

Leading US Lawyer John Shoemaker Examines the Possibility of the US Opening to Global Information Exchange

John Shoemaker, a Registered Foreign Lawyer for US law firm Butler Snow in Singapore, is an expert on regulation, compliance and good practices. He has forged his career by offering robust, timely advice to wealth management intermediaries and their private clients. He joined our Hubbis Asian Wealth Solutions event in Singapore on June 14 to provide some key US tax & regulatory updates and highlight some key implications. He looked at how the US has been collecting data for beneficial ownership. And he deliberated on whether the US will soon be sharing data with key partner jurisdictions. His central point for the talk was the forthcoming and very far-reaching Corporate Transparency Act, which will become effective on January 1, 2024. He said advisors need to properly understand it, and the ramifications, so they can advise their clients and be well ahead of the game.

GET IN TOUCH

[View John Shoemaker's LinkedIn Profile](#)

[Find out more about Butler Snow](#)

[View the On Demand version of this Presentation](#)



JOHN SHOEMAKER
Butler Snow

John first told delegates that he is a US tax attorney for private firm Butler Snow in the US, working for their offshore offices in London and Singapore. He explained that they specialise in tax and succession planning and that his background includes having spent some time working for regulatory agencies in the US and then within the private banking world for a bank-owned fiduciary and subsequently in private legal practice.

As such, John said he has accumulated an excellent overview of how the regulators think, how they implement changes from a practical perspective, and also of the legal solutions and expertise that he and his firm can bring to individual clients and their families.

What next for the US data regime?

He said it is of considerable interest and concern to him that the US might be nearing a global information exchange commitment.

“My favourite movie is Burt Reynolds’ *Smokey and the Bandit*, from which there is the famous phrase: “We’ve got a long way to go and a short time to get there’. That is true of my talk today, so here goes!”

The new Corporate Transparency Act

John expressed that his mission was first to briefly cover the new Corporate Transparency Act, which will have a big direct and indirect effect on a lot of structuring that delegates are involved in.

The Corporate Transparency Act is, he reported, the US response

“This legislation is their latest attempt to stamp out criminal activities and the criticisms they face that they have not been doing enough,” he explained. “The purpose is to get money laundering, financing of terrorism and other illicit activity identified and stopped.”

to internal audits and external pressures that they were not doing enough under existing legislation (such as the Bank Secrecy Act, or AML protocols, or via the US Patriot Act) to get a true sense of beneficial ownership.

Addressing concerns and shortcomings

“This legislation is their latest attempt to stamp out criminal activities and the criticisms they face that they have not been doing enough,” he explained. “The purpose is to get money laundering, financing of terrorism

and other illicit activity identified and stopped.”

He reported that the penalties for non-compliance with the Act are both financial as well as custodial punishments. “For those that do not advise of their identities, there is a genuine risk of criminality, and that means that your clients must make sure they are compliant with this regime, which comes into effect January 1 of 2024.”

Time to pause and to reorganise

He drilled down deeper, noting that there are two elements of

this, the least impactful of which is retroactivity. “If you have an existing structure, you will have a year to become compliant, but for new structures dated from January 1 next year, there will only be a 30-day window.”

John then explained this will be relevant for any structures using US companies, a US LLC, or a US C-Corp in any client’s planning, as they all have these reporting obligations. Trusts and partnerships may fall in this, he indicated, but the lawyers are waiting to find out. Foreign companies may also fall into the



pot, but only if they are registered to do business in the US.

There are exemptions

There are a lot of exemptions, such as publicly traded companies, those with more than 20 employees in the US, and so forth. “Before you get too worried, my advice is to take good advice, whether with me or with somebody else, but sit down and see if perhaps you need an exemption,” John told guests.

He added that FinCEN will administer all the information, and it will not be accessible as a public register but instead is available to other statutory or regulatory official bodies, such as the Treasury Department or the IRS.

More collaboration and data sharing

“There will be plenty of information sharing, and I should also note that we have seen that the IRS has become a lot better at data management in recent times,” he reported. “Additionally, it is worth noting that foreign countries will get access on request. However, the next question becomes when automatic access will come through, and I will cover that in the last part of my talk.”

Spotting the UBOs

He explained that the UBO, or ultimate beneficial owner data will cover essentially three regimes. The first is FIRTPA, or the Foreign Investment and Real Property Tax Act, which is designed to cover capital gains equivalent tax liabilities relating to foreign persons buying, transferring and selling US real estate, along

with related withholding tax obligations.

“This has generally tended to stop at the first or second tiers of beneficial ownership, not drilled down to the ultimate beneficial owner, and individual, perhaps foreign names, and that was seen as a weakness in the reporting regime in the US,” John reported.

Tighter monitoring of foreign control

Another regime relates to the US Form 5472, designed to monitor 25% or more foreign-owned US corporations. “This is relevant in situations where someone uses, for example, a US LLC to hold US real estate or to invest in US private equity ventures that require US investors,” he explained. Like the FIRTPA, it seldom mined down to the UBOs, but that will all change with the Corporate Transparency Act.”

He then turned his attention to the other key regime, the Foreign Account Tax Compliance Act or FATCA as it is best known. Originally designed as data permitted to flow to foreign governments such as Singapore, it then became two-way flows, even if not precisely like-for-like data because, for example, trusts and partnerships, and others are not tasked with recording data to the same extent that Singapore entities have to do under the FATCA regime.

Two-way flows on the one-way road to greater data demands

However, John explained that it is clear that, in the case of Singapore by way of example, there is some

element of data being collected on Singaporeans who hold assets in the US that would be sent automatically back to the US under that reciprocal agreement. “And now with the Corporate Transparency Act coming soon, there’s going to be a huge increase in the amount of that data,” he cautioned.

He extrapolated from these comments, noting that whenever in history a government gets

hold of data, it finds it extremely difficult to resist the temptation to tax it. “When governments get a much clearer picture of assets and wealth around the world, we are likely to see more wealth taxes, transfer taxes, and so forth,” he warned.

Get ahead of the traffic

He concluded by reiterating the importance of the new Act and advising those in the room to learn more about it and its implications.

“You need to know more, you need to have the discussions with your clients, so you and they are ahead of the game here,” he stated. “There might be amnesty arrangements and there should be time to remediate structures so that the clients are not exposed. And from an advisory and business perspective, history teaches us that getting in early, or perhaps first, puts you in a very advantageous position.” ■

