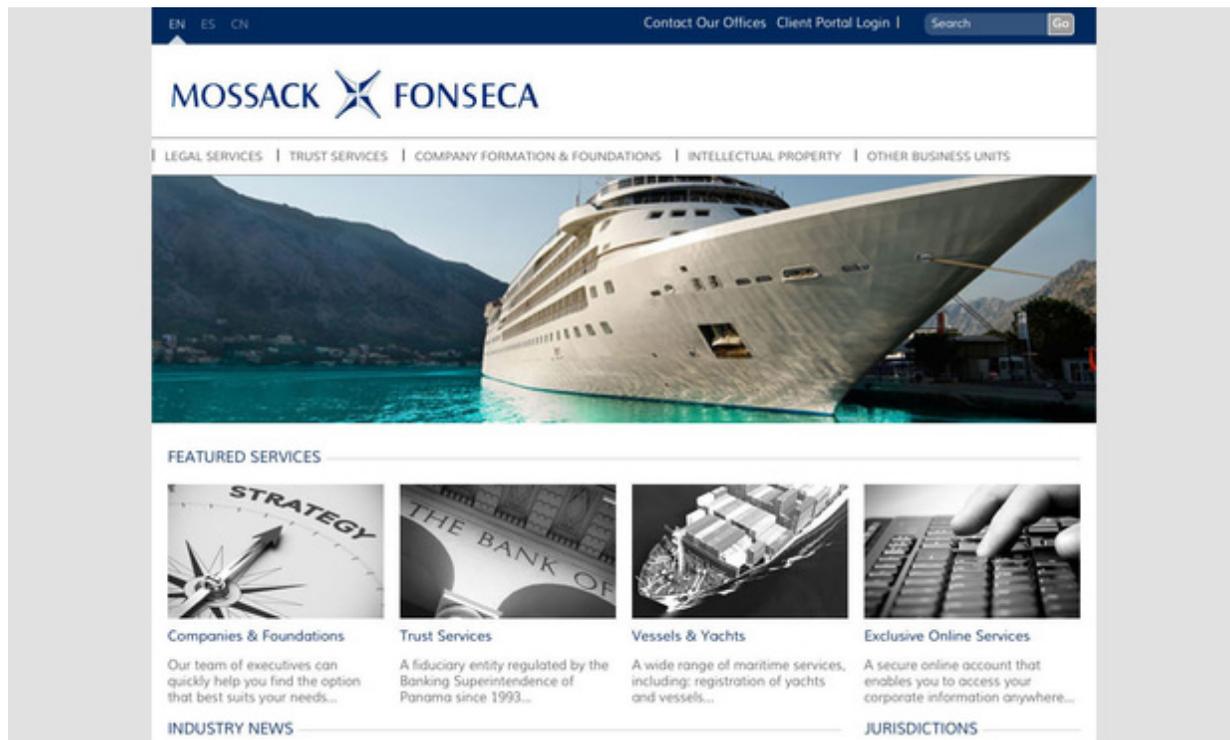


# Why Do the Panama Papers Name So Few American Clients?

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When the Panama Papers leaked, conventional wisdom held that Americans were underrepresented. Politicians from 50 nations were caught stashing large sums of money in offshore shell companies, and the U.S. was not among them.

The Panama Papers embarrassed the Chinese president brother-in-law and the Russian president's best friend. Perhaps the reddest-faced American (if only because she had a secret account too) was Marianna Olszewski, author of "Live It, Love It, Earn It: A Woman's Guide to Financial Freedom."

Then The New York Times trumpeted that the law firm forming the shells, Mossack Fonseca, served 2,400 U.S. "clients." A follow-up editorial called foreign tax evasion by rich Americans "rampant." And it suggested that Americans made up 17 percent of Mossack's clients.

The original conventional wisdom was right. The International Consortium of Investigative Journalists confirms that the figure of 17 percent is mistaken. It can only be derived by confusing two uses of the term "client." It seems that the Times compared the number of U.S. shareholders or beneficiaries of shell companies with the global number of intermediary banks or law firms retaining Mossack. On an apples-to-apples basis, only 4.5 percent of intermediaries were U.S.-based according to the ICIJ. And only about 2.5 percent of shareholders or beneficiaries of known nationality.

"Given the enormous cache of emails and the number of affluent Americans," says corruption expert

Alexandra Wrage of TRACE International, the U.S. presence in the Panama Papers is "surprisingly small."

More fundamentally, to focus on foreign tax evasion misapprehends America's problem with financial crime enforcement. In the past eight years, the U.S. has won a cascade of unsung victories over offshore tax evasion. Where America lags behind the world is in certain theaters of the war on money laundering.

Mossack's Ramon Fonseca outright told the Associated Press that "we prefer not to have American clients." Tax experts like Scott Michel of Caplin & Drysdale think that's "because the U.S. is perceived as being incredibly aggressive in enforcing its tax laws offshore."

The Times deplored \$40 billion to \$70 billion in annual foreign tax losses—but this estimate dates back to a single 2006 study. Even in January 2009, the Treasury Department cited that statistic only after the boldface disclaimer: "No one, including the IRS, has an accurate and reliable estimate of the U.S. international tax gap." Then came a revolution in foreign tax compliance.

In February 2009 the U.S. forced UBS to reveal thousands of secret Swiss bank accounts as part of a criminal settlement. The next month, Treasury's first Overseas Voluntary Disclosure Program offered criminal amnesty and finite penalties in return for disclosure. "UBS sort of blew the doors open," says Michel. "Practitioners' phones started ringing off the hook."

Then, in 2013, Treasury offered Swiss banks settlements on an industrial scale. By early 2016, it had resulted in 80 settling banks revealing \$50 billion in 35,000 accounts. Throw in the deals with UBS and Credit Suisse, and Swiss banks have paid the U.S. \$4.75 billion in penalties. "The Swiss Bank Program succeeded beyond what those of us who were involved ever thought it could," says the program's lead author, DLA Piper's Kathy Keneally.

The Swiss Bank Program scared Mossack Fonseca into advising two of the four U.S. clients spotlighted by the Times that they needed to report their secret accounts. Even Olszewski went to the IRS. Perhaps her book should bear the revised title: "Live It, Love It, Earn It, Report It."

Practitioners' phones kept ringing, so Treasury kept offering amnesty. At last count, some 54,000 major and 30,000 minor offenders have returned more than \$8 billion in dodged overseas taxes. And U.S. citizens began to routinely comply with their overseas tax obligations. The number of Foreign Bank and Financial Accounts (FBFAs) reports surged from fewer than 300,000 in 2008 to 1,163,000 last year. As of 2015, the Foreign Account Tax Compliance Act requires extensive information on U.S. accounts from banks around the world.

"What's been accomplished is remarkable both in terms of breadth and speed," says Michel. "Anybody who thinks you can hide money now has to worry about criminal investigations, civil cases, whistle blowers, information exchanges, media leaks, voluntary disclosures and FATCA cooperation. The U.S. government has basically eliminated bank secrecy for fiscal purposes. It should be extremely proud."

But let's not be too proud. "I don't think we can say Mossack had only 2,400 U.S. clients because we've found religion," says Wrage. Just ask a world expert on money laundering.

The Financial Action Task Force (FATF), the closest thing there is to a "World Financial Organization," last performed a full evaluation of the U.S. 10 years ago. America was deemed lacking in two key areas. First, the U.S. doesn't force lawyers and other gatekeepers to report suspicious transactions. Second, the U.S. lets

virtually anyone set up an anonymous shell company without revealing their identity. That makes America a popular offshore haven in its own right.

So perhaps the Panama mystery is explained by policy failure rather than policy success. Americans "don't have to go to Panama to create a shell company," said Tom Cardamome of Global Financial Integrity at a recent Association of Certified Financial Crime Specialists conference. "They can just pick up the phone in their living room and make a local call."

FATF will re-evaluate the U.S. in October. Bruce Zagaris, who edits International Enforcement Law Reporter, says that we are sure to be embarrassed again. The main U.S. response to FATF's critique was the bar's Voluntary Good Practices for Lawyers to Detect and Combat Money Laundering, which are toothless. Meanwhile, Europe has made strides on both incorporation transparency and gatekeeper regulation. "As the world's standards have risen," says Zagaris, "the U.S. has only fallen further behind."

So are Americans underrepresented in the Panama Papers because U.S. policy is so good, or so bad? The timing doesn't work well for either account. Many of the Panama Papers go back a decade or more. But the U.S. has only recently become a world leader in tax enforcement, while falling behind in anti-money laundering. And even without an ownership registry, bad guys have to worry that U.S. prosecutors will figure out who owns their Delaware shell with the help of a subpoena. I think Americans avoided Mossack Fonseca because they're so bad at languages. Why deal with Panama when you can go to the British Virgin Islands?