FATCA 2016 Update: The Panama Papers and Beyond

By Brian D. Burton

Brian D. Burton examines the year's major developments in the worldwide push to uncover taxable assets, raise revenue and close the tax gap.

Man is not what he thinks he is, he is what he hides.
—André Malraux

Transparency has dominated 2016, whether by data breach or intergovernmental cooperation. And, with global tax authorities investing significant resources to attack tax aversion, as well as unlawful evasion, there is widespread recognition that either disclosure or discovery is imminent. Cross-border tax enforcement, emboldened by the recent Mossack Fonseca leak, is on the hunt for both "tax haven"[1] concealment and "aggressive" minimization. Also on the minimization front, targeting corporate inversions, moving toward a Common Reporting Standard (CRS) for multinational enterprises and unveiling beneficial ownership registries. Stateside, the results have been noticeable, both in the record number of Americans who have disclosed international assets, as well as the record number who have renounced their citizenship and exited the U.S. taxation regime altogether.

This article highlights the year's major developments in the worldwide push to uncover taxable assets, raise revenue and close the tax gap, including: (1) the global tax enforcement response to the Panama Papers leak; (2) the progress of information-sharing initiatives such as the Foreign Account Tax Compliance Act (FATCA); (3) the Swiss Bank Program's final nonprosecution agreement (NPA); (4) a record number of Americans voluntarily disclosing offshore assets; (5) citizenship renunciation and legislation that permit passports to be denied or canceled on account of tax debt; (6) Offshore Voluntary Disclosure Program (OVDP) participation and IRS revisions to the Streamlined Filing Compliance Procedures (SFCPs) for nonresidents; (7) the first convictions of non-Swiss financial institutions

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for tax evasion conspiracy, and the Department of Justice's (DOJ) effort to obtain bank records in Singapore from a U.S. branch; (8) the IRS' recent proposed and temporary regulations aimed at disincentivizing corporate inversions; (9) international efforts to implement the Organisation for Economic Cooperation and Development (OECD's) CRS for multinational enterprises; and (10) the creation of public (and law enforcement-exclusive) registers of beneficial ownership.

1. The Panama Papers and Worldwide Tax Gap

It is suspected that individuals have more than $18.5 trillion hidden in tax havens worldwide, representing 19.5 percent of global deposits and resulting in an annual tax revenue loss of $156 billion.[2] Of that, more than $12 trillion is hidden in EU-related tax havens that include Luxembourg, Andorra and Malta.[3] By one estimate, Swiss banks still hold roughly $1.9 trillion in unreported offshore assets.[4,5]

2016 will be long-remembered as the year of the Panama Papers leak, which exposed over 11 million internal documents maintained by the Panamanian law firm Mossack Fonseca. The leaked documents were obtained by the German newspaper *Suddeutsche Zeitung* and subsequently shared with the OECD's International Consortium of Investigative Journalists (ICIJ), a division of the Center for Public Integrity. Their disclosure revealed the efforts of more than 500 banks to assist clients in more than 200 countries to create 214,488 offshore entities, effectively concealing taxable assets from international tax authorities.[6]

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International reaction to the latest ICIJ revelations was swift. A "special project meeting" of the Joint International Tax Shelter Information and Collaboration network (JITSIC) was held in Paris, which brought together IRS leadership and senior tax officials from more than 40 countries.[7] And New York's Department of Financial Services, the state's financial regulator, sent 13 foreign banks an order seeking information as to whether the banks' New York branches or personnel had any involvement in the establishment of shell companies through Mossack Fonseca, as well as the identity of any New York-based personnel who may have served as officers or partners in the shell companies, and records of any communications between the New York branches of these banks and the shell companies once post-formation.[8,9]

2. FATCA Reporting

Currently, 100 countries have FATCA-related Intergovernmental Agreements (IGAs) in place with the United States, which require foreign banks to either disclose their U.S. customer accounts on an automatic annual basis, or pay a 30-percent withholding tax on U.S.-source income.[10] Measured in terms of financial institution participation, 177,147 entities across 226 countries and jurisdictions have registered for a Global Intermediary Identification Number (GIIN) in order to comply with FATCA's reporting requirements.[11] To facilitate this massive information exchange, the IRS has established the International Data Exchange Service (IDES), a secure file transfer system by which the IRS may exchange taxpayer information with foreign tax authorities, as well as the International Compliance Management Model (ICMM), which allows the IRS to send, receive, process, store and manage data related to third-party reporting and FATCA compliance.[12]

The first FATCA FFI agreements were effective June 30, 2014, with those FFIs required to complete their preexisting account review and due diligence by August 29, 2016 (within two years and 60 days after the effective date of the FFI agreement).[13] On January 20, 2016, the IRS issued Notice 2016-08, by which the agency extended the due date for the first FATCA preexisting account certifications to July 1, 2018 (as opposed to August 29, 2016).[14] IRS Notice 2016-08 also eliminated the requirement that FFIs report 2015 gross proceeds paid to, or with respect to, an account held by a nonparticipating FFI.[15] In addition, Notice 2016-08 enables a withholding agent to rely on a Form W-8 or W-9 that has been collected from the beneficial owner or payee of the payment through an electronic system and furnished to the withholding agent by a nonqualified intermediary (NQI), nonwithholding foreign partnership (NWP) or nonwithholding foreign trust (NWT) that is a direct or indirect account holder of the withholding agent along with a written statement confirming that the electronic documentation was generated from a qualified system,[16] and that the withholding agent does not have actual knowledge that such statement is incorrect.[17] In May, U.S. Treasury Secretary Jack Lew implored Congress to "live up to its end of the bargain on foreign tax reporting" by enacting legislation to provide "full reciprocity under FATCA."[18]

3. End of Swiss Bank Program's Nonprosecution Agreement Phase

In a little under a year, the Swiss Bank Program saw the DOJ impose a total of more than $1.36 billion in penalties and execute NPAs with 80 Swiss Banks.[19] The final three NPAs were concluded in January, 2016, with those banks agreeing to: (1) pay a combined penalty of nearly $250 million; (2) make a complete disclosure of their cross-border activities; (3) provide detailed information on an account-by-account basis for accounts in which U.S. taxpayers have a direct or indirect interest; (4) cooperate in treaty requests for account information; (5) provide detailed information as to other banks that transferred funds into secret accounts or that accepted funds when secret accounts were closed; and (6) agree to close accounts of accountholders who fail to come into compliance with U.S. reporting obligations.[20]

4. Record Numbers of Americans Filing FBARs

With FATCA reporting of U.S. accounts on the horizon, an unprecidented number of Americans are bringing themselves into compliance with their international tax reporting obligations.[21] In 2015, the Treasury's Financial Crimes Enforcement Network (FinCen) received a record 1,163,229 FinCen Forms 114, Report of Foreign Bank and Financial Accounts (FBAR), which must be filed for any year in which the aggregate value of a U.S. taxpayer's foreign accounts exceeds $10,000.[22] That number represents an eight-percent increase in FBAR filings as compared to 2014 and continues a reporting trend that has seen FBAR filings grow on average by 17 percent each year over the last five years.[23]

5. Record Numbers of Americans Renounce Citizenship

The United States, along with the East African country of Eritrea, is one of only two countries that taxes its citizens on worldwide income, regardless of where an individual resides.[24] To escape the U.S. tax regime last year, 4,279 U.S. citizens renounced their citizenship, which is 18 times as many renunciations as occurred in 2008, even though the renouncement fee has risen from $450 to $2,350 (a 422-percent increase) over that period.[25]

For those carrying tax debt who maintain their citizenship, one of Congress' last acts of 2015 was to enact Code Sec. 7345, titled *Revocation or Denial of Passport in Case of Certain Tax Delinquencies*, which allows the State Department to revoke or deny a passport to anyone with a delinquent tax debt in excess of $50,000.[26]

6. OVDP Participation Stats and Nonresident SFCP Revisions

Since the IRS unveiled the first OVDP in 2009, there have been more than 54,000 disclosures and the IRS has collected more than $8 billion.[27] The success of the OVDP can be understood in light of the rapidly approaching FATCA reporting, and the harsh penalties imposed for noncompliance, which can reach as high as 50 percent of the account balance for each transgression.[28]

In lieu of the FBAR penalty, and many of the other significant penalties that attach to failures to file international information returns, the OVDP offers a single Title 26 miscellaneous offshore penalty, although that penalty has risen with each iteration of the OVDP.[29] Currently, the 2014-modified OVDP pegs the penalty at 27.5 percent, which is increased to 50 percent if the disclosure involves an account at one of the 97 banks on the IRS's Foreign Financial Institutions or Facilitators list.[30] Both the 27.5-percent and 50-percent penalties are calculated based on the highest aggregate total of all undisclosed accounts in any year during the OVDP period.[31]

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The IRS has relaxed requirements for nonresidents to utilize the popular SFCPs through a separate nonresident track for individuals who, in at least one of the most recent three tax years: (1) did not have a U.S. abode and (2) was physically outside the United States for at least 330 full days.[32] Nonresidents must certify that any failure to report income from a foreign financial asset and pay tax as required by U.S. law (and file an FBAR) resulted from nonwillful conduct.[33] This new nonresident SFCP track permits individuals to rectify past noncompliance while escaping costly failure-to-file and failure-to-pay penalties, accuracy-related penalties, information return penalties, FBAR penalties and even the five-percent Title 26 miscellaneous offshore penalty that is imposed on residents.[34]

The nonresident SFCP track requires the taxpayer to submit, in addition to filing any delinquent FBARs for each of the most recent six years for which the FBAR due date has passed: (1) delinquent or amended tax returns, together with all required information returns for each of the most recent three tax years; (2) the full amount of the tax and interest due in connection with the delinquent or amended returns; and (3) a completed and signed Form 14653, *Certification by U.S. Person Residing Outside of the U.S.*[35] In early 2016, the IRS revised Form 14653 to require detailed information as to the taxpayer's presence in the United States during the relevant submission period, as well as "specific reasons for [the] failure to report all income, pay all tax, and submit all required information returns, including FBARs."[36] The form now expressly asks for the taxpayer's "whole story including favorable and unfavorable facts."[37]

7. DOJ Moves Beyond Switzerland

The DOJ touted its first convictions of non-Swiss financial institutions for tax evasion conspiracy on March 9, 2016.[38] The guilty pleas were entered by Cayman National Securities (CNS) and Cayman National Trust Co. (CNT) in federal court in New York. The two Cayman Islands financial institutions admitted to conspiring with American account holders to hide accounts and evade U.S. taxes by "creating 'sham' corporations and trusts for their U.S. clients to obscure the true beneficial owners of the accounts."[39] The value of undeclared U.S. taxpayer assets under management rose as high as $137 million.[40]

As part of their plea agreements, CNS and CNT agreed to pay a penalty of $6 million and cooperate fully with the DOJ's investigation into unreported U.S. taxpayer accounts, including: (1) facilitating interviews that the office conducted of CNS and CNT employees, including top-level executives; (2) voluntarily producing documents in response to the office's requests; (3) providing, in response to a treaty request, unredacted client files for approximately 20 percent of the U.S. taxpayer-clients who maintained accounts at CNS and CNT; and (4) committing to assist in responding to a treaty request that is expected to result in the production of unredacted client files for approximately 90 to 95 percent of the U.S. taxpayer-clients who maintained accounts at CNS and CNT.[41]

Further evidence that the DOJ and IRS's enforcement efforts have branched out can be seen in *UBS AG*[42] in which the IRS has moved to force UBS Group AG to comply with a "Bank of Nova Scotia" summons, requesting that the bank turn over records on an account in Singapore held by a U.S. citizen.[43] Although the first request of its kind in the battle against undisclosed offshore accounts, the authority to compel a bank's U.S. branch to produce records held by a non-U.S. branch of the same bank—even where production would violate the bank secrecy laws governing the non-U.S. branch—was established over 30 years ago, in *In Re Grand Jury Proceedings (Bank of Nova Scotia)*.[44]

8. Corporate Inversions

The IRS issued a package of proposed and temporary regulations in April designed to reduce the tax benefits and incentives for corporate inversions, by which a U.S.-parented multinational group changes its tax residence to reduce or avoid paying U.S. taxes, by acquiring a smaller foreign company and subsequently relocating the tax residence of the merged group to a low-tax country outside of the United States.[45] As opposed to growing the underlying business, maximizing synergies or pursuing other commercial benefits, the primary focus of an inversion transaction is simply to reduce tax liability.[46]

The new rules aim to curtail an inverted company's ability to access foreign subsidiaries' earnings without paying U.S. tax.[47] Specifically, the temporary regulations allow the IRS to disregard foreign parent stock attributable to certain prior inversions or acquisitions of U.S. companies.[48] In addition, the IRS's proposed regulations seek to address the corporate practice of "earnings stripping" by: (1) targeting transactions that increase related-party debt but do not finance new investment in the United States[49]; (2) allowing an IRS audit to divide a purported debt instrument into part debt and part stock[50]; and (3) requiring that documentation for members of large groups must include key information for debt-equity tax analysis.[51]

The U.S. Treasury also issued two formal temporary regulations: (1) a rule addressing a technique by which U.S. companies may seek to avoid Code Sec. 7874 by structuring an inversion as a multi-step transaction using back-to-back foreign acquisitions; and (2) a rule requiring a foreign subsidiary of the inverted U.S. group to recognize all realized gain upon certain post-inversion asset transfers that dilute the inverted U.S. group's ownership of those assets.[52]

9. Common Reporting Standard for Multinational Enterprises

This year saw the European Commission introduce its Anti-Tax Avoidance Package (ATA), the first element of which is the CRS, as adopted from the OECD's Action Plan to require country-by-country reporting in order to limit tax base erosion and profit shifting (BEPS).[53,54] In March, following the Panama Papers revelations, the IRS Commissioner, Koskinen, called for Congress to also approve the United States use of the CRS.[55]

Corporate tax avoidance costs EU countries EUR 50–70 billion each year, with the corresponding annual U.S. tax revenue loss estimated to top $100 billion.[56,57] The newly proposed EU rules would apply to multinational corporations operating in the EU that have global annual revenues of more than EUR 750 million.[58] Multinational enterprises with global revenues exceeding EUR 750 million would have to file a country-by-country tax report with the tax authorities in the EU member state where its parent company is based, and include tax-related information for all subsidiaries, broken down by country.[59] In addition to tax paid, multinational enterprises will be required to report, on a country-by-country basis the: (1) nature of activities, (2) number of employees, (3) total net turnover, (4) profit before tax, (5) amount of income tax due compared with profits, (6) amount of tax actually paid and (7) the accumulated earnings.[60]

Under the EC's proposal, the exchange of tax information gathered *via* the country-by-country reporting would be mandatory, and automatic. To date, 101 countries have agreed to OECD's Common Reporting Standard.[61]

10. Registers of Beneficial Ownership

Both the United Kingdom and Australia announced in April plans to create public registers revealing the identities of the beneficial owners of shell companies in order to combat tax avoidance by multinational companies.[62,63] At the same time, the United Kingdom, France, Italy, Spain and Germany committed to automatically share information as to the ultimate owners of companies and trusts, a proposal that was quickly endorsed by an additional 22 jurisdictions.[64] The EU has indicated its intent to set up a similar register of beneficial ownership to operate across all 28 EU member states.[65] For its part, in May, FINCEN issued a new rule—the "Customer Due Diligence Rule" which requires financial institutions to obtain and confirm the identities of beneficial owners of client entities.[66]

11. Conclusion

So far, 2016 has been a landmark year for anti-tax avoidance and financial transparency initiatives. Revenue raising efforts have capitalized on both information obtained from the Panama Papers leak and increased intergovernmental cooperation, to ramp up the attacks against offshore secrecy, uncover previously undisclosed taxable assets, and reign in multinational enterprises engaged in cross-border tax minimization.

ENDNOTES

1 According to the OECD, there are four key factors that distinguish a tax haven: (i) no or nominal tax on the relevant income; (ii) lack of effective exchange of information; (iii) lack of transparency; and (iv) no substantial activities required. *See* OECD Report, *Harmful Tax Competition: An Emerging Global Issue*, at 22 (1998), available online at *www.oecd.org/tax/transparency/44430243.pdf*.

2 *See www.oxfam.org/en/eu/pressroom/pressrelease/2013-05-22/tax-havens-private-billions-could-end-extreme-poverty-twice-over*.

3 *Id.*

4 *See www.bloomberg.com/news/articles/2016-01-27/the-world-s-favorite-new-tax-haven-is-the-united-states*.

5 Recent reports suggest that tax avoidance may challenge soccer as the world's most widely played sport. By recent estimates, 270 million people are actively involved in the game of football. *See* FIFA "Big Count," available online at *www.fifa.com/worldfootball/bigcount/allplayers.html/*. At least 3.2 billion people watched some part of the 2014 World Cup. *See www.fifa.com/worldcup/news/y=2015/m=12/news=2014-fifa-world-cuptm-reached-3-2-billion-viewers-one-billion-watched--2745519.html/*. The Panama Papers leak revealed even closer ties between the global sport of soccer and tax avoidance, as the documents purportedly reveal offshore holdings by a founding member of the FIFA ethics committee, as well as current or former owners of at least 20 major soccer clubs, and high-profile players.

6 *See https://panamapapers.icij.org/20160403-panama-papers-global-overview.html/*.

7 *See www.nbcnews.com/storyline/panama-papers/irs-urges-americans-come-clean-now-we-read-panama-papers-n557246/*.

8 *See www.bloomberg.com/news/articles/2016-04-20/ny-regulator-asks-banks-for-records-linked-to-panama-papers-firm/*.

9 This is the second large international leak regarding tax evasion that the International Consortium of Investigative Journalists (ICIJ) has handled in the past few years. In 2013, the Costa Rican newspaper *La Nación* sent the ICIJ databases maintained by Singapore-based Portcullis TrustNet (PTN) and Commonwealth Trust Limited (CTL), based in the British Virgin Islands. Combined, the two firms established over 100,000 secret offshore companies, trusts and accounts, for clients in more than 170 countries and territories. *See www.icij.org/offshore/icij-releases-offshore-leaks-database-revealing-names-behind-secret-companies-trusts/*.

10 Currently, 87 countries have Model 1 IGAs, while 13 countries have Model 2 IGAs.

1A Agreements are reciprocal agreements, by which the foreign government agrees to collect the specified FATCA disclosure information, including U.S. accountholder names, from its financial institutions and exchange the information on an automated reciprocal basis with the United States. 1B Agreements are nonreciprocal. In Model B IGAs, the foreign government agrees to permit financial institutions to register and supply FATCA disclosures directly to the IRS, with government-to-government cooperation to overcome any legal impediments to sharing the information.

11 *See FATCA November GIIN and IDES Updates* (Kluwer International Tax Blog, November 25, 2015), available online at *http://kluwertaxblog.com/2015/11/25/fatca-november-giin-and-ides-updates/*.

12 *See FATCA Information for Foreign Financial Institutions and Entities*, available online at *www.irs.gov/Businesses/Corporations/FATCA-IDES-Technical-FAQs/*.

[13] IRS Notice 2014-33, IRB 2014-21, 1033, *Further Guidance on the Implementation of FATCA and Related Withholding Provisions* (May 2, 2014), available online at *www.irs.gov/pub/irs-drop/n-14-33.pdf/*.

[14] Notice 2016-08, *Timing of Submitting Preexisting Accounts and Periodic Certifications; Reporting of Accounts of Nonparticipating FFIs; Reliance on Electronically Furnished Forms W-8 and W-9* (Jan. 20, 2016), available online at *www.irs.gov/pub/irs-drop/n-16-08.pdf/*.

[15] *Id.*

[16] *Id.*, providing that "[t]he electronic documentation [must be] generated from a system that meets the requirements in §1.1441- 1(e)(4)(iv), §1.1471-3(c)(6)(iv), or Announcement 98-27, as applicable."

[17] *Id.*

[18] *See www.treasury.gov/press-center/press-releases/Documents/ Lew%20to%20Ryan%20 on %20CDD.PDF/*.

[19] *See Justice Department Announces Final Swiss Bank Program Category 2 Resolution with HSZH Verwaltungs AG* (Jan. 27, 2016), available online at *www.justice.gov/opa/pr/justice-department-announces-final-swiss-bank-program-category-2-resolution-hszh-verwaltungs/*.

[20] *Id.* A complete list of NPAs achieved under the Swiss Bank Program is available at *www.justice.gov/tax/swiss-bank-program/*.

[21] At the most basic level, U.S. taxpayers must truthfully and accurately answer the yes/no "foreign bank question" (also known as "check the box") which appears on Schedule B to Form 1040 (boxes 7a and 7b). Further, in addition to submitting FinCen Form 114 through the FinCen's BSA E-Filing System, U.S. taxpayers, where appropriate, must submit international information returns that include: (1) Form 3520, *Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts*; (2) Form 3520-A, *Annual Information Return of Foreign Trust With a U.S. Owner*; (3) Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*; (4) Form 8621, *Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund*; (5) Form 8865, *Return of U.S. Persons With Respect to Certain Foreign Partnerships*; and (6) Form 8938, *Statement of Specified Foreign Financial Assets*.

[22] IRM, pt. 4.26.16.6.6.1 (Nov. 6, 2015).

[23] *See* IRS News Release, IR-2016-42, March 15, 2016, *Foreign Account Filings Top 1 Million; Taxpayers Need to Know Their Filing Requirements*, available online at *www.irs.gov/uac/Newsroom/Foreign-Account-Filings-Top-1-Million-Taxpayers-Need-to-Know--Their-Filing-Requirements/*.

[24] *See Tax History: Why U.S. Pursues Citizens Overseas* (May 18, 2012), available online at *http://blogs.wsj.com/washwire/2012/05/18/tax-history-why-u-s-pursues-citizens-overseas/*.

[25] *See Record Numbers Renounce Their U.S. Citizenship*, available online at *www.forbes.com/sites/robertwood/2016/02/06/record-numbers-renounce-their-u-s-citizenship/#5cf3f55a6e6a/*.

[26] H.R. 22 (114th Congress), Fixing America's Surface Transportation Act, the "FAST Act," available online at *http://thomas.loc.gov/cgi-bin/query/D?c114:6:./temp/~c114JG3JGf::/*.

[27] IRS News Release, IR-2016-17, February 5, 2016.

[28] 31 USC §5321(a)(5)(C); IRM, pt. 4.26.16.6.5.3 (Nov. 6, 2015).

[29] *See* IRS, *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014*, available online at *www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised/*.

[30] *See* IRS, *Foreign Financial Institutions or Facilitators*, available online at *www.irs.gov/Businesses/International-Businesses/Foreign-Financial-Institutions-or-Facilitators/*.

[31] *See* IRS, *Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers 2014*, FAQs 7 and 7.2, available online at *www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers-2012-Revised/*.

[32] *See* IRS, *Streamlined Filing Compliance Procedures for U.S. Taxpayers Residing Outside the United States Frequently Asked Questions and Answers*, available online at *www.irs.gov/Individuals/International-Taxpayers/Streamlined-Filing-Compliance-Procedures-for-U-S--Taxpayers-Residing-Outside-the-United-States-Frequently-Asked-Questions-and-Answers/*.

[33] *Id.*

[34] *Id.*

[35] *See* IRS Form 14653 (Rev. Feb., 2016), available online at *www.irs.gov/pub/irs-pdf/f14653.pdf/*.

[36] *Id.*

[37] *Id.*

[38] *See* CI-2016-03-09-A (Mar. 9, 2016), *Two Cayman Island Financial Institutions Plead Guilty in Manhattan Federal Court to Conspiring to Hide More Than $130 Million in Cayman Bank Accounts*, available online at *www.irs.gov/pub/foia/ig/ci/CI-2016-03-09-A.pdf/*.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *UBS AG* (S.D.FL. 16-mc-20653).

[43] *See www.bloomberg.com/news/articles/2016-03-03/singapore-banking-secrecy-makes-ripe-target-for-irs/*.

[44] *In Re Grand Jury Proceedings (Bank of Nova Scotia),* CA-11, 691 F2d 1384 (1982), cert. denied, SCt, 462 US 1119 (1983).

[45] *See* IRS, *Fact Sheet: Treasury Issues Inversion Regulations and Proposed Earnings Stripping Regulations* (Apr. 4, 2016), available online at *www.treasury.gov/press-center/press-releases/Pages/jl0404.aspx/*.

[46] *Id.*

[47] *Id.*

[48] T.D. 9761, Apr. 4, 2016, available online at *https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-07300.pdf/*.

[49] REG-108060-15, available online at *https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-07425.pdf*. Earning stripping involves a post-inversion loan from the parent corporation to its U.S. subsidiary for operational expenses, with interest payments subsequently deducted by the U.S. subsidiary.

[50] Code Sec. 385.

[51] *Id.*

[52] *See* IRS, *Fact Sheet: Treasury Issues Inversion Regulations and Proposed Earnings Stripping Regulations* (Apr. 4, 2016), available online at *www.treasury.gov/press-center/press-releases/Pages/jl0404.aspx/*.

[53] *See* European Commission, *Anti Tax Avoidance Package* (Jan. 2016), available online at *http://ec.europa.eu/taxation_customs/taxation/company_tax/anti_tax_avoidance/index_en.htm/*.

[54] *See* European Commission, *Proposal for a COUNCIL DIRECTIVE laying down rules against tax avoidance practices that directly affect the functioning of the internal market* (Jan. 28, 2016), available online at *http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0026&from=EN/*.

[55] *See http://federaltaxcrimes.blogspot.com/2016/03/commissioner-koskinen-calls-on-congress.html/*.

[56] *See European Commission proposes public tax transparency rules for multinationals* (Apr. 12, 2016), available online at *http://europa.eu/rapid/press-release_IP-16-1349_en.htm/*.

[57] *See* Oxfam America, *Broken at the Top How America's dysfunctional tax system costs billions in corporate tax dodging* (Apr. 14, 2016), available online at *www.oxfamamerica.org/static/media/files/Broken_at_the_Top_FINAL_EMBARGOED_4.12.2016.pdf/*.

[58] *See European Commission proposes public tax transparency rules for multinationals* (Apr. 12, 2016), available online at *http://europa.eu/rapid/press-release_IP-16-1349_en.htm/*.

[59] *Id.*

[60] *Id.*

[61] *See* OECD, *CRS by jurisdiction* (May 11, 2016), available online at *www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/crs-by-jurisdiction/#d.en.345489/*.

[62] *See* HM Treasury, *Joint statement on beneficial ownership information*, available online at *www.gov.uk/government/uploads/system/uploads/attachment_data/file/520459/statement_on_the_initiative_for_exchange_of_beneficial_ownership_information.pdf/*.

[63] *See www.theguardian.com/world/2016/apr/22/australia-to-follow-uk-in-creating-public-register-of-shell-companies/*.

[64] The additional countries and jurisdictions are: Isle of Man and Gibraltar, Netherlands, Romania, Sweden, Finland, Slovakia, Latvia, Croatia, Belgium, Ireland, Cyprus, Slovenia, Denmark,

Malta, Lithuania, Bulgaria, Portugal, Estonia, Greece, Czech Republic and Montserrat. *See More countries sign up to anti-corruption code* (Apr. 22, 2016), available online at *www.theguardian.com/uk-news/2016/apr/22/isle-of-man-gibraltar-cyprus-sign-anti-corruption-code-money-laundering-tax-evasion/*.

[65] *See Centralised beneficial ownership registers may be ineffectual* (Apr. 27, 2016), available online at *www.cchdaily.co.uk/centralised-beneficial-ownership-registers-may-be-ineffectual#sthash.CoiPK3vh.dpuf/*.

[66] *See www.gpo.gov/fdsys/pkg/FR-2016-05-11/pdf/2016-10567.pdf/*.