



**Visit by the
Independent
Expert on
Foreign Debt &
Human Rights
to
The Bahamas**


In response to
call for submissions

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The Bahamas: Submission for consideration by the Independent Expert

Executive Summary

The Bahamas is internationally recognised as a tax haven.¹

In 2018, an Expert from the Committee on the Elimination of Discrimination against Women asked the Bahamas ‘about measures in place to ensure that its tax laws did not impede the ability of other countries to mobilise tax revenues’.² The Bahamas noted that it “was committed to meeting the highest international standards of tax cooperation and tax transparency and aimed to continue to preserve its reputation as a clean and compliant financial jurisdiction”.

This is not born out by the facts. The Bahamas has pursued a tax and financial secrecy legal and policy framework that increases the risks of tax abuse and illicit financial flows, negatively impacting on other countries’ abilities to collect tax revenues, and therefore also on the human rights and wellbeing of people in other jurisdictions, further compounding inequalities.

Extra-territorial human rights impact of financial policies

Transparency and accountability are core human rights principles. Tax and financial policy frameworks also need to reflect these core principles to facilitate stronger accountability between citizen and state.³ The nature of secrecy undermines such accountability by making it difficult for civil society, governments and the media to view the scale and depth of tax abuse, profit shifting and illicit finance.

¹ [1] CEDAW, *Committee on the Elimination of Discrimination against Women Examines the Situation of Women in the Bahamas* (Geneva, 25 October 2018) <<https://www.ohchr.org/en/press-releases/2018/10/committee-elimination-discrimination-against-women-examines-situation-women>> [accessed 21 July 2023]. Also, see General Secretariat of the Council, Council of the European Union, *Draft Council Conclusions on the Revised EU List of Non-Cooperative Jurisdictions for Tax Purposes - Approval* (Brussels, Belgium, 22 September 2022) <<https://media.euobserver.com/5d2aa7be35193531078ad98ff315377d.pdf>> [accessed 21 July 2023].

² CEDAW, *Committee on the Elimination of Discrimination against Women Examines the Situation of Women in the Bahamas* (Geneva, 25 October 2018) <<https://www.ohchr.org/en/press-releases/2018/10/committee-elimination-discrimination-against-women-examines-situation-women>> [accessed 21 July 2023].

³ Dayana Blanco and others, ‘Principles for Human Rights in Fiscal Policy’, *CESR*, 2021 <<https://www.cesr.org/principles-human-rights-fiscal-policy>> [accessed 20 June 2021].

The full cost of regressive tax policies and financial secrecy continues to be difficult to quantify. We do know that in secrecy jurisdictions few benefits are bestowed on the ordinary citizen compared to those corporations and individuals who use the secrecy system. Meanwhile great harm is done through loss of social and economic rights to people living in other jurisdictions through corporate profit shifting and wealthy individuals ‘offshoring’ their wealth.

The very nature of financial secrecy laws and policies require researchers to estimate losses using careful modelling techniques. The Government Revenue and Development Estimations project (GRADE) has modelled the relationship between government revenue and child and maternal mortality,⁴ access to drinking water, access to sanitation, and children’s time in education. A summary of their findings is included in Appendix 1.

The Bahamas is by no means the worst offender⁵ but its participation in financial secrecy practices and profit shifting behaviour does generate harm. According to the State of Tax Justice Report 2023 the Bahamas is responsible for 0.3 per cent of global tax losses.⁶ Using the GRADE model, financial secrecy in the Bahamas has a direct, quantifiable impact on human rights. The tax revenues lost could have funded access to basic water supply for 42,943 people per year; or basic sanitation for 86,759 people. It could have paid for 34,208 more children to spend an extra year in school. Or the lost revenues could have been used to bolster healthcare systems, as a result of which 1,330 more children could have survived their childhoods, or 218 more mothers could have survived childbirth.

Developments in financial transparency and tax policies

In 2017 the EU started publishing its list of non-cooperative jurisdictions, which is based on three main criteria: tax transparency, fair taxation, and measures against base erosion and profit shifting by multinational companies. The main caveats in the EU list are the exclusion of EU Member States and the lack of transparency in the decision-making

⁴ Stephen Hall and others, ‘Government Revenue and Child and Maternal Mortality’, *Open Economies Review*, 2020. Stephen Hall and others, ‘The Government Revenue and Development Estimations (GRADE)’, University of St Andrews School of Medicine, 2021. <https://med.st-andrews.ac.uk/grade/> [accessed 21 June 2021].

⁵ Tax Justice Network, ‘Financial Secrecy Index 2022’, *Tax Justice Network*, 2022 <<https://fsi.taxjustice.net/>> [accessed 21 September 2022]. See also Tax Justice Network, ‘Corporate Tax Haven Index’, 2021 <<https://cthi.taxjustice.net/en/>> [accessed 8 May 2022].

⁶ The State of Tax Justice estimates the tax losses inflicted on others by analysing each countries role in enabling offshore wealth tax abuse and corporate tax abuse. The 2023 State of Tax Justice estimates that Bahamas causes approximately \$1,427 billion in tax losses, representing 0.3% of the global tax losses estimated at around \$471 billion. Tax Justice Network, *Country Profile: Bahamas*, State of Tax Justice <<https://taxjustice.net/country-profiles/bahamas/>> [accessed 31 July 2023].

process, resulting in some notorious secrecy jurisdictions avoiding scrutiny and remaining unaffected by the list.

The Bahamas was added to the list of non-cooperative jurisdictions in 2018⁷ but was removed 2 months after following its commitment to fulfil the requirements by the end of 2018.⁸ In 2022 it was added again, with concerns that its zero or nominal rate of corporate income tax would attract profits without real economic activity. In particular, it failed to address a number of recommendations of the Forum on Harmful Tax Practices on the enforcement of economic substance requirements.⁹ As of July 2023, the Bahamas is still on the list.

There are various consequences associated with being on the EU list of non-cooperative jurisdictions:¹⁰

- a. Increased scrutiny from both EU member states and international financial institutions. This can involve stricter due diligence procedures, increased reporting requirements, and more extensive investigations.
- b. Financial restrictions being imposed by EU member states and other jurisdictions, including limitations on financial transactions, stricter controls on cross-border investments, and the imposition of additional taxes or levies on transactions.¹¹
- c. Higher compliance costs from implementation of measures to address the concerns raised, including enacting new legislation, strengthening regulatory frameworks, and enhancing the enforcement of anti-money laundering and tax evasion measures.
- d. Reputational damage from complying with international standards and being considered a high-risk destination.
- e. Hesitance to engage in business relationships with entities located in listed jurisdictions.

⁷ Council of the European Union, 'Taxation: 3 Jurisdictions Removed, 3 Added to EU List of Non-Cooperative Jurisdictions', *Press Release*, 2018 <<https://www.consilium.europa.eu/en/press/press-releases/2018/03/13/taxation-3-jurisdictions-removed-3-added-to-eu-list-of-non-cooperative-jurisdictions/>> [accessed 31 July 2023].

⁸ Ricardo Wells, 'Bahamas Removed from EU "Blacklist"', *The Tribune*, 25 May 2018, Online edition <<http://www.tribune242.com/news/2018/may/25/bahamas-removed-eu-blacklist/>> [accessed 31 July 2023]. Table.

⁹ Council of the European Union, 'Taxation: Anguilla, The Bahamas and Turks and Caicos Islands Added to EU List of Non-Cooperative Jurisdictions for Tax Purposes', *The Council of Europe*, 2022 <<https://www.consilium.europa.eu/en/press/press-releases/2022/10/04/taxation-anguilla-the-bahamas-and-turks-and-caicos-islands-added-to-eu-list-of-non-cooperative-jurisdictions-for-tax-purposes/>> [accessed 31 July 2023].

¹⁰ EY Global, 'ECOFIN Adopts Revised List of Non-Cooperative Jurisdictions for Tax Purposes', *Tax Alert*, 2023 <https://www.ey.com/en_gl/tax-alerts/ecofin-adopts-revised-list-of-non-cooperative-jurisdictions-for-0> [accessed 31 July 2023]. KPMG, 'Tax Defensive Measures against Non-Cooperative Jurisdictions - KPMG Global', *KPMG*, 2023 <<https://kpmg.com/xx/en/home/insights/2022/01/tax-defensive-measures-implemented-by-european-states-against-non-cooperative-jurisdictions.html>> [accessed 31 July 2023].

¹¹ Council of the European Union, 'EU List of Non-Cooperative Jurisdictions for Tax Purposes', *Policies*, 2023 <<https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/>> [accessed 31 July 2023].

These potential consequences are likely to affect the revenues that the Bahamas' is able to collect, indirectly limiting its ability to adequately fund and protect human rights.

How the Bahamas scores on the Financial Secrecy Index and the Corporate Tax Haven Index

The Bahamas ranks 22 on the Financial Secrecy Index 2022 and is responsible for 1.13 per cent of the world's financial secrecy.¹² Its secrecy score is an extremely high 75. This is mainly due to its non-transparent legal framework on the ownership registration of legal vehicles as well as secrecy around companies' accounts, and its lack of income tax.

The Bahamas ranks 12th on the Corporate Tax Haven Index 2021 (out of 70 jurisdictions)¹³ and is responsible for 3.26 per cent of the world's corporate tax abuse risks¹⁴. It has the maximum haven score of 100, mainly due to its lack of income tax. These jurisdictions rank among the top enablers of corporate tax avoidance on the index.

Providing golden visas

As of July 2023, the Bahamas is among the jurisdictions identified as having residency/citizenship programmes that potentially pose a high risk to the integrity of the Common Reporting Standard.¹⁵ Many jurisdictions provide "citizenship by investment" and "residence by investment" schemes, which enable foreign individuals to acquire citizenship or residency rights through local investments or a predetermined fee. These schemes have the potential to undermine the diligence procedures of the Common Reporting Standard¹⁶ - a multilateral legal framework for automatic exchange of banking information - by resulting in inaccurate or incomplete reporting. This is especially true when individuals fail to disclose all of their tax residence jurisdictions to the financial institution. Individuals could falsely claim tax residency solely in the "citizenship by

¹² Tax Justice Network, 'Country Detail: Bahamas – Financial Secrecy Index', *Financial Secrecy Index, 2022* <<https://fsi.taxjustice.net/country-detail/>> [accessed 31 July 2023].

¹³ Tax Justice Network, 'Corporate Tax Haven Index - 2021 Results', 2021 <<https://cthi.taxjustice.net/en/>> [accessed 31 July 2023].

¹⁴ The Corporate Tax Haven Index combines an analysis of the legal framework of a country (the haven score) with the scale of multinational activity (the global scale weight) to assess how intensely the jurisdiction enables multinational corporations to abuse corporate tax, and what is the share of global corporate tax abuse risks they are responsible for.

¹⁵ OECD, 'Residence/Citizenship by Investment - Organisation for Economic Co-Operation and Development' <<https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>> [accessed 4 May 2022].

¹⁶ OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters. Including Commentaries*. (July 2014) <https://read.oecd-ilibrary.org/taxation/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters_9789264216525-en> [accessed 2 May 2022].

investment” jurisdiction, even if they do not actually reside there or actually have residency in other locations. This comes at the cost of the human rights of people in other countries.¹⁷ (See for instance Cyprus where research questions the policy of ‘golden visas’ and the associated practice of ‘round-tripping’.¹⁸)

For more than a decade, permanent residency in the Bahamas could be obtained through real estate investments.¹⁹ In 2021, the Bahamas passed an amendment introducing an "economic permanent residence certificate" under which the Minister can determine the minimum investment amount,²⁰ with a \$200.00 non-refundable processing fee and \$750,00 for “speedy consideration”.²¹

Automatic information exchange of financial accounts

In 2018 the Bahamas signed the Multilateral Competent Authority Agreement²² for the automatic exchange of banking information, but is one of the few countries that have opted for "voluntary secrecy" within the framework.

This means that it will share information with other jurisdictions but will not receive any in return. This arrangement ensures that information on any individual evading taxes remains uncollected by the bank altogether, and none of its residents are required to report their financial information.

Beneficial ownership

¹⁷ CEDAW, *Concluding Observations on the Eighth Periodic Report of Cyprus** (Geneva and New York, 25 July 2018) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/238/36/PDF/N1823836.pdf?OpenElement>> [accessed 31 July 2023]. Para. 42-43.

¹⁸ Tax Justice Network, ‘State Responsibility for the Impact of Domestic and Extraterritorial Tax Abuse on Women: Cyprus’, *Tax Justice Network* <https://taxjustice.net/wp-content/uploads/2021/03/CEDAWComm-CYPRUS-BackgroundMemoJunFinal_v02.pdf> [accessed 31 July 2023]. P.9.

¹⁹ Higgs & Johnson, *Guide To Residency In The Bahamas - - Bahamas*, 16 October 2012 <<https://www.mondaq.com/immigration/201428/guide-to-residency-in-the-bahamas>> [accessed 31 July 2023].

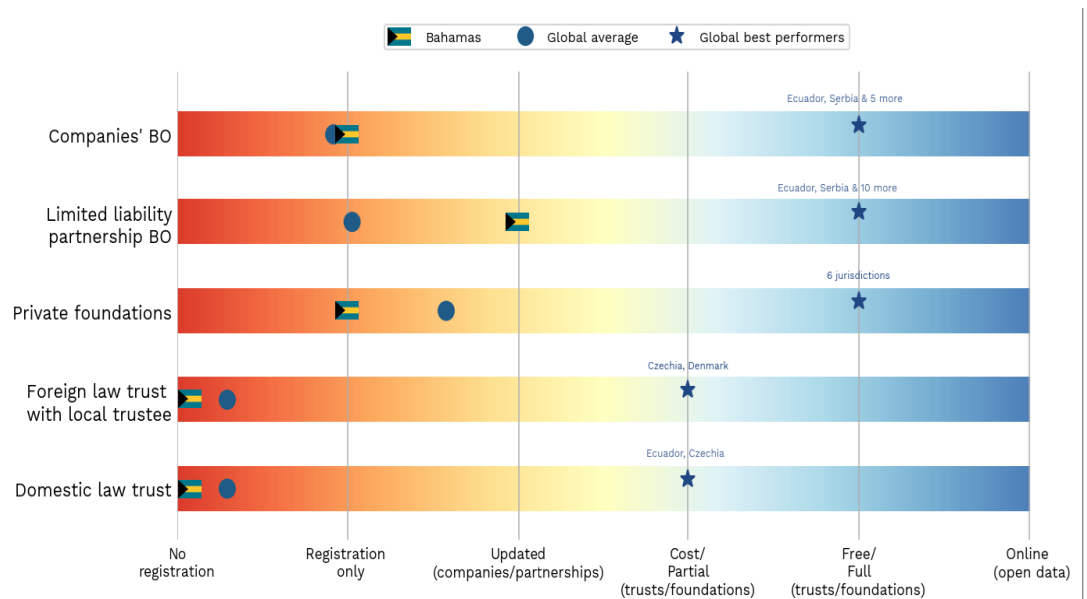
²⁰ The Bahamas Authority, *Extraordinary Official Gazette The Bahamas*, 1 July 2021 <<http://laws.bahamas.gov.bs/cms/images/LEGISLATION/AMENDING/2021/2021-0023/ImmigrationAmendmentAct2021.pdf>> [accessed 31 July 2023].

²¹ The Government of the Bahamas, Department of Immigration, ‘Permanent Residence – Bahamas Immigration’, *Permanent Residence*, 2023 <<https://www.immigration.gov.bs/residence/permanent-residence/>> [accessed 31 July 2023].

²² OECD, ‘Multilateral Competent Authority Agreement - OECD’, 2023 <<https://www.oecd.org/tax/exchange-of-tax-information/multilateral-competent-authority-agreement.htm>> [accessed 31 July 2023].

Transparency in legal vehicles and beneficial ownership is crucial in combating illicit financial flows, corruption, and tax evasion. The Bahamas has a central registry of beneficial owners under which companies must report their beneficial owners. However, the register is not public, and information is "accessible only by a designated person from a designated secured location within The Bahamas." Figure 1 compares the Bahamas' transparency of beneficial ownership registration requirements against the global average and global best performers.

Figure 1: Transparency in legal vehicles and beneficial ownership²³



Bearer shares


While international companies in the Bahamas are prohibited from issuing bearer shares, local companies may do so with approval.²⁴

Bearer shares are utilised to maintain anonymity for owners since they are effectively untraceable. They are negotiable instruments that grant ownership in a legal entity to the individual possessing the bearer share certificate.²⁵ Typically, joint stock companies issue registered shares, where the shareholder's name is explicitly stated on the certificate, and the identities of shareholders are recorded in public registries, ensuring

²³ Tax Justice Network, 'Financial Secrecy Index 2022', *Tax Justice Network*, 2022 <<https://fsi.taxjustice.net/>> [accessed 21 September 2022].

²⁴ The Government of the Bahamas, *Companies Act, STATUTE LAW OF THE BAHAMAS*, 2010 <http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1992/1992-0018/CompaniesAct_1.pdf> [accessed 31 July 2023].

²⁵ Financial Action Task Force FATF, 'The FATF Recommendations', 2023 <<https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>> [accessed 31 July 2023].



that third parties can easily verify ownership of the company. By contrast, bearer shares do not list the names of shareholders, nor is there any record regarding their identities. The legal owner of the share and the company is simply the person physically holding the share certificates.

The FATF Mutual Evaluation Report notes that although the Bahamas has currently ceased approving bearer shares and declared a future non-approval policy, the law still grants a discretion in this matter²⁶. There is therefore a risk of bearer shares still being available, if not today then potentially in the future.

Climate injustice and inequality

Many small island states are at the forefront of the climate crisis and suffer severe consequences of global warming and rising sea levels. The Bahamas, too, are exposed to these risks. Sadly, the relationship between the levels of carbon emissions attributable to individual nations and the consequences they suffer are almost entirely uncoupled from each other.

The Bahamas is a special and somewhat ironic case. A highly developed nation with a high standard of living and significant financial infrastructure, the Bahamas produce relatively high per capita emissions compared to other small island states.²⁷

Aside from that, the Bahamas plays a vital role in shielding assets that are financing fossil fuel extraction and polluting sectors. Many investments, especially from the very top of the economic distribution, are likely to have a high carbon content which, when channelled through the offshore spiderweb, are safe from any form of regulation or pressure to divest. These investment emissions – the carbon footprint of investments or loans – are estimated to be of staggering volume, but are cloaked by a veil of active financial secrecy.

The financial secrecy typical of a small island tax haven and its role in enabling the financial flows that contribute to worsening the climate crisis shows, once more, the many overlaps between the fight for climate justice and the fight for tax justice. There is a range of tax policy principles to meet some of the challenges facing the climate justice movement, such as the climate finance gap, ongoing imbalances between those responsible for the climate crisis and those most affected, the legacies of historic climate injustice, political inertia, and a lack of global cooperation.

²⁶ Financial Action Task Force FATF, *Mutual Evaluation of the Bahamas*, 2023 <<https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mutualevaluationofthebahamas.html>> [accessed 31 July 2023].

²⁷ The World Bank, 'World Bank Open Data: CO2 Emissions (Metric Tonnes per Capita) Bahamas, The, Germany, United States, Belgium, Barbados, Maldives', *World Bank Open Data*, 2023 <<https://data.worldbank.org>> [accessed 31 July 2023].



Conclusion

It is crucial that all states acknowledge the important convergence of tax justice with human rights. It is especially important to recognise the extra-territorial impacts of financial secrecy and tax abuse. Tax abuse impacts all but the very wealthy. Tax justice and human rights obligations demand a progressive policy regime built on transparency and the normative standards that are set out in this submission.

States - including the Bahamas - should review and revise their secrecy regimes to meet obligations under the International Covenant on Economic, Social and Cultural Rights.

A comprehensive global agreement on tackling tax havens, specifically addressing the secrecy that underpins their business models, is necessary to achieve effective action against tax dodging.

The ongoing failure of the OECD to deliver inclusive, progressive and transparent proposals has provided the momentum for a UN Resolution to begin intergovernmental dialogue on the governance of global tax and under the auspices of the United Nations.²⁸

²⁸ Cobham, Alex, 'UN Resolution for an Intergovernmental Tax Framework: What Does It Mean, and What's Next?', *Tax Justice Network*, 2022 <<https://taxjustice.net/2022/12/15/un-resolution-for-an-intergovernmental-tax-framework-what-does-it-mean-and-whats-next/>> [accessed 31 July 2023].

Appendix 1: GRADE analysis on impact on human rights harms

Potential outcomes from recouping revenue lost to tax abuse:

<i>Region (Number of countries with data)</i>	<i>Additional people with basic water each year</i>	<i>Additional people with basic sanitation each year</i>	<i>Numbers of children who would spend an extra year in school*</i>	<i>Number of children who would survive*</i>	<i>Number of mothers who would survive*</i>
<i>Africa (45)</i>	1,629,984	2,926,013	2,034,847	175,163	22,416
<i>Asia (39)</i>	12,200,000	25,200,000	5,845,440	239,440	45,434
<i>Caribbean and American Islands (7)</i>	1,239	10,706	3,992	558	12
<i>Europe (42)</i>	54,132	143,341	1,474,795	6,876	435
<i>Latin America (14)</i>	423,230	628,420	337,067	19,647	4,303
<i>North America (2)</i>	0	0	1,661,791	578	0
<i>Oceania (7)</i>	5,882	11,198	44,676	992	59
Total	14,314,467	28,919,678	11,402,607	443,254	72,659
<i>The harm caused by the Bahamas</i>	42,943	86,759	34,208	1,330	218

*over the time studied