

CRA to come down hard after Panama Papers leak



**MERRICK
WEALTH**

By
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Peter Merrick, TheIceSolution.com

In the wake of the Cuban missile crisis, brothers Robert and Richard Sherman penned "It's a Small World (After All)" for Walt Disney at the 1964 New York World's Fair. Its message is of peace and brotherhood, and it's one of the most performed and translated songs on the planet.

Over the past three decades we have witnessed how small a world we actually live in. With a click of a button, lives can be changed in an instant. One such example of this occurred on April 3, when a press release from the International Consortium of Investigative Journalists (ICIJ) went around the world and it continues to have ripple effects. The subject was a "Giant leak of offshore financial records exposes global array of crime and corruption."

I spoke with Robert Kepes, a tax lawyer and founding partner of Morris Kepes Winters LLP in Toronto about the Panama Papers to learn more about how a legal business over 3,000 miles away can impact Canadians.

There were 11.5 million documents taken from Panamanian law firm Mossack Fonseca. The anonymous source, John Doe, initially gave them to the German newspaper *Sueddeutsche Zeitung*, which then asked ICIJ to organize a collaborative effort to analyze the files. The files were reviewed for over a year

before the ICIJ announced them to the world.

Kepes explained that the ICIJ's initial press releases summarized the intricate and opaque world of offshore tax avoidance and tax evasion through the use of intermediaries and shell entities. About a month later, the ICIJ provided access to a searchable database that displays information about offshore entities, and their directors, owners and intermediaries. However, the ICIJ claimed this is only a fraction of the Panama Papers because it was not disclosing raw documents or personal information such as bank accounts, e-mail exchanges and financial transactions contained in the documents. Both the ICIJ and various media outlets promised not to disclose the information to tax authorities or law enforcement agencies.

John Doe then issued a statement explaining why, and why the law firm's documents should now be leaked. In short, John Doe charged that shell companies are used to carry out a wide array of serious crimes, including tax evasion. Thus, Mossack Fonseca's founders, employees and clients must answer for their roles in these alleged crimes. In the meantime, governments around the world took notice of the Panama Papers leak.

The RCMP and Canada Revenue Agency issued statements that they would attempt to obtain the information regarding any Canadian names in the database. The first such attempt was successful. The CRA filed a motion in Federal Court for authorization to issue a requirement on the Royal Bank of Canada. This is written notice requiring a person to provide any information or document related to the administration or enforcement of the *Income Tax Act*.

Kepes said the CRA was looking for information and documents relating to a group of RBC clients. The only evidence filed in support of the motion was an affidavit by a CRA official that relied on media reports about RBC having regularly used Mossack Fonseca to set up approximately 370 entities. In other words, the CRA had no direct evidence of non-compliance, only media reports which CRA believed to be true.

RBC consented to the motion. While a requirement is part of the CRA's standard arsenal of audit procedures, Canadians may be surprised to learn that unverified media reports are enough for the CRA to apply for a court order to issue a requirement on a Canadian bank.

After the CRA obtains the names, Kepes said the agency can use various mutual assistance

agreements, tax treaties and Tax Information Exchange Agreements between Canada and other countries to make requests for information and documents. A Canadian who is caught in this caper should expect to receive a letter from the CRA's Offshore Compliance Division that says they have been selected for audit.

"Based on letters our firm has seen, the audit period will be lengthy, likely going back to 2001," said Kepes. "The CRA can open a tax year beyond the normal, three-year reassessment period if there was a misrepresentation on the return."

In addition to providing books and records such as bank statements, you will have a 15-page questionnaire. It asks for information about all foreign and domestic property, or entities, in which you or family members have ever had an interest or control. Family members include spouses and minor children.

Completing the questionnaire is time consuming and expensive due to the lengthy audit period and to the detailed information requested. Records generally required to be maintained for only seven years is not a factor in having to provide this information.

"A taxpayer has very few defences that justify non-compliance with a CRA audit," said Kepes. However, a taxpayer can

legitimately refuse to provide information or documentation that is covered by lawyer-client privilege.

"Another defence found in subsection 231.5(2) of the act provides that every person must comply with an audit unless the person is unable to do so. Inability is not the same as unwillingness. You will have to produce letters from banks and professional advisers attesting to why the records are unavailable. You will likely find yourself in front of a judge and have to demonstrate why you are unable to comply with the CRA's audit requests."

If the audit is, or develops into, a criminal investigation, then you have the right to remain silent under Canada's *Charter of Rights and Freedoms*.

"It's not too late for those Canadians mentioned in the Panama Papers to make a voluntary disclosure to the CRA, provided it has not yet made contact with the person," said Kepes. A voluntary disclosure will alleviate any penalties and criminal charges.

Kepes' message was clear. Canadians with undeclared income in offshore accounts should get professional legal advice from the likes of a specialist. This grants you the protection of lawyer-client privilege, which is important especially if you have been contacted by the CRA or police.

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Venture exchange trying to reinvent itself

By **DONALEE MOULTON**

It is not business as usual for the TSX Venture Exchange. As 2015 came to a close, the TSXV announced plans to revitalize the country's public venture market. Now the national exchange has issued the first report on its progress.

"They're trying to change things up," said Eric Foster, a senior associate with Torys LLP in Toronto.

The need for change is widely acknowledged. At present, the TSXV is languishing. The white paper released by the exchange in December is "reactionary," said Foster. "The market has not been good. They have been struggling. They're trying to put their best foot forward."

Primarily seen as a resource-

based exchange — and business was up 25 per cent in this sector from January to May in tandem with increasing commodity prices — the venture exchange is hoping to bring back the technology and innovation start-ups that once looked to this specialized market for capital. "The venture capital market has expanded in Canada in recent years and that has led to investment not being listed on the TSXV. They don't see the need to have a venture exchange," said Foster.

This is a relatively new reality for the TSXV. "There was a very viable and active exchange. Then there was the commodities boom. The market was hot up until about 2011," Foster noted.

The TSXV acknowledges its



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declining popularity on the first page of its white paper. "Unfortu-

nately," the report states, "the last few years have been extremely challenging for Canada's public venture market. Macroeconomic factors, and particularly the sustained downturn in commodities, have highlighted vulnerabilities in our market and underscored that our model must continue to evolve."

Other problems have also contributed to the decreasing use of the TSX Venture Exchange. "TSXV requirements have been very demanding and costly to comply with for small companies," said Simon Romano, a partner in the Toronto office of Stikeman Elliott LLP.

Changing this reality is among the three commitments the TSXV announced in December. In addition to promising to reduce

administrative and compliance costs, the exchange also pledged to expand the base of investors financing companies and enhance liquidity as well as diversifying and growing the stock list.

In its first progress report, issued earlier this year, the TSXV identified several initiatives that are now in place. Policy revisions that will eliminate the general requirement for sponsorship have been drafted and are moving forward for regulatory approval. This can make a significant difference for companies, noted Foster. "Sponsorship can cost \$50,000 to \$100,000."

Other cost-cutting measures in the works include providing

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