

## Little clarity on next steps as House taxwriters discuss implications of ‘Pandora Papers’

Democrats and Republicans on the House Ways and Means Oversight Subcommittee were divided this week over how Congress should respond to the so-called “Pandora Papers,” which purport to describe how tax havens across the globe—including in the United States—have allowed certain ultrawealthy individuals to arrange their financial affairs in ways intended to minimize scrutiny by tax authorities and law enforcement.

### Background on Pandora Papers

The Pandora Papers, which were published in October by the International Consortium of Investigative Journalists (ICIJ), are based on a review of nearly 12 million confidential files that were leaked by what the ICIJ describes as “14 offshore services firms from around the world that set up shell companies and other offshore nooks” for their clients. The ICIJ notes that “[i]n most countries, it’s not illegal to have assets offshore or to use shell companies to do business across national borders,” but adds that the activities it identified “often amount to shifting profits from high-tax countries, where they are earned, to companies that exist only on paper in low-tax jurisdictions.”

[URL: https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/](https://www.icij.org/investigations/pandora-papers/global-investigation-tax-havens-offshore/)

According to the ICIJ, purported tax haven activity in the United States is tied largely to certain trust companies operating in a handful of states—such as South Dakota, Florida, Delaware, Texas, and Nevada—with laws that allow a high degree of anonymity for trust beneficiaries. The ICIJ has stated that its investigation “identified 206 US-based trusts linked to 41 countries holding combined assets worth more than \$1 billion. Nearly 30 of the trusts held assets connected to people or companies accused of fraud, bribery, or human rights abuses in some of the world’s most vulnerable communities.” However, the ICIJ also states that “[t]here is no evidence in the Pandora Papers documents that any of the foreigners with trusts in the United States sheltered criminal proceeds.”

[URL: https://www.icij.org/investigations/pandora-papers/us-trusts-offshore-south-dakota-tax-havens/](https://www.icij.org/investigations/pandora-papers/us-trusts-offshore-south-dakota-tax-havens/)

### Taxwriters divided

At a December 8 Ways and Means Oversight Subcommittee hearing to examine “the Pandora Papers and hidden wealth,” Chairman Bill Pascrell, D-N.J., and the panel’s Democrats generally pointed to the ICIJ’s findings as evidence of a what they called a two-tiered US tax system that provides one set of rules for wealthy taxpayers and another for individuals with more modest financial means. They argued that Congress needs to ensure that federal tax laws promote financial transparency and make it more difficult for taxpayers to engage in complex transactions or take advantage of regulatory “blind spots” to avoid taxes or disguise assets.

Pascrell noted several times during the hearing that Congress is not interested in shutting down trusts and other financial structures that are being used as legitimate planning tools, but he argued that the government needs to be able to identify beneficial owners of these entities to determine whether they are indeed serving a

legitimate purpose. Not addressing the difficulties of determining beneficial ownership “will only exacerbate” the two-tiered wealth system in the US, he said.

Ranking member Mike Kelly, R-Pa., and the panel’s Republicans noted that the Pandora Papers do not provide evidence that US-based trust companies or their clients are bad actors and commented that small businesses and family farms typically rely on trusts for succession planning and other accepted purposes. They contended that Democrats were using some of the more sensational details in the Pandora Papers as a foundation for proposing a new round of information reporting requirements that would unduly burden small businesses and put taxpayer privacy at risk. (Several GOP taxwriters argued that the government has a poor track record of protecting confidential taxpayer information, citing the anonymous leak earlier this year of tax return information that revealed the amount of federal income taxes paid by certain prominent high-net-worth taxpayers over several years. The leaked information was subsequently published by ProPublica.)

Kelly and other Republicans also argued that Democrats’ position on the use of trusts and other tax planning tools by wealthy individuals is inconsistent with their efforts to include a provision relaxing the current-law cap on the deduction for state and local taxes (SALT) in the Build Back Better legislation now making its way through Congress. Specifically, GOP taxwriters contended that by relaxing the cap Democrats would be providing a disproportionate tax break to the wealthy.

Chairman Pascrell, responding to a comment by Rep. Jackie Walorski, R-Ind., countered that the \$10,000 limitation on the SALT deduction that Republicans enacted in the Tax Cuts and Jobs Act of 2017 (P.L. 115-97) created a “serious problem of double taxation” that he and other Democrats are attempting to address in the Build Back Better Act.

### **Witnesses weigh in**

Among the witnesses at the hearing, Beverly Moran, a professor of law (emerita) at Vanderbilt University, said during an exchange with Pascrell that determining beneficial ownership of trusts and other entities is key to controlling the spread of tax havens in the US. She noted that noncharitable special purpose trusts are attractive to certain investors because under current rules it is “impossible” to trace their ownership.

“If you don’t know who owns what it becomes very difficult to prevent a tax haven,” she said.

Moran also told the panel that tax havens are “contagious” and can never be eradicated, so the best response by government is aggressive regulation. She cautioned, though, that any new rules should be “applied in such a way that they don’t encourage competition between the states.”

Daniel Hemel of the University of Chicago Law School argued that while the US is “doing well in combating offshore tax evasion by our own citizens and residents, it has become “a go-to investment destination for offshore wealth” since it does not tax portfolio interest paid to foreigners and does not impose a withholding tax on gains from stock buybacks. He told the panel that Congress should reconsider those policies and called

the proposed 1 percent excise tax on stock buybacks included in the House-passed Build Back Better Act “a first step in the right direction.”

Hemel also urged the administration to “work multilaterally with other countries that are home to large and liquid capital markets so that our anti-evasion efforts align with theirs.”

David Burton of the Heritage Foundation agreed with Republican taxwriters that the public is wary of proposals to expand tax information reporting, citing the reaction among some taxpayer groups to a Biden administration budget proposal to require financial institutions to report gross inflows and outflows for certain accounts. He added that taxpayers are losing confidence in the government’s ability to protect private taxpayer information.

Burton also agreed with Republicans that small businesses and farms use trusts for legitimate planning purposes. If Congress is concerned about the use of trusts to circumvent the generating-skipping transfer (GST) tax, he said, lawmakers “can solve the problem through the simple expedient of amending the GST to address perceived problems by making the GST apply notwithstanding the existence of a trust.”

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