

Recommendations

Overview

Standards of transparency/information disclosure are changing rapidly, as are the mechanisms and structure of enforcement. We recommend that

- i. Panama immediately fully comply with all standards as they have been set by the major standard setting bodies, including automatic exchange of information by 2018, and participate in the applicable multilateral legal instruments, including the Multilateral Convention on Mutual Assistance in Tax Matters and agreements under Article 6 of that Convention.
- ii. Panama put on notice all those operating in Panama that there are likely to be a tightening of standards, as the international standards themselves change, and that such notice implies that the compliance period will be increasingly shortened.
- iii. That the tightened enforcement measures be undertaken within 12 months
- iv. That all regulatory institutions that in a way or another are involved in the process of making effective the exchange of information, supervising financial institutions, and the associated service providers (accounting, registered agents, legal firms) are independent, have suitable personnel meeting the highest professional standards, and have an adequate budget.
- v. That an Independent Standards Review Commission be established with at least 40% members being non-Panamanian experts to identify gaps in compliance with the standards, gaps between International Standards and current legislation in Panama, and gaps between what the international standards are likely to be in the coming years, and current legislation in Panama, providing an annual Public Report. This Commission should review legislation and enforcement. In the area of enforcement, it should review the structure, resources, and performance of all relevant regulatory bodies. While this report focuses particularly on a particular set of issues, this Review should be broader, e.g. including insurance and re-insurance.
- vi. That the capacity of the institutions of higher education to train professionals in legal, accounting and audit affairs and the consistent compliance with evolving regulatory standards needs to be strengthened.
- vii. That an Independent Resources Review Commission (IRRC) be established, with at least 40% members being non-Panamanians and with no member having any conflict of interests, providing an assessment of gaps in skills and other resources impeding Panama attaining and remaining a world class center for finance and intermediation, and especially those capacities, including institutions of higher education to train professionals in legal, accounting and audit affairs, which are conducive to strengthening Panama's position as a logistics hub but including all resources relevant to compliance with international standards in these sectors, including the commitments made below; and proposing how such gaps can be quickly addressed. The IRRC should produce an annual public report, identifying progress that has been made to closing gaps that have previously been identified, and presenting new gaps, if any, that have become apparent since the previous report.
- viii. The Government of Panama should participate in all relevant multi-lateral forums (IMF, UN, OECD) where discussions of standards and practices concerning the areas

discussed in this report, and in doing so, Panama should be seen as an active advocate of high standards, demonstrating a willingness to go along with higher standards so long as they are uniformly applied.

The underlying question is the obligations on whom for disclosure of what to whom; with access of information to whom under what terms; and whose responsibility should it be to enforce compliance, with what consequences for whom for non-compliance, with what judicial procedures. There is a second set of questions concerning taxation, including tax free zones.

Information Disclosure and the Regulation of Services

Tax and financial information

The global standard here is clear: the automatic exchange of information among relevant tax, regulatory, and enforcement authorities. Panama has agreed.

The international community has taken an active role in enforcing this standard, putting non-compliant countries on a gray list, with a threat of cut-off from the global financial system, spelling the end of a country as a financial system.

Corporations registered in Panama

The global standard here is moving clearly to¹

- a) A publicly accessible and searchable registry of directors and registered agents for all companies.
- b) A full registry with automatic exchange of information of beneficial owners to tax and enforcement agencies².

This goes beyond the requirement that the registered agent have at hand such a list to be disclosed to those requesting such information.

¹ The proposal here is stronger than that containing in the suggested Preliminary Report from Alberto, which suggested:

offshore entities be required to maintain financial statements and a list of beneficial owners available through their registered agent, similarly to the way the information of the shareholders is maintained, and establish the obligation of private annual reporting, that will be required and maintained in strict confidentiality, except in cases of dubious illicit flows, in which case it will be taken to the respective authority when legally required.

² The international standards have already made it clear that countries automatically receiving such information must comply with certain standards. See Chapter 3. There are already standards for the exchange of such information in the context of money laundering. The Committee of Experts believes that the world will be quickly moving to the standard set here, and believes it would be beneficial for Panama to move immediately to such a standard. As in the exchange of information related to taxes, we believe that Panama should indicate its willingness to comply with stronger standards should the international community move to such standards.

- c) Further, if the OECD and others move to a stronger standard, disclosure of information to anyone requesting the information, or the slightly more restrictive condition, disclosure of information to certain approved parties (e.g. investigative press), or to parties that are willing to disclose that they have made such a request (currently the case for certain tax information), Panama would not only comply, but welcome this strengthening of standards.
- d) Any corporation, trust, or foundation incorporated in Panama must report its location of its economic activities, and its profits within each jurisdiction in which it operates and the taxes it pays in that jurisdiction.³ This country-by-country tax information will be subject to the automatic exchange of information.
- e) Any corporation, trust, or foundation not able or willing to comply with the two foregoing requirements shall lose its corporate listing, assets within Panama put into public trust, and with no legitimacy to the transfer of any asset of the corporation or trust to any other party. In the event that the deficiency is not corrected in five years, the asset will be sold with the receipts going to the public Treasury.
- f) Any registered agent not complying with these provisions will be subject to fine and lose his license.

Lawyers providing legal services to corporations and trust registered in Panama

- a) It is the obligation of any lawyer registering a corporation or trust to attest to personal knowledge of the natural person, who is the ultimate beneficial owner.
- b) Any lawyers who knowingly registers a corporation or trust whose main intent is to evade or avoid taxes or to engage in money laundering may be subject to permanent revocation of his license to practice law. The lawyer has a *positive* obligation to ensure that there is a real economic motive for the existence of the firm, and must state that purpose, along with the intended location of the planned economic activity in the filing. .
- c) Any violation of these provisions is punishable by fine, suspension of license to practice law, and any systematic pattern of violations will be punished by a permanent revocation of license. Any systematic pattern of violations within a law office may be punished by a temporary or permanent revocation of the license of all the lawyers within the law office. It is the responsibility of all the lawyers within any law office to ensure that partners and associates are not engaged in such activities.

Real estate transactions

- a) It is the obligation of any lawyer or real estate agent or broker to report all cash purchases of real estate to the Panama tax administration, listing the amount of the

³ As noted in footnote 1, Alberto's draft mentioned "financial" reporting, but was not specific about what should be included.

purchase, the name of the natural person, who is the buyer or the beneficial owner of the purchasing entity.

- b) Any violation of these provisions is punishable by fine, suspension of license to practice law and/or deal in real estate, and any systematic pattern of violations will be punished by a permanent revocation of license. Any systematic pattern of violations within a law office and/or real estate brokerage may be punished by a temporary or permanent revocation of the license of all the lawyers and/or agents and brokers within the law office. It is the responsibility of all the lawyers within any law office and/or brokers and agents within any real estate brokerage to ensure that partners, associates and/or agents and brokers are not engaged in such activities.

Taxation

As noted in earlier sections of this Report, there is a concern that certain tax preferences not only have brought limited benefit to Panama, but also may have been part of global practices of tax avoidance and evasion, and in some circumstances may have played a role in money-laundering.

Panama has adhered to the principle of territorial taxation. This means that it believes it should have full discretion over the taxation of activities which occur within its territories, but that no profits are taxed for activities not occurring within its borders. The principles guiding the allocation of profits are not fully settled, but the BEPS (base erosion and profit shifting) project of the OECD and G20 countries have laid out a minimal set of standards. Panama should declare its willingness to comply fully with these principles, and the information exchanges to which Panama has agreed should facilitate such compliance. At the same time, it is recognized that there are other mechanisms that have been used for profit shifting, and working with authorities in other jurisdictions, it will seek to make sure that such profit shifting does not occur.

Activities within zones that are tax free or entities that enjoy other tax preferences should be given especially tight scrutiny, establishing whether the profits that are booked within those zones are commensurate with the level of actual economic activities that have occurred, as indicated by employment and capital.

Any firm that has been found to have engaged in systematic profit shifting (of any form, whether associated with money laundering or not) will lose its tax preference, and such loss of tax preference will be extended to any firm, trust, or foundation with substantial overlap of beneficial ownership or directorship.

As part of its close scrutiny of firms enjoying tax preferences, there should be full disclosure of beneficial ownership, with a public, searchable registry, and such preferences should not be extended to any firm for which any beneficial owner has been associated with money laundering or previously convicted of tax evasion.

Panama should set up an Independent Tax Review Commission to ascertain whether the social and economic benefits of these tax preferences (e.g. in terms of job creation and indirect tax revenues generated through the activities stimulated) are worth the costs (e.g. diversion of economic activity from elsewhere in Panama with the associated loss of tax revenues, exposure of Panama to the risks of accusation of participating in tax avoidance/evasion/money laundering). This Review Commission shall publish all tax preferences as budget expenditures in an annual public report, along with the social and economic benefits from such preferences. If for a period of three/five years, the revenue forgone exceeds the social and economic benefits, the Review Commission shall recommend cessation of the tax preferences program. The membership of the Tax Review Commission shall include equal representation of members from labor, business, government and civil society institutions of Panama.

General comments:

- 1) It is a privilege, not a right, to operate as a bank, a lawyer, or a registered agent or to receive tax preferences. Therefore, in each of these areas, high standards should be set, e.g. a corporation whose beneficial owners include individuals under suspicion for tax avoidance, tax evasion, or money laundering should be denied preferential tax status.
- 2) There are many details associated with the implementation of the above recommendations. In this area, more than others, “the devil is in the detail.” For instance, we have made recommendations for an “Independent Tax Review Commission.” It will be important to have members of the Commission with no conflicts of interest.
- 3) There are important questions of regulatory structure (e.g. whether there should be a single unified regulator, separate regulatory bodies for say insurance than for banks, etc.) Thinking on this matter has shifted over time. Prior to the crisis, emphasis was placed on the advantages, e.g. in terms of specialized knowledge, of having separate regulatory bodies. After the crisis, which was seen as a systemic crisis, emphasis shifted to the advantages of having a systemic perspective, i.e. a single regulator, within which, of course, different departments would focus on the role of particular actors. The shift in the UK’s regulatory structure reflects this shift in perspective. It may be similarly important to have a broad systemic view of the transparency of the *system*. As we have noted, there can be important interactions. The Committee within its time frame did not

