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Newsflash

The Panama Papers and the future of international tax transparency

A group of international journalists has obtained information concerning several thousands of "off shore" companies based in multiple tax havens, including the identity of the ultimate beneficial owners. Tax authorities in several countries have vowed to act on this information. However, this material may just be the tip of the iceberg compared to the information that will be available to tax administrations from next year onwards, following the application of the Common Reporting Standard.

How the tax administrations will act remains unclear. The debate concerning the information's validity and accuracy, as well as its suitability for tax audits and tax corrections has yet to begin. Will some or all information be protected by the attorney-client privilege? Is the information enough to tax some of those involved or are additional investigations required? One point to keep in mind is that the European Court of Justice recently ruled that evidence obtained in violation of the fundamental rights guaranteed in the legal order of the European Union cannot be used for tax purposes (ECJ 17 December 2015, C-419/14).

In Belgium, the Minister of Finance already confirmed that the Special tax investigation (BBI – ISI) will study the information supplied by the journalists. Taxpayers implicated in the Panama Papers can expect additional tax audits. This includes taxpayers who followed the voluntary disclosure procedure, as the tax authorities may consider this an opportunity to assess whether the voluntary disclosure of the past was in fact complete and accurate (for example whether the historical equity of the structures have been treated with their appropriate tax regime). Furthermore, it can be expected that public prosecutors will also thoroughly examine this information, given that tax fraud, money laundering and other criminal offences could surface from these investigations.

An element flying under the radar is the wave of international tax transparency which will reach several ‘tax havens’ in the next few years. Following the FATCA initiative by the USA, the OECD (and the European Union) have pushed forward an automatic exchange of financial information system, the so called “Common Reporting Standard” (CRS).

The CRS forces jurisdictions to obtain information from their financial institutions and automatically exchange that information with other jurisdictions on an annual basis. The goal is to annually exchange information on all financial assets of non-resident taxpayers with their country of tax residence. The Standard provides for annual automatic exchange between governments of financial account information, including balances, interest, dividends, and sales proceeds from financial assets, reported to governments by financial institutions and covering accounts held by individuals and entities, including trusts and foundations. This also includes life insurance products.

Under CRS, the financial institutions also have the obligation to communicate information concerning the ultimate beneficial owners of certain entities (so called “passive NFE’s”) to the ultimate benificial owner’s country of residence. Furthermore, all account information (balances, etc.) of said entities also has to be reported.

The practical implications are highly significant. Firstly, the duty to report resides with the financial institution holding the account. Thus, a Luxembourg bank holding accounts for a passive NFE established in a tax haven with a Belgian Ultimate Beneficial owner will disclose all information to the Luxembourg tax authorities, who will in turn inform the Belgian tax authorities. Hence, even if the account holding entity’s country of residence does not apply CRS, the Belgian tax authorities will still obtain information through CRS based on the country where the assets are held. This also leads to conclusions that some of the structures implicated in the Panama Papers will in fact become known to the Belgian tax authorities if they hold accounts in CRS countries (possibly corroborating the Panama Papers information at a later stage).

As of March 2016, 96 countries have committed to applying this standard of automatic exchange of information. The list is quite remarkable, including several so-called tax havens or countries previously reputed for their strict banking secrecy (Switzerland, Liechtenstein, the British Virgin Islands, the Cayman Islands, etc.). This only confirms that international pressure has forced several low tax juridictions to exercice openness and ensure transparency.

Taxpayers with financial assets outside their home jurisdictions should be aware that the era of discretion for such assets is now very much in the past. The local tax administrations will soon be aware of foreign financial assets and may start making enquiries as to the nature and origin of these assets. Laga remains available for any questions regarding the implications of the Panama Papers or the new rules around the exchange of information .

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