



**PANA**

Committee of Inquiry into Money laundering, tax avoidance and tax evasion

## **Delegation to the United States 21- 24 March 2017**

### **MISSION REPORT**





## 1. PROGRAMME

### Monday 20 March

Arrival

### Tuesday 21 March

09h00 - 09h45 Briefing

- Caroline VICINI, Deputy Chief of Mission of the EU Delegation

09h45 - 10h30 Meeting with Elise BEAN, Washington Co-Director of the Levin Center at Wayne Law

10h30 - 12h00 Expert panel discussion

- Gerard RYLE, Director of the International Consortium of Investigative Journalists
- Gary KALMAN, Executive Director, FACT Coalition
- Tom CARDAMONE, Managing Director, Global Financial

12h30 - 14h00 Working lunch discussion

Speakers:

- Jeppe KOFOD, MEP S&D Group, Co-Rapporteur
- Petr JEZEK, MEP ALDE Group, Co-Rapporteur

15h00 - 17h00 Meetings at US Treasury

- Anti-Money Laundering Team & FinCen
- International Taxation Team

**Wednesday 22 March**

- 09h30 - 10h30 Meeting at the Congressional Research Service (CRS) (Library of Congress)
- Jane GRAVELLE, Researcher Government and Finance Division
- 11h00 - 11h30 Meeting with Senator Ron WYDEN (Democrat, Oregon), Ranking Member of the Committee on Finance (Dirksen Senate Building)
- 14h30 - 15h00 Meeting with Representative Richard NEAL (Democrat, Massachusetts), Ranking Member of Ways and Means Committee
- 15h30 - 16h00 Meeting with Senator Tom CARPER (Democrat, Delaware), Ranking Member of the Subcommittee on Investigations (Hart Senate Building)
- 16h15 - 16h45 Meeting with Senator Orrin HATCH (Republican, Utah), Chairman of the Committee on Finance (Hart Senate Building)

**Thursday 23 March**

Meeting with House Representatives of the General Assembly

- Peter C. SCHWARTZKOPF, Speaker of the House
- Valerie LONGHURST, House Majority Leader
- Daniel B. SHORT, House Minority Leader

Meeting with Senators of the Delaware General Assembly

- David B. McBRIDE, President Pro Tempore
- Margaret ROSE HENRY, Senate Majority Leader
- F. Gary SIMPSON, Senate Minority Leader

16h00 -17h00 Meeting at the John L. Weinberg Center for Corporate Governance of the University of Delaware

- Charles M. ELSON, Edgar S. Woolard Jr. Chair in Corporate Governance, Professor of Finance

**Friday 24 March**

08h30 - 09h30 Meeting with Delaware Executive Branch Jeffrey W. BULLOCK, Delaware Secretary of State

- Rick GEISENBERGER, Delaware Secretary of Treasury
- Kristopher KNIGHT, Delaware Deputy Secretary of State and Director of the Corporations Division

Meeting with the Delaware Attorney General

- Matt DENN, Attorney General

11h30 - 12h30 Meeting at Widener University

- Lawrence A. HAMERMESH, Ruby R. Vale Professor of Corporate and Business Law
- Paul L. REGAN, Associate Director, Institute of Delaware Corporate and Business Law



## 2. LIST OF PARTICIPANTS

### MEMBERS

Werner LANGEN, Chair	PPE
Jeppe KOFOD, co-rapporteur	S&D
Petr JEZEK, co-rapporteur	ALDE
Dariusz ROSATI, coordinator	PPE
Ludek NIEDERMAYER	PPE
Anneliese DODDS	S&D
Matt CARTHY	GUE
Eva JOLY	Verts/ALE
Barbara KAPPEL	ENF



### 3. KEYS MESSAGES

#### KEY FINDINGS FROM DELEGATION VISIT:

##### Main issues discussed:

- At the time of the visit, many key functions in the US government, including within the US Treasury, have not yet been filled; therefore the policy orientation of the new US administration is currently unclear in several areas
- New US Treasury Secretary Mnuchin stated at the G20 meeting that the US would remain committed to OECD's BEPS project
- US tax reform will be a priority for the new US administration and Congress, the discussed plans for a "Border Adjustment Tax" are not yet clear and remain controversial, as well as their compatibility with WTO law
- AML-CFT policies remain a priority for the US Treasury but the US favours bilateral exchange and precise requests, arguing too much cooperation is not always helpful. Their focus for cooperation is primarily on fighting terrorism.
- On Beneficial ownership transparency: US federal lawmakers see this as a State competence (corporate law); lawmakers in Delaware stated they would not oppose increased beneficial ownership transparency in principle, but only if all US states commit to it, as this would otherwise create an uneven playing field
- Delaware sees its business attractions as neither special tax regimes nor transparency of beneficial ownership, rather linked to the extensive experience of Delaware courts in corporate law (notably its Court of Chancery)
- Companies incorporated in Delaware pay the standard US federal corporate tax of up to 35%, therefore Delaware does not consider itself a tax haven
- On FATCA, it seems unlikely that the current US administration and Congress will commit to a full exchange of information on tax matters with the EU; on the contrary some initiatives aim at repealing FATCA

##### KEY RECOMMENDATIONS:

- EU should take the leadership fighting tax fraud, tax avoidance, and money-laundering, coinciding with the current US administration
- EU should increase fines for intermediaries, as current EU fines are a fraction of what these institutions earn
- EU should require banks to admit liability, enabling the possibility for class action lawsuits
- EU should ensure that fines are not tax-deductible, as otherwise taxpayers end up paying (parts of) the fines
- EU should enact legislation on protecting whistleblowers



## Briefing at the EU Delegation

- General presentation on EU-US relations under the new Trump administration
- Some key positions in the administration are not yet filled, intentions in many policy areas are still unknown
- Tax policies have become a priority for the administration and Congress
- Border adjustment tax (BAT): originally not part of the Trump administration, yet part of the Republican blue print, currently upcoming in the House of Representatives
- Highly controversial with US trading partners (unlikely WTO compatible), US Congress, and US companies (solely favouring exporting companies)
- Americans holding foreign assets will suffer (as dollar depreciates), those owning American assets will benefit. Sovereign debt will be effected (similar to Reagan era)
- Expectations that BAT may not pass US Congress in its current form
- On tax evasion and BEPS: no clear guidance, Secretary of Treasury Mnuchin announced at the G20 that the US was looking forward to continuing international progress
- On EU state aid rulings; US perceives EU state aid systems as threatening to US companies. Explanation still required by EU

## Meeting with Elise BEAN

- Current leadership vacuum on international tax issues with the new US administration, EU should strive to fill this vacuum.
- Tax reform plans in the US are currently unclear and vague, as other proposed reforms
- The proposed Border Adjustment Tax (BAT) is controversial and unclear, facing opposition in Senate (and probably House).
- Senator Ron Wyden [Democrat, Oregon] proposed a bill to end deferrals of tax on foreign profits.
- Wyden requested information from the IRS on US shell companies appearing in the Panama Papers (PP), this information could be shared with the PANA committee.
- The term of IRS Commissioner John Koskinen will end in November. There is currently no information on who will replace him.
- No current signs implying a repeal of either the CBCR or FATCA, although Senator Rand Paul tired several times during the former administration.
- The Apple case is continuing with the ECJ appeal.





- Delaware's corporate regime allegedly attracts criminals to the US. It would be important to convey the EU's successes on public beneficial ownership (BO) registries.
- Delaware Secretary of State Jeffrey Bullock and Secretary of Treasury Rick Geisenberger are perceived as the main opponents against shell company transparency at the federal level.
- Encourage the PANA Delegation to communicate that the (transparent) EU-system works.
- The Carper-Heller bill on BO is perceived as weak. Under the bill, the IRS will collect information on BO while bound by tax secrecy and under-resourced. It would make more sense for FinCEN to collect BO information, as it has the capacity to do so, and is not bound by tax secrecy. Providing greater possibility of publicized information. PANA's message to Delaware should be that their opposing role is harming law enforcement and banks.
- EU laws require that companies doing business in the EU disclose payments made to EU governments – this should be broadened to include disclosure of donations to any governments.
- On CBCR the EU had banks report publicly for a while; PANA Committee should convey the message to the US tax administration that it is working in the EU.

Further points made by Elise Bean during discussion:

- Unclear how the BAT proposal will proceed as important forces such as the Koch brothers and retailers like Walmart are against.
- General expectation that the dollar will not rise quickly if the BAT is introduced. However if it does, it would create a debt crisis for countries who have their debt in US dollars, heavily affecting whole economies.
- House of Representatives is fixated on BAT because it does not want to end deferral, a majority or at least 50 in the Senate is opposed.
- Key functions in Treasury have not been filled yet, many senior staff functions are still vacant.
- PANA should hold a hearing on money-laundering by Russian oligarchs through EU financial institutions. Should request information from various governments and include the details in a final report.
- On writing committee reports, one should focus 80% on the problem and 20% on the solution.
- To improve enforcement, the EU could:
  - 1) Increase fines – currently EU fines are a fraction of what these institutions earn.
  - 2) Include a requirement that the company admits liability, opening the door for class action lawsuits.
  - 3) Make sure that fines are not tax-deductible, as to not burden tax payers.
  - 4) Change the culture.





- As per compliance monitors, a monitor would observe an institution for a period of two years to ensure required changes are made. Consider requiring banks to pay for their own

### Meeting with NGOs

- Gerard RYLE, Director of the International Consortium of Investigative Journalists
- Gary KALMAN, Executive Director, FACT Coalition
- Tom CARDAMONE, Managing Director, Global Financial Integrity

Gerard RYLE, Director of the International Consortium of Investigative Journalists

- Offshore leaks and other leaks affected many countries. Pressure needs to be placed on governments, institutions, and companies to end secrecy. Europe should take a leading role to influence the rest of the world
- Banks and intermediaries: need for criminal sanctions, as financial penalties will never be enough
- Need for whistle-blower (WB) protection in Europe to inspire the international community to do the same.
- Beyond taxation, leaks concerns ML terrorism financing. Public registries for all companies whether local or international are needed.

Tom CARDAMONE, Managing Director, Global Financial Integrity (GFI)

- Panama Papers is good news: however only the tip of the iceberg. 200,000 companies have been exposed from one law firm in one country. Anyone can go online and create simple legal documents, even a corporation for approximately 300 USD.
- Anonymous companies are legal in many countries, any amount of anonymity provides the opportunity for legal actions.
- FATF is extremely weak: A 25% stake in a company means one can be a BO. Last October, FATF reported to the G20: "recent revelations and review of first 9 country reports highlighted that many countries still do not implement the BO requirement adequately". Standards are adequate, although this needs more attention as implementation is the problem.
- Secrecy is unnecessary, citizens have the right to create corporations, but need to abide by the rules.



- As EU countries form the majority of FATF membership, the EU should push FATF to have stronger recommendations on BO.

Gary Kalman, Executive Director, FACT Coalition

- Corporate transparency: the conversation has changed thanks to the Panama Papers and ICIJ.
- April 3rd (anniversary of Panama Papers): In the House, Treasury to collection information or give the state the option to collect the information if desired.
- GTOs (geographic targeted orders): collection of BO for some real estate transactions in certain cities. Extended during both Obama and Trump administrations, with full support of the Treasury Secretary. Opposition still comes from the Chamber of Commerce and Bar Association.
- On CBCR: The IRS is collecting private information. IASB: is considering having MNE's to hold information in their accounts, than go public through the SEC.

### Q&A:

- Delaware: it is extremely easy to set up a shell company there.
- IRS collects information, although will not collect the real BO under the current legal structure.
- Contradiction between new CDD regulations (2016) and previous practices. For a trust, you only have to identify the trustee (not the owner), for a company, you have to identify a manager (not the owner). CDD regulations are extremely weak. In order to meet the EU standards, they want to have one system. So for US companies, you'll have to provide the manager only.
- Support in the US to fight tax evasion and avoidance: public information will help the cause (that's why public CBCR is needed). 80% of the US budget is paid by individual taxes and only 10% by companies (compared to 30% in the past), yet profits still soar.
- The 35% corporate tax rate is what everyone knows, yet the effective tax rate for the Fortune 500 companies is around 24%.
- Companies are changing their thinking because of the EU. While they felt they could get away with 2%, they now strive for 10%.



## Meeting with US Treasury AML Team & FinCen

- No specific US Treasury investigation after the Panama Papers, no direct link between Panama Papers and US regulation.
- Federal law on the BO: company creation is at the state level, they decide how a company is formed without federal competence. In May 2016, there was a failed attempt to require disclosure directly to the federal government due to division to powers issues.
- FATF evaluation, there is pressure to move faster. BO is one of the fine tuning efforts in progress (regulation or guidance), but other aspects are also highlighted.
- As of May 2018, all institutions will have to collect BO information for legal entities. For the time being, they are not mandated.
- Trusts are not legal entities, the requirement is to identify the trustee, with no identification of the BO. Law enforcement can issue a judicial subpoena and the trustee will produce the information. There is no obligation on the trustee itself at this point (trustee can be both physical persons and legal entities). These investigations are difficult and take time.
- Good dialogue between FinCen and EU FIUs. 2 mechanisms to share information, prefer the bilateral exchange of information (since investigations are often sensitive, information has to be protected, how it is transmitted, stored etc...). Multilateral is FIUnet or Edgmont group, they facilitate bilateral exchange of information. Be specific on the nature and purpose of information exchange. International cooperation in a broad sense is not always helpful.
- FIU does an excellent job in sharing information bilaterally. We have freedom to share intelligence reports.
- US thinks law enforcement authorities should get access to BO information, which is why we don't want public registries. We are afraid people will go somewhere else to disclose their information (rather than disclosing to the government). Publicly could lead to reduction of quality information. More private regimes make people more willing to disclose.
- Transparency is a huge priority for us, but it must be stressed that the majority of companies are created for legitimate purposes.
- If somebody sponsors the last legislative proposal, it would be FinCen that would collect BO information. There are no current legislative proposals for federal BO collection.
- For competitive purposes, there are good reasons not to disclose the BO of companies says the Treasury. They did not explain.



## Meeting with US Treasury Taxation Team

- The IRS Commissioner's Office was not available, they couldn't go into detail on the Panama Papers investigation. More discussion is needed on the policy side.
- We are not on the enforcement side (like the IRS).
- There are not many citizens in the Panama Papers because the US has had a tax information exchange agreement with Panama since 2010. It is not easy for citizens to hide assets.
- The government is still in transition, there is a new Treasury Secretary, but many senior officials are not assigned. The Treasury Secretary has been publically supportive of BEP's. The US has been very active during the DEP discussions at the OECD. We are doing CBCR (action 13) and do not have harmful practices (as mentioned in action 5). There is still discussion on if action 15 is needed.
- FATCA vs CRS: FATCA created a momentum, which lead to CRS. We were the first mover and advocate for full reciprocity (see our last 3 budgets). To date we have tried to close some information reporting loopholes, although we cannot commit to CRS without congressional action to change the law and allow reciprocity.
- On BAT: tax is a high priority for the treasury, and BAT is one of the proposed options. We will continue to discuss with Congress but it is still a work in progress
- CBCR will be exchanged through bilateral conventions. Exchange will be between the US government and other countries, confidentiality is required.
- On EU blacklist: A list approach can be under inclusive or over inclusive, with the question of if it can adequately reflect changes over time. Information about a contact point was sent to the US Treasury rep in Brussels (answering the EU letter). Many efforts have been done to remove secrecy jurisdictions. CH has made a lot of progress, if they end up being blacklisted it could backfire.
- Trust: it can be a financial institution depending on its role. In most cases, it will be considered an investment entity with most information available on request.
- They have looked at VAT models and comparisons between VAT and some BAT models. Compatibility with the WTO is one of the things they look at to achieve to compliance.

## Meeting with CRS

Jane Gravelle (tax evasion)

- Tried to make a list of tax havens, starting with the US, but also UK, LU or CH.



- Estimates of tax evasion: USD 100 million a year (cost for the US).
- Main option for tax avoidance: transfer pricing.
- US rules to avoid evasion: not entirely successful. Evasion is often when individuals evade tax, keep assets abroad, and hide illegal activities. The main policy is to try to require information of US citizens (who should pay tax on passive income in the US, therefore they use shell companies to pretend they are foreigners). It is hard to fully determine if new law is working as it has only been in force for 2 years. The US won't participate in CRS, the Treasury has attempted to have FACTA agreements, but needs Congressional approval.
- States develop rules about company incorporation, issue with LLCs (no tax ID number), Congress would have to do something about BO information.

#### Maureen Murphy (AML)

- Treasury has the authority to request obliged entities to make reports on AML suspicion. This law was amended after the 9/11 attacks. Many competencies exist for the Treasury to declare a jurisdiction, a transaction, or an obliged entity of primary ML concern and to take it off the US financial system. Tremendous penalties have been given by regulators and the DOJ.
- FinCen has a financial crime enforcement network. Almost a million STR's were received last year in a database law enforcement can consult.
- FinCen has a financial crime enforcement network (database of all the reports received). Almost a million STRs last year, all in the database which law enforcement can consult (to check serious violations of tax law, foreign assets control law)
- AML law is applied to various kinds of financial institutions. New treasury regulations were established last year to require CDD for financial institutions and checking BO for legal entities at creation (entering into force in May 2018).
- The proposed BO registration last year was not enacted. So far the new administration has not furthered any changes.

#### Erika Lunder

- Each state has their own rules as to what information for legal entities have to be reported. For example, Delaware requires very little information, and the federal government has made no efforts to address it.
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#### Mark Keightly (corporate tax avoidance)

- Wyoming and Delaware consider all federal government attempts to increase BO transparency an infringement on individual rights and state competence.



- There is no agreed upon list or definition of a tax haven.
- Developing countries are not involved in international decision-making, kept dependant on development assistance.

## Q&A

- All banks are covered by AML obligations in the US. The ALM program will be different from a Wall Street bank than a community bank.
- CIT reform has been on the agenda in the US for the last 6 years. This will not happen right away, but there will be some incremental tax reforms. BAT is essentially a carefully worded consumption tax, so reform will be difficult. If I were to bet my money, I would say DBCFT won't happen.
- The other option is to end deferrals and lower the corporate tax rate. Tax reforms are very hard to do.
- A tax haven can be defined broadly or narrowly. Ireland doesn't have secrecy rules but they have rulings and low tax rate (even below 12.5%). That could be considered as a tax haven (you are looking for outside investments through low tax rates). If you are doing a blacklist, you need criteria. But as far as criteria go, you can choose different angle. The OECD blacklist was a failed effort. But OECD does not have government powers to do anything.
- The US is not a parliamentary government. It has a Congress with its own interests from many states. The system is set up not to achieve anything because of Delaware, Nevada, etc., there is a risk of the race to the bottom.
- If criminal liability is indicated, then there is the possibility of deferred prosecution agreement/negotiations with the bank (for internal changes) + civil fines by all regulators + possible sanctions. Fines and monitoring are not enough. The DOJ has the power to prosecute regardless of negotiations with banks, however proving reasonable doubt to a jury is often difficult, thus favouring negotiations. The statute of limitation for persecution is 6 years, this can be extended.
- Lawyers: have been prosecuted for ML. However, requiring lawyers to provide STR's bring the issue of confidentiality with their clients, thus is not included in AML law.
- EU could adopt a FATCA type legislation. If the EU forces US banks to send information to EU authorities, then it could force Congress to pass a law to have reciprocity under FATCA.
- AML is more a federal competence in the US. And BO identification is a problem (if 5 below 25% ownership, then you only list a director or senior manager).
- Every 18 months, banks are supervised on their AML programme.
- Healthcare act vs tax reform: Healthcare proposal has to be done before tax-law as it costs so much.





### **Meeting with Senator Ron WYDEN (Democrat, Oregon)**

- With regard to Panama Papers, disclosure to the US is not functioning properly. Senator Wyden inquired about the system of BO transparency in place in the UK and if there was substantive business opposition. A discussion is present that if you are rich enough, you can buy anonymity, which can later be used for tax-crimes/AML. Registers, intermediaries, and enforcement are all important.
- Members inquired about US tax-reform. The Senator stressed that it is now up to the Republican members, touching upon the boarder tax and its implications globally (possibly contrary to WTO). Senator Wyden was involved in an inquiry on a shell-company and is willing to share its findings with the Panama-committee, as he is interested in close US-EU cooperation.

### **Meeting with Representative Richard NEAL (Democrat, Massachusetts)**

- Is unaware of any tax reform plans yet. Will have to wait and see the operations of the new administration. All members seemingly stressed the need for international cooperation.
- Congressmen have discussed the 'Border Adjustment Tax' and their anti-trade war stance among other issues. They have yet to formalize these positions in their committees.

### **Meeting with Senator Orrin HATCH (Republican, Utah)**

- "Repeal and replace" Obamacare - only after that we will know what will happen. Border Adj. Tax are not popular. Indicated that President Trump wants a real tax-reform. Members stressed need for register of BO in sighting terrorism Europe and US should be on same track.

### **Q&A**

- We're having a lot of difficulties with our Democrat friends, it is hard to predict what we can get done. I've passed 750 major bills in my 40 years of work. Right now we are trying to repeal and replace Obamacare, until this is achieved, it is difficult to know how we will proceed tax-wise.
- On BAT: No support for this in the Senate and retailers are very upset. On major tax reforms, Trump and I would like to have one as we have lost some of our benefits overseas due to our tax rate.
- Wyden under the control of the Democrat party leader in the Finance Committee and this minority leader have taken a strong position. We have 2 trillion USD overseas and we need to get that money back. I want to change that, a better vibrant business community will also be better for the EU.
- We reinforced the importance of international cooperation on money laundering and the finance of terrorism while ensuring tax reforms do not





affect trade. In regards to TTIP, Trump favours bilateral trade, however I would prefer TTIP the way it was planned.

- We highlighted the need to collaborate upon anti-money laundering measures and the issue of data sharing.
- On tax reform: Trump wants to cut it to 15%, however due to logistical issues it will likely be 20% along with reforms to PIT.

### **Delaware:**

Delegation Members were invited to take the floor in the Delaware General Assembly and to introduce themselves.

### **Meeting with Senators of the Delaware General Assembly**

- We want to remain competitive, but we realize there are some risks.
- We offer opportunities for businesses to function and deal with other companies.
- People come to Delaware for our court system and the law firms specializing in incorporation.
- The EP delegation shared its concerns on the lack of transparency and the Senators agreed. As there can be problems, collaboration is needed.
- Difficulty to establish where the economic value is created for some businesses, there is an issue with intangibles.
- Questions on trusts, BO, and what is the advantage for the state? There is incorporation fee (1600 USD maximum) and we are looking at increasing it. 45% of all fortune 500 companies incorporated here. Many don't pay taxes but they pay the incorporation yearly.
- In Delaware there is an online incorporation website which you can view the incorporated entity. For deeper information for a criminal investigation, a subpoena is necessary.

### **Meeting with Charles M. ELSON, Edgar S. Woolard Jr. Chair in Corporate Governance, Professor of Finance University of Delaware**

- Corporation law is a state matter with no federal counterpart.
- Corporate law in Delaware has advanced due to the tremendous increase of incorporated entities within the state. Exceedingly unique to the state, judges are not elected and come from a corporate, rather than criminal law background.



- Delaware taxation law is perceived as more neutral as out of state income is not taxed.

### **Q&A**

- The rules of incorporation are the same in every state.
- Corporate legal battles in federal courts are often more risky and time consuming as judges may not have the appropriate expertise on the issues.
- A lot of states do not tax intangibles. Delaware's taxation basis is to support its people. We should not overtax people for the services they receive. The state budget is small, franchise taxes provide 27% of it, as there is no sales tax here. Delaware's tax regime is not designed for secrecy.
- It is feasible to find out who is transferring what in a bank under US law. BO identification is a start, yet still avoidable, the real method is to follow the money.
- The sunshine law in Delaware: when trustees of a trust meet, they have to do it in public.
- Corporate law is a narrow field in the US. Having that sort of expertise is expensive. Judges in the US are political (should be a balance between republicans and democrats at the federal level).
- On a number of disputes: jurisprudence and case law reduce the necessity for a case to go to trial.
- The franchise fee is based on the number of shares you have (the more shares, the more times you have to pay it).

### **Meeting with**

**Jeffrey W. BULLOCK, Delaware Secretary of State**

**Rick GEISENBERGER, Delaware Secretary of Treasury**

**Kristopher KNIGHT, Delaware Deputy Secretary of State and Director of the Corporations Division**

- Few DW companies mentioned in the Panama Papers.
- A bill providing for registration of beneficial owners has been pending in Congress for a long time. This will take decades to pass.
- We support the collection of BO information. Could be collected by the IRS or FinCen. The focus should be on how to collect it well. We need a single, unified, federal approach.
- In the US, we already collect a lot of BO through FinCen requests, banking law, Treasury, and CDD. Although the information is usually not available to law enforcement for ALM and financial crime investigations.
- There are misunderstandings about the difference between federal vs. state tax law. If you do business in the US, you can be taxed under federal and state tax laws. Delaware is not unique on this matter.



- Delaware's holding company statute has been attracting companies located in the state. Our corporate income tax rate is 8.7% on top of the 35% federal tax rate.
- Many states introduced combined reporting requirement.
- For non-US investors incorporating a company in any state with no internal activity, their taxes are of federal law competence.

## Q&A

- Our publicly traded companies are quite open (probably more transparency than in Europe) on BO.
- 54 different jurisdictions in the US that register companies. If Delaware changes, the other 53 would still continue. So we need a federal approach on this.
- Not a coincidence you can hardly find Delaware the Panama Papers. The fee to have a corporate in the state is among the highest in the country and is charged annually (max. 180.000 USD).
- In Delaware, if you want to create a company, you have to go through a registered agent (who collect communications contact for that business entity which law enforcement can request with a court order).
- We visit these agents and check if they do CDD (some other states don't do this). 80% of our legal entities are represented by 10 agents; 66% by two of them. We make sure that they have contact information (their CDD). If they don't, we don't let them be a certified agent.
- If you are marketing secrecy, tax evasion, etc... you would not be allowed to be listed on our website.
- Having 300,000 companies at the same address, we see this as a strength because the registered agent can keep track of all the companies.
- The suggestion to create their own BO register (for Delaware) won't accomplish anything as the other 53 jurisdictions would continue to do the same. The BO information is already collected today, the issue is how to get it to the right people.
- Most of that information can be found in Washington. In the US, you cannot open a bank account without having CDD rules, without disclosure of some information to the bank. The place to find ML is not the incorporation register but at the level of transactions (so with the banks). Full CDD is needed at the bank level.
- On passing the ball between federal and state level: they believe the solution is at federal level. All state representatives agree that they need a federal action. The main reason that data is collected is for Anti-terrorism purposes.



## Meeting with Delaware Supreme Court

- Delaware has been misleadingly accused of being a tax haven. Hope you are open-minded because you have many problems in Europe too.
- Delaware is home to 60% of most transparent companies of the world (the American publicly listed companies).
- In Delaware, we make money with highest charging costs in the US. Our main thing is large-scale public companies where investors want to keep their companies accountable.
- No public disclosure required in the EU either (see Netherlands). You know far more about Google than about many EU companies.
- I want to hear about what the EU will do about its tax havens. You should go to Switzerland. And look at Gibraltar and Guernsey and Cook Islands.
- Getting a tax ID for everybody is one solution.
- Negative about the Carper law: collect information and give it to the state, because they don't want to pay for it.
- Feels passionate about the integrity of the DW system. We don't want fraudsters around here. The shell companies pay nothing, they don't hire Delaware lawyers, so we have no interest having them.

## Q&A

- On BO information: When investigating, we don't know which corporations are legitimate or which are not. The fraudsters are not going to have a lot of shares. By asking everyone to report information, it's a lot of work for the legitimate business. Instead we ask to keep a record on who owns more than 25%, when the government comes for information, it is available.
- American incorporation (in Delaware) is subject to the tightest disclose laws. Far more fraud is going through the pockets of exceptions in the EU than in the US as a whole.

**Meeting with**

**Lawrence A. HAMERMESH, Ruby R. Vale Professor of Corporate and Business Law**

**Paul L. REGAN, Associate Director, Institute of Delaware, Corporate and Business Law**

**Meeting at Widener University (Lawrence Hamermesh and Paul Regan)**

**Q&A**

- Business law in Delaware are pretty much the same in any other state on BO disclosure. We are more successful at attracting publically traded companies. So let's require all states to disclose BO information.
- You need to get the republicans on board if you want to pass a law on BO information.
- On collection of BO information: to track down transparency when things are moving now at the speed of light is impossible. Monitoring costs from what you are suggesting are huge.
- BO collection should be done at the level of the state (because if we do it in Delaware, Nevada will advertise that they don't do it). Finding a targeted way to get rid of the criminals is something we want.
- On a multilateral approach: Don't see this happen under this administration. Our president is a negotiator, we wants to make deal for the US. FATCA solved the problem for us, now it's your problem.
- On ML, go through Federal Reserve and the bank regulators, rather than through the Congress (where it will be very hard). Reserve is very independent from Congress (talk to central bankers). They want harsher penalties for ML rather than more AML laws (HSBC example: take them out of business).
- No cost of ML for individuals, there is no fine or prison time for them. The threshold to bring to court is high (beyond reasonable doubt). So they would rather settle on a fine.