



From the horse's mouth

(Jurgen Mossack's letters from preventive detention)

"Tax Avoidance and Tax Evasion by Clients" - 10/APRIL/2017

FROM THE HORSE'S MOUTH

(Jurgen Mossack's letters from provisional detention)

Panama, 10th April, 2017.

Tax Avoidance and Tax Evasion by Clients

"The Panama Papers" is a press investigation labeled with a misleading name since 98% of Mossack Fonseca clients are not Panamanian. At the same time 85% of the few companies targeted were constituted in other jurisdictions. The ongoing investigations in various countries for some of these companies and end client (these are not belonging to Mossack Fonseca) are mostly/mainly investigated in connection with tax matters, where there exists the suspicion that a client was not completely honest with the tax authorities of his country. In Panama tax evasion is considered an administrative offense, while in other countries it is considered a crime.

In this vein of enquiry the term "tax evasion" (mostly erroneously) is frequently of mostly used. However, it exists, and we posit that this is likely the most frequent occurrence, the term "tax avoidance", which consists of a lawful conduct, the purpose of such is to avoid the creation of a tax liability in the first place.

Whereas an evaded tax remains a tax legally owed, an avoided tax is a tax liability that has never existed.

In the United States of America, one of its most famous judges whose name was Learned Hand, in the case of Gregory vs. Helvering, U.S. Court of Appeals, 2nd, circuit, 1935 said in that judgment "Anyone may so arrange his affairs so that his taxes shall be as low as possible. He is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one's taxes".

It is in this sense that tax avoidance can be said to be morally and legally acceptable and not all legal structures can and should be confused with tax evasion.

The prosecutors of Panama who are investigating trying to determine if any crime was committed by a law firm which merely incorporated companies in the spirit of law 32 of 1927, as other firms have been doing and continue doing since the last 90 years should be mindful of this important distinction, especially since tax matters area an affair that exists strictly between a tax payer and his government.

Creating companies, foundations and others structures is not only legal, but is a 90 year-old tradition.

Prosecutors handling the above mentioned investigation are making use of stolen material which in itself said investigation has any merit whatsoever.

The fact that someone hacked our database and ICIJ has supposedly found some possible wrongful use of such structures in some cases (much less than 1% of all companies, incorporated by us could possibly fall into this category) does not convert a law firm into a company that consciously serves the wrong type of clients.

If same companies incorporated by Mossack Fonseca were used by its owners in order to try to cheat on their taxes, we would not have been aware of that, since no client in his right mind would tell people he has never met that he would use the company for an illegal purpose, because such a disclosure would automatically disqualify him from being accepted as a client.

Importantly, virtually all our clients have been banks, trust companies, accountants, tax advisors and other professionals, mostly in regulated jurisdictions. It is those professionals, who know and have dealt with the final client. It is only since 2015 that there exists a law forcing the Registered Agents to know the identity of the end client (beneficial owner). Not all clients are willing, for perfectly understandable and legitimate reasons, to give all their data to someone in a faraway country, especially in this world where everything can be hacked. It is just recently since law 23 of 2015 that the law forces Resident Agents to know their end client or beneficial owner.

Predictably, company formations have diminished about 30% since one year ago, in Panama and many other jurisdictions. However, jurisdictions such as Delaware, Nevada and others located in the United States, where virtually no Due Diligence is required (zero transparency, no legislation similar to law 23 of 2015), incorporations are thriving!

Whilst Panama tries hard to be whiter than white, others are profiting. We all ought to reflect on this fact and draw our own conclusions.

J.Mossack