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The right OECD response to the Panama Papers: Tougher tax transparency standards & public country-by-country reporting

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The Panama Papers are the biggest data leak in history, exposing 11.5 million documents and 214 000 offshore entities created by the Panama based law firm Mossack Fonseca dating as far back as 1977. The papers have thus far uncovered the secret dealings of more than 140 prominent figures, and crimes that include bribery, arms deals, tax evasion, financial fraud, drug trafficking, and sanction busting.

The OECD has been quick to react. In a statementⁱ on 4 April the OECD claimed to “have constantly and consistently warned of the risks of countries like Panama failing to comply with the international tax transparency standards” through the Global Forum on Transparency and Exchange of Informationⁱⁱ. On 14 April, the OECD submitted new proposals to the G20 to take “*concrete actions to advance global transparency*”ⁱⁱⁱ, including (i) broadening and acceleration implementation of the OECD standard on automatic exchange and (ii) ensuring all countries members of the Global Forum have their respective legal and regulatory frameworks meeting at least “largely compliant” status with the 10 standards on transparency required for exchange upon request. The OECD also proposes to deepen the “Oslo Process” to intensify cooperation on transparency over “beneficial ownership” – the opacity of which is at the heart of the revelations contained in the Panama Papers.

The effectiveness of the Global Forum rests on two legs: (i) implementation of the OECD standard on automatic exchange of information between tax authorities (the “AEOI”) and (ii) compliance of the domestic regulatory framework with 10 “essential standards” on exchange of information on request (“EOIR”)—including transparency over beneficial ownership. The two systems—AEOI & EOIR—go hand in hand: before tax authorities can automatically exchange information, information needs to be made available through a robust domestic legal and regulatory framework in the first place.

While Panama fails to commit to automatic exchange, it is considered in compliance with the tax transparency standards of the Global Forum. The papers’ leak proves that it is not. A closer look at Panama’s rating by the Global Forum in fact shows that it fails to comply with 3 out of the 10 standards, including on beneficial ownership.

The case of Panama is not isolated. Other jurisdictions have been given a green light on their compliance despite failing to meet the beneficial ownership standard, including OECD member states. In a note comparing the Global forum rating with the EU list of tax havens and the TJN Secrecy index rating, the TUAC concluded that “Over 80% of jurisdictions are considered fully compliant or largely compliant with the Global Forum’s standard. However, less than 50% of the rated jurisdictions scored a “fully compliant” rating regarding “availability of ownership information”^{iv}.

The Panama papers expose the need for a tougher rating system by the Global Forum: A more stringent approach leaving no room for complacency on transparency over beneficial ownership and requesting full compliance with relevant Global forum standards. On that, the OECD proposal to the G20 have all jurisdictions meet “largely compliant” status by the time of the next G20 summit in 2017 is a welcome first step. But there is room for further action.

- No compromise anymore on transparency over beneficial ownership in the OECD standards: “largely compliant” status should require full observance (ie. “in place” using the Global Forum’s terminology) of the above OECD standards on beneficial ownership A1-3; and
- Re-active a black list and grey list of tax havens, for countries that are not meeting the OECD standards, and engage a discussion on the implications in terms of treaty benefits (dealt under the BEPS Package), international investment and trade treaty regulations.

The papers also reveal the pivotal role of global banks and law firms. Several global banks officially considered as systemically important by the Financial Stability Board are involved. We are facing a much bigger problem beyond tax transparency and cooperation between tax administrations. The OECD should put a much greater focus on corporate tax accountability and on how tax is treated as a “risk” in key OECD instruments on responsible business conduct, on corporate governance and on long term investment. It is Time for a change. The OECD should engage discussion on the public disclosure of a country-by-country reporting framework. So far, it has refrained from such discussion.

ⁱ <http://www.oecd.org/tax/statement-from-oecd-secretary-general-angel-gurria-on-the-panama-papers.htm>

ⁱⁱ <http://www.oecd.org/tax/transparency/>

ⁱⁱⁱ <http://www.oecd.org/tax/concrete-actions-needed-to-advance-global-tax-transparency.htm>

^{iv} http://www.tuac.org/en/public/e-docs/00/00/11/0A/document_doc.phtml