Paradise papers--leaked documents shine light on offshore financing

The International Consortium of Investigative Journalists (ICIJ) has analysed a new cache of leaked files from offshore law firms and other sources containing information on the offshore activities and structures of prominent individuals and companies from all over the world. Like the Panama papers before it, the Paradise papers were first obtained by the German newspaper Süddeutsche Zeitung and shared with ICIJ. The BBC has reported that more than 100 media organisations, including the Guardian, are working on the 13.4 million records. Lawyers from Simmons & Simmons and Lewis Nedas Law argue that, while nothing illegal has taken place, reputational damage might lead some organisations to reconsider their tax structures.

The latest investigation involves more than 13 million files leaked from law firms as well as certain countries’ company registries, with much media attention given to investments by the Duchy of Cornwall and members of the current US administration.

A large proportion of the information comes from Appleby, an established international law firm based in Bermuda. This information is said to include details of tax planning by nearly 100 multinational corporations, including Apple, Nike and Uber.

The ICIJ says it intends to publish more stories in the coming days and weeks, including:
- strategies used by multinational corporations to shift profits to low-tax jurisdictions
- private jets and yachts registered by wealthy owners in offshore tax havens
- offshore trust funds held by rich and powerful people
- use of offshore financial structures by prominent political donors in the US
- tax haven shopping by multinational companies in Africa and Asia using shell companies in Mauritius

The ICIJ will release structured data connected to the Paradise papers investigation on its offshore leaks database in the coming weeks.

The rise of tax transparency

Nick Cronkshaw, partner at Simmons & Simmons, provides some context for the Paradise papers: ‘The widespread acceptance and adoption of the principle of tax transparency has been one of the major developments in international taxation over recent years. Businesses that are properly advised and have in place robust tax compliance procedures have little to fear from transparency as such--though with transparency requirements comes a not insignificant associated administrative burden.’

Cronkshaw suggests, however, that recent advances in tax transparency might prompt some issues: ‘More recent developments have shown that transparency developments may, in fact, be the thin end of the wedge, as public concerns over tax avoidance have led to confidential tax transparency measures being supplemented with public reporting requirements.’

Siobhain Egan, director at Lewis Nedas Law, also highlights transparency issues: ‘Since the last financial crash, when the use of these offshore mechanisms has come under the microscope, the main issue is the secrecy surrounding them and the lack of transparency of ownership. Slowly governments have realised the benefits of registers of beneficial ownership, though in the UK, the government has refused to publish or allow the public access to such a register.’

Egan believes HMRC and the National Crime Agency will look for those evading tax, aggressive tax avoidance, laundering the proceeds of crime, bribery and corruption, and sanctions busting activities. She says: ‘HMRC
have employed various civil and criminal strategies to deal with those failing to declare monies offshore—for example, the common reporting standards, self-disclosure facilities, and the civil penalties regime.

**Considering questions of legality and reputational damage**

One expected result of the Paradise papers is reputational damage for individuals and businesses. Cronkshaw explains that ‘public reporting, unlike reporting which is limited to relevant tax authorities, has the capacity to be misunderstood and misconstrued, giving rise to significant reputational risks for business’.

He continues: ‘These risks are highlighted by the 2016 Panama papers scandal and the subsequent Paradise papers revelations. The very public revelations of both business and private connections with tax havens often blur the distinction between illegal tax evasion and quite legal investment activity. To this degree, it, unfortunately, makes sensible debate as to what is or is not acceptable more difficult.’

It is important to remember, as Cronkshaw suggests above, that the revelations in the Paradise papers were legal. As Egan elaborates: ‘Despite the enormous adverse publicity generated by the release of the Paradise papers, there is nothing illegal in the use of offshore trusts or investment vehicles. They are used for many legitimate reasons—often where the investments or investors are multinational.’

Egan continues: ‘The majority of UK institutional pension or large investment funds will have an ‘off shore’ element, for example. All offshore investors are obliged to report these investments to the tax authority where they are domiciled. Most of these so-called tax havens are compliant and highly regulated—Bermuda is one of the best regulated, in fact. That isn’t to say that the data is not going to be scrutinised by the world regulators and revenue authorities and the information will be shared.’

**Will the Paradise papers lead to changes to business tax structures?**

Cronkshaw says: ‘These public revelations mean that all businesses should be considering the reputational risk of their business structures and investments. As a result, it may well be that some businesses will conclude that their quite legitimate, tax-efficient structures are no longer worth the risk of adverse publicity.’