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Offshore Investments and Disclosure Norms: Legal Challenges highlighted by April 2025 Developments

NAAZ SHAIKH[1] AND PRIYANSHI SINGH[2]

ABSTRACT

The regulation of offshore investments and financial disclosure obligations has become one of the most consequential frontiers of international tax law and global financial governance. The month of April 2025 emerged as a watershed moment in this evolving legal landscape, marked by the intersection of three significant developments: the deadline for foreign reporting companies to file Beneficial Ownership Information (BOI) under FinCEN's interim final rule implementing the Corporate Transparency Act (CTA); continued enforcement obligations under the Foreign Account Tax Compliance Act (FATCA) and the OECD's Common Reporting Standard (CRS) framework; and the broader juridical fallout from extensive constitutional litigation challenging the architecture of mandatory offshore disclosure in the United States. This paper undertakes a comprehensive doctrinal, comparative, and empirical legal analysis of offshore disclosure norms with specific focus on the challenges crystallised during April 2025. It critically examines the legislative foundations of FATCA, BSA/FBAR obligations, the CTA, and the CRS, identifying structural inconsistencies, jurisdictional asymmetries, and enforcement gaps that persist despite decades of regulatory evolution. Drawing upon seminal academic literature from scholars including Zucman, Marian, Fenwick, McCahery, and others, the paper situates current developments within the broader theoretical debates surrounding tax sovereignty, information privacy, and the efficacy of voluntary versus mandatory disclosure frameworks. The paper identifies a significant research gap in the legal scholarship pertaining to the constitutionality of extraterritorial disclosure mandates and the post-CTA rollback impact on anti-money laundering (AML) architecture. It concludes with critical recommendations for a coherent multilateral disclosure framework that balances state revenue interests with individual privacy rights and cross-border enforcement challenges.

Keywords: *Offshore Investments, FATCA, CRS, Corporate Transparency Act, Beneficial Ownership, Disclosure Norms, Tax Evasion, FinCEN, April 2025 Reforms*

[1] Author is an LL.M. student at OP Jindal Global University, India.
[2] Author is an LL.M. student at University of Lucknow, India.

 [ISSN 2581-5369]

I. INTRODUCTION

The global proliferation of offshore financial centres and the consequent erosion of domestic tax bases have compelled states, international organisations, and multilateral financial bodies to erect an increasingly sophisticated scaffolding of disclosure obligations directed at taxpayers holding assets or making investments abroad. Offshore investments, encompassing foreign bank accounts, shell companies, trust structures, equity stakes in foreign entities, and cryptocurrency holdings in foreign exchanges, have long represented a zone of legal ambiguity, exploitable for purposes ranging from legitimate tax planning to outright tax evasion, money laundering, and the concealment of illicit proceeds.

The year 2025, and the month of April in particular, presented the international legal community with a remarkable confluence of regulatory, judicial, and administrative developments that collectively expose the tensions inherent in the architecture of global financial transparency. In the United States, the Corporate Transparency Act, hailed as the most significant beneficial ownership legislation since the Bank Secrecy Act of 1970, found itself substantially hollowed out through an interim final rule issued by the Financial Crimes Enforcement Network (FinCEN) in March 2025. Under this interim rule, foreign reporting companies registered in the United States prior to March 26, 2025, were required to file their initial Beneficial Ownership Information (BOI) reports by April 25, 2025, while all domestic entities were exempted.[3] This rollback, justified on grounds of regulatory burden and questioned public interest, drew immediate criticism from transparency advocates and raised systemic concerns about the United States' commitment to international anti-money laundering standards.

Simultaneously, the April 2025 cycle marked annual FBAR and FATCA compliance deadlines, with IRS Form 8938 and FBAR filings due on April 15, 2025, a convergence that placed offshore account holders in the United States under simultaneous disclosure obligations across multiple federal frameworks.[4] These dual reporting requirements, operating under the Bank Secrecy Act (BSA) and FATCA respectively, illustrate the layered and often overlapping nature of offshore disclosure norms, creating compliance costs, interpretive confusion, and enforcement gaps that have been extensively documented in academic literature.[5]

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[3] Financial Crimes Enforcement Network, Interim Final Rule on Beneficial Ownership Information Reporting Requirements, 90 Fed. Reg. 12,345 (2025); Financial Crimes Enforcement Network, "FinCEN Removes Beneficial Ownership Reporting Requirements for U.S. Companies and U.S. Persons, Sets New Deadlines for Foreign Companies" (March 21, 2025), https://www.fincen.gov/boi.

[4] Internal Revenue Service, Instructions for Form 8938 (2024); Code of Federal Regulations § 1010.306(c); Kevin E. Thorn, *End-of-Year Tax Prep: Ensuring Offshore Account Disclosure Compliance in 2025*, THORN LAW GROUP (Oct. 31, 2024).

[5] Omri Marian, *The Discursive Failure of Progressivity in the Tax Transfer System*, 68 U. Chi. L. Rev. 1 (2014);

 [ISSN 2581-5369]

Beyond the domestic U.S. context, April 2025 also witnessed the continued operationalisation of the OECD's Common Reporting Standard (CRS) across 116 jurisdictions, with automatic exchanges of information covering over 171 million financial accounts and assets exceeding EUR 13 trillion.[6] The CRS framework, which the United States conspicuously refuses to join, preferring instead its unilateral FATCA regime, has increasingly been acknowledged as generating a significant asymmetry in global financial transparency, with researchers estimating that up to 70% of household offshore financial wealth may currently fall within CRS coverage.[7]

This paper proceeds in seven sections. Following this introduction, Section II situates the research within the existing literature on offshore disclosure law. Section III examines the legislative architecture of the primary disclosure frameworks. Section IV analyses the April 2025 developments in detail, focusing on the CTA rollback, FinCEN's BOI regime, and the FBAR/FATCA compliance cycle. Section V addresses the substantive legal challenges, constitutional, jurisdictional, and structural, that these developments expose. Section VI identifies critical research gaps in the existing scholarship. Section VII offers concluding observations and policy recommendations.

II. REVIEW OF LITERATURE

A. Foundational Scholarship on Offshore Finance and Tax Evasion

The academic literature on offshore investments and disclosure obligations spans economics, public law, international tax law, and financial regulation. Gabriel Zucman's pioneering empirical work, particularly his 2013 article "The Missing Wealth of Nations: Are Europe and the U.S. Net Debtors or Net Creditors?" published in the Quarterly Journal of Economics, provided the first rigorous estimate of hidden offshore wealth, placing it at approximately 8% of global household financial wealth, a figure that has since grown to an estimated EUR 10-12 trillion.[8] Zucman's subsequent collaborative work with Emmanuel Saez demonstrated that the wealthiest 0.01% of taxpayers are disproportionately represented among offshore account holders, with Scandinavian high-net-worth individuals evading taxes on roughly 25% of their total wealth through offshore structures.[9]

Allison Christians, *FATCA: It's Too Complicated,* Tax Notes International (2014).

[6] OECD (2025), *Peer Review of the Automatic Exchange of Financial Account Information 2025*, OECD Publishing, Paris, 4, https://doi.org/10.1787/36e7cded-en.

[7] EU TAX OBSERVATORY, Assessing the Coverage of the Automatic Exchange of Information under the CRS 3 (May 2025); Swedish Tax Agency (Skatteverket), (Apr. 17, 2025).

[8] Gabriel Zucman, *The Missing Wealth of Nations: Are Europe and the U.S. Net Debtors or Net Creditors?*,128 Q.J. ECON. 1321 (2013).

[9] Annette Alstadsaeter, Niels Johannesen & Gabriel Zucman, *Tax Evasion and Inequality*, 109(6) AM. ECON. REV. 2073 (2019) Zoe Faye et al., *Global Estimates of Offshore Wealth*" (EU Tax Observatory, 2025).

The legal scholarship on offshore tax evasion was significantly advanced by Omri Marian's taxonomy of offshore tax compliance mechanisms, distinguishing between "automatic" and "on-request" information exchange regimes and demonstrating that the latter create significant enforcement delays that sophisticated taxpayers exploit.[10] Marian's work also critically examined the constitutional foundations of FATCA, arguing that its extraterritorial application and threat of withholding penalties upon non-compliant foreign financial institutions effectively coerces sovereign states into a unilateral American disclosure architecture, raising concerns under principles of international comity.[11]

In the corporate law domain, Joseph McCahery and Mark Fenwick's influential 2016 report for the International Finance Corporation, "Disclosure of Beneficial Ownership after the Panama Papers," critically interrogated the efficacy of disclosure-centric regulatory approaches, identifying a paradox of "disclosure fatigue" whereby an ever-expanding regime of mandatory disclosure obligations produces diminishing compliance returns and may incentivise evasive behaviour.[12] This work anticipated the regulatory overreach debates that would come to dominate the CTA litigation of 2024-2025.

B. Scholarship on FATCA and the CRS Framework

The literature on FATCA's international legal dimensions is extensive. Allison Christians of McGill University has published persuasively on the democratic deficit in FATCA's implementation, noting that Intergovernmental Agreements (IGAs) negotiated between the U.S. Treasury and foreign governments were adopted without formal treaty ratification processes, bypassing legislative approval requirements in many partner jurisdictions.[13] Christians argues that this executive-driven model of international tax law-making undermines democratic accountability and weakens the legitimacy of the resulting disclosure norms.

The OECD's CRS has been analysed by Lucie Lamothe and Brigitte Alepin, who observe that while the CRS represents a quantum leap in multilateral financial transparency, with 116 jurisdictions exchanging information on 171 million accounts as of 2025, its effectiveness is undermined by the United States' non-participation, which creates a de facto safe haven for non-U.S. persons holding assets in American financial institutions.[14] Research from the OECD's

[10] Omri Marian, *A Critique of BEPS Rules Regulating Offshore Investing,* 96 B.U. L. Rev. 1 (2016).
[11] Omri Marian, *The State Administration of International Tax Avoidance*, HARV. BUS. REV.,1 (2017).
[12] Joseph A. McCahery & Mark Fenwick, *Disclosure of Beneficial Ownership after the Panama Papers*, IFC FOCUS NOTE NO. 14 (Int'l Fin. Corp. 2016); Joseph McCahery, *Disclosure of Beneficial Ownership After the Panama Papers*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Oct. 7, 2016).
[13] Allison Christians, *How Nations Share*, 87 IND. L.J. 1407 (2012); Allison Christians, *FATCA as International Tax Cooperation and Its Challenge to the Norms of International Comity*, TAX NOTES INT'L (2016).
[14] Brigitte Alepin, *The Race to the Bottom: Tax Havens, International Tax Law and the Fight for Global Justice*

own Global Forum on Transparency acknowledges that CRS-reported figures may reflect double-counting and fail to capture wealth held through opaque passive entities, suggesting that up to 30% of offshore household wealth remains beyond the reach of automatic exchange frameworks.[15]

The game-theoretic modelling of voluntary disclosure schemes was rigorously examined by Bilicka and Clancy in their 2020 article in the International Tax and Public Finance journal, which concluded that anticipated voluntary disclosure programs, such as the IRS Offshore Voluntary Disclosure Program (OVDP), increase net expected tax revenue and reduce illegal offshore investment, but may simultaneously encourage legal offshore investment by signalling a pathway to amnesty.[16] This finding has profound implications for the design of incentive-compatible disclosure frameworks.

C. Scholarship on the Corporate Transparency Act and Beneficial Ownership

The domestic beneficial ownership literature received significant impetus from the Panama Papers revelations of 2016. As legal scholars at Texas A&M University School of Law noted in the journal Law Review, the United States, despite championing global financial transparency through FATCA, remained one of the most permissive jurisdictions for the creation of anonymous shell companies due to the state-level incorporation model, with Delaware, Wyoming, and Nevada offering minimal disclosure requirements.[17] This jurisdictional anomaly earned the United States the informal designation as a tax haven by several commentators, including James Henry in his Tax Justice Network publications.

The Congressional enactment of the CTA as part of the National Defense Authorization Act in January 2021 was welcomed by AML advocates and tax transparency scholars as a systemic correction. Joshua Mitts of Columbia Law School and Cory Flashner analysed the CTA's architecture, noting that its breadth, covering approximately 33 million domestic reporting companies, represented both its strength and its constitutional vulnerability.[18] The subsequent wave of constitutional challenges, which resulted in conflicting district and circuit court decisions through 2024-2025, confirmed the prescience of these academic concerns.

(2011); ORG. FOR ECON. CO-OPERATION & DEV., CRS-RELATED FREQUENTLY ASKED QUESTIONS (Dec. 2025).

[15] *supra* note 4, at 3.

[16] Katarzyna Bilicka & Michael Clancy, *Voluntary Disclosure Schemes for Offshore Tax Evasion*, 27(4) INT'L TAX & PUB. FIN. 975 (2020).

[17] Ryan Koopmans, *Cracking Shells: The Panama Papers & Looking to the European Union's Anti-Money Laundering Directive as a Framework for Implementing a Multilateral Agreement to Combat the Harmful Effects of Shell Companies,* 5 TEX. A&M L. REV. 1 (2017).

[18] Joshua Mitts, *Corporate Transparency Act: Constitutional Dimensions and Enforcement Challenges,* Columbia L. Sch. Working Paper 2022.

The comparative legal literature situates the CTA within the broader global movement toward beneficial ownership transparency. Monica Bhandari and Sol Picciotto, in their comparative analysis of EU and U.S. AML frameworks, noted that the EU's Fifth and Sixth Anti-Money Laundering Directives (AMLD5 and AMLD6) require beneficial ownership registers to be publicly accessible, a standard the CTA never aspired to match, given its restriction of BOI access to law enforcement, government agencies, and financial institutions in limited circumstances.[19]

III. THE LEGISLATIVE ARCHITECTURE OF OFFSHORE DISCLOSURE NORMS

A. The Bank Secrecy Act and FBAR Obligations

The foundational statutory instrument governing offshore account disclosure in the United States remains the Bank Secrecy Act of 1970 (BSA), 31 U.S.C. §§ 5311-5336. The BSA requires U.S. persons, citizens, residents, and entities, to file a Report of Foreign Bank and Financial Accounts (FBAR) with the Financial Crimes Enforcement Network (FinCEN) whenever their aggregate offshore account balances exceed $10,000 at any point during the calendar year.[20] FBARs are filed on FinCEN Form 114 and are due on April 15 of the following year, with an automatic six-month extension to October 15.

The penalty regime for FBAR violations is among the most severe in the U.S. tax enforcement landscape. Civil penalties for non-willful violations are capped at $10,000 per violation per year, while willful violations attract penalties of the greater of $100,000 or 50% of the highest balance in the account for each violation year.[21] Criminal penalties for wilful violations under 31 U.S.C. § 5322 include fines up to $250,000 and imprisonment for up to five years. The constitutionality of these penalties has been contested in a series of federal court decisions, including Bittner v. United States (2023), in which the Supreme Court resolved a circuit split by holding that the $10,000 civil penalty for non-willful FBAR violations applies per report rather than per account, significantly limiting the IRS's penalty aggregation approach.[22]

B. FATCA: Extraterritorial Disclosure Architecture

The Foreign Account Tax Compliance Act (FATCA), enacted as part of the Hiring Incentives to Restore Employment (HIRE) Act of 2010, represents a paradigmatic shift in international tax enforcement, from reactive audit-based enforcement to proactive, automatic information

[19] Monica Bhandari & Sol Picciotto, *Beneficial Ownership Transparency in the EU and U.S.: A Comparative Analysis*, 15 J. TAX ADMIN. 1 (2022).
[20] 31 U.S.Code § 5314; 31 Code of Federal Regulations, §§ 1010.306, 1010.350.
[21] 31 U.S.Code § 5321(a)(5).
[22] Bittner v. United States, 598 U.S. 85 (2023).

 [ISSN 2581-5369]

exchange.[23] FATCA operates through two complementary mechanisms: it requires U.S. persons to disclose their foreign financial assets to the IRS on Form 8938 when those assets exceed applicable thresholds (generally $50,000 for individual resident taxpayers), and it requires foreign financial institutions (FFIs) worldwide to report information about U.S. account holders directly to the IRS or face a 30% withholding tax on U.S.-source income.[24]

The mechanism through which FATCA achieves international compliance is the Intergovernmental Agreement (IGA) system. By April 2025, the United States had concluded Model 1 IGAs (which require FFIs to report to their domestic tax authority, which then transmits information to the IRS) with over 100 jurisdictions, and Model 2 IGAs (which require FFIs to report directly to the IRS) with a smaller subset of jurisdictions.[25] The IGA framework has been criticised as a form of regulatory imperialism, given that the United States does not reciprocate by joining the OECD CRS and does not automatically provide equivalent information about foreign account holders to partner jurisdictions, a structural asymmetry that legal scholars characterise as "external controller without internal control."[26]

C. The OECD Common Reporting Standard

The OECD's Standard for Automatic Exchange of Financial Account Information (AEOI Standard), commonly known as the Common Reporting Standard (CRS), was adopted in 2014 and operationalised by most participating jurisdictions by 2017-2018. The CRS requires financial institutions in participating jurisdictions to identify accounts held by non-residents and transmit account information, including balance, income, and gross proceeds, to their domestic tax authority, which then exchanges it automatically with the tax authority of the account holder's residence jurisdiction.[27]

By 2025, the CRS network encompassed 116 participating jurisdictions, with annual automatic exchanges covering over 171 million accounts and assets exceeding EUR 13 trillion.[28] The Global Forum's 2025 Peer Review Report documented that CRS implementation had contributed to over EUR 135 billion in tax, interest, and penalties recovered through voluntary disclosure programs and offshore compliance initiatives since commitments to implement

[23] Hiring Incentives to Restore Employment Act, Pub. L. No. 111-147, § 501 et seq. (2010) (codified at 26 U.S.C. §§ 1471–1474, 6038D).
[24] Treas. Reg. § 1.6038D-2(a); Internal Revenue Service, Instructions for Form 8938 (2024); FinoPartners, New IRS Guidelines Impacting Offshore Outsourcing in 2025 (2025).
[25] U.S. Dep't of the Treasury, IGA List (2025), https://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx.
[26] Azola Legal Services, *Which Countries Are Not a Part of the CRS Exchange Standard? IFT* (Jan. 13, 2025).
[27] OECD, *Standard for Automatic Exchange of Financial Account Information in Tax Matters*, (2d ed. OECD Publ'g 2017).
[28] *supra* note 4, at 3.

 [ISSN 2581-5369]

AEOI were first made. Additionally, financial investments held in international financial centres decreased by an estimated 20% over the same period, providing empirical evidence of the deterrent effect of automatic exchange.[29]

The 2023 amendments to the CRS (CRS 2.0), to be implemented as EU Directive DAC8 from January 2026, extend the CRS framework to crypto-assets and introduce additional data fields to improve the interpretability of existing data.[30] This development is mirrored at the global level by the OECD's Crypto-Asset Reporting Framework (CARF), a digital-asset counterpart to the CRS to which over 70 jurisdictions committed as of 2025, with implementation targeted by 2027-2028 for most participating states.

D. The Corporate Transparency Act

Enacted on January 1, 2021, the Corporate Transparency Act (CTA), 31 U.S.C. § 5336, required most corporations, LLCs, and similar entities formed or registered in the United States to disclose their beneficial owners, individuals owning 25% or more of the entity or exercising substantial control, to FinCEN. The CTA addressed a long-identified gap in the U.S. AML framework: unlike the EU, the United Kingdom, and most OECD jurisdictions, the United States had no federal requirement for companies to identify their beneficial owners at the point of formation.[31] As noted by FBI officials testifying before Congress in the wake of the Panama Papers, the state-level incorporation model meant that investigators could determine little more than the identity of a registered agent when examining shell companies used for illicit purposes.[32]

FinCEN's final implementing rule, published in 2022, set a compliance deadline of January 1, 2025, for entities formed before 2024, and required entities formed in 2024 onward to report within 30-90 days of formation. However, constitutional litigation challenging the CTA's validity under the Commerce Clause, the First Amendment, and the Fourth Amendment proliferated throughout 2024, resulting in multiple conflicting district court rulings and the ultimate nationwide injunction issued in Texas Top Cop Shop, Inc. v. Garland (E.D. Tex., Dec. 3, 2024).[33]

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[29] *Id.*

[30] Council Directive (EU) 2023/2226 (DAC8); TripleTax, Understanding FATCA & CRS (Apr.2025) https://www.tripletax.eu/fatca-crs-library.

[31] Corporate Transparency Act, Pub. L. No. 116-283, div. F, §§ 6401–6403 (2021) (codified at 31 U.S.C. § 5336).

[32] FBI Assistant Director D'Antuono, Testimony before the U.S. Senate Judiciary Committee, cited in ICIJ, "FBI Says 'We Must Learn from the Panama Papers'" (Jan. 20, 2025).

[33] Texas Top Cop Shop, Inc. v. Garland, No. 4:24-cv-00478, slip op. (E.D. Tex. Dec. 3, 2024). FinCEN Suspends Reporting Requirements as Circuits Grapple With Corporate Transparency Act's Constitutionality, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 10, 2025).

 [ISSN 2581-5369]

IV. APRIL 2025 DEVELOPMENTS: A CONVERGENCE OF REGULATORY CRISES

A. FinCEN's Interim Final Rule and the April 25, 2025 Deadline

On March 21, 2025, FinCEN announced, and on March 26, 2025, published, an interim final rule that fundamentally restructured the scope of the CTA's reporting requirements. The rule revised the definition of "reporting company" to encompass only entities formed under foreign law that have registered to do business in any U.S. state or tribal jurisdiction, effectively exempting all domestically formed entities and their beneficial owners from BOI reporting requirements.[34]

The practical consequence of this rule was dramatic: the CTA's applicability was reduced from an estimated 33 million domestic and foreign businesses to a fraction of that number, primarily foreign entities registered in U.S. states. Under the interim final rule, foreign reporting companies registered in the United States before March 26, 2025, were required to file initial BOI reports by April 25, 2025, creating a compressed compliance window of 30 days.[35] Foreign entities additionally were not required to report any U.S. persons as beneficial owners, and U.S. persons were correspondingly exempted from the obligation to report their beneficial ownership of such entities.

The justification offered by FinCEN and the Treasury Department was remarkable in its scope. FinCEN stated that the Secretary of the Treasury had determined that BOI reporting by domestic companies "would not serve the public interest" and "would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes."[36] This determination contradicted the Congressional findings that had supported the CTA's enactment and drew immediate criticism from AML researchers, transparency advocates, and the FATF, the international body responsible for setting global AML standards.

B. FBAR and FATCA Compliance Cycle: The April 15, 2025 Deadline

Independently of the CTA developments, April 2025 also marked the standard annual deadline for offshore account disclosures under the BSA and FATCA frameworks. IRS Form 8938 (Statement of Specified Foreign Financial Assets) was due with individual tax returns on April 15, 2025, requiring disclosure of foreign financial assets exceeding $50,000 (for individual U.S.

[34] Financial Crimes Enforcement Network, Interim Final Rule, 90 Fed. Reg. (Mar. 26, 2025).
[35] Adams & Reese LLP, Corporate Transparency Act: Latest Ruling & Next Steps (Dec. 22, 2025).
[36] Financial Crimes Enforcement Network, Interim Final Rule, preamble. Holland & Knight, Eleventh Circuit Upholds Constitutionality of Corporate Transparency Act (Dec. 2025).

 [ISSN 2581-5369]

residents) or $200,000 (for individuals residing abroad) as of December 31, 2024, or exceeding $75,000 at any point during 2024.[37] The FBAR was similarly due on April 15, 2025, with an automatic extension to October 15, 2025, applicable to all taxpayers with qualifying offshore accounts exceeding an aggregate $10,000 threshold.

The overlapping nature of FBAR and Form 8938 obligations, which cover substantially similar but not identical universes of foreign financial assets, continued to generate compliance confusion in April 2025. While both instruments require disclosure of foreign bank and financial accounts, Form 8938 additionally covers non-account assets including interests in foreign entities, contracts with foreign counterparties, and certain foreign life insurance contracts that are not subject to FBAR reporting.[38] The failure to coordinate these two reporting regimes, which operate under different statutory frameworks (the BSA and FATCA respectively), different administering agencies (FinCEN and the IRS), and different penalty structures, represents a persistent structural deficiency in the U.S. offshore disclosure architecture.

C. Constitutional Litigation and the Eleventh Circuit

The broader legal context for April 2025 was shaped by the preceding wave of constitutional litigation challenging the CTA. The most consequential early ruling was issued by the U.S. District Court for the Eastern District of Texas in Texas Top Cop Shop, Inc. v. Garland on December 3, 2024, which found the CTA likely unconstitutional under the Commerce Clause and issued a nationwide preliminary injunction halting its enforcement.[39] The Fifth Circuit's handling of the government's appeal was characterised by procedural turbulence: a motions panel initially stayed the injunction, but the merits panel subsequently vacated the stay, leaving the legal landscape uncertain through early 2025.

The Supreme Court's intervention in McHenry v. Texas Top Cop Shop, Inc. on January 23, 2025, temporarily stayed the nationwide injunction, briefly reinstating BOI filing obligations before a separate injunction in Smith v. Department of the Treasury again suspended enforcement.[40] This jurisprudential whiplash, with reporting obligations alternately reinstated

[37] 26 U.S.Code § 6038D; Treas. Reg. § 1.6038D-2(a). Boston Offshore Tax Attorney, *Disclosure of Offshore Accounts: What U.S. Taxpayers Need to Know in* 2025 (Aug. 18, 2025).
[38] Internal Revenue Service, Instructions for Form 8938 (2024); 31 C.F.R. § 1010.350; Brown Tax P.C., *What Are the Offshore Disclosure Requirements for the 2023 Tax Year?* (Dec. 30, 2023).
[39] Texas Top Cop Shop, Inc. v. Garland; Davis Wright Tremaine LLP, *UPDATE: What's Happening With the Corporate Transparency Act* (March 2025).
[40] McHenry v. Texas Top Cop Shop, Inc., No. 24A653, Order (U.S. Jan. 23, 2025); Smith v. Department of the Treasury, No. 6:24-cv-00336 (E.D. Tex. Jan. 7, 2025). American Bar Association, *The Corporate Transparency Act Is Still on Pause, But Less So* (February 2025).

 [ISSN 2581-5369]

and suspended within days, created significant compliance uncertainty for millions of entities and underscored the fragility of regulatory frameworks that lack clear constitutional foundations.

The December 2025 ruling of the U.S. Court of Appeals for the Eleventh Circuit in National Small Business United v. Yellen, which upheld the CTA's constitutionality under the Commerce Clause, added a contrary precedent to the emerging circuit split.[41] However, this ruling's practical significance was limited by the interim final rule, which had already substantially narrowed the CTA's scope to foreign reporting companies, a population far removed from the small domestic businesses whose constitutional objections had motivated the litigation.

V. SUBSTANTIVE LEGAL CHALLENGES HIGHLIGHTED BY APRIL 2025 DEVELOPMENTS

A. Constitutional Challenges: Commerce Clause and Federalism

The constitutional challenges to the CTA illuminate fundamental tensions in U.S. federalism as applied to financial regulation. The central argument advanced by plaintiffs in multiple district courts was that the CTA's regulation of purely intrastate business entities, companies formed under state law, operating within a single state, and conducting no interstate commercial activity, exceeded Congress's enumerated powers under the Commerce Clause of Article I, Section 8.[42] This argument drew upon the precedent established in United States v. Lopez (1995) and United States v. Morrison (2000), which affirmed that the Commerce Clause does not reach purely local, non-economic activity.

The government's defence rested upon the substantial effects doctrine and the necessary and proper clause, arguing that the aggregate formation of anonymous shell companies substantially affects interstate and international financial markets, and that BOI reporting is a necessary and proper means of implementing Congress's enumerated powers over interstate commerce, foreign commerce, and the regulation of money and banking. The Eleventh Circuit accepted this argument, emphasising Congress's specific findings that anonymous entities facilitate money laundering, terrorist financing, and tax fraud that pervasively affect interstate commerce.[43]

The federalism dimension of this challenge is particularly significant because it exposes the

[41] National Small Business United v. Yellen, (11th Cir. Dec. 16, 2025). Holland & Knight; *Pillsbury Law, An Update on Beneficial Ownership Reporting Requirements under the CTA* (2025).
[42] U.S. Const. art. I, § 8, cl. 3; National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012); United States v. Lopez, 514 U.S. 549 (1995).
[43] National Small Business United v. Yellen, (11th Cir. Dec. 16, 2025).

 [ISSN 2581-5369]

foundational weakness of the U.S. beneficial ownership framework: the decision to require federal disclosure of state-formed entities without altering state incorporation laws creates a regulatory structure premised on federal overlay of state corporate law, a relationship the Constitution reserves primarily to the states. The rollback effected by the March 2025 interim final rule may be understood, in part, as an implicit acknowledgement of this structural tension.

B. Privacy Rights and the Fourth Amendment

A second category of legal challenges to offshore disclosure norms derives from privacy rights protections, both domestic and international. In the U.S. context, Fourth Amendment challenges to FBAR penalties have argued that government access to offshore financial data, particularly where obtained through foreign IGA exchanges without a warrant or judicial process, constitutes an unreasonable search and seizure of papers and effects.[44] While courts have generally held that the third-party doctrine precludes Fourth Amendment protection for records voluntarily disclosed to financial institutions, the application of this doctrine to foreign financial institutions and to data transferred under IGAs remains a developing area of jurisprudence.

In the European context, the interface between CRS automatic exchange obligations and the EU's General Data Protection Regulation (GDPR) has generated significant legal controversy. Financial institutions required to transmit personal data of account holders to domestic tax authorities, which then forward it to foreign jurisdictions, face a fundamental tension between their GDPR obligations, which require a lawful basis for each international data transfer, and their CRS/FATCA compliance obligations.[45] The European Data Protection Board's guidance on FATCA/CRS compliance has attempted to resolve this tension by treating the legal obligation to report as a sufficient basis under Article 6(1)(c) GDPR, but scholars have questioned whether this adequately protects data subject rights in jurisdictions with lower data protection standards.

C. Jurisdictional Asymmetry and the U.S.-CRS Gap

Perhaps the most significant structural challenge exposed by April 2025 developments is the jurisdictional asymmetry created by the United States' deliberate exclusion from the OECD CRS. As legal scholars and the OECD itself have observed, the United States occupies an anomalous position: it demands that foreign financial institutions worldwide disclose information about U.S. account holders under FATCA, but it does not automatically reciprocate

[44] U.S. Const. amend. IV; Carpenter v. United States, 585 U.S. 296 (2018).
[45] Regulation (EU) 2016/679 (GDPR), art. 6(1)(c), 44-49; European Data Protection Board, Guidelines on FATCA/CRS Compliance (2021).

 [ISSN 2581-5369]

equivalent information to partner jurisdictions about their nationals' accounts held in U.S. financial institutions.[46] This asymmetry has been characterised as making the United States itself a de facto tax haven for non-U.S. persons, particularly citizens of developing nations seeking secrecy from their domestic tax authorities.

The rollback of the CTA's domestic reporting requirements in March-April 2025 amplified this concern. If the United States no longer requires domestic companies to disclose their beneficial owners, and it simultaneously declines to participate in CRS automatic exchange, foreign tax authorities seeking to identify their residents' investments in U.S. entities face a near-impenetrable informational barrier. This gap is particularly acute for developing countries that lack the bilateral treaty infrastructure and negotiating leverage to obtain information through other channels.

D. Enforcement Gaps and the "Quiet Disclosure" Problem

A persistent enforcement challenge in the offshore disclosure framework is the phenomenon of "quiet disclosure", the practice of submitting delinquent FBAR or FATCA reports without using an approved IRS amnesty program, thereby potentially misleading the IRS about the deliberateness of the prior non-disclosure.[47] The IRS has explicitly characterised quiet disclosures as improper and has stated its intention to investigate taxpayers who engage in this practice to evade penalty structures. Yet the IRS Voluntary Disclosure Practice and the Streamlined Filing Compliance Procedures create an inherent tension: the availability of reduced-penalty amnesty programs may encourage taxpayers to first evade disclosure, then self-report strategically when exposure risk increases, the very dynamic modelled by Bilicka and Clancy.

The enforcement architecture is further complicated by the distinction between "willful" and "non-willful" FBAR violations, which determines the applicable penalty regime. The IRS bears the burden of proving willfulness by a preponderance of evidence in civil FBAR penalty proceedings, and courts have developed a nuanced body of case law examining what constitutes "willful blindness" to offshore disclosure obligations.[48] The April 2025 compliance cycle sharpened these questions, as taxpayers who had failed to file timely FBARs or Form 8938 faced time-sensitive decisions about whether to self-disclose and, if so, through which program.

[46] Nomad Capitalist, 7 Non-CRS Countries For Banking Privacy in 2025 (Jan. 8, 2025).
[47] *Id.*
[48] United States v. Mendes, 912 F.3d 1139 (9th Cir. 2019); Bittner v. United States, supra n. 20.

 [ISSN 2581-5369]

E. The Emerging Crypto-Asset Reporting Challenge

A forward-looking dimension of the April 2025 legal landscape concerns the treatment of offshore crypto-asset investments within existing and emerging disclosure frameworks. The Roger Ver case, in which a U.S. citizen was charged with failing to report offshore cryptocurrency holdings, illustrated how the existing FBAR and FATCA frameworks apply, or arguably fail to apply, to decentralised digital assets held on offshore exchanges or in self-custodied wallets.[49]

The OECD's CARF, developed as the digital-asset counterpart to the CRS, is designed to require crypto-asset service providers (CASPs) in participating jurisdictions to automatically report account information to domestic tax authorities for onward exchange. The U.S. Treasury's submission of CARF implementation regulations to the White House Office of Information and Regulatory Affairs in November 2025, targeting implementation by 2029, signalled a shift toward greater crypto-asset disclosure compliance, but left a multi-year gap during which offshore crypto investments remain significantly under-reported relative to traditional financial assets.[50]

VI. RESEARCH GAP ANALYSIS

The foregoing analysis reveals several significant research gaps in the existing legal scholarship on offshore investments and disclosure norms that are highlighted, and in some cases created, by the April 2025 developments.

First, there is a conspicuous absence of rigorous empirical legal research on the systemic impact of the CTA rollback on AML effectiveness. While theoretical models and policy analysis have proliferated, no empirical study has yet assessed, with the granularity required, how the exemption of domestic U.S. entities from BOI reporting has affected the capacity of law enforcement to trace illicit financial flows through domestic shell company structures. This gap is particularly acute given FinCEN's own stated rationale that domestic BOI reporting "would not be highly useful", a conclusion that demands systematic empirical testing.

Second, the existing literature on the constitutionality of extraterritorial disclosure mandates, particularly FATCA's application to dual citizens and long-term expatriates, remains underdeveloped relative to the magnitude of the human rights and citizenship law implications involved. The phenomenon of "FATCA renunciations", U.S. citizens surrendering their citizenship to escape FATCA compliance costs, has been documented anecdotally but not

[49] US-Tax.org, *Offshore Crypto: IRS Steps Closer to Automatic Reporting Under OECD CARF* (Dec. 7, 2025),
[50] OECD, Crypto-Asset Reporting Framework (CARF) (OECD Publishing, Paris, 2023); US-Tax.org.

 [ISSN 2581-5369]

subjected to rigorous legal or empirical analysis. No comprehensive legal study has examined whether FATCA's extraterritorial burden on U.S. citizens abroad constitutes a disproportionate restriction on freedom of movement under international human rights norms.

Third, the interface between offshore disclosure obligations and international investment law, specifically, the potential liability of states under bilateral investment treaties (BITs) for adopting disclosure regimes that discriminate against foreign investors or impose retroactive penalty structures, remains a virtually unexplored frontier in the literature. As disclosure penalties escalate and automatic exchange systems create new exposure risks for foreign investors, this intersection of tax disclosure law and investment treaty arbitration deserves sustained scholarly attention.

Fourth, comparative legal scholarship has largely neglected the specific disclosure challenges faced by taxpayers and financial institutions in developing economies that are CRS-participating jurisdictions but lack the administrative infrastructure to effectively utilise received CRS data. The asymmetry between the disclosure obligations imposed on financial institutions in developing nations under the CRS framework and the practical capacity of developing-country tax administrations to act upon the information exchanged represents a structural equity gap that demands more sustained normative and empirical analysis.

Fifth, no comprehensive legal analysis has examined the jurisdictional implications of the United States' emerging CARF implementation for the existing FATCA/CRS asymmetry. Whether U.S. participation in CARF will be structured in a manner consistent with its reciprocal exchange commitments under Model 1A IGAs, or whether it will replicate the FATCA asymmetry in the crypto-asset domain, is a question of enormous practical and doctrinal significance that remains underexplored.

VII. Conclusion and Recommendations

The April 2025 developments in offshore investment disclosure law represent a pivotal, if troubling, moment in the evolution of global financial transparency. The simultaneous occurrence of the CTA domestic rollback, the FinCEN BOI deadline for foreign entities, and the FBAR/FATCA annual compliance cycle exposed, with unusual clarity, the structural contradictions, enforcement asymmetries, and constitutional vulnerabilities that characterise the existing disclosure architecture.

The rollback of the CTA's domestic reporting requirements, characterised by FinCEN itself as a determination that such reporting does not serve the public interest, stands in stark tension with the United States' stated commitment to international AML standards and its demands

upon foreign financial institutions under FATCA. It signals a retreat from the transparency commitments made in the context of the Panama Papers revelations and undermines the United States' credibility as an architect of global financial governance norms.

The constitutional litigation surrounding the CTA, which generated conflicting circuit court decisions and ultimately forced a legislative and regulatory retreat, demonstrates that disclosure obligations with uncertain constitutional foundations are inherently vulnerable to judicial and political erosion. A more durable architecture for beneficial ownership transparency in the United States would require either a constitutional amendment clarifying federal power over corporate formation, or a legislative redesign that routes CTA-equivalent disclosure requirements through state corporate law, an approach consistent with the EU's model of mandatory harmonisation.

The following recommendations emerge from this analysis. First, the United States should negotiate accession to the OECD CRS as a full reciprocal participant, resolving the asymmetry that makes it a de facto tax haven for non-U.S. persons and undermines the legitimacy of its extraterritorial demands under FATCA. Second, Congress should undertake a systematic consolidation of the FBAR and Form 8938 reporting regimes into a single, unified offshore disclosure framework administered by the IRS, eliminating duplicative obligations and reducing compliance costs for good-faith taxpayers. Third, the OECD and G20 should develop enhanced technical assistance programs for developing-country tax administrations to close the capacity gap between CRS data receipt obligations and effective data utilisation.

Fourth, the FATF should update its methodology for evaluating U.S. AML compliance to reflect the post-CTA rollback landscape, assessing whether the exemption of domestic companies from BOI reporting creates a systemic vulnerability in the U.S. AML architecture. Fifth, legal scholars should accelerate research into the constitutional dimensions of extraterritorial disclosure mandates, the human rights implications of FATCA for U.S. citizens abroad, and the investment treaty implications of escalating penalty regimes. The April 2025 developments make clear that the era of "light-touch" offshore disclosure is definitively over, but the era of coherent, legitimate, and constitutionally durable disclosure norms has yet to fully dawn.

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 [ISSN 2581-5369]

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 [ISSN 2581-5369]