

Client Memorandum

IFC Review 19.04.2016 – Panama Leaks: Through the Offshore Looking Glass

So excited are the left-wing media at the apparent ease with which the legitimate right to privacy can now be breached, that absent from the extensive coverage of the Panama Papers leak is any journalistic analysis whatsoever of the evident and coruscating irony.

Firstly, as the always excellent Dan Mitchell of the Cato Institute points out, we apparently find ourselves in some distorted Alice Through The Looking Glass universe where it is more important to ensure the confidentiality of murderous terrorists locked in an iPhone than it is to maintain the confidential financial information of what may very well turn out to be law-abiding citizens with a legitimate right to privacy in their personal affairs. It should not be forgotten that we were all entreated to stories of mass crime and tax evasion on the occasion of the unlawful hacking of financial records held by two BVI service providers some 18 months ago, but we have to date seen no prosecutions for tax offences or anything else as a result.

Secondly, having decided to inhabit that Alice Through the Looking Glass universe, the logic applied by the International Consortium of Investigative Journalists (ICIJ) does not even meet the standard exhibited by Tweedledee. (*'If it was so, it might be; and if it were so, it would be; but as it isn't, it ain't. That's logic.'*)

Thirdly, - and we simply have to allow ourselves a quiet chuckle – if Prime Minister Cameron had been better briefed from the outset about the meaning of the expression 'offshore investment' (which, of course, is anything else in the world beyond the white cliffs of Dover), and what is lawful and what is not, he would have been spared the anguish of dancing on the head of a pin in the House of Commons trying to justify his father's perfectly legitimate and lawful fund operations.

Fourthly, it is beyond bizarre that those fund operations, conducted as they were latterly in Dublin, an investment hub in the heart of the EU, have been mischaracterized as indicative of yet more suspect offshore investment.

Fifthly, if the clients of the unfortunate Mossack Fonseca law firm were truly all that interested in absolute confidentiality and hiding criminal activity and tax evasion, they would not have caused their affairs to be moved from a non-transparent, non-OECD compliant jurisdiction like Panama to an OECD-compliant and transparent jurisdiction like the BVI, where tax authorities and law enforcement have an unrestricted right of enquiry as to beneficial ownership and where upon such enquiry the records are available.

Sixthly, what we appear to have evidence of is a number of members of the political elite responsible through various bodies like the OECD, the G7 and the G20 for promoting transparency standards relying heavily on the confidentiality provisions of a non-compliant jurisdiction.

We can lay the blame for this ludicrously topsy-turvy state of affairs firmly at the open-toed sandals of the overly vocal and factually deficient extreme left-wing, high-tax, anti-capitalist NGOs; not to mention certain misdirected charities such as Oxfam and Christian Aid.

The publicly verifiable facts speak for themselves (as indeed now does David Cameron, by whatever convoluted route he got there in the end). The Overseas Territories (OTs) have long met and exceed global transparency standards. Indeed, tax and law enforcement authorities have had the ability to make

legitimate enquiries in the OTs for over 15 years. The noses of Tax Justice Network are firmly and increasingly out of joint simply because they are not regarded as legitimate persons who may make enquiry regarding beneficial ownership, and that remains the position under the new beneficial ownership accords just struck.

But the stake through the heart of the extreme left-wing, high-tax, anti-capitalist NGOs is that as transparency in the OTs has steadily progressed from meeting to now exceeding international standards (and credit where credit is due, attributable in large part to the efforts of the British Government Mr Cameron included), so have assets under management by Cayman Islands hedge funds increased and enquiries made by tax and law enforcement authorities reduced to a statistically insignificant frequency.

The unanswerable problem that faces these NGOs is that they cannot suspend disbelief forever. Any sensible analysis will conclude that tax evasion and tax avoidance are quite different matters and to say that sufficient transparency does not exist in the light of FATCA and the CRS can now only be regarded as delusional ranting. Obviously, it will take some time for the BBC, the Guardian and other media to catch up with the reality: offshore hedge funds and structured finance vehicles exist in offshore centers like the Cayman Islands because the legislation is superior and increasingly so.

I was asked recently on a BBC Radio 4 programme by the highly intelligent Evan Davis why it was that investors chose Cayman Islands hedge funds and private equity vehicles. He seemed bemused by the simplicity of the answer: Because the Cayman Islands is where the hedge funds and private equity vehicles are.

It will take some time, no doubt and surprisingly so but eventually the truth will out. There are offshore financial centres and onshore financial centres; the objective should be to ensure standards in the latter are raised to the standards now exhibited in the former.

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