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The Panama Papers Affair and the challenges ahead: AEOI and Beneficial ownership

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Massive leaks of information on offshore activity like the Panama Papers illustrate the need for an enhanced global tax cooperation with an improved and deeper interjurisdictional information sharing scheme.

In fact, efforts towards reaching a global tax cooperation on obtaining and sharing interjurisdictional information is a longstanding endeavor of the international community, whose origins may be traced back to the 80' when the issue became significant as a result of the deregulation and globalization of financial markets.

The OECD Convention on Mutual Administrative Assistance in Tax Matters (the Convention), developed jointly with the council of Europe (1988) was undoubtedly a turning point in this saga, as it was conceived as the most comprehensive multilateral instrument for all forms of tax co-operation to tackle tax evasion and avoidance among OECD member States. In 2009, responding to a call from the G20, the Convention was amended to align it to the then current international standard on exchange of information upon request, and to open the Convention to all countries.[1] The Convention was finally revamped in 2014, following the G20's call for automatic exchange to become the new international standard of the exchange of tax information, and the subsequent development of the Standard for Automatic Exchange of Financial Account Information.[2]

Notwithstanding the above referred meaningful international efforts, offshore activity through opaque vehicles in ring-fenced no- or low-tax environments is still a common place, as the Panama papers revealed. Barriers to an effective and comprehensive cooperation under the Convention include (i) the existence of jurisdictions that have not yet signed for AEOI, ranging from tiny financial centers like Panama to the largest financial center on earth, the United States; (ii) some sort of *double standard* on the perception of the issue by the countries involved, whether victims or victimizers of the opacity game, as well as on justifications and attacks on the uses of offshore vehicles, whether at the governments level, or at the level of offshore players (*i.e.*, financial institutions and trust companies, accounting and law firms, company formation agents), and their onshore counterparts; and, finally (iii) the lack of an express binding mandate to keep records of, and share the identity of the ultimate owners behind offshore legal entities and legal arrangements.

It is now time to approach the offshore phenomenon far from the circumstantial outcries of the political trenches, and the traditional players' hypocrisy. Thus, centered on a mature, functional and technical perspective, efforts should be intensified to bring the offshore jurisdictions into

tolerable terms for the community of nations as a whole, by enforcing AEOI and adding effective tools to fight against opacity.

Assuming, as I am persuaded, that once the dust is separated from the straw insofar as the Panama Papers is concerned , there are still legitimate uses that justify the existence of an offshore sector (family wealth protection, arrangement of corporate investment flows and the like), the trend should consist of guarantying offshore jurisdictions to exercise their tax sovereignty freely –in accordance with ancient international law principles coming from the Peace of Westphalia (1642)– while tightening the international fight against the most unwarranted features of the offshore regimes: Anonymity, bank secrecy, and ring-fenced legal systems securing the lack of disclosure of beneficial ownership. This is a self-protective and urgent mandate on international bodies like OECD and G20, as well as on onshore and offshore jurisdictions; and this is so, simply because it is self-evident that tax evasion, money laundering and terrorist financing are evils closely associated to those features. This endeavor should get up to full speed with no delay under the auspices of OECD-G20's full transparency principles first contained in the G20 Leaders Declaration of Saint Petersburg (2013),[3] and in more recent pronouncements in the same sense triggered by the Panama Papers scandal. Paraphrasing OECD Secretary General Angel Gurria´s recent words "It's time for world leaders to make good on…promises."

Full exchange of information schemes (whether bilateral or multilateral), properly designed to avoid undesired collateral damages such as breaches of confidentiality on personal as well as corporate reputation/wealth beyond intervening government bodies, and seriously aimed at procuring global transparency, fight evasion efficiently as well as preventing money laundering and terrorist financing, will not be fairly workable until an ample consent on beneficial ownership record-keeping and disclosure is reached by the community of nations, including central economies' self-commitment on their own or own-protected territories.

A breakthrough is underway and the outcome is frankly auspicious. On April 14, 2016 the finance Ministers of the U.K., Germany, Italy, France and Spain announced that their countries were going to automatically share information on the ultimate owners of entities in what can be perceived as a serious attempt to abate tax dodging practices and the funneling of "black money" into the formal system. They also urge their G20 counterparts to take action towards a fully global exchange of beneficial ownership information aimed at removing "the veil of secrecy under which criminals operate"[4] In the letter, the Ministers of Finance plea to mandate OECD to develop common international standards for the beneficial ownership record-keeping and their interlinking in cooperation with FATF (Financial Action Task Force).

Also on April 14, 2016, the OECD published a Report from Secretary General Angel Gurria that was presented during the G20 Finance Ministers meeting held in Washington DC.[5] Point 3.2 of the report addresses the beneficial ownership issue, and proposes that *progress should be made towards more effectiveness in the implementation of the beneficial ownership identification rules and alternative solutions should be explored to make sure the information is more readily available.*

The G20 embraced the proposal for more transparency on the beneficial owners as shown in Point 8 of the Final Communiqué issued by the G20 Finance Ministers and Central Bank Governors on April 15, 2016, which reads as follows: *The G20 reiterates the high priority it attaches to financial transparency and effective implementation of the standards of transparency by all, in particular with regards to the beneficial ownership of legal persons and legal arrangements. Improving the*

*transparency of the beneficial ownership of legal persons and legal arrangements is vital to protect the integrity of the international financial system, and to prevent the misuse of these entities and arrangements for corruption, tax evasion, terrorist financing and money laundering. The G20 reiterates that it is essential that all countries and jurisdictions fully implement the FATF standards on transparency and beneficial ownership of legal persons and legal arrangements and we express our determination to lead by example in this regard. We particularly stress the importance of countries and jurisdictions improving the availability of beneficial ownership information to, and its international exchange between, competent authorities for the purpose of tackling tax evasion, terrorist financing and money laundering. We ask FATF and the Global Forum on Transparency and Exchange of Information for Tax Purposes to make initial proposals by our October meeting to improve the implementation of the international standards on transparency, including on the availability of beneficial ownership information, and its international exchange.***[6]**

Although the world is still half way on its path to keeping beneficial ownership records and interjurisdictional exchange of that information, the first steps in the right direction have been taken so that it appears that, finally, international bodies and governments recognize that the time for declamations has passed and it is time for action before a new scandal erupts.

[1] The amended Convention was opened for signature on June 1, 2011, and today 94 jurisdictions participate in the Convention, including 15 jurisdictions covered by territorial extension.

[2] Following approval of the Standard for Automatic Exchange of Financial Information in Tax Matters by the OECD Council on July 15, 2014, the full Standard was endorsed by the G20 Finance Ministers in their meeting in Cairns, September 2014, as well as by the G20 Leaders at their Summit in Brisbane, November 2014.

[3] Leaders Declaration, Tax Annex, point 52.

[4] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/516868/G5_letter_DOC140416-14042016124229.pdf. See also The Guardian, *UK and European allies plan to deal "hammer blow" to tax evasion,* April *15, 2016.*

[5] OECD Secretary-General Report to G20 Finance Ministers, Update on Tax Transparency.

[6] On April 16, U.S. Secretary of the Treasury Jack Lew proposed a plan to force the beneficial ownership disclosure to the IRS of one-partner LLCs incorporated in the U.S. territory (so far states like Delaware, Wyoming or Nevada allow to register entities without disclosing the ultimate owners). In the same line, the UK government has already made arrangement with overseas territories and Crown dependencies for the sharing of beneficial ownership information; see https://www.gov.uk/government7organisations/cabinet-office, and https://www.gov.uk/government/organisations/foreign-commonwealt-office

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