The Panama Papers: addressing the consequences

Global Tax Alert

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Approximately 11.5 million internal documents were leaked to media organizations around the world that reveal the operations of the Panamanian law firm Mossack Fonseca.

The law firm’s leaked files (popularly known as the Panama Papers) show that Mossack Fonseca worked with more than 14,000 banks, law firms and companies to establish shell companies and offshore bank accounts in tax havens for its clients, which include high-profile individuals and public officials.

Several countries – among them the United States, France, Germany, Austria, Sweden and the Netherlands – have already begun investigations into the Panama Papers.

Although there are legitimate reasons to utilize a Panamanian corporation, individuals exposed by the Panama Papers as potentially engaging in improper activities may face criminal prosecution in the United States. For activities that had an impact in the US, charges could potentially include tax evasion, mail or wire fraud, money laundering and other crimes. Federal prosecutors may also seek to establish jurisdiction over foreign persons to the extent that activities involved US intermediaries or transactions cleared in US dollars through correspondent accounts. A spokesperson for the US Department of Justice stated this week that the government would investigate “all credible allegations of high-level, foreign corruption that might have a link to the United States or the US financial system.”

Independently, the US Treasury Department has issued proposed regulations, known as “customer due diligence” or
“CDD Rules” to require US financial institutions to identify any individual who owns 25-percent or more of an entity owning a US bank account. The CDD Rules are intended to ensure the US banking industry has systems in place to track the ultimate beneficial owners of US accounts and avoid the type of secretive financial transactions disclosed in the Panama Papers.

Notably, however, in addition to jurisdictional questions, the Justice Department may face evidentiary challenges to the use of the leaked records.

Kathryn Keneally, chair of DLA Piper’s Civil and Criminal Tax Controversy practice and the former Assistant Attorney General for the Tax Division of the US Department of Justice, states, “Since 2008, the Justice Department and the IRS have steadily increased enforcement activities to crack down on the use of offshore structures and foreign bank accounts for tax evasion, money laundering, and other crimes. Anyone who is concerned about these activities should act quickly to address those concerns.”

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