

US Double Tax Treaty with Norway excludes Spitsbergen, bear Island and Jan Mayen while FATCA IGA explicity exludes Svalbard and Jan Mayen. Confusion reigns supreme.

Svalbard and the other Norwegian dependencies are excluded from DTAs, FATCA IGAs, Multilaterlateral Competent Authority Agreement. Svalbard is excluded from the EU and Schendgen travel area. Also excluded from NATO to boot.

"SJ" is the collective ISO 3116 two-letter code reperesenting both Svalbard and Jan Mayen, although theyre nearly a 1,000 km apart

Have a look at the Double Tax Treaty between Norway and the USA, ratified in

January 1971.

UNITED STATES-NORWAY INCOME AND PROPERTY TAX CONVENTION Convention Signed at Oslo December 3, 1971; Ratification Advised by the Senate of the United States of America August 11, 1972; Ratified by the President of the United States of America August 28, 1972; Ratified by Norway May 5, 1972; Ratifications Exchanged at Washington September 29, 1972; Proclaimed by the President of the United States of America October 31, 1972; Entered into Force November 29, 1972. GENERAL EFFECTIVE DATE UNDER ARTICLE 31: 1 JANUARY 1971 MESSAGE **FROM** THE PRESIDENT OF THE UNITED STATES THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE KINGDOM OF NORWAY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND PROPERTY, SIGNED AT OSLO ON DECEMBER 3, 1971 CHAPTER II **DEFINITIONS** ARTICLE 2 General Definitions (1) In this Convention, unless the context otherwise requires: (b) (i) The term "Norway" means the Kingdom of Norway; and (ii) When used in a geographical sense, the term "Norway" includes (A) the territorial sea thereof and (B) the seabed and subsoil of the submarine areas adjacent to the territorial sea, over which Norway exercises sovereign rights in accordance with international law, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation. However, the term "Norway" does not include Spitzbergen (including Bear Island), Jan Mayen, and the Norwegian dependencies outside Europe.

Page 7 of 44 Article 2 Definitions: The term "Norway" means Kingdom of Norway, but does not include Spitzbergen (including Bear Island), Jan Mayen and the Norwegian dependencies outside Europe.

Claims to sovereignty over Svalbard

- Although Denmark & and Norway never formally gave up their claim to Svalbard, the archipelago continued to be a terra nullius - a land without a government.
- Problems were exacerbated as, there were no means to make a mining claim legal nor for a way to resolve conflicts, particularly labour conflicts, which often saw the mining company and the workers have different nationalities.
- The Government of Norway took the initiative in 1907 for negotiations between the involved states.
- Multilateral conferences were held in the early 20th century, which proposed various types of joint rule between claiming nations.
- The breakthrough came at the Paris Peace Conference. Germany and Russia had both been excluded for warmongering during the Great War, while Norway enjoyed goodwill
- with their neutral policy and was regarded as harmless. • The Svalbard Treaty of signed 1920, effective 1925, granted Norway full sovereignty over
- Svalbard. Although the Soviet Union was initially skeptical of the treaty, they were willing to sign it in exchange for Norwegian recognition of the Soviet regime.
- All signatory Parties to the Svalbard Treaty, 22 EU Member States, and 26 other states have equal rights to economic resources including hunting, fishing, mining, industrial,
- maritime, and commercial activities. Nor can Svalbard be used for war. • After significant political debate, a proposal to establish Svalbard as a dependency and administrate it from Tromsø was rejected. Instead, the Svalbard Act specified that the
- islands would be administrated by the Governor of Svalbard and was considered "part of the Kingdom of Norway", although not regarded as a county.

The history of Svalbard and its sovereign territories and "biland" dependendencies, and its tax treaties is described in my article "Norway has sovereignty over Svalbard & Jan Mayen but not part of EEA, Schengen, CRS, FATCA, CARF, DTAs, AEoI, EoR, OECD MCAA. Strangest place in world"



The islands had until then been known as the Spitsbergen Archipelago, and it was at this time the term "Svalbard" was

- introduced. The legislation took effect in August 1925. • The name **Svalbard** was officially adopted for the archipelago by Norway under the 1925 Svalbard Act which formally annexed it.
- The former name **Spitsbergen** was thenceforth restricted to the main island. • The total area of Svalbard is 24,209 square miles (62,700 square km). Spitsbergen, the largest island, is 15,075 square miles (39,044 square km).

The FATCA IGA between Norway and US explicitly excludes Svalbard (at least they got it right this time around)

Samtykke til å sette i kraft en avtale mellom Kongeriket Norge og Amerikas Forente Stater om forbedret internasjonal overholdelse av skattelovgivningen og gjennomføring av FATCA, undertegnet i Oslo 15. april 2013 c) The term "IRS" means the U.S. Internal c) Uttrykket "IRS" betyr den amerikanske Revenue Service. Internal Revenue Service. d) The term "Norway" means the Kingdom of d) Uttrykket "Norge" betyr Kongeriket Norge og inkluderer landterritoriet, indre farvann, Norway, and includes the land territory, internal waters, the territorial sea and the sjøterritoriet og områdene utenfor sjøterritoriet hvor Kongeriket Norge i overensarea beyond the territorial sea where the stemmelse med norsk lovgivning og folke-Kingdom of Norway, according to Norwegian legislation and in accordance with retten, kan utøve sine rettigheter med hensyn til havbunnen og undergrunnen samt international law, may exercise her rights deres naturforekomster; uttrykket omfatwith respect to the seabed and subsoil and ter ikke Svalbard, Jan Mayen og de norske their natural resources; the term does not comprise Svalbard, Jan Mayen and the Nor-

So what does this mean for FATCA and CRS?

Assume a FFI in Svalbard does not register for a GIIN.

wegian dependencies ("biland").

- There is no need for teh FFI to obtain a GIIN for a FFI if it's a non-participating FFI There will be no 30% withholding on reportable payments if there is no payments to the
- In addition, an FFI located in Svalbard does not report recalcitrant accounts as its not a partipating FFI or an IGA FFI
- A FFI can be a FI for CRS, but will not report for CRS as Svalbard is explictly excluded from CRS

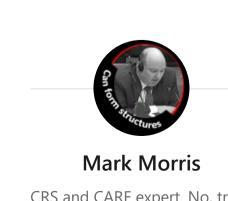
The OECD CRS-related FAQ update in April 2024 confirms an Entity can be a CRS FI without a GIIN

Conclusion

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1. The fatal FATCA falw is an entity can be a FFI for FATCA but does not register with IRS for a GIIN if it's located in a non particpating FATCA country 2. The entity is a FFI based on its income and activity, such as a Custodial Institution, and not if it registers for a GIIN

3. There is no 30% withholding payment if the FFI receives no reportable payments 4. There is no reporting by the FFI on recalcitrant accounts for FATCA if the country where the FFI is located does not have an IGA with USA and does not refister with IRS



CRS and CARF expert. No, truly. < >> More articles for you Mauritius Tax Treaty Network Update The BEPS Multilateral Instrument – Mexico signs Multilateral Convention on BEPS Overview and focus on treaty abuse, in IFF Osiris Corporate Solutions (Mauritius) Ltd. Forum 2017 David Dominguez, LLM Hugues Salomé 🖒 6 · 1 repost **1**1 8 \bullet 0 0 0