



The problem with parrots

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CRS is alive and well in the United States of America, but only if you mean “Can Remain Secret” rather than Common Reporting Standard, as I wrote in my client newsletter last month. This, however, should be music to the ears of Latin Americans because according to the Boston Consulting Group, around USD400 billion of offshore wealth in the US comes from Latin America. Expect this flow from Latin America to increase as the initiative, spawned from America’s Foreign Account Tax Compliance Act, goes ever more worldwide after starting life as a European Union initiative. If events so far this century have not convinced you yet that it is a mad, mad, mad, mad world (to borrow the title of the 1963 film directed by Stanley Kramer) we even have the US commissioner of taxes imploring Washington to support the CRS model.

The standard was put together in haste and, worse still, by politicians, a breed which rarely allows practicalities to stand in the way of policy. It is, nonetheless, the application of the CRS rules and the confidentiality of the data underpinning it which should concern people living in the subcontinent and whose countries have agreed to the CRS regime. When applying the rules, you have to consider those charged with feeding the information into the CRS machine, such as bankers, brokers, accountants, lawyers plus a panoply of other related professional services providers. Let’s address both concerns more fully.

The accurate interpretation of the CRS guidelines within any profession usually falls upon the shoulders of the compliance officer or department. But up to now the guidelines put out by the Organisation for Economic Co-operation and Development (OECD) leave too many questions unanswered. Like Egyptian hieroglyphics, they are open to interpretation. Critically, there is a shortage of adequately trained compliance staff who understand the subtleties of the concept of beneficial owner beyond the patently obvious (as in the case of the dead Norwegian Blue parrot famously featured in Monty Python’s “Dead Parrot Sketch”); when trusts or foundations come into play the cartographer’s admonition “Here be dragons”, a warning about dangerous and unexplored territories, might apply. Suddenly the appearance of controlling persons rather than beneficial owners might rear their ugly heads and can lead to inaccurate reporting.

I read last year about a situation involving a Swiss bank and a family trust. The records of the bank showed the eldest son of the family as the settlor; except that he had never been. The deceased father had been the settlor; but because the due diligence forms required a living person to be recorded, the bank, blinkered by robotic box-ticking, had arbitrarily gone ahead and named his son, regardless of any consequences, especially regarding taxes, which might flow from this for him. In this case the paterfamilias was the issue just like the parrot, but, contrary evidence as to his demise was disregarded. Definitions of control open the doorway to a maze that only the competent will be able to find their way out of. In computer science a common term is GIGO (garbage in, garbage out), sometimes applicable when assessing the quality of the input. For the hapless family head of that family trust, he unfortunately might suffer from that acronym’s other meaning: garbage in, gospel out, when unwarranted faith is put in the accuracy of computer-generated data.

The second issue should worry not just Latin Americans. Data leaks from official records was one of the arguments put forward by the president of Panama when the OECD was attempting to press gang his country into a carte blanche exchange of information. It’s bad enough that countries in the developed world are not immune from the scourge, but what about the developing countries scattered across the globe who clearly have neither the necessary technical nor financial resources? Remember, this new reporting standard was written for, and by, big economies, with every other country meant to string along; these include some of the very countries which rank high on international corruption and crony-capitalism indexes. A cynic might feel that the potential for misuse of CRS information is why a number of corrupt countries have been so keen to sign up.

President Obama has regularly raised the spectre of cyber security which threatens American business and infrastructure. We didn't need the Panama Papers to know that hackers have repeatedly targeted intellectual property, sabotaged corporations' operations and stolen sensitive government personnel information. The volume of cyber security incidents in the US government increased by 10% last year to 77,183. The US office of Personnel Management has said that over 5 million peoples' fingerprints have been stolen; this is in addition to the more than 21 million social security numbers and addresses of former and current government employees.

Europeans, however, are more sensitive to privacy rights. It's why the European Commission's plan to reveal tax and financial data of large companies publicly has raised alarm bells for some European Union finance ministers whose published views on the European Union's plan to reveal tax and financial data of large companies publicly express misgivings. They worry about reputational risk for companies as some data may be misinterpreted – not to mention the acquisition of valuable information by non-EU competitors. This strikes a chord with the complaints made about the 'International Consortium of Investigative Journalists' (ICIJ) publication of the Mossack Fonseca files.

Belgium's finance minister said that ministers "have to be careful about privacy rights", which brings me to Emma Watson, the actress and Harry Potter star, whose British Virgin Islands company was exposed to the public by the ICIJ through the Panama Papers. Her spokesman said that because companies in the UK are required to publish details of shareholders publicly, the decision was made to incorporate elsewhere. Her spokesman went on to say that anonymity was required to protect her personal safety which had been jeopardised in the past, adding that the actress receives neither tax nor monetary advantages from the arrangement, only privacy. Perhaps a graduate of Hogwarts School of Witchcraft and Wizardry could have helped.

The European Court of Justice has stated that there should be recourse to legal remedies when personal data relating to someone requires rectification or erasure. The court says such denial "does not respect the essence of the fundamental right to effective judicial

protection". To my knowledge there is no legal recourse mechanism in place when CRS errors are made, and there will be many.

It's early days, of course, and we could be heading towards a new category of lawsuit against those who, as I put it, are feeding information into the CRS machine. No doubt, even if the Mossack Fonseca data base thief (who seems to have been driven by his own special ideology) has said that he feels that the legal profession has let the public down because, on average, lawyers have become "so deeply corrupt", there will be sufficient honest and capable ones who might take up the cudgel on behalf of aggrieved clients who are accidental CRS victims.

We can only wonder how the CRS set of rules, imported into Latin America from the West's advanced economies, will be diligently implemented across the region; the fact that the US is wavering on the CRS gangplank and is not fully on board will not go unnoticed. In a letter to the Financial Times in April, James Anderson, Editor-in-Chief of PAM Insight in Geneva, suggested that if the EU and the OECD are seriously committed to addressing international money laundering and tax evasion, then "US fiscal imperialism", as shown by America's one-sided FATCA policy, must be confronted. Nicholas Shaxson, author of "Treasure Islands: Tax Havens and the Men who Stole the World", has got it right – and for once tropical islands were not his target – when he says that the EU should impose a withholding tax on payments originating in the Union to non-compliant jurisdictions such as the US, in line with FATCA's arbitrary tactics.

I read that islands occupy less than 6% of the world's surface but are home to almost 40% of critically endangered species; for some of those islands providing little more than offshore financial services the West's tangled transparency policy could place them on a separate critically endangered species list, boosted by revelations rooted in Panama.

In May the Panama Papers were scattered to the wind, and Shakespeare was right about "Rough winds do shake the darling buds of May". It's summer now in Europe but rough winds are still blowing, because unlike Las Vegas, what happened in Panama didn't stay there.

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ISSN 0954-0628 US PS 002-273.

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US POSTMASTER: Send address changes to Offshore Investment, c/o Worldnet Shipping Inc., 156-15, 146th Avenue, 2nd Floor, Jamaica, NY 11434, USA. Subscription records are maintained at European Magazine Services Ltd, 12-16 Castle Lane, Belfast BT1 5AF, United Kingdom. Air Business Ltd is acting as our mailing agent.

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