

SHOW ME THE MONEY: UNDERSTANDING FATCA  
UNITED STATES & CARICOM RELATIONS

by

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## THESIS ABSTRACT

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This study explores the provisions of the United States Internal Revenue Services' Foreign Account Tax Compliance Act (FATCA) and its demands to increase disclosure and transparency pertaining to the financial data of foreign account holders who are American citizens and corporations. This study specifically analyzes the cultural and economic impact of FATCA on Caribbean nations.

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## Chapter I

### FATCA and Its Effects on Partnering Countries

In August of 2009, one of France's richest citizens faced a dilemma. A taped recording revealed her and her financial manager's intentions to move an estimated \$160 million from two Swiss bank accounts (Gabriel, Johannesen, Niels and Zucman, 2014). The recorded discussion consisted of the financial manager's suggestion to transfer her funds to banks located in Hong Kong, Singapore, or Uruguay. The suggested transfer of funds was in response to the newly amended tax treaty between France and Switzerland. Hong Kong, Singapore, and Uruguay did not have an agreement of transparency with France; therefore her accounts would not have been disclosed with the French government of France (Gabriel, Johannesen, Niels and Zucman, 2014). The tax treaty required Switzerland to disclose all requested information regarding accounts held by France persons for tax enforcement. In previous years the Swiss Bank would not have disclosed any information due to their secrecy laws (Gabriel, Johannesen, Niels and Zucman, 2014). However, the amended tax treaty signified a change in regards to the culture of international secrecy and transparency concerning offshore accounts. This new order was created in order to combat the issue of tax evasion.

Similar to the 2009 bilateral treaty between France and Switzerland, the United States devised an international tax law called FATCA (Foreign Account Tax Compliance Act) with Caribbean islands (Dizdarevic, 2011). To many of the islands' officials this new law only serves as imperial tool to extend the control and influence of the United

States on other nations. However, the United States' Internal Revenue Service has articulated the objective of the tax law as a strategy to provide economic legitimacy and security to all governments involved. Furthermore, what is absent from the incorporation of this international tax law is a perspective shared by financial professionals and political officials who reside within the Caribbean. This study intends to decipher what is being negotiated within FATCA by the United States and Caribbean Community Member States, also known as CARICOM (see Appendix A for list of countries). In addition to understanding what is being negotiated within FATCA, I also intend to recognize what the newly implemented provisions regarding increased disclosure and transparency represents between the United States and the CARICOM islands. Therefore, in order to better understand FATCA and its effects on CARICOM states, I will present the opinions regarding FATCA of financial professionals who reside in the Bahamas to show that the impact of FATCA has affected the entire make up of CARICOM states. In particular, this study provides responses to two questions:

1. What are the perspectives of local financial and political officials regarding the provisions of FATCA?
2. What are the resulting affects of FATCA's mandate of increasing disclosure and transparency regarding Unite States affiliates who have financial accounts within the Bahamas?

While researching FATCA, I interviewed four financial professionals who work within the financial services sector in the Bahamas. During my research, I analyzed the enactment of FATCA and explored potential imperialistic approaches designed to further

the objective of the United States Internal Revenue Service goal in preventing tax evasion. Within my research I discussed the significance of countries being labeled as tax havens, sanctions being imposed on non-compliant countries, and the financial impact of FATCA on the economy of the Bahamas.

I also focus on the demonstrated power of certain countries by analyzing the practice of imposing sanctions. Through the analysis of the imposition of sanctions we see how ruling powers perpetuate their ideas to further sustain power through bi- and multi-lateral agreements and other laws. I then discuss the concept of “financescapes” introduced by Arjun Appadurai and the distinction of individuals who identify within a certain class who seek out the financial asylum of havens for added monetary security in the context of contemporary globalization.

### **What Is FATCA?**

In 2010 the United States Internal Revenue Service (IRS) acknowledged their intentions to commence a series of mandated policies defined within the Foreign Account Tax Compliance Act (FATCA). FATCA requires all foreign financial institutions (FFI's) to report financial information on accounts held by all United States' persons. In case of the refusal to comply with the policies of FATCA, all noncomplying FFI's would be subject to a 30 percent withholding tax on intergovernmental transactions (Grinberg, 2012). The creation of FATCA represented an anomalous turn of events. The defined international transparency provisions within FATCA conflicted with the domestic laws of partnering foreign countries (Grinberg, 2012). As a result, the mandated tax protocols were received with great anxiety by countries that agreed to comply with to the

international tax law. Due to the United States request for increase disclosure and transparency, Foreign Financial Institutions (FFIs) was forced to disclose all information regarding the offshore accounts of United States' persons, companies and individuals (Grinberg, 2012). Countries within the Caribbean have consented to the terms of FATCA but with an ambivalent response. The expressed concerns regarding FATCA are attributed to the mandated provisions. According to a financial professionals within the Caribbean, the provisions requesting increase transparency contradict the domestic secrecy laws. As a result, FFI's become susceptible to lawsuits for breach of contract (JR Harvey, 2014). Foreign countries are becoming more exasperated with the response of the United States' IRS after they presumably comply with the commission imposed by the United States. In lieu of complying with the United States' IRS tax decree, countries that maintain their own methods of disclosure and transparency are steadily being denoted as "tax havens." The significance of being denoted as a tax haven has created a stigma, which listed countries have described as a "blacklist." This event has created uproar among partnering countries.

Countries that have been noticeably outspoken in the wake of the FATCA policies are members of the CARICOM member states (Bean & Wright, 2015). Prior to FATCA, CARICOM member states enjoyed the autonomy of their economy through their development strategies; however recently these countries perceived that the FATCA tax law has infringed upon the autonomy they once enjoyed. The Bahamas have exhibited their displeasure publicly due to being denoted as tax havens despite complying with the provisions of FATCA. Professionals within the financial services sector of the Bahamas have stated that they are taking every possible measure to comply with FATCA. However

the country is still viewed as a tax haven in the eyes of the United States IRS. Skepticisms have been raised concerning the implementation of the FATCA tax law. Banks are taking longer to approve the accounts of foreign investors from the United States because they want to make sure that they have done their due diligence and acquired as much information as possible regarding any potential account holders. Partnering countries within the Caribbean are evaluating a series of implementation strategies to alleviate any conflicts with domestic laws. Despite informing the United States IRS on what is allowed within their jurisdictions, CARICOM members recognized a level of apathy being expressed by the United States. The IRS response to further penalize FATCA agreed countries despite being informed of the issues regarding domestic laws has prompted financial experts to evaluate FATCA as a string of protectionist measures.

### **FATCA Pertaining to Caribbean Nations**

In May of 2015 the OECD reported a list of distinguishing countries that were complying with the FATCA tax law, in addition to countries who were in violation of the statutes enlisted within the document (see Appendix B for FATCA Compliant Countries). According to the OECD, a number of Caribbean Countries were denoted as tax havens and were in violation of the compliance standards required of the G-20 countries (see Appendix C for list of G-20 countries) attending the Global Forum. Of the listed countries, the Bahamas was recognized as zero haven jurisdiction that did not tax income or capital gains (Guerrero, 2017).

In addition to the Bahamas being listed as a tax haven, a number of other countries were also listed. The list provoked a level of displeasure among the Caribbean



countries' political officials. For many countries that were blacklisted, they were denoted as countries serving as tax havens by G20 countries for primarily preventive reasons (Artecona & Bustillo, 2015). In consequence, these countries became more susceptible to heavier tax burdens (Artecona & Bustillo, 2015).

### **FATCA Pertaining to European Countries**

Issues regarding the implementation of FATCA in the European Union have been discussed among its members. Article 29 Working Party in the European Commission expressed an understanding of the United States and its reasoning for issuing FATCA (Brodzka, 2013). G-20 countries were blacklisting countries for reasons irrelevant to actual tax violations. According to Artecona and Bustillo, in May of 2013, France placed Trinidad and Tobago on a black list primarily to put pressure on them to move towards more transparent policies (Artecona & Bustillo, 2015).

However, EU members wanted FATCA to serve a mutual role in recognizing what is necessary regarding transparency from an EU perspective (Brodzka, 2013). According to Article 8 of the Charter of Fundamental Rights, the right to a private and family life is a fundamental right (Brodzka, 2013). According to Brodzka,

“It means demonstrating the necessity by proving that the required data are the minimum level necessary in relation to the purpose. It should not mean the bulk transfer and the automatic screening of all these data... The EU requested that the US ensures that there is a lawful basis for the processing through careful assessment of how the objective of FATCA aligns with the EU's fundamental rights. This recognizes that Americans and their personal information are subject to the same protection as EU citizens.” (Brodzka, 2013, p. 10)

In response to the European Union's request of reciprocity, the US modified its approach to implementing FATCA by incorporating a government-to-government framework (Brodzka, 2013). Therefore this approach consists of a collection of information from FFI's to send to the US without needing to enter into separate data disclosure agreements with the IRS. This new approach alleviated the compliance issues that were initially expressed by the EU members. The government to government approach also allowed EU members to engage in information exchange through coordinated bilateral agreements where the US also committed to collecting data of European residents and to share the information with the European country engaged in the bilateral agreement (Brodzka, 2013). According to Brodzka, countries will be viewed by the US as operating in compliance by entering into the bilateral agreement (Brodzka, 2013). They will not have to sign an agreement with the IRS and they will not be subjected to the 30% withholding tax from other banks jurisdictions (Brodzka, 2013).

### **FATCA Implementation Concerns**

The aforementioned examples of FATCA in the Caribbean and its implementation among EU members highlight the concerns of its implementation due to jurisdictional conflict among partnering countries. Although the EU has remedied some of their concerns by requiring a level of reciprocity from the US, Caribbean countries such as the Bahamas have provided a level of compliance, yet still maintain their secrecy laws, which prohibit the disclosure of individual bank accounts. The IRS is adamant about their approach and requires that all partnering countries comply with the law. Unfortunately, if the issue isn't resolved the countries will be blacklisted and viewed as tax havens, which

will prompt foreign investors to seek other secure environments to place their financial assets. This results in a loss of foreign direct investment, where the access to innovation and technology is predicated. Unfortunately for Caribbean islands, if their matters regarding disclosure aren't resolved similar to EU members then the perception of being a tax haven continues to linger and the loss of foreign investment will negatively impact their economic development.

The IRS reports a loss between \$21 trillion and \$32 trillion in offshore accounts, with an annual estimation between \$40 billion and \$70 billion harbored within tax havens (Henry, 2012). Statistics show that the United States' annual budget deficit is over \$500 billion and experts believe that FATCA represents a new measure of collecting unpaid taxes in offshore accounts (Henry, 2012). While the United States elaborates FATCA as a strategy to address an issue of tax evasion, initially opponents of the FATCA tax law continued to view it as a measure of imperialism. According to Trinidad & Tobago's Finance and Economy Minister, Larry Howai, has expressed the extraterritorial law as a method to convert foreigners into unpaid IRS agents, which he refers to as US backwards imperialism (Bowen Jr, 2014). Advocates as well as opponents of the international tax law often discuss the disparity regarding the perceived benefits and negatives of FATCA. However, a resolution cannot be attained without the understanding of what this law represents in a historical and contemporary sense.

### **Business/ Economic Challenges**

Since a number of countries have conceded in agreement to the FATCA mandate, the transition to this new method of disclosure has not been easy. Foreign parties

involved have expressed the challenges pertaining to business and technological factors regarding this law. Challenges associated within the business arena have been described as complicated and cumbersome. The implementation has been costly. According to Alicja Brodzak, if all foreign financial institutions from around the world participated in FATCA the cost of implementing the law would be between \$500 million to \$1 billion USD (Brodzak, 2013). According to Brodzak,

“Running costs (if all participate) were assessed at 10- 30 billion USD worldwide. The report compared the costs with projected benefits of FATCA: additional tax revenues of 8.5 billion USD over 10 years gave the global rate of return of FATCA of 1%. The simple commentary of professionals’ environment sounded: ‘Ask the world to pay 100 USD for the US to get less than 1 USD’ (Brodzak, 2013, p.9).

According to Brodzak, initially the implementation costs of FATCA were too expensive. The amount of money it would require the FFIs from around the world to commit to wasn’t worth the gain of solving the problem that the United States wanted to tackle. As a result, the costs to implement FATCA made the attempted goal to prevent the illegal movement of money insignificant. The potential gains of the United States appeared small and insignificant.

Many foreign countries have denounced the principles of FATCA, stating that their local laws prohibit them from disclosing their clients’ information (Blank, 2014). Countries such as Brazil and Peru, have elaborated that their information confidentiality and secrecy law are often cited as propositions by Foreign Financial Institutions, which in turns prevents them from disclosing their clients’ information without violating local country laws (Scharlack, 2015). The Foreign Financial Institutions perceived that the

FATCA law would actually hinder the relationship of their clients and void any contracts established in the past (Eldridge, 2012).

The relationships established by these clients and Foreign Financial Institutions serve as an economic mainstay to many of the partnering countries. The disclosure of clients' accounts result in a breach of any relationship (Eldridge, 2012). Therefore, hindering the accumulation of economic incentives provided to the foreign host country through disclosure will tarnish the reputation of FFIs. In respects to closing the accounts of recalcitrant account holders deemed by the United States IRS, in many countries this process is either illegal or quite extensive (Bowen, 2014). For countries such as the Bahamas and Cayman Islands this signifies a dilemma, due to the prohibitive laws that do not permit the disclosure of client accounts. For instance if an Foreign Financial Institution withholds and remits taxes to the IRS from clients who are recognized as violators of tax avoidance, the Foreign Financial Institution may have to absorb additional costs without having the authority to pass the costs on to account holders (Bowen, 2014). In addition to taking on the accounts, the Foreign Financial Institutions may also become exposed and susceptible to lawsuits regarding breach of contract agreements (Eldridge, 2012).

Potential breaches of contracts and eventual lawsuits will also have a negative effect on countries. This can also lead to disgruntled clients and a level of stigmatization that scares away potential investors. Economists in the Bahamas have expressed a level of concern believing that the statutes of FATCA are coercing the island into a precarious economic landscape. A FATCA participating institution may opt to discontinue business

relationships with non-complying Foreign Financial Institutions in addition to investors moving financial assets to jurisdictions that do not have issues adjusting to the FATCA laws (Eldridge, 2012). This approach can have negative affect on the economy in addition to leading to potential losses regarding correspondent banking relationships that perceived the costs of transactions outweigh the profitability (Eldridge, 2012).

### **Technological Challenges**

The technological challenges that are frequently highlighted by economic experts regarding FATCA are aligned with issues pertaining to the technological and operations governance. FATCA requirements may unsurprisingly initiate an organization to demand increased governance over their data, processes and systems to ensure compliance with FATCA (Eldridge, 2012). The FATCA guidelines affect many measures within an organization and may need greater communications and transparency to manage. As regulations become constantly modified, technology will need to adapt to meet those needs. So an organization should consider how changing requirements would be monitored and implemented in their systems. Operational governance will be needed as well. For example, how a legal entity is created should be tightly controlled to ensure new entities that are created or changed, can be analyzed for FATCA implications.

Another technological concern that exists is an issue in regards to the analysis and the remediation of pre-existing accounts (Eldridge, 2012). A number of commercial banks within the Caribbean have expressed the extensive amount of resources and work needed to assess account holders (Eldridge, 2012). There are many countries within the Caribbean that has informed the IRS that their documents are recorded on paper

(Eldridge, 2012). In order for their institutions to analyze and assess each account holder, the amount of information they possess with a labor power between 10-15 resources would take approximately two years (Eldridge, 2012).

### **Background**

In October 2015 the IRS reported a list of countries that were complying with the FATCA tax law in addition to a list of non-complying countries who were deemed to be in violation of the statutes enlisted within the international tax law. According to the United States' Internal Revenue Service, 19 of 25 Caribbean Countries were denoted as tax havens and were in violation of the compliance standards required in FATCA. Of the 19 listed countries, the Bahamas and Cayman Islands were denoted as the most notorious islands within the region (McCarthy, 2015). The list provoked a level of displeasure among the countries' political officials. There were references towards the FATCA list referring to the international law as constitutional black listing (McCarthy, 2015). The officials felt that they were in compliance with what was requested of them; however, US officials stated that their secrecy laws did not adhere to transparency requirements that were detailed within the FATCA law (McCarthy, 2015).

This particular example aligns with the jurisdictional conflict among partnering countries. Although the Bahamas and Cayman Islands have provided a level of compliance, their secrecy laws prohibit the disclosure of accounts and have also obstructed any progress regarding complying with the FATCA law. However, the IRS is adamant about their approach and requires that all partnering Caribbean Islands to comply with the law. Unfortunately, if the issue isn't resolved the countries will be

viewed, as blacklisted countries and their economic environment would render into instability, which will lead foreign investors to seek other secure environments to place their financial assets. This results in a loss of foreign direct investment, where the access to innovation and technology are dependent. Unfortunately for Caribbean countries, if the perception of being a haven for those who evade taxes continues to linger then the loss of foreign investment will negatively impact their economy.

To further explore the FATCA and what its provisions mean to Caribbean countries, in chapter II I present a literature review regarding the theoretical assessment of FATCA. Upon its assessment, I will analyze how capitalism and globalization has historically played a role in the ascension of countries and their global influences demonstrated through their power. In Chapter III, I explain my methodology and data analysis. In Chapter IV, I explain the difference between offshore financial centers and tax havens. Chapter V, I share my findings regarding the opinions of FATCA through the lens of domestic professionals who work within the financial sector of the Bahamas. Finally, in Chapter VI I discuss the conclusion of my findings.



## Chapter II

### Big Bank, Little Bank: The Sustainability of Power

Research dedicated towards analyzing the inception of globalization has discovered that there exists a fundamental paradox in regards to assessing the role of global capitalism in ancient and modern societies. According to Samir Amin, the role of globalization in ancient societies enabled developing nations with the opportunity to ascend to the status of the developed nations (Amin, 1999). Being viewed as inferior compared to the superior developed countries, developing countries are able to eventually maneuver into economic prosperity and political domination through globalization. In addition to Amin's assessment of ancient capitalism he analyses modern globalization. To Amin, modern globalization is deemed to have a polarizing effect on developing nations by eliminating the opportunity for developing nations to economically ascend to the status of developed nations (Amin, 1999). Amin emphasizes the concept of delinking, which is realized when an active agent reshapes the confines of globalization to manipulate it to one's own agenda (Amin, 1999).

When analyzing FATCA we see a measure of delinking regarding the policies that request the disclosure of foreign accounts owned by United States affiliates. Delinking is assumed in this role because not all countries are afforded a level of reciprocity regarding transparency pertaining to foreign accounts. Through FATCA we see the desire of the United States to use its influence to prevent a domestic issue pertaining to the movement of money exiting the country. However, the United States

benefits from money entering into the country. Despite benefiting from the existing system at hand the United States is adamant in their pursuit of halting the system at hand, which they benefit from. Although FATCA was created to prevent tax evasion, its efforts were not designed to prevent money from entering into the country. FATCA does not prohibit money from entering into the country however it operates through delinking in order to reshape the agreed upon rules for the best interest of the Bahamas.

Amin asserts that the methodical ascension to economical prominence through globalization is not a new phenomenon. International agents utilize globalization for their motives and achieve a level of manipulation in order to maintain power. What is new regarding globalization is the unprecedented control and influence enjoyed by powerful nations and the continued subjugation endured by developing nations (Braun, 2006, 2008; Braun et al., 2015). The unveiling of this phenomenon is often demonstrated within the confines of bilateral treaties between powerful nations and less powerful nations. Through the observations of policies, experts are now conceding that often-proposed bilateral treaties are modern day instruments of imperial measures. Dominant nations are enabled with the ability to continue their political influence over other nations through agreed bilateral agreements (Braun 2005, 2006, 2015). For many researchers, bilateral treaties often times expand the control of one nation to another. However, a popular argument consistently raised is that bilateral agreements are proposed to protect and sustain the well being of partnering countries.

Samir Amin elaborates on the evolution of globalization through three phases of imperialism (Amin, 2001). Amin acknowledges capitalism and monopoly capitalism as

pivotal phases contributing to the existence of imperialism. Capitalism was evident and permeated the global arena through industrialization. Industrialization represented a colonial subjugation where countries in Asia and Africa were forced in participating in the free market. Cases such as China's inclusion into the opium trade demonstrated England's domination of the world's market (Amin, 2001). Amin followed his case regarding capitalism by introducing monopoly capitalism as the most recent stage of imperialism. According to Amin, capitalism prevented declines through profit of unequal exchanges (Amin, 2001).

Amin's assessment of imperialism appears accurate with what is taking place today. Proponents of the FATCA tax law have denounced any measures that provide historical references to imperialism; however, the law exudes the qualities defined by Amin. The role of globalization plays a major role in the implementation of FATCA. The United States' believes their intentions to enforce all FFI's that agreed to the law will benefit all parties. Much like capitalism in the form of industrialization, the United States' IRS is endorsing the law for its ability to protect all partnering nations, however the main beneficiary is the United States. The goal to keep all finances within the United States while requiring FFI's to disclose information regarding off shore accounts protects the United States but leaves FFI's in limbo.

Within the confines of globalization researchers of the global political economy have analyzed the current correlation between capitalism and imperialism. When discussing modern globalization, or globalization within the 21<sup>st</sup> century, capitalism and imperialism are perceived as important elements to its inception. The convergence of

these two themes illuminates the evolution of globalization and reveals the demonstrated practices utilized by powerful nations. William I. Robinson references to this phenomenon as the “imperial state,” where the interest of promoting and protecting transnational activity is motivated by the ulterior motives of governmental control and influence of nations (Robinson, 1996; Braun and McLees, 2012; Braun and Sylla Traore, 2015). Nevertheless, international authorities have expressed FATCA as an example of modern globalization. Despite IRS authorities claiming that FATCA was created in an effort to crack down offshore tax evasion, the provisions of penalization have been identified as imperial measures of coercion over less dominant nations within the Caribbean, but the United States’ perception of the matter is aligned with the idea of levying penalties to discourage noncompliance.

### **Financescapes**

Economists have argued that the negatives of FATCA will create a regression concerning economic development within the Caribbean due to the coercive elements within the international tax law serving as an imperial measure. This particular argument is often waged when discussing the financescapes regarding the global flow of finances. Arjun Appadurai coined the term financescapes when analyzing the destabilizing of national economies through the rapid and uncontrollable flows of global finance (Powell, 2001). In Jason Powell’s article of financescapes, he references the global credit crisis as an example of how volatile financescapes are to an economy. According to Powell, the uncertain future is made visible to the speed and rapid changes in currency markets, stock exchanges and commodity speculations (Powell, 2001).

Financescapes also place emphasis on the flow of currencies, securities and of capital (Powell, 2001). This is evident in the flow of financial crimes such as tax evasion, where organized criminals can hide illegal finances in offshore accounts. This particular practice is argued by advocates in favor of FATCA to implement the international tax law. The absence of an existing strategy to prevent tax evasion is enough to provoke an economic and political collapse.

Despite providing information regarding the correlation of imperialism and the provisions defined in FATCA, the literature excludes information regarding the repercussions of FFI's that refuse to oblige to the provisions. Concerns regarding the eventual development of the islands remain absent. Through my readings, I am aware of the limitations of the foreign agencies as well as the existing opposition. However, I did not find any information regarding the aftermath pertaining to the development and economic stability of the countries that are punished. The future of the recalcitrant countries remains unknown. Questions regarding economic development for financial enterprises such as banks, insurance firms and investment firms are still unclear. Consequently, the impact of small business owners and major industries contributing to the economic development, such as, the tourism industry, will be impacted but evaluation of such effects remains unknown.

### **Penalization: What Are Economic Sanctions?**

By analyzing the levying of penalties, therein lies the understanding of imposing sanctions. In order to discourage non-compliance, the more powerful nations impose sanctions to prevent further dissension. As a result, countries that disagree with the

premise of FATCA are unable to fight back because of the repercussions to which their country becomes susceptible.

FATCA imposes a 30% withholding tax for nations who choose not to comply with the demands of FATCA. The 30% withholding tax serves as a penalty for all non-complying nations. This particular detail regarding FATCA, highlights the level of force that the United States places on Caribbean countries in attempt to coerce them into complying with the provisions of FATCA. In addition to being recognized as a penalty is that it also countries as a sanction. In order to recognize the sanctions, one must first understand economic sanctions. In the next section I will discuss questions pertaining to economic sanctions should be addressed such as, “What are economic sanctions? Who does the imposing of sanctions impact? Are economic sanctions effective?” should be asked.

The dynamic of understanding sanctions poses a dilemma to its experts. Economists, humanitarians, and political scientists alike all recognize the problems that the implementation of economic sanctions cause once enforced. While the perception of economic sanctions as an alternative to military intervention is recognized universally, experts and researchers have called its effectiveness into question. Humanitarians have emphasized the significance of effects upon the civilians of the nation, which the sanction is placed. Often a penalty against a leader found guilty of violating humanitarian rights, an economic sanction is used as a penalty to discipline the perpetrating nation’s leader. However, what’s devised in theory is not what always takes place. Due to the misfortunes of a particular nation’s leader, the citizens are the ones who bear the burden of the

disciplinary results of the imposed sanctions. As a result, political officials have continued to assess the effectiveness of sanctions and its effects of nations. Through their assessment, inquiries regarding the response of the nation's leader who is found guilty of violations are being analyzed. Once placed under sanctions there is no research that exist which points in favor of the effectiveness of economic sanctions and the eventual concession of political leaders becoming more inclined to abide by any mandated law or universally recognized humanitarian right. However, evidence suggests that the imposing of economic sanction does more harm to citizens of the imposed sanctioned nation. Furthermore, to get a clear understanding of the economic sanctions, one must first analyze its purpose and further evaluate its effects on sanctioned nation-states. Therefore, I will analyze the effectiveness of economic sanctions by exploring why they are proposed and analyzing the role at which the United States has utilized sanctions.

According to Makio Miyagawa, the absence of a central authority within the international community, economic sanctions are often times defined as not only a way to describe positive and negative measures to influence individual nation-states to conform to a desired behavior but its construction is also devised in a manner where the enforcement of such sanctions are created to be enforced as retaliatory measure adopted by individual nation states (Miyagawa, 1992).

Miyagawa illustrated the dynamic of economic sanctions through the utilization of an elementary example of two countries, Country A and Country B. In her illustration, Miyagawa explains that Country A imposes a sanction against Country B because Country B has turned hostile towards Country A. Although the relationships between

Country A and Country B have become severed through a series of interactions, there exists no breach of law in this severed relationship. However, Country A's actions resulted in the imposing of an economic sanction against Country B. According to the consensus regarding the perceived accepted reason to impose an economic sanction against a particular country, the actions of Country A demonstrate another layer regarding economic sanctions that is not often discussed or evaluated. Miyagawa further articulates that, through similar cases of what was demonstrated in the example between Country A and Country B, sanctions weren't constituted as a punishment for a breach of law or the rules of conduct within the society, but what ignited Country A's reason for imposing an economic sanction was a retaliation to Country B's shift in their stance pertaining to a policy (Miyagawa, 1992).

Economic sanctions utilize, as a retaliatory response isn't uncommon. Its practice is notoriously ignored in the depths of denial by the countries that methodically impose them. However, by recognizing the environment in which economic sanctions are imposed, one may tend to expect countries of authority to overextend their influence by abusing the placement of economic sanctions upon other countries. As stated earlier, the peculiarity of the international community is the lack of a central authority; thereby the absence of a government and the recognized fact that the imposing state will adamantly claim the actions resulted in a severed relationship by another country caused by an unfriendly alteration of the target's policy results in a breach of an agreement of "friendship" (Miyagawa, 1992). Therefore, the retaliatory response is viewed as a sanction.



The actions of certain state powers that mimic the aforementioned example of the relationship between Country A and Country B, gives credence to the critics of economic sanctions. Provoking concerns that ignite the questions of experts often lead to many people pondering whether or not the effectiveness of economic sanctions is evident. Researchers have assessed who are truly affected by the imposition of sanctions and according to their findings citizens are the ones who are most affected. However, sanctions are continued to be imposed on other nations.

Questioning the legitimacy of the authority pertaining to the imposing of economic sanctions is a valid concern for many critics. However, their concerns often view sanctions in a punitive regard, which is a common flaw. Not all sanctions are punitive in nature. There are cases where the imposing of sanctions constituted a preventive measure. According Miyagawa, circumstances may arise where forceful actions may prevent rule breaking (Miyagawa, 1992). The recognition of police action among states is a measure taken to prevent the potential threat of an act that may become a transgressor to the rules of society or the police action may operate in a role that may prevent the offender from attaining his goal and accomplishing an act of ill doing (Miyagawa, 1992). Economic sanctions imposed with the intent to prevent ill-resulted acts of harm are not viewed in a punitive light but are perceived to be created with the purpose of aiding the vulnerable people within a violating country through preventive measures. Therefore, experts who acknowledge economic sanctions and its preventive measure have also defined economic sanctions as the use of economic capacity by one international actor, whether it's a state, international organization or a group of actors against another international actor with the intention of disciplining the latter for its

breach of a certain rule or preventing it from infringing upon a rule which the party who is imposing the sanction deems important (Miyagawa, 1992). Many experts who may argue in favor of sanctions or hold a nonpartisan view of its effectiveness often acknowledge its many forms and the effective layers it may constitute depending upon the circumstance.

To further assess effectiveness of sanctions, I would like to review the newly imposed Foreign Account Tax Compliant Act (FATCA) and how it entails potential economic sanctions for any nation state that violates its agreement. The reason why I want to review the FATCA tax law is due to the uniqueness of its inception. For its creators, the FATCA tax was created by the IRS to prevent the ill effects of tax evasion from impacting the economic society of the United States. However, opponents of the new tax law argue that its inception was developed as a retaliatory response in regards to foreign countries, particularly within the Caribbean, who did not want to become unofficial IRS agents for the United States.

### **Power: Ruling Class and Ruling Ideas**

According to the claims of the United States IRS, the premise of FATCA is designed to monitor that all United States' affiliates; individuals, corporations and multi-corporations, are paying their taxes and that the economic status of the country is sustained. Its premise is viewed as a beneficial tool to citizens of the United States in addition to partnering countries. However, there exists a level of hypocrisy because in many instances the United States is viewed as a tax haven. For instance, within the state of Delaware shell companies' are the primary vehicle for laundering money (Wayne,

2012). Delaware has reaped the benefit of collecting \$860 million in taxes and fees from their absentee residents in 2011 (Wayne, 2012). Although \$860 million is a lot of money it paled in comparison to United States' neighboring states. According to financial experts, Delaware provides the anonymity to account holders that most offshore jurisdictions don't, which results in more than 50 percent of the worlds major corporations opening up accounts located in that state (Wayne, 2012). Critics of FATCA point to the financial operations of the state of Delaware regarding the hypocrisy of FATCA.

Within the realm of globalization, the role at which governments play in an era of globalization mimic the practices of individuals during the capitalistic period during Marx's period of the state existing within the capitalist. The United States IRS order of FATCA highlights its relationship with partnering countries, whose existing financial entities reacts and responds in a manner of individuals who operated in the non-ruling class. According to Marx and Engel (1972), ideas of the ruling class exist in every epoch as the ruling ideas. The ruling class, which has the material means of production at its disposal, also controls the means of the mental production (Marx and Engel, 1972). Placed into a more modern context, in regards to FATCA and offshore accounts, the material means are represented by the Unites States' affiliates, U.S. citizens or businesses, and their financial possessions existing within the scope of globalization.

Understanding how these institutions operate is eerily similar to the individuals of the ruling class, which Marx writes about in his works. We can see that the role of the state has evolved where state institutions communicate and do businesses with other

states as individuals did during Marx period. Institutions operating in social classes of dominance are creating mandates to non-dominating governments. This is evident through the antiquated classification of countries through the three world's theory.

According to the Three World Theory, first world nations were viewed as international superpowers. During Three World theory comprising of states' classification, the United States and former Soviet Union comprised the first world group for their economic advancements in addition to their engagements in imperialism and social imperialism. The second world states were comprised of developing countries during that period. Countries such a Canada and other European countries comprised that category. Finally, there existed third world countries, which were countries that were denoted as exploited nations. Countries within Africa, Latin America and Asia (exception of Japan) composed the third world. Although in recent events many of these terms have not been used and some of the countries have emerged, such as the 2008 BRIC countries of Brazil, Russia, India and China, and with countries such as the USSR dismantling. The United States and other international powers still serve in an imperialistic ruling role where they can dictate their ideas to other nations. This precedence is set through their role as a hegemon, a world power. As a result of being a hegemon and through cultural hegemony the United States IRS can dictate as well as manipulate their views to other global entities as the deciding views and principles for the world to non-hegemonic/non-ruling nations.

According to Marx and Engels,

“Ruling ideas are nothing more than the ideal expressions of the dominant material relationships, the dominant material relationships grasped as ideas; hence of the relationships which make the one class the ruling one, therefore, the ideas of its dominance. The individuals composing the ruling class possess among other things consciousness.” (Marx and Engels, 1972).

In an apparent parallel between Epoch of the Illusions and the creation of the creation of FATCA, the United States IRS represents the global ruling class in dictating their ideas to nations who are non-ruling. The United States recognizes its influence as a dominant country. The U.S. feels that their action will be followed too by smaller countries.

### **Class, Status, and Party**

According to Max Weber, the apparent juxtaposition of social order and economic order exist. Weber states that sometimes the social order and economic order are often times confused as being the same but in reality they are of separate orders that are related to the legal order (McGee and Richard, 2003). Weber’s analysis regarding the assertion of social and economic order was in response to Marx’s methods of analysis. Weber viewed Marx with much esteem, however he felt that Marx’s analysis was flawed because it was heavily focused on economics.

Weber coined the term class situation, which conflicted with the methods of analysis from Marx. According to Weber, classes represented the frequent bases for communal action. Weber mentioned that class is associated with individuals having a common specific causal component of their lives; the component being represented by economic interests in the possession of goods and opportunities for income, dictated by the conditions of the commodity of labor markets (McGee and Richard, 2003).

Weber contested Marx's assessment through his beliefs of individuals having common specific interests within their lives and that interest being aligned with their economic pursuits. Through this assessment an understanding of status groups within a social group is realized. Status groups also separate individuals representing an affluent class.

Weber not only maintains that individuals are socially grouped by their common interest but he asserts that status honor is predicated upon a shared lifestyle of individuals who want to be admitted into a circle (McGee and Richard, 2003). According to Weber, an expectation exists regarding the lifestyles of individuals who want to be associated with a particular social class. For instance the examples Weber provides includes individuals who may live on a certain street renowned for its wealthy inhabitants, or Germans who participate in dueling as a sport of prestige. The examples provide an analysis of wealthy individuals engaging in activities that they perceive as being prestigious and at which only individuals of their class participate in. Weber constituted this phenomenon as the stratification of status groups. This is prevalent in regards to the wealthy today. Efforts by the economic elite are initiated in hopes of separating themselves and their family from other individuals in society. Therefore in order to preserve their recognition and standing within their respected social classes they engage in practices that they may believe will maintain their status. As result of sharing an aligned interest of economic pursuits, the wealthy elite want to preserve their wealth by seeking advancements that will provide security for their financial possessions. Therefore, these individuals seek efforts such as off shore accounts.

Concepts such as “old money,” which denote the economic longevity of individuals are a perfect example of status groups within social classes. No longer are individuals viewed as being wealthy, individuals are now seeking the status honor of being old money because it denotes generational wealth. In relation to FATCA, Weber provides an understanding of why certain individuals engage in offshore accounts. The average person has no concern about offshore accounts because their lives are preoccupied with matters of survival; meanwhile a wealthier individual desires to sustain their wealth through any means. The absence of understanding off-shore accounts and tax evasion are due to the efforts of the wealthy attempting to retrieve the recognition of generational wealth by preserving their financial gains through placing their money in another country or by just not paying taxes. They are practices of the wealthy where an individual associated with the working class does not understand nor do they care about the matters because it is above their class situation.

In the next chapter, I provide my methodology and describe the general traits of my conducted interviews and my fieldwork site. I also discuss the challenges and limitations I experienced while conducting my interviews.

## **Chapter III**

### **Methodology**

In this chapter I discuss my research methodology. My intention pertaining to this research topic was to share a perspective regarding FATCA from local professionals within the financial sector located in the Bahamas. After becoming acquainted with the United States' Internal Revenue Service reasoning behind mandating the laws of FATCA, I wanted to hear another perspective from local financial professionals regarding the international tax law. I decided to select the Bahamas as the area to further assess the impact of FATCA, while also I furthering my understanding of its impact of throughout the Caribbean through the utilization of archival journals chronicling the infancy stages of FATCA within the Caribbean. I referenced quantitative data derived from the Financial Action Task Force (FATF) to see how much money was existing and entering the United States. I also conducted interviews with four individuals who worked within the financial sector in the Bahamas in order to attain a local perspective regarding FATCA.

#### **Location of Interviews**

I selected the Bahamas to conduct my interviews as well as a local point of reference for this research because of its proximity to the United States, its historical relationship with the United States and OECD regarding transparency, and the current impact of FATCA on the island's banking sector.



Due to the island's proximity to the United States, a common issue that was arising regarding FATCA was dual citizenship. There were many Bahamian nationals who held a United States' passport because of their dual citizenship status. The majority of Bahamian nationals with dual citizenship status were born in the United States but returned to Bahamas and was raised as Bahamians through their cultural practices within the Bahamas. However despite residing in the Bahamas for majority of their lives, they were impacted by FATCA because they held a dual citizenship status and were expected to pay taxes to the United States despite not working nor living within the United States. As result we saw an issue emerge where many Bahamian nationals renounced their dual status.

The Bahamas also has a historical relationship with the United States and the OECD pertaining to transparency. Prior to the inception of FATCA, the OECD requested transparency of foreign account holders within the Bahamas. However, the process was recognized as tax information exchange agreements and countries were not permitted to request tax information without a probable cause. Countries were required to provide some form of indicator as to why there was a level of suspicion existing pertaining to a foreign account holder and after that suspicion was expressed the hosting jurisdiction would provide the requesting party with the tax information to assess if there were any forms of incriminating evidence to confirm the case of presenting suspicion. Despite the level of transparency that was agreed upon through tax information exchange agreements, the process was quite difficult and extensive. Countries could not impulsively request a foreign account holder's tax information due to KYC guidelines, also known as Know Your Customer guidelines. Due to the mandated KYC protocol required of the Bahamas,

accounts for foreign investors could not be created until that process was complete. However, once FATCA was introduced that particular process was disrupted by the demands of the IRS.

I identified a local professional to help me target a list of professional candidates to interview in the Bahamas. My professional contact was also my cousin, Marcus<sup>1</sup>. Marcus was the founder and owner of an insurance agency within the Bahamas. He was also well respected within the financial sector. After owning his insurance company for over 20 years, he developed a positive rapport with not only local financial professionals, but with professionals who worked within the financial sector throughout the Caribbean.

Finally, my last reason for selecting the Bahamas was the apparent impact of FATCA on the islands banking sector. Due to the inception of FATCA and its new defined laws of transparency, many jobs in the banking industry were discontinued. Local banks did not see the need for these occupations because they would just hand over the tax information to the IRS. In addition jobs being discontinued, a number of account holders would leave the Bahamas and find other favoring jurisdiction. Therefore, my reason was to further assess the economy of the Bahamas being impacted by FATCA.

### **Research Methodology**

In August of 2017, I participated in an independent research study with Florida International University's Dr. John Zdanowic. The object of the research study was to analyze the earlier stages of FATCA, while reviewing numerical data regarding the

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<sup>1</sup> I used a pseudonym to provide anonymity to my cousin.

<sup>2</sup> I use pseudonyms for all individuals who participated in my interviews. After I received a request from a participant to receive full anonymity, I decided to provide

fluidity of monetary sources circulating throughout the United States. According to the numerical data I was granted access to, I became privy to the amount of money that was entering into the United States as well as the money exiting the United states. The information I had access to provide me with insight that clarified the issue of FATCA pertaining to the concerns of financial professionals within the Caribbean.

My independent study served as a pivotal factor regarding the shaping of my research. Once the information was gathered regarding the numerical information pertaining to the amount of money entering as well exiting the United States between the years of 2014-2016, I was able to document those numbers as I discovered relevant facts through the archival sources of academic and economic journals. Through those sources I was able to decipher the common critiques of FATCA by financial administrators and political officials who resided within the Caribbean. The archival research also entailed researching the impact of economic sanctions imposed on countries concerning matters of disputes. Due to understanding implications regarding countries noncomplying with the transparency guidelines within FATCA, the research regarding the imposing of economic sanctions aligned with the effects of the 30% withholding tax imposed on countries who did not comply with the guidelines of FATCA.

After reading about the critiques of FATCA through the archival research as well as the gathered numerical data regarding the amount of money entering the United States and exiting the United States between the years of 2014-2016, I contacted my professional network with the Bahamas to help me find potential candidates to interview regarding FATCA. I wanted to conduct interviews with professionals who were well

versed regarding the nuances of FATCA as well as its historical, present and projected economic impact on the island of the Bahamas. I realized that the topic was fairly new and not many professionals were aware of the historical secrecy and transparency laws that always kept a microscope on the island. However, I wanted my research to take in perspectives regarding this matter.

While communicating with my Marcus, I explained to him the research I was conducting and the data I became privy to due to my research with Dr. John Zdanowicz. Due to my Marcus being an established financial professional within the insurance sector located in Caribbean, he understood the topic I was discussing and agreed to assist me in my recruitment of a of candidates who were identified as having some form of experience dealing with FATCA. Due to being the owner of their insurance firm, Marcus possess relational ties to a number of professionals who worked within the financial sector in the Bahamas.

Targeted candidates for interviews were determined by their occupational role within the financial sector. Marcus and I discussed the traits we were looking for in potential candidates. We wanted local professionals within the financial sector to be prioritize but we did not want to preclude any opportunities to interview expatriates because their experiences were deemed valuable. According to the archival sources I referenced, expatriates were oftentimes displeased with the transparency laws because they could often times be double-taxed. We also determined potential target candidates by the level of work experience they possessed concerning FATCA. For instance, a banker who has been working within the banking sector since the year 2009 would

possess knowledge of FATCA, its inception and the implemented requests its transparency guidelines. They would also be able to reference why certain guidelines were assumed by the IRS to be implemented. We also identified their duration within the financial industry. Individuals who were accountants for major firms for 20 plus years would be able to recount the historical transparency laws that were enacted within the Bahamas as well as who were the major players (i.e. countries) responsible for initiating the transparency laws as well as why did they exist.

To initiate my recruitment process, I shared my recruitment letter with Marcus. Marcus and I subsequently emailed the recruitment letter to a list of potential candidates, who he identified as his contacts/colleagues. Marcus also provided potential candidates with a physical copy of my recruitment letter. I relied heavily on the assistance of Marcus because I was not familiar with the business and financial landscape within the Bahamas prior to my arrival. I was initially concerned with notion of being dismissed due to being a foreigner or either receiving a level of skepticism because I was a college student from America interviewing subjects on a highly contested topic within the Caribbean. I actually attempted to reach out to potential candidates prior to notifying Marcus, but to no avail I was either denied an interview opportunity with the financial professionals identified or no one responded to my email, which consisted of my recruitment letter.

After the recruitment letters were sent out, we only received a response from four professionals who agreed to be interviewed regarding the matters of FATCA. We acknowledged that the number regarding the interviewed subjects were a small number, however what was also understood was the reservations that exist within the

consciousness of the identified targeted candidates. A number of potential candidates expressed that they were unfamiliar with the nuances of FATCA due to it being new and introduced in 2015. A number of other professionals wanted to remain mum on the matter because of the contesting views and wanted to be cautious of what they expressed as their views because of their occupation. However, the majority of potential targets stated that they were not knowledgeable enough on FATCA to participate in the interviews.

After receiving confirmation from the professionals who agreed to participate in the interviews, I scheduled appointments to meet with each during professional to conduct interviews during the summer of 2018. Due to my independent study with Dr. John Zdanowicz satisfying as well as substituting my required 10-week fieldwork experience, I decided to go to Freeport Bahamas for 5 weeks to conduct interviews with the professionals who agreed to the interview. I offered each participant a level of anonymity after receiving the responses from the professionals who declined the opportunity to be interviewed; I made it my intention to present that option to my subjects. I was willing to provide pseudonyms as well as a level of confidentiality regarding their occupation. I also offered each subject the opportunity to ask me any questions regarding the clarity of my research. As a result my first interviewed was conducted on July 6, 2018 and final interview was conducted on July 24, 2018. After each interview, my subjects expressed their gratitude concerning my interest pertaining to FATCA and offered their availability if I needed further information.

### **General Characteristics of Interviews**

My interviews consisted of four interviews with individuals who worked within the financial sector within the Caribbean. All participants resided in the Bahamas. The jobs occupied by the by each participant were identified as chief financial officer for a local company, a financial advisor, an accountant and an expatriate business representative officer for a boat company. All professionals are Bahamian nationals with the exception of the expatriate financial officer. The expatriate business representative was born in the United States.

With the exception of one participant, the financial advisor, all of the professionals had extensive experience in their profession. Three of the participants had 20 plus years of experience within the financial industry, meanwhile the banker had 8 years of experience. Although the expatriate business representative had a total of 20 plus years of experience, he only worked in the Bahamas for a total of two. Their experiences played a major role because either they possessed knowledge of the transparency laws in the Bahamas prior to FATCA or if they were fairly new to the sector or new to the region, their assessment regarding FATCA was not as in depth or as personal as the professionals who worked 20 plus years and resided within the Bahamas for the majority of their professional career.

To initiate the interviews, each participant briefly expressed how they perceived FATCA. Two of the participants acknowledged its service but expressed it as an imperialistic tool. The two professionals who shared that view were the chief financial officer and the accountant. Both professionals felt as if FATCA was causing more harm and further disrupting the country's economy because its impact on foreign investment

and tourism. One of the professionals even so much to mention that the tactics of FATCA and other United States transparency laws were viewed as “shot gun” diplomacy.

Both professionals expressed, the difficulties that existed pertaining to the process regarding the opening of accounts for potential foreign investors. They related to me during their interviews the potential inconvenience they presented compared to opening an account in the United States. According to their interviews, financial professionals who work within the bank sector within the Bahamas are extremely careful regarding their financial documenting in order to prevent any potential errors that may cause the United States to be alerted. As a result, it may take between 2-6 months for a non-Bahamian national that is also a United States citizen to open an account. As a result, they have witnessed potential account holders seek another jurisdiction to open an account.

However, on the contrary, the financial advisor and the expatriate expressed a different opinion. The financial advisor expressed FATCA as one of the current laws that needed to be followed and found no issues with the requests for more transparency with the international tax law. He stated that since they have been serving in their role, they have not encounter any issues with any potential clients or foreign account holders. If there existed any reluctance exhibited by an individual to follow any transparency laws that may signify a potential red flag.

In regards to the expatriate, their interview offered another insight. The insight of United States’ citizens representing a company working abroad in another country has been a major topic discussion concerning expatriates. However, he referred to the



practices of reporting his financial earnings to the United States Internal Revenue Services as just following the orders of the IRS. He admitted that he lacked knowledge regarding how transparency laws were affecting the Bahamas prior to FATCA. He informed me that he was aware of the many concerns regarding expatriates but he was fortunate to not have experienced any concerns regarding financial reporting. This was unique because according to the academic journals I referenced pertaining to FATCA, expatriates from the United States were vocal of FATCA because of the financial reporting of their earnings. As a result, United States expatriates around the world were renouncing their citizenship.

In the next chapter I assess the perception of tax havens as well as the origins at which the transparency laws regarding FATCA are derived from within the Bahamas. Offshore financial centers and tax havens are frequently confused as being synonymous with one another, so I explore the identities of both institutions and analyze their intentional operations. I particularly focus on the initial purpose of tax havens, the type of individuals who utilized tax havens, and the role the Bahamas had in operating as an offshore financial center.

## Chapter IV

### Misperceptions and Misunderstandings: OFCs & Tax Havens

To further understand the significance of FATCA, one must also consider that there are distinct differences between offshore financial centers (OFCs) and tax havens. The subject of transparency is paramount to the operational goals of offshore financial centers and foreign financial institutions. If there ever is a case where information is requested but not disclosed to a level agreed upon by a country that has reason to believe that their citizen has opened a foreign account in another country to evade taxes, then the host country can potentially be deemed as a tax haven. This is important to my study because for many countries operating as an offshore financial center propels the economy.

The services of OFCs not only generate finances for education, infrastructure and jobs but the finances generated through those services are also used to sustain their culture as well as certain traditions that are prevalent to a respected region. OFCs also offer a level of privacy and protection for their account holders. However if a country is viewed as a tax haven, the ramifications for operating as a tax haven can discourage foreign investors from opening foreign accounts. For many foreign investors, the utilization of offshore financial centers provides security to them and their families from potential crimes of abduction and extortion. The notion of privacy regarding OFCs offers security that extends beyond monetary sustainability; personal security for investors and families plays an important role, too. However, if a country is believed to be a tax haven investors who want to keep their financial earnings private will seek other jurisdictions to

open accounts in because their financial information would be revealed to the public due to the attention that tax havens bring once revealed to be a tax haven. Therefore, understanding the distinct differences is important for readers because the operations of OFCs and tax havens are often confused for being synonymous.

Foreign financial institutions that are located within the Bahamas understand the notion of transparency. However, they are concern with their operations being viewed as a tax haven despite complying with the terms of FATCA. FATCA isn't the first international law to request the disclosure of accounts from affiliated foreign nationals. Transparency laws has been agreed upon and implemented for years. However, what is deemed problematic for countries such as the Bahamas is that the operations are being associated with tax havens, despite maintaining that they are a offshore financial center. The labeling of offshore financial centers as tax havens are a legitimate concern and are often misunderstood. As a result the Bahamas has to constantly validate their operations as a tax haven by complying with FATCA to counter that assumption.

In this chapter, I will discuss the misconceptions regarding offshore financial centers and tax havens. Within that discussion encompasses the legitimacy of offshore financial centers as opposed to the misconception of assuming its operations are the same as tax havens. In addition to discussing the misconceptions of offshore financial centers, I will explore the origins regarding the practice of offshore financial centers and tax havens.

In order to clearly discuss the differences between offshore financial centers and tax havens, I referenced Paddy Carter's *Why Do Development Finance Institutions Use*

*Offshore Financial Centres* and Neha Sinha's and Ankita Srivastava's *Offshore Financial Centers and Tax Havens*. Both texts provide a clear definition of offshore financial centers and tax havens. In addition to providing definitions to OFCs and tax havens, both sources reference International Monetary Fund.

### **Offshore Financial Centers**

When discussing secrecy and transparency regarding the disclosure of foreign accounts, an understanding pertaining to the role of offshore financial centers (OFCs) are absent. A popular assumption is that OFCs encourage money laundering and that their account holders are criminals seeking to indulge in nefarious activities involving monetary assets. Although those debates are prominent within certain communities, understandings of OFCs are overshadowed by the negative cases associated with the services of offshore financial centers.

There is currently no official definition for offshore centers, however the International Monetary Fund (IMF) recognizes offshore centers in the broadest terms as jurisdictions that provide financial services by financial institutions to nonresidents (Carter, 2017). According to Neha Sinha's and Ankita Srivastava, the IMF describes offshore financial centers as,

“... A center where the bulk of financial sector activity is offshore on both sides of the balance sheet; where the transactions are initiated elsewhere and the majority of institutions involved are controlled by non-residents.” (Sinha & Srivastava, 2015, p. 990).

Sinha and Srivastava also describe offshore financial centers as jurisdictions that complete business transactions through operations at remote locations. The services provided by offshore financial centers are believed to provide potential account holders with a security net that will preserve their wealth beyond what banks or other financial institutions within their home country could do. Whether it's through increase interest on their earnings or limited taxation, OFCs are deemed valuable by their account holders because they offer a benefit that does not exist within their home countries.

Neha Sinha and Ankita Srivastava identify offshore financial centers by three characteristic traits,

“Offshore financial centers are identified as jurisdictions that possess the ability to host a large number of financial institutions that prioritize the engagement of business ventures with non-residents. Offshore financial centers may offer financial incentives such as reduce taxation or maybe perceived by its account holders to reside in a more stable economy.” (Sinha & Srivastava, 2015, p. 991).

Individuals who lose faith in their national government economy usually seek financial asylum in offshore centers. For instance, during my interview with Barry McGuire a financial advisor within the Bahamas, he provided me with an example of individuals seeking financial asylum. According to Barry McGuire:

“In the late 90's and early 00's, baby boomers were coming of age where they need to collect on their pensions in their home countries and most of these countries; because their pensions were unfunded, did not have the monies to meet these obligations... People who may have decided to, for whatever reason, to open a foreign account in a country such as the Bahamas, where there was no income tax; still no income tax. So that was a way that they felt that they was [sic] preserving capital.”

The role of offshore financial centers are also described as an operation designed to finance developments with foreign financial assets that are greater than what is accessible domestically. Neha Sinha and Ankita Srivastava described OFCs as,

“... Financial systems with external assets and liabilities out of proportion to domestic financial intermediation designed to finance domestic economies.” (Sinha & Srivastava, 2015, p. 991)

In efforts to promote stability within a nation’s economy, offshore financial centers serve as a channel for potential investments, and the utilization of financial infrastructure designed for effective financial transactions. Through this practice pertaining to offshore centers, the incentives for potential foreign account holders are presented to encourage individuals to open accounts with a foreign financial institution residing offshore. As a result the incentives of being rewarded with favorable investments presents enough appeal for foreign nationals to open financial accounts.

Finally according Sinha & Srivastava,

“... offshore financial centers are viewed as centers providing low or zero taxation; moderate or light financial regulation; banking, secrecy, and anonymity.” (Sinha & Srivastava, 2015, p. 991)

The financial protection from taxation, regulation, and anonymity were all characteristics of a financial institution that appealed to potential foreign investors, because they saw little to no financial risks in regards to their investments. As referenced earlier in my interview with Barry McGuire, baby boomers from the United States sought a jurisdiction that would potentially preserve their financial capital. Those individuals

recognized the precarious nature regarding their social security and opted for a desirable avenue to protect their financial assets, so they chose the Bahamas. Like many offshore centers, the Bahamas offered a jurisdiction with no income tax that provided relief to its potential foreign account holders. As a result, potential investors perceived the Bahamas as a more favorable environment to preserve capital once they retired as opposed to relying on the economic system within the United States and holding out hope for Social Security. With the incentives pertaining to the reduction of taxation and the laws pertaining to secrecy and transparency, potential account holders recognize that a level of security exists within offshore centers that trump the jurisdictional efforts of their domestic financial institutions.

### **Origins of Offshore Financial Centers**

The origins of financial centers or the operations of offshore financial centers are believed to have existed for centuries. According to Hilton McCann,

“... Historians and researchers believe that wealthy people once handed over their valuable assets to the inhabitants of Delos in ancient Greece for protection.”  
(McCann, 2006, p.19)

Although the reasoning of this practice may vary from the modern utilization of offshore financial centers, the premise of offshore financial centers remain consistent from ancient Greece until now. Individuals in hopes of preserving their financial wealth utilize offshore financial centers as a system to sustain their wealth. The individuals who are more likely to seek out the offshore financial centers are wealthy people. Demonstrated within the referenced case of wealthy individuals seeking financial refuge

in Delos, McCann shows that the wealthy people are the main people to engage in the financial practices of offshore financial centers because they possess the financial resources and incentives to move their money. Since its inception as financial system, offshore financial centers has been utilized to offer security pertaining to the financial wealth of people dating back centuries. In addition to the historical cases of offshore financial centers, the modernization of offshore financial centers can be referenced back to the 20<sup>th</sup> century. According to Hilton McCann, the modernization of offshore financial centers can be traced back to the 1930's. McCann explains that,

“... At the conclusion of the First World War, taxes within the United States rose to 90 percent and attempt to keep their economies afloat, the United States and The United Kingdom discouraged the transfer of money abroad... However, the discouragement of the transfer of funds only impacted the wealthy. As a result, the assets of wealthy individuals retreated from the higher tax areas to offshore jurisdictions.” (McCann, 2006, p.20).

The conclusion of the First World War gave precedence to the people within the United States looking for favorable jurisdictions that did not impose heavy taxes on their earnings. As a result, the utilization of offshore financial centers became popular among the wealthy after the Second World War. This was the first recognized case regarding the utilization of offshore centers pertaining to matters of the United Kingdom and the United States occurred after the Second World War in response to death duties and high tax rates. According to Hilton McCann (2006),

“... At the conclusion of World War II the imposition of death duties and high rates of tax enhanced the attractiveness of offshore accounts. In efforts to preserve their financial capital, consumers began to heavily seek after jurisdictions with lax tax laws due to their offshore financial centers. As a result of the growing demands for the offshore services and features, the supply of offshore services



increased as well. Ironically, the United Kingdom became fond of this practice because their former British colonies that still followed the Anglo Saxon common laws were well placed in the development of this type of business engagement. Due to the need of increased revenue among small islands, the UK encouraged the development of offshore sectors located within small islands whose main industry relied upon agriculture and tourism.” (McCann, 2006, p. 20).

Another referenced historical event that referenced the increase involvement in the utilization of offshore financial centers took place when the Eurodollar market originated in the 1940’s. Hilton McCann explains that,

“In addition to the inception of the Eurodollar market, China and the Soviet Union decided to deposit their dollar holdings in London and Paris in hopes to prevent their revenues from being frozen similar to how the United States did the former Yugoslavia’s gold held in New York. During that period, one of the banks China and the Soviet Union opted to engage in business with for this purpose was the Banque Commerciale pour l’Europe du Nord. Ironically the bank also had the telex address Eurobank, which coined the term Eurodollars to its account holders. Due to the stability resulting from the exchanged rate mechanism of the Bretton Woods system, the strategy to seek “offshore” institutions gained momentum and experience growth in its practices Account holders were able to avoid exchange control regulations and to exploit interest arbitrage.” (McCann, 2006, p.20).

This practice enabled the increased involvement of individuals utilizing offshore financial centers and contributed to the establishment of offshore financial centers in London as opposed to New York (McCann, 2006). The individuals who were concerned with their financial assets being in a volatile financial environment opted for more secure economies. Once London became known as an offshore financial center, their jurisdiction became a popular destination for wealthy individuals to deposit their money.

Offshore financial centers became more appealing at the start of the 1960’s. During that period a number of factors contributed to the increased utilization of OFCs. A

major contributing factor to the increased appeal of offshore financial centers was the role of the government. Sinha and Srivastava explains that the construction of new policies for more governmental influence contributed to the first wave of entities that departed for less restrictive jurisdictions. According to Sinha and Srivastava,

“By the 1960’s and 1970’s developments towards offering governments more control over monetary policy was taking place in several countries. A number of developed countries and sovereign governments were attempting to regulate capital flows by imposing restrictive domestic measures on financial institutions. What later ensued was that banks became encouraged by the idea of seeking out less restrictive jurisdictions to engage in business and financial ventures... Financial institutions eventually shifted their deposits and borrowing activities to less regulated institutions at offshore financial centers, which had lesser regulations and restrictions within the United States.” (Sinha & Srivastava, 2015).

While shifts towards the utilization of OFCs were beginning to take place pertaining to American affiliates, Europe continued to experience a growth regarding their nationals and multinational corporations (MNCs) opting for offshore jurisdictions. Ahmed Zorome referred to this process as delocalizing. Zorome infers that, due to the financial gains from the return of nonresidents’ assets, it became more appealing for financial institutions to delocalize by decreasing the volume of their financial activities within European countries then opting to increase their activities in more lenient tax jurisdictions (Zorome, 2007).

The construction of regulative policies and the increasing business opportunities abroad proved to be too appealing to ignore for financial entities residing in Europe. Financial institutions were faced with dealing with government regulations and more taxation within Europe or they could have opted for less restrictive locations abroad. As

financial institutions and MNCs continued to reap the financial gains from their financial activities abroad, Europe experienced a growth in financial assets fleeing the continent. According to Zorome, modern-day offshore centers have four distinguishable factors that academics and practitioners attribute to the increase deposits into offshore financial centers (Zorome, 2007). Ahmed Zorome states,

“The first contributing factor to the creation of modern-day offshore financial centers was the establishment of capital controls. Between the 1950’s and 1960’s the United States and Organisation for Economic Co-operation and Development (OECD) wanted to reduce the unsustainable balance of payments deficits through the establishment of capital controls. The second contributing factor encompassed the imposition of high taxes. Balance of deficits were deferred because of regulations imposing the increase of taxes and more restrictive monetary policies. Another contributing factor consisted of the removal of foreign exchange restrictions on the conversion of non-resident earnings in Western Europe. The removal of foreign exchange restrictions allows more opportunities for potential foreign investors to invest in a specific country. Finally, the Glass-Steagall Act of 1993 barred commercial banks from entering the investment banking business. This act deterred the United States interest in conducting business transactions in foreign currencies. The opportunity to extend the United States reach to foreign jurisdictions were also lost after the Glass-Steagall Act.” (Zorome, 2007, p 24).

### **Role of Offshore Financial Centers**

Despite the skepticism surrounding offshore financial centers, there are legitimate reasons for the utilization of offshore centers. The generalizations regarding minimal taxes being an appealing component to attract potential account holders to offshore financial centers are recognized as a major appeal. However, OFCs offer an apparent plethora of legitimate opportunities for potential foreign investors. Sinha and Srivastava list a number of legitimate reasons why corporations and individuals utilize the services of offshore financial centers. Sinha and Srivastava lists that,

- Corporations and foreign nationals consider the OFCs because they allow businesses to reduce costs by providing opportunities for centralized groups and shared services within a multinational group.
- OFCs permit effective movement of capital and resources.
- OFCs provide facilities to manage financial affairs confidentially and they provide legal justification from unjustified claims.
- OFCs attract foreign investors because of the low tax jurisdictions. Low tax jurisdictions help corporations save significant taxes, while also reducing the impact of transfer pricing rules
- OFCs also permit the use of intermediary holding companies to overcome strict exchange control regulations (Sinha & Srivastava, 2015, p. III-992)

The aforementioned four points give reason to why OFCs are utilized. As opposed to working in a decentralized business environment, potential corporate investors are intrigued with the centralized theme because it allows them to operate with the ability to share responsibilities and the ability to delegate specializations to a group of qualified professionals. This in turn reduces the cost of their ventures because it allows investors to encourage specialization regarding their business ventures while prevent any form of fragmentation. Whether it's an individual or a corporation, business investors find it appealing when they perceive they have more control over a business transaction. Within the U.S. its not uncommon for business owners to advocate for decentralized corporations, however the costs of such practices are expensive considering that staff members are required to wear many hats within their job responsibilities. However with

OFCs offering reduced costs in efforts to promote centralized group services, it became an incentive for potential investors to consider OFCs.

The effective movement of capital encourages potential foreign investors to seek OFCs because of the investment opportunities that exist in less restrictive jurisdictions. The ability to move capital and resources provides greater access to global investment. Through this incentive, potential foreign investors can engage in a business transaction abroad without any issues that may pertain to regulatory policies. Without any roadblocks corporations and individuals enjoy the freedom of monetary flow throughout their transactions. These entities do not have to worry about restraints regarding investments because they are foreign nationals. Neither do they encounter restrictive measures regarding the payment and transfer of money once they deposit their financial assets in an OFC. As a result, most individuals who eventually become a foreign investor decide to invest in business ventures located within the country where the OFC resides.

In addition to the monetary incentives, Sinha and Srivastava highlight the legal incentives associated with offshore financial services by listing that, OFCs provide facilities to enforce confidentiality and provide legality to protect their account holders (Sinha & Srivastava, 2015). OFCs provide their account holders with a level of secrecy that will not be disclosed without a probable cause. Potential investors find this as an important incentive because they feel they have added legal protection when doing business abroad. This serves as an incentive for foreign investors because the individuals who utilize OFCs are individuals or entities that may have lost confidence regarding the economic stability of their home nation. Therefore, individuals who decide to deposit

their financial earnings abroad are not worried about their government requesting their tax information because the OFCs will not provide it to the requesting party unless its an agreed upon law.

As Sinha and Srivastava note, the importance of intermediary holding countries, OFCs allow these companies to combat strict exchange regulations (Sinha & Srivastava, 2015, p. III-992). This incentivized trait enables potential corporate investors with the ability to override any regulations that interferes with their ventures. Intermediary holding companies are parent companies, limited liability companies and limited partnership companies that own enough voting stock in a foreign company to control its operations. The parent company does not have any active or direct businesses, however it owns assets in multiple companies. OFCs grant this type of operations to corporate investors because they can avoid the legal restrictions that are imposed on domestic services but are also granted privileges designed to attract foreign investors.

Finally, Sinha and Srivastava highlight the significance of low taxation through transfer pricing. Transfer pricing is viewed as the costs of goods and services sold abroad. Transfer pricing rules are constructed with the intent to compare and monitor the global market price regarding goods and services sold abroad. By offshore financial centers alleviating the restrictions of transfer pricing rules, corporations are able to engage in operations abroad that will present them with the opportunity to potentially enjoy higher interests on their financial earnings as well as the revenues from governments that minimally regulate their economies.

### **Tax Havens**

What is lost when discussing offshore financial centers is the existing legality in the ability to place finances in a foreign jurisdiction. An individual is not engaging in any criminal activities if they choose to have a financial account in an international jurisdiction. What is brought into question is whether or a not an individual chooses to report their financial earnings to their national government, despite earning their finances as well as living abroad. Debates have occurred regarding the encouragement of tax evasion from offshore financial centers, however foreign account holders are responsible for reporting finances earned abroad to their national government. This practice is usually taken before a national government requests the disclosure of financial information regarding an affiliated national's foreign account located in the offshore financial center.

So often offshore financial centers are misidentified and their operations are misconstrued with the practices of tax havens. Although the offshore financial centers can become tax havens, tax havens are not necessarily offshore financial centers. Tax havens are different from OFCs because of their practices. Although OFCs have secrecy and transparency laws that protect the rights of their account holders, they only disclose information regarding their account holder's financial assets if a probable cause from the account holder's national government is presented to the OFC through legal measures. However, tax havens do not disclose information no matter the circumstance because their operations entail harboring the finances of their clients in an attempt to evade taxes.

There is also no comprehensive definition that defines a tax haven. Due to the comparative nature of tax benefits offered by any country and the nature at which every

benefit is provided, every country operates as a tax haven to an extent. According to the OECD Tax Haven Report (1997):

“Any country might be a tax haven to a certain extent, as there are many instances where high tax countries provide opportunities or devise policies to attract economic activities of certain types or in certain locations” (Rohatgi, 2005, p. 88).

However in order to prevent further confusion the OECD has provided three provisions that identify a tax haven. These descriptions differentiate a tax haven from an offshore financial center. According to the OECD, a tax haven imposes no or nominal taxes (Sinha & Srivastava , 2015). The option of harboring financial earnings in a jurisdiction that offers no taxes appeals to individuals who intentionally seek out havens, because it allows them to increase their finances through interest rates while not being responsible for paying taxes due to their avoidance and evasion. Individuals are now able to invest and earn money without any form of taxation.

Tax havens also provide lack of transparency. Through the operations of tax havens, there is minimal reporting pertaining to the financial earnings of their account holders. As mentioned earlier, no matter whom requests the information tax havens refuse to disclose information pertaining to their account holders. Transparency serves as a significant component for banking and financial practices. Transparency ensures that there is a level of compliance taking place that involves “consistent application of tax laws among similar situated taxpayers” (Sinha & Srivastava, 2015, p. III-993). These laws provide information detailing the earnings of foreign account holders and reports the findings back to their home government. In addition to reporting the earnings,



transparency laws report the source of earnings. Governments want to know if their citizens are engaging in ethical practices abroad. If a tax haven reports little to no transparency, the risk of harboring earnings sourced from illegal practices is heightened. Terrorist funding, drug trafficking, etc. all become a possibility if transparency laws are not complied with. This information is needed by tax authorities to determine a taxpayers tax liability accurately.

Tax havens also contribute to capital flight. Capital flight consists of the exodus of monetary assets and capital from a country to another country. Capital flight is a major economic challenge in many countries. There are a number of factors that contribute to capital flight, such as economic uncertainty and fiscal deficits. However those factors combined with the country differences in tax rates to cause capital flight (de Boyrie, Pak, & Zdanowicz, 2004). According to the work of Maria Boyrie, Simon Pak, and John Zdanowicz,

“Capital flight tends to erode the country’s tax base, increases public deficit, reduces domestic investment and destabilizes financial markets.” (de Boyrie, Pak, & Zdanowicz, 2004, p. 4)

Finally, tax havens implement administrative practices and laws that prevent the exchange of tax information (Sinha & Srivastava, 2015). Tax havens also have secrecy provisions, which impact the effectiveness of exchange information. Through the practice of secrecy clauses, tax havens do not disclose information pertaining to tax purposes with other governments because it benefits their clients receiving no or nominal taxation benefits.

In the next chapter I explain how the perceptions of tax havens impact how the Bahamas is perceived by the United States. I will present the perspectives of my interviewees and how they described and understood the current economic landscape. Analysis of my interview data will shed light on how certain policies are perceived and how those policies have affected the operations of offshore financial centers within the Caribbean.

## Chapter V

### FATCA's Impact on the Caribbean: Perspectives from Local Professionals

The United States Internal Revenue Service describes FATCA as a tax law that prevents individuals from evading taxes. IRS representatives have suggested that the FATCA tax law is beneficial to all countries involved because the U.S. can help detect financial criminals who maybe residing within the Caribbean. However, shared within my interviews are the opinions of professionals who work within the Bahamas and their perception of FATCA. Exhibited within my interviews are the opinions of professionals who perceive FATCA as something negative, whereas other professionals view it as the law that needs to be followed.

#### Interviewees

For my interviews, I interviewed four professionals who worked within the financial service sector<sup>2</sup>. Barry McGuire is a financial official for a major pharmaceutical company within the Bahamas. Barry has worked within the financial sector for 20+ years. His views regarding to FATCA entails that it's a harmful imperialistic tool designed to negatively affect the Bahamas. Barry referenced preceding tax laws similar to FATCA, but ultimately said that FATCA was most impactful tax law to negatively affect the Bahamas. In our interview Barry informed me that foreign account holders were beginning to close their accounts and to deposit their financial assets in more favorable or lenient jurisdictions.

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<sup>2</sup> I use pseudonyms for all individuals who participated in my interviews. After I received a request from a participant to receive full anonymity, I decided to provide it to all of my interview participants.

Another professional I interviewed was Ken Sosa. Ken is an accountant who has worked for over 20 years in that profession. During my interview with Ken he expressed his skepticism with FATCA and referred to its provisions as an overreached. Despite his criticism, Ken admitted that the Bahamas' reputation as a tax haven was attributed to past practices regarding their involvement in financial crimes. According to Ken, since the earlier missteps of the Bahamas, the country has been compliant with the demands of FATCA. Ken also states that the laws of FATCA must be followed.

I also interviewed a financial advisor by the name of Vince McGrady. Vince has been a professional within his field for 10 years. Vince occupational responsibilities has entailed being FATCA compliant. Vince views FATCA as a law that must be followed. During our interview, he states that he hasn't encountered any issues regarding his clients and FATCA.

Finally, I interviewed an expatriate professional from Dallas, Texas, by the name of Jerry Francis. Jerry has worked within the Bahamas for two years. He is a business representative for a local company in the Bahamas. Jerry has encountered dealings with FATCA as he works with his clients as well as reporting his financial earnings to the United States IRS. Jerry views FATCA as a law and wasn't familiar with the financial landscape of the Bahamas pertaining to offshore financial centers. He offered me insight on how he views FATCA and it proved to be interesting because it contradicted some of my findings which referenced U.S expatriates being upset with FATCA and responding by renouncing their citizenship. Jerry views FATCA as a law that he follows. He also

admitted to being unfamiliar with the Bahamas financial services practices prior to FATCA.

<b>Name</b>	<b>Job Title/Occupation</b>	<b>Years of Experience</b>	<b>Country of Citizenship</b>
Barry McGuire	Financial official for major pharmaceutical company	20+ years of experience	Bahamian national
Ken Sosa	Accountant	20+ years of experience	Bahamian national
Vince McGrady	Financial Advisor	10 years of experience	Bahamian national
Jerry Francis	Expatriate; Business Rep	2 years of experience working in the Bahamas	Expatriate from Dallas, Texas

### **Interview Data**

My interviews consisted of professionals who perceived FATCA as a harmful law that has negatively impacted the Bahamas. During my interviews Barry McGuire used the term “gangsterism” to express the nature at which the United States IRS requested the disclosure regarding the accounts of foreign account holders who were also American nationals. Barry McGuire explained that the United States was receiving an annual 1040 tax return from nationals who live abroad and wanted to see if the information reported

on the tax return form was consistent with what the foreign institution reported. However, if the foreign institution did not report earnings of American nationals within the Bahamas then the United States would follow up with a lien on a flight or they will hold the flights of financial officials associated with those financial institutions. According to Barry McGuire, that method was gangsterism.

“That’s high-handed ‘gangsterism.’ That’s what it is. ‘So you have until such and such day to become registered with the United States’ treasury department as this foreign financial whistle blower type. And you need to tell us who are all of your US customers are...’

So most of the U.S. customers recognizing that closed out all of their accounts and they went to friendlier jurisdictions. One of the interesting things that came up was dual- persons with dual status. So I have a Bahamian passport and US passport, well the U.S.; I’m not saying this in an offensive way; they are such gangsters, they say, ‘... You know that’s easy... If you have someone who has a U.S. passport, that trumps any other passport for tax reasons.’ Huh? Isn’t that gangster? That’s what it says ha-ha. Check it out. That’s what it says. You can’t have a dual-nationality as a U.S. person. The only way you get out the U.S persons is if you renounce your citizenship in the United States...”

Ironically the aforementioned assessment of FATCA also aligned with the sentiments of the accountant, Ken Sosa. According to Ken Sosa, the Bahamas doesn’t receive anything by disclosing information about accounts held by foreign investors who are American nationals. Reciprocity is nonexistent because the matters discussed within the provisions of FATCA only benefit the United States. When I interviewed Ken Sosa, he expressed that the work of FATCA is an overreach because of the demands placed upon the Bahamian nationals who work within the financial sector, the Bahamian government receives no incentives for disclosing information because as long as the money is not derived from anything unethical then Bahamian government doesn’t care.

However, Ken Sosa expressed frustration over the orchestration of FATCA giving reinforcing the power of the United States by the IRS providing laws to a foreign jurisdiction on how to apparently run their country. Ken Sosa interpreted the demands of FATCA as an overreach and model aligned with the practices of “gunboat diplomacy.”

According to Ken Sosa,

“... If you consider a scenario where you are in my house and tell me what to do (haha)... Haha that is pretty strong to say something like that to me because I can throw you out of my house. You cannot throw me out of my house... We go back to the days where they would call it gunboat diplomacy, where they would stick a warship outside your harbor and you knew that they meant business. You were force to do what they say. Well it’s basically a financial way of doing things now. More over less, from my thinking I think they would say it’s an overreach.”

Barry McGuire and Ken Sosa, both expressed disapproval of the functions of FATCA. Terms such as “gangsterism” and “gunboat diplomacy” highlights their views of FATCA. Both professionals perceived FATCA as a mode of bullying asserted by the United States. Their ideas align with the notion that within the realms of imperialism larger countries force their ideas smaller countries. This element of FATCA led to the frustration of some Bahamian professionals who dealt with FATCA.

Despite the perceptions of FATCA being viewed as methods resembling “gangsterism” and “gunboat diplomacy,” two interviewees advocated for FATCA as a law that should be followed by account holders and financial representatives. Both interviewees articulated that the functions of FATCA is a part of the law and every potential foreign account holder should abide by it. Ironically, one of the interviewees was Ken Sosa and, despite maintaining his belief that the practices of FATCA are

harmful, they were also adamant that anyone who comes to do business within the Caribbean must abide by the provisions of FATCA. According to the Ken Sosa, nothing has really changed in regards to reporting. Ken Sosa and his colleagues who are American expatriates would report regardless.

“Typically, nothing has changed. Only changes are in terms what I declare regarding myself. I would report that “I am not” a United States citizen. This is basically notifying that I am not a citizen when opening a banking account. We have U.S. affiliation and we are a Bahamian company... The folk that I work with will declare from year to year. They will tell you that their account in the Bahamas forces them to declare because the United States government already knows. They (United States IRS) are quite aware of their presence residing within the Bahamas and they know that they have accounts within the Bahamas. The banks in essence are forced to disclose what citizens reside in the Bahamas. Another organization within the Bahamas reports what accounts United States affiliates have in the Bahamas.”

During my interview with Vince McGrady, he reiterated that FATCA should be followed in order to avoid any issues. Vince neither stated that the law was beneficial or harmful but was adamant in his assertion that the safest approach to avoiding any issues was to follow the provisions requested by FATCA. When discussing the idea that United States infringed upon the sovereign rights of the Bahamas, Vince stated that:

“... The concept of sovereignty has been pierced since 2000-2001 and even prior to that we seen internet revolution where countries has gotten a lot closer together through the information revolution I’d say. So if a country like the United States; which is huge trading partner for the Bahamas, is saying “Look this is a requirement from us...” Obviously there is consideration on how much the US can ask for initially, but now I think there are so many cases of tax leakages that the Bahamas wants to have a clean reputation. They don’t want to be black listed; they don’t need to be black listed. Even though financial services would have been a huge pillar for the economy, but I think by and large the country just kind of accepting the fact that we prefer to be known as a clean jurisdiction than to be black listed. It causes fewer tourists to come; it causes the perception of corruption to rear. Nobody wants to deal with that.”



Throughout the interview, Vince reiterated the importance of following the rules of FATCA. According to Vince, he expressed the incorporation into the investing models required by banks. During our interview the Vince stated that,

“... There is awareness now in the marketplace; full disclosure is the order of the day. It reduces the moral hazard. Those that are attempting to do opaque things know upfront that it is not going to fly. There is so much attention on it that you have to be blind to believe you can get away with that type of evasion. I think that personally, those that are coming into offshore jurisdictions to do bonafide business, there's no issue. Those are the one's that are very forthright and very forthcoming; they know what the obligations are. There's no fear or hesitation in reporting to the IRS. They know upfront that this is the way it is now. You want to do business, you want to make money then you're going to be taxed. You just can't avoid it. I get both sides to the argument, but I'm more to side that if you're clean then you'll be fine. Just follow the law then you'll be fine... Even before you get the transaction its, “Look, lets make sure upfront that you are aware of our obligations as an institution to report and your obligations as an individual to report as well.” There's no arrange that isn't known upfront and there's no arrangement that secretive. Even a perception of a secret is complete transparency. It is what it is. It's your obligation to make sure that your transactions are aligned with your profile. There are consequences as well.”

For my final interview I interviewed Jerry Francis. Jerry was limited in regards to his understanding regarding the precedence set by FATCA. When asked about the evolving transparency laws that potentially impact expatriates, Jerry responded with “I don't have an issue... I just provide my financial information to my accountant and he submits my reported financial earnings to the IRS.” Jerry was unable to reference the previous model regarding disclosure and the previous transparency laws pertaining to the effects it had on the economy within the Bahamas. Jerry admitted that he was not well versed in understanding any of the previous laws so he could not adequately assess the

current state of the economy of the Bahamas. He just assumed that the law was another tax practice requested of the United States.

### **Noticeable impacts**

The impacts of FATCA were also evident to Barry McGuire. According to Barry McGuire, one of the impacts of FATCA is how it affected the jobs of local financial officers within the Bahamas. Barry expressed strong sentiments to what he noticed as a result of FATCA. Barry referenced the discontinued jobs of professionals within the Bahamas as a negative affect of FATCA. According to Barry,

“FATCA along with other sanctions and laws assessed by the OECD crippled our financial service industry; hollowed it out. It caused a lot of high paying jobs where Bahamians were sitting in middle management and top management at some of these offshore banks making in excess of 100K dollars a year, and then all of sudden the rug gets pulled out. These bankers feel that it is no longer feasible to do business in the Bahamas and they leave to go back home or to a friendlier jurisdiction.”

The demands of FATCA are the result of ideas that has been historically articulated by western states in efforts to seek a method to overturn any practices of secrecy that prohibited the disclosure of financial information pertaining to foreign account holders who reside within the Caribbean. However, in efforts to combat this issue, the actions of western states have been perceived by Caribbean officials as an infringement of sovereignty. According to Barry McGuire, FATCA has violated the sovereign rights to the Bahamas. According to Barry McGuire,

“That’s an affront to our sovereignty. But let’s face it; we’re in the real world. So there’s an African proverb that says, ‘When elephants fight, only the grass underneath of their feet get trampled.’ From the perspective of us being proud

people, the larger developed countries have a way of forcing compliance. They know exactly what levers to pull. So it's really an unsophisticated form of blackmail that they have perpetrated on countries such as the Bahamas. They started out by first and foremost hanging this moniker on us; calling us a tax haven. Which has all kinds of negative connotations attached to it. And when that did not work, they then started using threats, such as slowing down funds for other financial institutions as well as levying fines. If financial institution here is some how connected to financial institutions there in Brussels and Switzerland, and going to the home office and threatening them with fines and alike; fast forward the United States' same agenda passes the Foreign Account Tax Compliant ACT (FATCA). It went a bit further than the previous initiatives up until that time."

During my interview with each of the professionals, I was made privy to the dilemmas and frustrations of the financial professionals within the Caribbean. My interviewees discussed a deeply rooted issue in the financial service industry within the Bahamas. However, the frustrations were derived from a series of other laws imposed by other western powers and FATCA was so demanding that economic and political officials became outspoken with the introduction of the provisions of FATCA. To better understand the source of the frustrations of FATCA, I became informed of the events that led to the creation of FATCA and where the emotions regarding the requirements of FATCA were derived from.

### **Overworked and Still Misunderstood**

Misperceptions regarding the services of offshore financial centers have created a dilemma for Caribbean nations and their operations pertaining to the practices of foreign financial centers. The Bahamas and many of its Caribbean neighbors and CARICOM member states are being surveillance by the United States. As a result, professionals within the financial sector residing in the Bahamas have acknowledged and recognized

the impact of FATCA within this Caribbean nation. These professionals have expressed two primary impacting challenges that have affected the economic make-up of the Bahamas.

The first noticeable impact resulting from FATCA was the domestic conflict regarding the increased labor of financial professionals when reporting information of American foreign account holders to the United States IRS. Financial professionals have admitted to losing potential account holders due to the extended process required to create an account for foreign investors. Bahamian financial professionals are operating in a cautious manner because they do not want to become liable for a mistake that may constitute their operations as a tax haven in the eyes of the United States IRS. According to the Ken Sosa, reporting the accounts to foreign nationals has become more complicated and tedious. Financial reporting has required more responsibility placed upon the financial professionals; however the compensation of this type of work hasn't increased and therefore the professionals aren't compensated for their work. During my interview with the Ken Sosa, he shared what he experienced from the implementation of FATCA and how it has changed the way at which financial professionals handle the opening of an account for a potential foreign account holder. Ken Sosa stated:

“For me I think it’s an overreach for any government that does not directly govern another country to over reach their bounds by forcing compliance. This affects Bahamian citizens in terms of the amount of paperwork that it involves in simply opening up accounts. In terms of regulation, there is more reporting for an accountant who client is a United States citizen. There is more paperwork. The accountant will have to report that that their client has an account with the local bank. The entire process is more cumbersome... For instance an account may now have to file with a government body in the Bahamas, saying that a particular person has an account with you and if for some reason that person doesn't declare

what they have to the U.S. government as a result the U.S. government directly contacts the accountant for more information.”

Ken Sosa presented the challenges that exist for domestic financial professionals within the Bahamas. According to Ken, there now exist more reporting which extends the amount of time required to open an account. As a result this has contributed to the domestic conflict resulting from FATCA within the Bahamas. The model utilized now to open foreign accounts has also extended the timeframe for potential foreign account holders to open up a bank account. Compared to the United States, it now may take a foreign national 3-6 months for them to open up a bank account within the Bahamas because of the reporting that is required now to avoid being denoted as tax haven.

Another dilemma that has potentially been perpetuated by the creation of FATCA is that this particular law was created because countries within the Caribbean were/are havens for tax evaders. There is no denying that the reputation of being tax havens has existed throughout Caribbean. There was a valid reasoning for believing that some of the countries were engaging in the evading of taxes. Unfortunately, the past involvement of Caribbean countries engaging in financial crimes such as money laundering and tax evasion contributed to those reputations. However, now many of these countries have adopted new secrecy and transparency laws that have permitted an increased level of disclosure of account information to the home country of a foreign account holder yet they are still being monitored as if they are engaging in nefarious tax crimes.

Despite compliance, the issue of still being denoted as a tax haven or possessing operations that align with the practices of a tax haven has been expressed by financial

professionals within the Caribbean. A common theme of frustration has been the concession of Caribbean officials adopting the provisions of FATCA yet they perceive that they aren't being trusted enough by the United States for them to continue their operations without the ever evolving disclosure rules of FATCA. This sentiment was shared during my interview with Barry McGuire of a major corporation within the Caribbean. According to Barry McGuire, the financial operations of institutions within the Bahamas are operating in an ethical manner when opening accounts for potential foreign account holders. During our interview Barry McGuire:

“We certainly would not knowingly take funds from drug dealers, potent takes, and other nefarious types. We have strong Know Your Customer (KYC) laws. Yet still almost on an annual basis now, because of the flow of funds that the developed countries expected would have been repatriated back have not occurred, the pressure remains too.”

The sentiments shared by Barry McGuire, was also echoed by the Ken Sosa. Bahamian nationals that work within the banking and financial sector believe that that they are doing everything in their well being to avoid any discrepancies that may alert the IRS of any potential forms of tax evasion yet they are being monitored as a tax haven or are associated as tax haven despite being a offshore financial center. Ken Sosa admits that the Bahamas was once involved in nefarious operations, however the country's approach to attracting foreign investors have changed. When asked about the effectiveness of the KYC (know your customers) laws this what the Ken Sosa shared in our interview:

“... We have our own KYC (know your customer) rules and it has to some extent force premium compliance by banks to ask more questions regarding where funds

are coming from. However, because we had a previous history with the drug trade and other illegal things that force those rules, FATCA makes it more difficult for the U.S. affiliate more so than us.”

Unfortunately it appears that despite complying with FATCA the Bahamas is perceived to be plagued with the over surveillance by the United States IRS because of their history. Understandingly so, Bahamian financial professionals recognize that the financial involvement with foreign account holders in the past has led to FATCA, however what’s resulting from FATCA in this misrepresentation of the country has ignited a level of frustration because of the impact it has on the country. As a result the misrepresentation has brought operations and economic dilemmas that have affected the country. Professionals are being overworked and despite being in compliance with FATCA there is still a black eye from the country’s past actions, which continues to pain the Bahamas as a tax haven despite the changes that have occurred.

### **Before FATCA**

FATCA wasn’t a tax law that appeared out of nowhere. The inception of FATCA was derived from a series of tax laws imposed by other dominant nations or organizations in the past. Its inception represented a key issue, an issue that has been embedded in the policies of nations that attempt to restrict the amount of money lost to the evasion of taxes. The inception of FATCA illustrates a popular misconception that the countries within the Caribbean are tax havens.

Due to the existing ideas that view OFCs are synonymous with tax havens, a series of tax laws have been devised to attain desired information regarding foreign

investors. Prior to the implementation of FATCA within the financial arena of the Caribbean, the OECD created a series of practices that requested a greater level of financial transparency pertaining to financial institutions within the Bahamas. These practices were the devised from the preconceived idea that countries within the Caribbean such as the Bahamas were operating as tax havens. According to my interview with Barry McGuire,

“... The OECD as well as the United States and other develop countries has this perception that the Bahamas and countries like the Bahamas are “tax havens.” That’s the moniker used to describe us. In the late 1990’s mounted a serious assault on all off-shore financial institutions in places like the Bahamas, the British Virgin Islands, Caymans, Bermuda, and alike. Although Cayman, Bermuda, Turks & Caicos brought a different kind a treatment than other independent countries did, because they are still territories of Great Britain. The assault pretty much took the form of naming and shaming certain countries who had been designated as tax havens; the Bahamas was among those countries and the effect that had on financial services is even being felt today.”

Expressed within the quote from Barry McGuire is their observance of a tax law’s effects that has negatively impacted the financial landscape of their country. Resulting from a perception shared by other western states, efforts to tackle tax evasion was prompted and its concerns painted a number of off shore financial centers with a broad brush when their practices were not deemed acceptable by the United States or other European nations. Due to the disruption of financial practices regarding the banking and financial sector within the Caribbean, countries such as the Bahamas have felt the ill affects of the new transparency laws imposed by FATCA.



## Hypocrisy?

When discussing tax havens, countries within the Caribbean are usually automatically perceived as such. As discussed earlier, this association is sometimes manufactured by stronger countries looking to further their motives. However, the correlation between tax havens and the Caribbean harboring accounts for tax evaders are derived from their past actions. However, what isn't discussed is the role of countries such as the United States having states that operate as tax havens. Currently there are several states within the United States that functions as tax havens, such as Delaware, Nevada, and Wyoming all have been recognized for operating as tax havens. Ironically, Delaware has developed the most notorious reputation for being a tax haven within the United States yet this isn't often discussed when trying to tackle the issue off tax evasion. Earlier I mentioned that during the First World War, the United Kingdom encouraged the utilization of tax havens in order to maintain their economic standing by harboring funds within their Caribbean provinces. However, Delaware has been a longstanding tax haven within the United States.

Leaning heavily on the work of Scott Dyreng and Leslie Wayne, I explored the operations of Delaware and why that state is considered a tax haven. According to Scott Dyreng, nearly sixty percent of all public traded entities reside in Delaware, where as three out of every four United States public offerings chose Delaware as their state of incorporation (Dyreng, Lindsey, & Thornock, 2013). As a result, researchers have questioned why Delaware has been considered the hub for corporate enterprises to stake their corporations. Dyreng states that fifty-one percent of all U.S. corporate subsidiaries are

located within the state of Delaware (Dyrenge, Lindsey, & Thornock, 2013). According to Dyrenge, the concerns pertaining to the financial operations of Delaware has been expressed by other nations and organizations. Dyrenge states that,

“In June 2010, National Geographic magazine published a figure depicting the most financially secretive locations in the world. Topping this list was the United States because of the lax corporate disclosure requirements in the State of Delaware, outpacing more commonly mentioned tax havens such as Luxembourg, Switzerland, and the Cayman Islands. Separately, the government of Brazil recently considered legislation to blacklist Delaware as an abusive tax haven, right alongside countries such as Bermuda and the Isle of Man, among others...”

Despite the public scrutiny, little has been done to the corporate loopholes that exist within the state of Delaware. In addition to the corporations that stake their subsidies within Delaware, Delaware also places hosts to account holders that are notorious for their participation in unethical financial crimes. According to Leslie Wayne, 1209 North Orange plays host to several businesses and account holders. 1209 North Orange is corporate office in Delaware that has corporate and individual clients that are seeking a reduction in taxes. The address has over 285,000 businesses accounts (Wayne, 2012). Corporate giants such as Coca Cola, American Airlines and General Electrics hold the accounts there (Wayne, 2012). The address plays hosts to a few individuals who possess notorious reputations. According to Wayne (2012),

“What attracts these marquee names to 1209 North Orange and to other Delaware addresses also attracts less-upstanding corporate citizens. For instance, 1209 North Orange was, until recently, a business address of Timothy S. Durham, known as “the Midwest Madoff.” On June 20, Mr. Durham was found guilty of bilking 5,000 mostly middle-class and elderly investors out of \$207 million. It was also an address of Stanko Subotic, a Serbian businessman and convicted smuggler — just one of many Eastern Europeans drawn to the state.”

Ironically the same suspicions that have caused the Bahamas to become over surveillance by the requirements of FATCA are evident within the operations of Delaware. This has led to some officials echoing the notion of hypocrisy when discussing tax havens. For many countries, certain measures were taken to remain afloat in the global arena. Certain practices by the Bahamas in the past were done to create a steady economic backbone for the country. However, now efforts to comply with the provisions of tax agreements and laws has been adopted within the practices of the financial service industry, yet their past continues to haunt them when given as a reason for increased disclosure. During my interviews, the notion of hypocrisy was frequently brought up by two of my interviewees. They felt that some of the concerns raised by the United States IRS regarding transparency was being addressed within their banking practices. However, the same concerns that are often brought up regarding tax havens being associated with countries in the Caribbean are prevalent within the United States.

Barry McGuire and Ken Sosa suggested that FATCA was a model perpetuating hypocrisy. Each interviewee felt that the issues of tax evasion hasn't been handled domestically within the United States and that the effort to police certain countries in the Caribbean is perplexing. According to Barry McGuire, not only are privileges granted to domestic havens such as Delaware but also certain islands in the Caribbean are granted privileges due to their association with the United States' allies.

“So the guys in the British Virgin Islands, the Cayman Islands, and Bermuda are doing the very same thing we are doing, but the impact on their financial institutions hasn't been as severe as it been for places like the Bahamas. Then you have to ask yourself “why?” Then you visit these places and you say, “... Okay, I

understand.” These places are teeming with expatriates from the “good ole” UK, Europe, and the rest of it. And there persuasions are a little different from ours. Their eyes are a bit bluer and hair is a bit blonder. Then you say, ‘Certainly you guys are still feeling the pressure. So why is it that you are still able to maintain such a large chunk of the industry?’ Then they will tell you, ‘We are a territory of Great Britain; who is a member of the OECD, and there is protection in our affiliation with them...’ If you go to these islands offshore that are affiliated with the UK you see the same thing. Business is booming. They aren’t doing anything differently. They aren’t being more rigorous in terms of their screening of who comes in. A matter of fact, the biggest money launders in the world will be found in New York and London. That’s an established fact. Most recently, a huge bank got caught up in a money- laundering situation. That was in an OECD country, right underneath their nose. So there’s a bit of institutional discrimination that is being practiced by these countries.”

Illustrated within the quote above are the frustrations regarding the inconsistent measures of transparency enforced by the United States. Through their observance they noticed the privileges being afforded to other countries that reside in their same because of their association with the United States allies or being a state located within the United States. Frustrations regarding perceived hypocrisy and the inconsistent practices of enforce disclosure has upset professionals within the Bahamas.

In the next chapter I discuss my findings and what I believe will be the next process regarding FATCA and its impact on the Caribbean. This concluding chapter entails an analysis of the current economic landscape and the role FATCA plays within the Caribbean and the potential issues that may evolve from the enactment of FATCA.

## Chapter VI

### Conclusion & Implications

The premise of this study was to hear another perspective regarding FATCA from financial professionals within the Caribbean. Prior to my fieldwork and interviews, the only perspective I was privy to the perspective shared by the United States Internal Revenue Service. After conducting my fieldwork, I became informed about how FATCA is perceived by some professionals within the Caribbean. Individual professionals who participated in my interview interpreted FATCA differently. According to my interviews, some professionals interpreted FATCA as a model that was harmful to the economy of the Bahamas. Meanwhile other professionals viewed the provisions of FATCA as laws that needed to be followed. Despite the differences regarding the professional assessment of FATCA, what was clearly identified within my research was the distinction of offshore financial institutions and tax havens. Although there exist concrete differences between offshore financial centers and tax havens, the association of the financial services within the Bahamas being viewed as a tax haven led to the enforcement of FATCA. As a result, the enforcement of FATCA negatively impacted the economy of the Bahamas because its provisions requested more transparency regarding financial accounts within that jurisdiction and extended the process for any nonresident to become an account holder.

The Bahamas became a popular destination for foreign account holders to deposit their financial earnings during late 1990's to early 2000's. This surge in foreign direct investment also attracted more nationals from the United States to open up accounts in the Bahamas but it also raised eyebrows with the United States Internal Revenue Service.

My findings show that there exists a misconception of offshore financial centers and tax havens. FATCA has played on that misconception by requesting more transparency pertaining to the financial accounts of US affiliates. My research also aligns with the assessment of Barry McGuire's interpretation of FATCA being an infringement on the sovereignty of the Bahamas and negatively impacting the economy of the Bahamas. During my interview with Barry McGuire he explained that the Bahamas became a popular jurisdiction when baby boomers realized that they weren't going to be able to collect on their pensions. Therefore they sought out a financial asylum within the Bahamas to place their earnings. Once the United States Internal Revenue Service recognized this trend then they devised laws to prevent such practices. FATCA was devised with the intention to halt the exiting of financial assets leaving the United States through the compliance of mandated provisions. The mandated provisions discouraged many individuals from holding accounts within the Bahamas.

Participants who viewed FATCA as a new law that needed to be followed, such as Vince McGrady, also saw the impact of FATCA. Vince recognized the increased transparency as something that may have not been as appealing to potential foreign account holders, however he reiterated within his interview that the laws were something that was expected to be followed because they wanted to avoid the label of being perceived as a tax haven. If denoted as a tax haven the Bahamas would be sanctioned with a withholding tax and foreign investors would not want to associate their businesses and investments with the financial services of a tax haven.

My interview with Ken Sosa also included him admitting that FATCA needed to be followed in efforts to reconstruct the image of the Bahamas as a tax haven. Although Ken's assessment of FATCA aligned with Barry's assessment of FATCA being a form of imperialism, Ken referred to FATCA as "gunboat diplomacy." He felt that FATCA was the law and was needed to be followed because the repercussions on the country were too serious. The perception of FATCA differed depending on the professional, but all participants recognized the impact of FATCA's effects on the economy.

During my interview my interview with Jerry Francis, I realized that he wasn't as well versed in the nuances of FATCA as my other participants. Jerry was not familiar with the preceding transparency laws that existed before the inception of FATCA and was unable to provide me with any relevant accounts to compare the functions and impact of FATCA to what occurred in the past. I found that interview to be just as useful because it provided another layer to my research. Prior to conducting that interview, I presumed that all of interview participants would assume the stance of being anti-FATCA, however I learned that wasn't the case beginning with this interview.

Jerry's interview was also the shortest interview out of all my participants, however it was the most unique because Jerry is an American expatriate from Dallas, Texas. As an expatriate, Jerry provided me with what he experienced during his time working in the Bahamas as a United States national. As a United States national, Jerry was required to report his earnings to the United States Internal Revenue Service and by his accounts that is what he did. Jerry did not hold a strong position of FATCA; he just saw it as a required procedure. Ironically, Jerry's perception of FATCA differs from

Taylor Denson's assessment of FATCA, detailed in *Goodbye Uncle Sam*, in which Taylor asserts that Americans abroad are renouncing their United States' citizenship because of the tax burdens placed upon them working abroad (Denson, 2014). Taylor states that,

“In order to avoid FATCA's withholding penalties for noncomplying foreign financial institutions, a number of banks have refused to take on Americans as clients, even before the Act went into effect. In some countries, American citizens have had their legal bank accounts closed simply because they were American. Others have had mortgages cancelled for the same reason. Many banks would rather drop Americans as clients than have to report to the IRS.

As a result, many honest Americans living abroad face the decision of paying taxes they believe are fundamentally unfair, or being dishonest and either hiding their heritage from foreign banks or lying to the IRS. To avoid such a decision, Americans living abroad are choosing to renounce their citizenship at an increasing rate.” (Denson, 2014, p. 210)

Jerry Francis' interview was short in duration, however his experiences provided another layer regarding the perspective of FATCA viewed by professionals within the Caribbean. After Jerry's interview, I also noticed other factors related to how FATCA was viewed. Barry McGuire and Ken Sosa both expressed FATCA as being a form of imperialism and referred to the law either as “gangsterism” or “gunboat diplomacy.” Both individuals are experienced professionals with over 20+ years of experience individually. Vince was a younger professional with less than 10 years of experience in his industry and Jerry was only working within the Bahamas for less than 5 years. I noticed that the professionals with the least experience did not hold the strongest criticism of FATCA. I saw a correlation regarding the duration pertaining to experience or connection to the financial industry within the Bahamas and the position which was



held regarding to how FATCA was viewed. Participants with an extensive experience in the financial service sector within the Bahamas had a stronger criticism of FATCA, whereas professionals who had less than 10+ years of experience were not as critical to the provisions of FATCA.

Despite the different opinions regarding the interpretation of FATCA, a common concern shared by my participants were the increased responsibilities expected of professionals who worked within financial sector in the Caribbean. The interviews of both Barry McGuire and Ken Sosa expressed sentiments of increased labor without any form of added compensation. Both professionals expressed that the work was too much for people who work within the financial sector of the Caribbean. These sentiments also aligned with the Finance and Economy Minister of Trinidad & Tobago, Larry Howaii. Lary Howaii reportedly referred to the enforcement of FATCA as the United States wanting foreign financial professionals to turn into unpaid IRS agents. This became a common theme regarding my interviews when analyzing the impact of FATCA. My participants expressed concerns that it was not their job to decipher which foreign account holders did not pay their taxes to the United States. According to Barry McGuire,

“People who may have decided to, for whatever reason, to open a foreign account in a country such as the Bahamas, where there was no income tax; still no income tax. So that was a way that they felt that they was preserving capital.

Now there are two ways to look at this, the guy who is in the internal revenue service might look at it as “wait... This individual should have been au fait with the laws of the United States. Which required that when you file all of your returns etcetera, you have to declare all of your income, globally because that is what our rules say.” Well that’s all fine and good. And we respect that but we in the Bahamas and many of the other countries around the Caribbean did not and still do not see ourselves as being the “water boys” for the great U.S. and Canada and rest of it. We’re sovereign countries, and if a fit and proper person comes into

our country and we are able to do the KYC background checks on them; and we are able to determine that they are not dealing an ill-gotten game... And they say “well suppose in doing so you violate the laws of the United States?” we said, “Wait a minute. We’re a sovereign country. If and following the procedures we do not break any Bahamian laws, we really could care less about the United States...” We aren’t their water boys...”

Barry McGuire reveals that the reporting of financial earnings entailed more than just reporting a list of account holders who identified as United States citizens to the IRS. According to my participants the reporting process is now more extensive and entails a process that that is not conducive to the current structure of the Bahamas. Foreign account holders either closed their accounts or declined the services of financial institutions within the Bahamas. Foreign account holders are now going to jurisdictions that are more lenient to nonresidents who want to open accounts in their jurisdiction. Participants of this research now point to the loss or potential of foreign account holders outcomes resulting to the increased responsibilities of financial professionals. The resulting outcome is also seen as an effect of FATCA that impacts the Caribbean.

What was not lost in my research regarding the increased responsibilities for domestic financial professionals in the Caribbean was the unfortunate discontinuation of occupations within the financial service industry. When considering the impact of FATCA, I wanted to find out if it affected the jobs of Bahamian professionals within the Bahamas. Barry McGuire informed me that FATCA contributed to the loss of jobs for Bahamian professionals within the financial service industry. This issue of discontinued occupations also exhibits the negative impact of the international tax law within the Caribbean. This issue brings about an inconvenience, which discourages investors and

also forces professionals to seek a position within the financial sector in another jurisdiction. The loss of work disrupts the amount of domestic money that circulates throughout the economy and a segment of their population either leaves or are without jobs.

In addition to my interviews, the data I collected provided me with clarity regarding the operations of offshore financial centers and what forms of operations determine what is defined as a tax haven. According to International Monetary Fund, offshore financial centers are identified as financial services offered to nonresidents residing in a foreign jurisdiction (Carter, 2017). However, after extensively researching the work of Neha Sinha and Ankita Srivastava, I learned through their work that offshore financial centers are also viewed as a center where financial transactions are initiated in one location meanwhile the operations of the partnering institutions are controlled by nonresidents (Sinha & Srivastava, 2015). Where as tax havens are jurisdictions that are accomplices in aiding any company or individual in the process of evading the payment of taxes to their home country.

The information I researched regarding offshore financial centers and tax havens exhibited a popular misconception of offshore financial centers contributed to a common mistake that they are synonymous with tax havens. Unfortunately, what ensued from the misconception is the over surveillance by the United States IRS on Caribbean countries such as the Bahamas. According to my interviews, the Bahamas reputation as a tax haven was illuminated due to its which posed an issue because of the inconsistencies regarding the enforcement of FATCA.

According to my interviews, the Bahamas past dealings of engaging in practices that weren't ethical in regards to financial services tainted their reputation in the eyes of western countries and entities. Prior to the inception FATCA and other tax laws, the Bahamas was known as a tax haven. Ken Sosa details in his interview that what attributed to a decline in the economy of the Bahamas was not the inception of FATCA. Ken asserts that an evident decline started in before the introduction to FATCA. Ken states that,

“Basically, the financial services industry within the Bahamas has been on the decline for a few years now. That had more to do with people who came here and attempted to hide their funds from the U.S. and European government. But those who are here, I guess there must be some other reason why they have come. Potentially, those who are staying may be staying for the service but they still have to declare to their various governments that they do have funds outside of their jurisdictions that are taxable. However, the Bahamian financial service sector has been on the decline for a number of years.”

Ken admits that the Bahamas has not always engaged in ethical practices. He also attributes the lingering effect of a declining economy to the involvement of assisting individuals who were seeking to evade taxes. However, what is often asked is why the Bahamas considered a tax haven when they have been complying with tax laws offered by the OECD and the United States. Not only has the Bahamas complied with FATCA but also they have gone above and beyond what has been required because they do not want to be blacklisted and considered a tax haven. During my interview with Ken Sosa he also stated that,

“Basically, we have our own KYC (know your customer) rules and it has to some extent force premium compliance by banks to ask more questions regarding where funds are coming from. However, because we had a previous history with the drug trade and other illegal things that force those rules, FATCA makes it

more difficult for the U.S. affiliates... In terms of the Bahamas, I think the Bahamas does due diligence in terms to comply but the rules keep changing.”

Despite monitoring their financial services’ operations, the Bahamas still finds itself combating the stigma of being a tax haven. In addition to attempting to move on from their past by complying and enforcing the laws of FATCA, the Bahamas is still viewed as a tax haven. What also frustrates their financial professionals is the lack of equal treatment when Bahamian professionals observe the leniency of islands such as Bermuda are afforded because of their connection to a United States ally. Despite it all, professionals do agree that the law now needs to be followed because the repercussions that follow are too severe.

### **Implications**

Through out my research what I found out was that FATCA impacted the Caribbean in a myriad of ways. The law wasn’t just a tax law that infringed upon the practices of the financial services within the Caribbean. FATCA embodied an overall attack on the culture of the countries such as the Bahamas. For instance, during my interview with Barry McGuire, he referenced that when the Bahamas became an independent country there were a number of expatriates and businesses that opted to leave the country because they felt that a majority black country could not successfully run the financial sector. That particular insult was most notable within insurance industry. Since then, the Bahamas has been a bit critical of the involvement of western countries because they view past criticisms as attacks on their culture. Now with the introduction of

FATCA, its provisions not only curtail the prior financial services' practices but it also attacks their culture.

During my duration in the Bahamas, I listened to a number of conversations where people expressed frustration with an apparent expectation of assimilation to the American culture. Local professionals expressed their frustrations with the tourism industry within the Bahamas. Their concerns regarding the over-marketing of fast food chains such as Kentucky Fried Chicken, McDonalds, and Wendy's hindered opportunities to further introduce tourists to their culture and cuisine. The Bahamas is known for their cuisine and their many dishes with shellfish conch. Tourists often missed out on the opportunity enjoy crack conch, conch fritters, conch salad, and stew conch at the expense of promoting the nearby McDonalds. I observed conversations on the broadcast news pertaining to the diminishing interest in their historical preference regarding the genre of calypso music, a fusion of African and Caribbean rhythmic beats. These conversations included the increase in pop music from the United States. A concern was expressed regarding a potential lost of culture occurring within the Bahamas compared to other islands in the Caribbean. Although FATCA impacted the financial sector, it attacked the one industry that would help sustain their culture through investment in offshore financial centers. With the lost of potential investors due to FATCA, I wondered how the Bahamas would be able to sustain their culture.

Within the Bahamas, the country depended on offshore financial centers to boost the economy. OFCs was embedded within the financial culture in order to sustain the existing economy. As an independent country the Bahamian political officials did not

want to rely on the assistance of any other country. What I gathered through my research was that FATCA perpetuates the same issues for smaller countries identified by Samir Amin in his analysis of modern globalization. FATCA forces Caribbean countries to become more dependent on the United States because the United States created the law and determined what level of disclosure aligns with their rules of being in compliance. This coerces Caribbean states to become more dependent on the United States because, if the level of disclosure is not accepted, the United States decides on what form of penalties to levy down.

During my interviews, I received the impression that every professional within the Bahamas wanted the country to remain in an economic state that would further sustain the island's culture. For the professionals who strongly criticized FATCA, they acknowledged past transgressions of the government's financial services for nefarious individuals, however they maintained their stance that the actions exhibited during the country's early years as an independent country were needed in order for the country to survive, as they were no longer the United Kingdom. As I continued to analyze the impact of FATCA, I soon realized that the same financial services offered by the Bahamas resembled many of the services in other regions of the world. For instance, I mentioned earlier within my research the services that Delaware provides to entities around the world. Similar to the Bahamas, Delaware relies on the foreign financial accounts as a major source of their economy. The rationale for Delaware to provide such services is to establish a position in an otherwise volatile economy. Their reasoning is the same as the Bahamas. The Bahamas wants to fulfill their visions of being an independent country. Once the island was granted independence from the United Kingdom, they took

measures to further establish themselves in the international arena. However, I see their goals being disrupted by FATCA.

Unfortunately, FATCA is being used as tool by the United States to further sustain their power over Caribbean states. The financial services provided by the Bahamas through their OFCs enabled them to engage in the process of delinking from the capitalist system overwhelmingly dominated by western powers. Unfortunately, at the moment, this aligns with Samir Amin's analysis of modern globalization. The United States exercises its power through its requests for more transparency to prevent countries in the Caribbean from progressing without depending on the United States. FATCA further expands and sustains the United States' power in modern globalization while forcing Caribbean states to depend on their definition of compliance. This not only attacks their financial practices but it also impacts sustainability regarding the culture and independence of these countries. As a result, the Bahamas is a country whose culture is most notably under attack. As an independent country, they are left to defend themselves.








**Appendix A:**

**CARICOM Member States (Caribbean Community)**

-  Antigua and Barbuda
-  Bahamas
-  Barbados
-  Belize
-  Dominica
-  Grenada
-  Guyana
-  Haiti
-  Jamaica
-  Montserrat
-  Saint Lucia
-  St Kitts and Nevis
-  St Vincent and the Grenadines
-  Suriname
-  Trinidad and Tobago

**CARICOM Associate Member (Caribbean Community)**

-  Anguilla
-  Bermuda
-  British Virgin Islands
-  Cayman Islands
-  Turks and Caicos Islands

**Appendix B:**

**FATCA countries – Model 1 Agreements**

**\* Model 1 agreement consists of a country agreeing to collect and check financial data before they forward the information to the United States IRS.**

Algeria  
Angola  
Anguilla  
Antigua and Barbuda  
Australia  
Azerbaijan  
The Bahamas  
Bahrain  
Barbados  
Belarus  
Brazil  
British Virgin Islands  
Bulgaria  
Cabo Verde  
Cambodia  
Canada  
Cayman Islands  
China  
Colombia  
Costa Rica  
Curaçao  
Cyprus  
Czech Republic  
Denmark  
Dominica  
Dominican Republic  
Estonia

Finland  
France  
Georgia  
Germany  
Gibraltar  
Greece  
Greenland  
Grenada  
Guernsey  
Guyana  
Haiti  
Holy See  
Honduras  
Hungary  
Iceland  
India  
Indonesia  
Ireland  
Isle of Man  
Israel  
Italy  
Jamaica  
Jersey  
Kosovo  
Kuwait  
Latvia  
Liechtenstein  
Lithuania  
Luxembourg  
Malaysia  
Malta  
Mauritius

Mexico  
Montenegro  
Montserrat  
Netherlands  
New Zealand  
Norway  
Panama  
Peru  
Philippines  
Poland  
Portugal  
Qatar  
Romania  
Saudi Arabia  
Serbia  
Seychelles  
Singapore  
Slovak Republic  
Slovenia  
South Africa  
South Korea  
Spain  
St. Kitts and Nevis  
St. Lucia  
St. Vincent and the Grenadines  
Sweden  
Thailand  
Trinidad and Tobago  
Tunisia  
Turkey  
Turks and Caicos Islands  
Ukraine

United Arab Emirates

United Kingdom

Uzbekistan

Vietnam

### FATCA countries – Model 2 Agreements

**\* Model 2 agreements entails government approval is needed for some financial data sharing. However countries agree to the terms of FATCA but they need approval from their government to relax existing laws that prohibit financial data sharing.**

Armenia

Austria

Bermuda

Chile

Hong Kong

Iraq

Japan

Macao

Moldova

Nicaragua

Paraguay

San Marino

Switzerland

Taiwan

**Appendix C:**  
**G-20 Members**

Argentina

Australia

Brazil

Canada

China

France

Germany

India

Indonesia

Italy

Japan

Mexico

Russia

Saudi Arabia

South Africa

South Korea

Turkey

United Kingdom

United States

European Union

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