

Chasing the Panama vapours



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More than two years after the Panama Papers leak, the industry is still reeling from its repercussions. **Derek Sambrook** reports on the state of the “offshore secrecy business” today

Buddhism teaches us to accept that everything in the world is shifting and impermanent; financial services practitioners, in particular, regardless of their beliefs, should do the same.

In the wake of the infamous Panama Papers which became headline news 26 months ago, much has changed, but still much has remained the same in the financial services arena.

Significantly, transparency has tightened the rules not only in Panama but in many other countries as well. Tax receipts have certainly increased because of apprehension rather than amnesties as people heed the words of Jesus on the matter of taxes: “Render unto Caesar the things which are Caesar’s”.

LIVING IN A FISH BOWL

My clients, regardless of their beliefs, hope for tax mitigation where possible, but the comfort which they seek is more about protecting their assets and having in place a secure succession plan.

The unintended consequences, however, of living in a fish bowl, with a degree of transparency rivalling an X-ray, is that everyone knows your business, for better or worse. Do you really need me to tell you that not everyone is a nice person?

The Panama Papers affair and its aftermath only poses a threat to the dishonest; whereas governments have overreacted to the revelations and pose a threat to everyone.

Unfortunately, just as the line has

been crossed in defining when tax avoidance (mitigation) becomes evasion, there is the imminent danger in the transparency campaign of seeing everything secret as being immoral at the very least; but for those seeking protection for their assets, confidentiality (keeping things secret) is a *sine qua non*.

THE DANGER OF DEFINITION

Ambrose Bierce defined a corporation as “An ingenious device for obtaining individual profit without individual responsibility”.

This is one of the many definitions to be found in *The Devil’s Dictionary* written by this American Civil War soldier, wit and writer who mischievously put his own slant on common words.

Bureaucrats are doing the same but humour is absent.

A case in point is the European Parliament which is now calling for a common international definition of “offshore financial centres” for the purposes of assessing tax non-cooperation and money laundering risks.

We are at the mercy of governments with interpretations and definitions made according to their own lexicon and usually by those whose knowledge of offshore financial centres is, at best, scant.

When symptoms need to be seen to be diagnosed properly you do not rely on a blind doctor. You may say that’s obvious; it is, however, not to everyone. I have come to this conclusion after a lifetime working in the public and private sectors in the industry.

The Organisation for Economic Co-operation and Development has 35 members but only two are from Latin America (Mexico and Chile) and whose voices, understandably, can never be the loudest in the room.

Those two members, however, understand as clearly as I do here in Panama what confidentiality and asset protection means for citizens in the region.

Unlike Finland, for example, Latin America’s countries have produced dictatorships, experienced expropriation, weak legal systems and large-scale government corruption.



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Encouragingly, the situation today on all those fronts has improved, in part because of a new generation of well-educated citizens, many of them with a more global outlook than their parents. But until they are firmly in the saddle, the suspicions of old will remain, which means putting more trust in your kin before either governments or people outside the family circle.

MAN THE RAMPARTS

For an Englishman, and a Latin American, his home is his castle. Very rich Latin Americans feel the need to have a metaphorical moat with a drawbridge to help protect their assets. Attempts to storm the castle, principally by the OECD, will encounter a strenuous defence.

A draft report issued in June by the European Parliament's Committee of Inquiry on money laundering, tax avoidance and tax evasion, prompted by the Panama Papers scandal, was revealing in itself and appeared the same month as one from the OECD's Global Forum on Transparency and Transparency of Tax Information Exchange which ranked Colombia and Mexico as "compliant" whereas both the United States of America and the United Kingdom were one notch below, being just "largely compliant" – along with Panama.

The European Parliament's committee report also revealed that Mossack Fonseca is not the largest law firm in "the offshore secrecy business" (with an approximate share of between 5% and 10% of the market) and so is only considered just "the tip of the iceberg".

There were 14,000 Panama Papers intermediaries reported of which some 2,700 (19%) are located in the European Union, and were responsible for the creation of about 40,000 (20%) of all entities established by the law firm.

Forget Oxford's dreaming spires and concentrate on the scheming spires

that dot the West's financial centres. In particular the banking institutions involved which have stoked the resentment of the have-nots against the haves.

Matt Taibbi writing in *Rolling Stone* magazine back in 2010 painted this word picture in the case of Goldman Sachs: "The first thing we need to know about Goldman Sachs is that its everywhere. The world's most powerful investment bank is a great vampire squid wrapped around the face of humanity, relentlessly jamming its blood funnel into any thing that smells like money". Now that's what I call resentment.

AN ATTACK OF THE VAPOURS?

The impact of the Panama leak and the consequential developments for Panama have meant that the local legislators have concentrated their minds on tightening regulatory controls.

Preceding the "largely compliant" classification given by the OECD's forum on transparency, a flurry of further legislative enactments, however, has placed a chokehold on business.

The supervision of corporate service providers already exceeded the standards in several other jurisdictions, many being fully paid-up members of the OECD.

I will not downplay the serious implications but today I am more inclined to refer to the Panama Vapours. Victorians suffered from the vapours whose symptoms, to my mind, mimic the Panama Papers furore: hysteria and loss of mental focus.

Companies – not just in Panama – are some-

times incorporated and ready to be sold off-the-shelf as part of contingency planning to meet the needs of clients (usually in commerce) who, for example, require an entity for an urgent business transaction. Shelf companies are not illegal and are only dangerous if, like firearms, they are in the wrong hands.

On that point, Panama has the largest shipping fleet in the world, and most of the ships have both foreign owners and management, which is also the case in respect of the jurisdiction's more than 350,000 international business companies on the Public Register (the third-largest number in the world).

In the UK some financial experts remain sceptical about the number of prosecutions likely to result from the Panama Papers, arguing that the uproar over their release was overblown.

The head of enforcement at the UK's Financial Conduct Authority has warned that prosecutions will not be easy, adding that: "This is very difficult territory. No one should underestimate that task... Collaboration is easier said than done".

AMERICAN AMBIVALENCE

With several states forming the epicentre of offshore corporate anonymity, it is not clear where the US stands on the matter of pursuing Panama leaks.

Back in April the US Senate Committee investigating the issue did not respond to the International Consortium of Investigative Journalists' request for information on the status of the investigations while the Department of Justice refused to comment.

And we know, of course, that President Trump now has far more papers to deal with than those concerning Panama.

I see the Panama Papers as a powerful tool to help in a worldwide cleaning out of the Augean stables; but the stable door in America remains bolted because the financial services industry in several states is prospering in a CRS-free environment.

How much support can the OECD expect from the billionaire US president and his chief economic adviser, Gary Cohn, who was, after all, the former president of Goldman Sachs which was so scathingly featured in *Rolling Stone* magazine?

There seems to be no trade-off in the pipeline and the best the OECD can hope for might be a "squid pro quo". ■

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