

FOLLOW-UP PANAMA PAPER SCANDAL

The **Panama Paper scandal** (<https://www.icij.org/>), thus far, has exposed approximately 170 companies and individuals who are currently being investigated by the South African Revenue Services (SARS) for tax evasion, money laundering and racketeering as well as contraventions of treasury regulations. This scandal has therefore led to a shift in focus by treasury institutions toward the so-called "safe havens" with strong emphasis on Mauritius, Seychelles, Bermuda and other countries where companies and individuals utilize off-shore facilities.

International Intelligence Agencies have revealed that many of the communication breaches which have been identified could be ascribed to the specialists, for example, attorneys, accountants, financial brokers and advisors etc., engaged by companies and individuals to execute specific services. It has become apparent that some of these specialists are not subjected to the same stringent risk assessments in respect of communication security as required by standard protocol.

It is imperative that when a company or individual engages the services of a specialist as indicated above, to insist on a confidentiality clause. Furthermore, companies must ensure that the specialists conduct periodical vulnerability assessments to maintain secrecy and confidentiality at their premises and make the full security audit available to the client on request. These assessments should entail communication risk assessments, including **Technical Surveillance Counter Measures (TSCM)** "Debugging" and **Digital Security and Information Technology Vulnerability Assessments**.

South Africa is no exception to international financial practices and companies and individuals regularly make use of various specialists in their field of expertise. **How sure are South African companies that their highly classified documents ranging from acquisitions and mergers to contracts are secured in the hands of these specialists?**

Advanced Corporate Solutions (ACS) has two decades of experience in technical surveillance counter measures and digital security. It specialises in communication security and due to the high threat of digital security, has expanded its expertise to engage international counterparts to assist in the onslaught on digital information security.

Experience has dictated that standard peripheral security, for example alarm systems, guards and cameras do not deter the perpetrator in respect of appropriating **Intellectual Property (IP)**. As discussed previously, the less stringent protocol practices by some specialists leave the client vulnerable to security breaches as evident in the Panama Papers.

In current research in South Africa, numerous incidents of security breaches have lately been identified by ACS, but was fortunately contained and addressed and not leaked to the media. Should it have been leaked to the media, the company under threat could have suffered major financial losses and reputational damage.

If you are concerned about your company's vulnerabilities, please contact ACS to assist you in doing a vulnerability assessment of your company, consisting of **Electronic Counter Measure Investigations (ECMI) / Technical Surveillance Counter Measures (TSCM), Mobile Technology and Information Security Risk Assessment**. Allow ACS to put forward a tailor-made solution to address possible shortcomings and prevent the next "Panama-Papers" scandal.

Please also refer to the news article published in the Business Day of 29 May 2016 on the following page.

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By: **CRAIG DODDS**

Cape Town - South Africans who made use of the Panamanian law firm Mossack Fonseca to hide their riches from Sars have a nail-biting four-month wait before an amnesty announced by Finance Minister Pravin Gordhan in his February Budget kicks in.

If they take advantage of the voluntary disclosure window – which will run from October 1 to March 2017 – they will be able to declare funds they have moved out of the country without paying appropriate taxes and face a more lenient penalty.

But if Sars gets to them before the legislation is passed to provide for the amnesty, or before they come clean, they are in for a financial hiding.

Already Sars has identified 1 700 South Africans whose names cropped up in the so-called Panama Papers, a massive data leak containing details of clients of Mossack Fonseca, a firm that specialises in helping rich foreigners hide their wealth.

This was disclosed at a special briefing on the Panama Papers and progress in combating base erosion and profit shifting in Parliament this week.

Around the globe, the noose is tightening on tax evasion, with an international information-sharing arrangement set to come into effect next year which will make it harder for individuals and companies to hide their money from authorities by shifting it from one jurisdiction to another.

Sars is also cracking down on profit shifting, with its manager for large business transfer pricing, Nishana Gosai, telling MPs the authorities were “tired of saying just because a legal owner is sitting in a low-tax jurisdiction they should be entitled to intangible related returns”.

Sars would no longer “blindly accept legal contracts and legal ownership without looking at the substance of where the economic activity... was performed”.

“Last year we reported that over a three-year period we tracked income and made adjustments to the tune of R20 billion, which resulted in R5bn in actual tax collection,” Gosai said.

Vlok Symington, Sars group executive for product oversight, legal and policy, said people implicated in the Panama leaks would be allowed to make use of the voluntary disclosure programme “if we don’t get to them first”.

“If we get to them before October 1, which I think we may, then they won’t be able to make use of the special VDP,” Symington said.

Sars had found a total of 560 offshore entities among those listed in the Panama Papers and had matched 79 of these to its own database, linked to 81 South African residents.

“We are now doing our best to match the rest of the names with the entities so we can start to look at their tax profiles,” Symington said.

It was also co-operating with foreign tax authorities to get the remainder of the Panama data, which is being released in tranches, as well as the underlying information detailing the company structures used to conceal wealth and the sums involved.

It was “too early” to predict the level of tax evasion, Symington said.

“We must remember that we do not have any amounts or any estimate of the values in those bank accounts – no one has it.”

Sars had also identified 56 South African intermediaries.

Financial Intelligence Centre director Murray Michell said he had authorised inspections of intermediaries to determine whether they had complied with all the requirements of the Financial Intelligence Centre Act.

“Those actions are taking place at the moment, have they met the FIC obligations – customer due diligence provisions, registration and reporting,” Michell said.

Reserve Bank head of financial surveillance Elijah Mazibuko said it was comparing the Panama data to its cross-border system, which captures all declared flows of money in and out of the country.

“We are still evaluating the tax compliance status of individuals implicated in the leaked information, we work with Sars in this regard, consider possible contraventions of relevant financial disclosure requirements and to determine whether offshore funds have any nexus to criminality,” he said.

The Reserve Bank was also checking whether the “enablers” – intermediaries that facilitated the transactions – had violated any laws or regulations.

But Treasury deputy director-general Ismail Momoniat warned that co-operation was required among all relevant government departments, if the government was to make a significant impact on the problem.

Referring to controversy around the operations of an alleged “rogue” intelligence unit at Sars, he said the service needed intrusive powers to gather information.

“If you look at cigarette smuggling... in Sars that was always a focus and all this stuff in the news was around cigarette smuggling, because these syndicates are sophisticated, they are five steps ahead of us,” Momoniat said.

Without this capacity he said Sars would always be “behind the curve”.

“And if Sars has no intrusive capacity, lots of people will use that not to pay their taxes,” Momoniat warned.

Chairman of the standing committee on finance Yunus Carrim agreed the police and prosecuting authority should be called when Parliament sits again in August to determine whether all cases referred to them by the FIC and Sars were investigated.

“The question is, do all of the allegations made go to the SAPS in general or to organised crime – the Hawks – or what. And then, what happens?” Carrim said.