - Does not exist, take off list

INTERIM REPORT

- **Keep on the list**

- **No Tax Countries**

- Anguilla - Antigua and Barbuda - The Bahamas - Bahrain
 - Bermuda - British Virgin Islands - Cayman Islands
 - Dominica - Jersey - Marshall Islands
 - Nauru (phosphate mining)
 - Turks and Caicos Islands - Vanuatu

- **Low Tax Rate Countries**

- Andorra (10%)
 - Liechtenstein
 - New law passed to abide by European Union requirements (12.5%)

- **Hybrid Countries**

- Aruba (28%)
 - Companies exempt if they perform activities such as; licensing of intellectual and industrial rights, holding shares, financing
 - Barbados - Belize - Cyprus - Dominica - Gibraltar - Grenada - Guernsey/Sark/Alderney - Isle of Man - Liberis - Luxembourg - Malta - Montserrat - Mauritius - Niue - Panama - Samoa - Seychelles - St Kitts and Nevis - St. Lucia - US Virgin Islands
 - Non-resident companies pay only on the country's source income
 - Cook Islands
 - St. Vincent and the Grenadines
 - International Business Companies exempt for 25 years

INTERIM REPORT

- **Any Countries That Should be Added?**
 - Reviewed our own tax returns
 - Not conclusive
 - Reviewed OECD's Global Forum on Tax Transparency
 - OECD's current focus is on transparency
 - Phase 1 (10 essential elements)
 - Availability of Information
 - Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities
 - Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements
 - Banking information should be available for all account-holders
 - Access to Information
 - Competent authorities should have the power to obtain and provide information that is subject of a request under an EOI agreement from any person within their territorial jurisdiction who is in possession or control of such information
 - The rights and safeguards that apply to persons in the requested jurisdiction should be compatible with effective exchange of information
 - Exchanging Information
 - EOI mechanisms should provide for effective exchange of information
 - The jurisdictions' network of information exchange mechanisms should cover all relevant partners
 - The jurisdictions' mechanism for exchange of information should have adequate provisions to ensure the confidentiality of information received
 - The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties
 - The jurisdiction should provide information under its network of agreements in a timely manner

INTERIM REPORT

- Reviewed OECD's Global Forum on Tax Transparency

ANNEX 2: PHASE 1 AND PHASE 2 REVIEWS

Table1: Jurisdictions that have undergone only Phase 1 Reviews

| | Jurisdiction | Type of Review | Availability of Information | | | Access to Information | | Exchange of Information | | | | | Move to Phase 2 |
|----|---------------------|-------------------------|-----------------------------|-----------------|-----------|-----------------------|----------------------------|-------------------------|----------------------------|----------------------|----------------------------|-----------------|-----------------|
| | | | A1 – Ownership | A2 – Accounting | A3 – Bank | B1 – Access Power | B2 – Rights and Safeguards | C1 – EOI instruments | C2 – Network of Agreements | C3 – Confidentiality | C4 – Rights and Safeguards | C5 – Timely EOI | |
| 1 | Andorra | Phase 1 | In place, but | In place, but | In place | In place, but | In place, but | In place, but | In place | In place | In place | Not assessed | Yes |
| 2 | Anguilla | Phase 1 | In place, but | Not in place | In place | In place, but | In place | In place | In place | In place | In place | Not assessed | Yes |
| 3 | Antigua and Barbuda | Phase 1 + Supplementary | In place | Not in place | In place | In place | In place | In place | In place | In place | In place | Not assessed | Yes |
| 4 | Aruba | Phase 1 | In place, but | In place | In place | In place, but | In place, but | In place, but | In place, but | In place | In place | Not assessed | Yes |
| 5 | Barbados | Phase 1 + Supplementary | In place, but | In place, but | In place | In place, but | In place | In place, but | In place, but | In place | In place | Not assessed | Yes |
| 6 | Belize | Phase 1 | In place, but | Not in place | In place | In place | In place | In place | In place | In place | In place | Not assessed | Yes |
| 7 | Botswana | Phase 1 | In place, but | In place, but | In place | Not in place | In place | Not in place | Not in place | Not in place | In place | Not assessed | No |
| 8 | Brunei | Phase 1 | Not in place | Not in place | In place | Not in place | In place | Not in place | Not in place | In place | In place | Not assessed | No |
| 9 | Chile | Phase 1 | In place, but | In place | In place | In place, but | In place, but | In place | In place | In place | In place | Not assessed | Yes |
| 10 | Cook Islands | Phase 1 | In place, but | Not in place | In place | In place | In place | In place | In place | In place | In place | Not assessed | Yes |
| 11 | Costa Rica | Phase 1 + Supplementary | Not in place | In place, but | In place | In place | In place | In place, but | In place | In place | In place | Not assessed | Yes |
| 12 | Curacao | Phase 1 | In place, but | In place | In place | In place | In place, but | In place, but | In place, but | In place | In place | Not assessed | Yes |
| 13 | Czech Republic | Phase 1 | Not in place | In place | In place | In place, but | In place | In place | In place | In place | In place, but | Not assessed | Yes |
| 14 | Dominica | Phase 1 | In place, but | Not in place | In place | Not in place | In place | Not in place | In place, but | In place, but | In place | Not assessed | No |

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WHAT NEXT?

- Used OECD transparency report to identify possible countries that should be included in tax haven list
 - Also used other public information to identify possible tax haven candidates
- Primarily used tax rates and tax systems as the basis to propose inclusion into the list
- Identified the following countries
 - Trinidad and Tobago
 - Non-transparent according to OECD report
 - Non-resident company liable to tax only on income arising in or derived in Trinidad and Tobago
 - Guatemala
 - Did not pass phase I of OECD transparency report
 - Non-resident company liable to tax only on income arising in or derived in Guatemala
 - Hong Kong
 - Non-resident company liable to tax only on income arising in or derived in Hong Kong
 - The Kingdom of the Netherlands
 - Non-resident company liable to tax only on income arising in or derived in the kingdom

WHAT NEXT?

- Countries also reviewed by the department
 - Costa Rica (taxed only on Costa Rica income)
 - Ireland (substantial employee presence)
 - Jordan
 - Lebanon (offshore company exempt on profits)
 - Macao (taxed only on Macao source income)
 - Maldives (previously on list)
 - Singapore
 - Switzerland
 - Tonga (previously on list)

TAX INFORMATION?

- Where did we get the information from various countries?
 - Internet
 - The various government websites
 - Tax preparers/service companies
 - News articles

QUESTIONS?

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