

# Offshore Bank Secrecy Acts and Confidentiality Ordinances

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The first Bank Secrecy Act in the Caribbean was adopted in the Bahamas in 1964. Until then, Switzerland had always been the “renowned banking haven” – known throughout the world for its “private banking”.

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The Cayman Islands government soon followed the Bahamas Bank Secrecy Act, with almost identical legislation a year later. The growth of the Cayman Islands into the top offshore banking center was spurred on originally by their Secrecy Act.

{bot\_wrgoogle}Today, all the tax havens have Secrecy or Confidentiality Ordinances. One exception is Bermuda, which never officially adopted a secrecy act – as Bermuda’s “common law” and isolated “jurisdiction” had always served it well.

As it turned out, the Secrecy/Confidentiality Acts and Ordinances were a boost to offshore businesses for the Caribbean and Pacific tax havens, and for the most part, they still are.

While the original idea of Banking Secrecy was a good one for the offshore havens, it was not (and never will) well received by the US Treasury Department and their enforcement agency – the IRS.

While no one would argue that these countries have every right to adopt and promote their bank secrecy, it has caused problems, including attracting a criminal element; drug money laundering issues, and tax evasion issues for citizens from industrial nations like the US, UK, Canada and Australia.

Bank Secrecy alone has worked well for the end users for over forty years, but under US law (and the laws of other industrialized nations – Japan, UK, Canada, Australia) it is income tax evasion (a felony) just having an offshore bank account and not reporting the income on one’s tax return. In the U.S., the mere existence of the bank and security accounts are reportable on a Form TD 90-22.1. Few Americans want to report.

[http://www.ustax.ch/pdf/2005\\_f9022-1.pdf](http://www.ustax.ch/pdf/2005_f9022-1.pdf)

But Secrecy and Confidentiality Ordinances offer protection against creditors and “others”; and where taxes alone are not the issue, bank secrecy along with “jurisdiction” add up to “asset protection’, privacy and more.

Privacy: One author writes: “People can’t find your offshore assets.” The Bank Secrecy Acts in the Bahamas (Cayman, Anguilla and the BVI) are said to impenetrable.

Exception: All these countries have Mutual Legal Assistance Treaties with the United States and other nations which allow for cooperation in criminal matters (i.e., other than tax issues).

A crime such as embezzlement of assets from the coffers of a US company to "hidden bank accounts" offshore is going to end up in conviction and sentencing – most of the time.

The MLATs are applicable on the "Federal level" through the US Attorney's office (i.e., located in Miami, Atlanta, New York, L.A.). However, there is no "cooperation" available to private investigations under the MLAT –except through the use of local (Bahamian, Anguillian, Cayman) attorneys and the local courts of those countries. When such "investigations are pursued, they are often expensive and futile – as the tax havens have a reputation to protect, and here again – bank secrecy becomes an issue even in the courts.

U.S. Judgments are not recognized offshore: "The Supreme Court of the Bahamas does not recognize U.S. court judgments against a company incorporated in their jurisdiction." The same can be said for the other Caribbean havens – including Cayman, the British Virgin Islands, Anguilla, Nevis and St. Kitts. Federal Courts have no jurisdiction: "U.S. Federal Court judges have no power or authority outside the U.S. borders. IRS liens are not recognized offshore. Seizure Warrants from the U.S. Customs service are not recognized offshore." – basically, the author of this statement is correct.

Another interesting protection you'll find offshore is American and foreign lawyers cannot practice law in these places. For example, here in the Bahamas you have to be a citizen of the Bahamas to become an attorney and practice in the Bahamian courts. Even the largest American law firm would need to hire a Bahamian law firm to pursue its litigation or claims

Notwithstanding all of the above, there is no "integration" between US tax law and the law of any foreign nation – excepting where there is an "income tax treaty".

Yet, the US Treasury Department has had a sympathetic "ear" and attitude to the offshore financial community's well being; but this too, has varied from "threats" to "bullying", to acceptance of their rights to exist and impose no taxes.

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Since 1990 I've formed a total of over 1,300 International Business Companies here in Nassau and in the no tax jurisdiction of Anguilla (a UK "Overseas Territory like Cayman and BVI) - 1,100 miles SE of Miami. 100 miles from San

Juan and USVI.

Based in the tax free haven of the Bahamas, I have over 20 years experience reading and writing about tax havens and financial center.

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