AFD Ep 301 Links and Notes - More on Tax Havens

- Onshore tax havens
  - Delaware: Dec 2015 report https://itep.org/delaware-an-onshore-tax-haven/ *Delaware ranks 46th in population among the 50 states with roughly 935,000 residents. Yet more than 1.1 million companies incorporated there as of 2014, including 65 percent of Fortune 500 parent companies.[ii] Additionally, 85 percent of Fortune 500 companies reported having at least one subsidiary in Delaware in 2014. In total, these companies reported more than 19,000 Delaware subsidiaries. In sum, 58 percent of all reported U.S. subsidiaries and 30 percent of total reported subsidiaries are housed in Delaware. In contrast, the two states that account for the largest contribution to the nation's Gross Domestic Product, California and Texas, have 1,160 and 1,540 Fortune 500 subsidiaries, respectively.[iii] Delaware is also favored by foreign companies as a location for incorporating subsidiaries. A 2011 analysis of FTSE 100 companies (the largest businesses on the London Stock Exchange) found that they collectively had more than 2,000 subsidiaries registered in Delaware, which is more than double the number of subsidiaries the FTSE 100 has in the Netherlands, the second most used tax haven.[iv]*
    - *Why are so many businesses drawn to incorporate in Delaware? The most popular answer is the state's "business-friendly climate." It has a dedicated corporate court system (the Chancery Court) producing a steady stream of case law, an enormous network of corporate lawyers, and laws that favor management over shareholders. The legal benefits are likely a large draw for parent companies, but this cannot explain the disproportionate number of subsidiaries that choose Delaware over other states, since subsidiaries don't have the same types of legal and corporate governance issues.[v] Another part of the appeal is the ease and rapidity with which a business entity can be formed there. Business entities can be set up in a number of hours. But the tax haven features of the state are a critical draw for individuals and corporations looking to engage in tax avoidance as well as illicit activities such as tax evasion and money laundering.*
    - *Delaware is not a typical zero-tax jurisdiction, nor is it one of the states with no corporate income tax (Nevada, Wyoming, and South Dakota). However, its tax code does contain a glaring loophole; it collects zero tax on income relating to intangible assets held by a "Delaware Holding Company," or a "Passive Investment Company (PIC)." This includes interest and investment income as well as income related to intellectual property, such as trademarks and patents. Sometimes called the "Delaware loophole" or the "Passive Investment Company (PIC) loophole," this allows corporations to set up holding companies in Delaware that the parent company or other subsidiaries then pay for the use of intellectual property. This income is not taxed in Delaware, while the payments can be deducted as a business expense from the parent company's tax liability in its home state. In effect, states where corporations are actually operating can lose millions of dollars in revenue*

as a result of the Delaware loophole. A 2012 New York Times article estimated that the loophole had cost states approximately $9.5 billion over a decade in lost revenues.[vii] One econometric study analyzing Delaware's role as a domestic tax haven (using data from over 2,500 firms between 1995 and 2009) estimated that firms using the Delaware PIC strategy reduced their state income tax liability by 15 to 24 percent, with the average firm saving an estimated $3.2 to $4.2 million annually.[viii] One prominent example of a company's use of the Delaware PIC strategy is Toys R Us, as it resulted in a significant South Carolina Supreme Court decision in 1993.[ix] Toys R Us, Inc. has a Delaware subsidiary, Geoffrey LLC, which on paper owns the company's trademarks and trade names (such as its mascot, "Geoffrey the Giraffe"). Retail Toys R Us stores in other states pay royalties to Geoffrey LLC for the use of these intangible assets, which are not taxed in Delaware, and then deduct the royalties on their state tax returns. For example, in 1990, Geoffrey LLC received $55 million in royalty income, and Toys R Us was able to avoid an estimated $2.75 million in state taxes as a result of this strategy.

    - ("It is worth noting that there are a few other states that have similar tax haven features as Delaware, most notably Nevada, Wyoming, and South Dakota.")
    - "It is unreasonable to expect other countries to make changes deterring tax haven abuse and improving transparency without holding U.S. states to the same standards."
- Nevada: https://www.theatlantic.com/national/archive/2016/04/panama-papers-nevada/476994/ *That same year, 2007, the Nevada secretary of state's website asked, "Why incorporate in Nevada?" The answer: "Minimal reporting and disclosing requirements. Stockholders are not public record." Nevada loosened its corporation laws in 1991, according to the Las Vegas Sun, hoping to make it a "Delaware of the West" and attract corporations with its low taxes and high secrecy. It made tens of millions of dollars. In 2006 alone, the Las Vegas Sun reported the state took in $87 million. One of the companies that made its way there was Rothschild Wealth Management & Trust, a firm with a storied history that was looking to move after the crackdown on Swiss banks. It chose Reno.*
    - *According to Bloomberg Businessweek: Putting his assets into a Nevada LLC, in turn owned by a Nevada trust, would generate no U.S. tax returns, Penney wrote. Any forms the IRS would receive would result in "no meaningful information to exchange under" agreements between Hong Kong and the U.S., according to Penney's PowerPoint presentation reviewed by Bloomberg.* [Penney was a managing director at Rothschild Wealth Management & Trust] https://www.bloomberg.com/news/articles/2016-01-27/the-world-s-favorite-new-tax-haven-is-the-united-states
- McClatchy review of Nevada after the Panama Papers and the history of the change (they passed the relaxed incorporation laws to cover a severe budget shortfall after a constitutional amendment required a legislative supermajority to pass new taxes)

        https://www.mcclatchydc.com/news/nation-world/national/article92679482.html - A UNLV Law professor notes that hostility toward the IRS in Nevada made people unsympathetic to claims that Nevada is aiding domestic federal tax evasion.
        - Responding to a letter from Sen. Wyden of Oregon after the Panama Papers: *Nevada Secretary of State Barbara K. Cegavske said in a June 2 response that her office does not have the authority to investigate illegal activities, such as money laundering or tax evasion, linked to Nevada-registered companies. Moreover, she said that in the past three years her office had not demanded ownership information from any company because no law enforcement agency had asked for it.*
- IMF "Finance & Development" Sept 2019 article on the damage of tax havens https://www.imf.org/external/pubs/ft/fandd/2019/09/tackling-global-tax-havens-shaxon.htm
    - Tax havens collectively cost governments between $500 billion and $600 billion a year in lost corporate tax revenue, depending on the estimate (Crivelli, de Mooij, and Keen 2015; Cobham and Janský 2018), through legal and not-so-legal means. Of that lost revenue, low-income economies account for some $200 billion—a larger hit as a percentage of GDP than advanced economies and more than the $150 billion or so they receive each year in foreign development assistance. American Fortune 500 companies alone held an estimated $2.6 trillion offshore in 2017, though a small portion of that has been repatriated following US tax reforms in 2018.
    - In May, the OECD published a "road map" proposing reforms based on two pillars: first, determining where tax should be paid and on what basis, and what portion of profits should be taxed on that basis; and second, getting multinationals to pay a minimum level of tax. Professor Reuven Avi-Yonah, of the University of Michigan Law School, said the plan was "extraordinarily radical" and would have been "almost inconceivable" even five years ago.
    - But radical change is feasible. The Tax Justice Network, which I have worked with, now sees its four core demands, initially dismissed as utopian, gaining global traction: automatic exchange of financial information across borders, public registers of beneficial ownership of financial assets, country-by-country reporting, and now unitary tax with formula apportionment.
    - There is a radically different, more powerful, approach. The relevant question is, Do the financial flows attracted by tax havens help the receiving countries? They certainly help *interest groups* there—typically in the banking, accounting, legal, and real estate professions—but do they benefit the *jurisdiction as a whole?*
- USPIRG 2017 "Offshore Shell Games" report (Bill wrote about the 2015 version of the report on the Arsenal For Democracy website & Bill/Nate/Persephone discussed it on episode 147 as well, but we never talked about it since then) https://uspirg.org/sites/pirg/files/reports/USP%20ShellGames%20Oct17%201.2.pdf https://itep.org/offshoreshellgames2017/
    - The main findings of this report are:
        - Most of America's largest corporations maintain subsidiaries in offshore tax havens. At least 366 companies, or 73 percent of the Fortune 500, operate one or more subsidiaries in tax haven countries.

    - All told, these 366 companies maintain at least 9,755 tax haven subsidiaries.
    - The 30 companies with the most money officially booked offshore for tax purposes collectively operate 2,213 tax haven subsidiaries.
- The most popular tax haven among the Fortune 500 is the Netherlands, with more than half of the Fortune 500 reporting at least one subsidiary there.
- Approximately 57 percent of companies with tax haven subsidiaries have set up at least one in Bermuda or the Cayman Islands
- Fortune 500 companies are holding more than $2.6 trillion in accumulated profits offshore for tax purposes. Just four of these companies, Apple, Pfizer, Microsoft and General Electric, account for a quarter of the total. Just 30 Fortune 500 companies account for 68 percent or $1.76 trillion of these offshore profits.
- If we assume that the average tax rate of 6.1 percent applies to all 293 Fortune 500 companies with offshore earnings, they would owe a 28.9 percent rate upon repatriation of these earnings, meaning they would collectively owe $752 billion in additional federal taxes if the money were repatriated at once.