



Peter Macfarlane: How to Survive the Panama Papers

by Peter Macfarlane

It's been a long time since I've been able to write for Q Wealth Report, due mainly to pressure of work on the private client side of my business and the fast changing environment. The scandal that is *The Panama Papers*, however, is definitely worthy of comment.

I am afraid that *The Panama Papers* and the ICIJ in general represent a sad reflection of our modern society and media. When respectable news organisations like the BBC see fit to publish stolen information about individuals, without any allegations that those individuals did anything illegal (note there is lots of innuendo, but nothing specific) and without so much as debating the moral and ethical aspects of their own actions... then there is every reason to be depressed about the way our world is headed. But there's positive news too... as I will report at the end of this article.

When the news first broke, I was hoping to get some sense of the affair by watching the BBC's primetime *Panorama* programme. *Panorama* has been around for years and started life as a serious and cutting edge investigative journalism show. However this time, I just saw the chasing people who happened to be listed in the Panama Papers down the street with cameras

asking for comments. One poor guy they chased had already apparently offered to prove the legality of his tax affairs to the BBC in a private meeting, but instead of taking him up on the opportunity, they simply lambasted in public. This struck me as reaching new lows of gutter journalism... not interested in the real story, but just in sensation... I mean, they really expect this guy to discuss his private financial affairs on international television just for the sake of it?

However, we won't go down that route. In this article I will try first to correct some of the errors, then as always to provide practical advice for those who may be affected by the *Panama Papers*, and for those who may be looking to protect themselves against future leaks.

First of all, the Panama Papers are not really about Panama

Even the BBC admits this, in a slight return to lucidity and balanced journalism that is this article: [Why the Top Ten Tax Havens Don't Include Panama](#).

"The criticism Panama is getting is unfair. It is media sensationalism," Gian Castillero, an adviser to Panama's foreign ministry, is [quoted](#) as saying. Meanwhile the President of the Panamanian Bar Association, José Alberto Álvarez, [says](#) that he sees the attack on Mossack Fonseca more like an attack on the country. "It could have happened to another firm, the damage is terrible for them, for lawyers, for the country."

(On the other hand, in the referenced BBC article you'll see a very misleading picture of a beach hut with the impression given that it is Uglund House where 18,000 companies are registered in the Cayman Islands. An image of the [real Uglund House can be seen here](#)).

Look at the BBC's own infographic [here](#), and you can see that according to the stolen papers refer to more than twice as

many companies incorporated in the British Virgin Islands as opposed to Panama. So why not call the affair instead “the BVI Papers”?

The reason is simple: Mr Álvarez is right. *The Panama Papers were designed as an attack on the country of Panama.* I am sure it is not coincidental that the subject of the attack is the only major international financial centre that recently exercised its sovereignty and refused to sign up to automatic exchange of information. If you need further evidence, together with salient comments on the aforementioned *Panorama* programme, read this article: [Disgraceful BBC Panorama Propaganda Hides Grim Truth About Britain.](#)

Panama is under great pressure at the moment, but it does of course have one trump card up its sleeve: the Panama Canal. It will be interesting to see how the story develops.

Who is talking?

Who or what is the ICIJ? This is an open question, to which I have yet to see a convincing answer.

The ICIJ is, according to its website “was launched as a project of the [Center for Public Integrity](#)” and is now “backed by the Center and its computer-assisted reporting specialists...” whatever that means (reporters with PCs?). It’s not clear if it involves financial support from the CPI.

The ICIJ site lists a number of Foundations as its financial backers. A special mention is made for Australian businessman Graeme Wood, who founded an online travel business recently sold to Expedia. Curiously, [according to this release](#), Wood was elected to the CPI’s board of directors in June 2013, although he is not on the current list of directors on CPI’s site.

The CPI is also, quite ironically, bankrolled [by a long list](#)

[of foundations, trusts and the like.](#)

So who are these foundations? To name a few:

- Ford Foundation
- Carnegie Endowment
- Rockefeller Family Fund
- W K Kellogg Foundation
- Open Society Foundation (George Soros)

This list, for those who know anything about history, certainly suggests a very specific agenda.

As for the people behind CPI, there is no shortage of biographical information... indeed, there are so many people on their [board of directors](#), a cynic might start bringing up the similarities between the terms *nominee directors* and *non-executive directors*, in order to ask who is *really* behind it?

I am pretty sure most of the names on the website think they are being do-gooders by lending their names to this organization, and there is no doubt a huge team of idealistic but rather naive young journalists around the world who have been sucked into the excitement of being involved in a big 'global' project. These are probably fundamentally good people who really believe that offshore financial centres are a bad thing, but they don't realize that the only way to eliminate tax competition is to eliminate sovereignty at all levels... from municipal through to national. And what a horrible world that would be.

They are also people who have, unfortunately, not stopped to question the ethics of using stolen information. I presume their sole justification for doing so is that the end justifies the means. CPI's [mission statement](#) begins "To serve democracy..." However, the 'end justifies the means' train of thought, taken to its logical conclusion, would transport us about as far away as one can get from the concept of a democratic society. I wonder if they would take the same

attitude to the use of stolen information if it was, say, Boeing's proprietary information that had been hacked by the Chinese?

Regular readers know I am not one for big conspiracy theories, but the bottom line is abundantly clear: this is a big organization based in Washington D.C. that is pushing US interests and bullying others into compliance with their world vision. Enough said.

Why are there so few American names in the Panama Papers?

This is a question that many people have now raised. Is it that the US is so completely free of corruption that very few Americans used the services of Mossack Fonseca? Perhaps a more [credible explanation is given here](#) by British journalist and former diplomat, Craig Murray. To quote Mr Murray:

The Suddeutsche Zeitung, which received the leak, gives a [detailed explanation](#) of the methodology the corporate media used to search the files. The main search they have done is for names associated with breaking UN sanctions regimes. The Guardian [reports this too](#) and helpfully lists those countries as Zimbabwe, North Korea, Russia and Syria. The filtering of this Mossack Fonseca information by the corporate media follows a direct western governmental agenda. There is no mention at all of use of Mossack Fonseca by massive western corporations or western billionaires – the main customers. And the Guardian is quick to reassure that “much of the leaked material will remain private.”

The Guardian, Mr Murray remind us, “smashed its copies of the Snowden files on the instruction of MI6.”

In fact, it is widely acknowledged these days that the USA wants to become the world's biggest tax haven – for non-Americans, at least. The US is the only major country that has

not signed up to exchange information automatically with other countries under the Common Reporting Standard. US banks today are actively soliciting undeclared investments that are leaving places like Switzerland, with promises that clients can avoid automatic reporting. There are still numerous states of the USA where you can form a corporation that is tax free and without so much as providing an ID document. Many offshore investment advisers who are braver than I are recommending their clients open accounts in the USA, but I don't think this is a wise long term strategy.

Are you affected by The Panama Papers?

Dozens of clients have called me and asked how this affects them. Here is my answer.

First of all, I have never personally had any dealings with Mossack Fonseca, and I have never sent any business of my clients to them. I've run into them from time to time and they seem like decent guys. I have simply never had a need for their services, and I tend to like working with smaller, more boutique operations even if it costs me a bit more.

That said, Mossack Fonseca's main business was running back office services – what they actually called a factory – for other providers who dealt with the end-user clients. So if you have set up an offshore company, trust or foundation at any time, with a firm other than mine, there is a fair chance that Mossack Fonseca were involved. You should be able to figure that out fairly easily by looking at your corporate documents and finding the name of your registered agent. You will soon see if Mossack Fonseca or Mossfon are listed anywhere.

If you were a client of Mossack Fonseca, directly or indirectly, you should certainly be on the defensive right now, but you might take comfort in two important facts:

1. In many cases, intermediaries never revealed to Mossfon the names of final clients or ultimate beneficial owners. This is another thing Mossfon has been criticized for recently, but it is completely legal and is normal practice. I for one never keep beneficial ownership information in the same jurisdiction as that of incorporation – it is standard practice that I pass information through a law firm in a third country where it is legally privileged information. If you bought a Mossfon company through an intermediary, and that intermediary did his job properly, your name should not have ended up in Mossfon files. Unfortunately, however, many intermediaries in this business are either sloppy or unregulated or both. If they were unregulated, possibly Mossfon would have been obliged to insist on receiving the beneficial ownership information.
2. Refer to the point above: the Guardian is quick to reassure that “much of the leaked material will remain private.” Remember, they are looking for sensational news stories about high profile people. If you are a low profile Joe Bloggs and they cannot find any information about you online, then with some luck they will pass over you and move on to juicier targets.

Nonetheless, you should think about damage control strategies and probably take professional advice from someone who understands offshore business. Finding the right lawyer may not be easy, but we can make recommendations to Q Wealth members.

How can I keep a low profile and protect myself from leaks or similar situations that may occur in the future?

There is a simple answer to this. Your personal privacy and security begins with you. Too many people publish too much information about themselves online. I would highly recommend

you stay off social media like Facebook and LinkedIn altogether – if you must participate, make sure your profiles are not publicly visible, and remember that you are not under oath when posting on social media... you do not need to post completely true information about things like where you live, or even your real name. Keep your phone numbers unlisted. And do not post your profile on the “about us” page of your corporate website. These simple steps will give you about 99% protection from snooping journalists. They might lose you some business as well, but long term, what value do you place on your personal privacy?

Make sure your children follow the same rules, too!

By far and away the best method of protecting your privacy, however, is to acquire a second residence and citizenship. Yes, that’s right, these days *going offshore* definitely involves planes, not just paper trips. There is no limit to the number of residences one individual may have, and in most cases there is no restriction on holding multiple citizenships either.

For US persons, holding another residence does not help you to legally avoid tax obligations, but for citizens of every other country in the world, it can. For Americans, a Plan B must involve a second citizenship, and the only way to opt out of US tax obligations completely legally is to renounce US citizenship. This is something many Americans are not quite ready to do, but it’s nonetheless a smart idea to have a second passport up your sleeve to keep options open. You can read a lot more about second residences and citizenship here on the [Q Wealth](#) site and we will be updating this information over the coming weeks and months.

Is this the end of the Offshore World?

The propaganda machine is working so well these days that I am

often asked this question. My response is absolutely not. Use of offshore structures, tax competition and international asset protection strategies increases every year and I believe this increase will continue exponentially. Those who do not like it might as well learn to live with it. Think about these points:

- Use of offshore structures used to require expensive lawyers and know-how so it was restricted to big global firms, of the type who are demonized for tax mitigation like Google, Apple, Starbucks etc. But these days, the internet, combined with other factors like increased willingness to travel and low cost flights, have made the offshore world open to the small guy. These days the smallest e-commerce start up can use the same techniques as the big guys.
- The whole reason we hear all this propaganda about offshore these days is that governments are worried, because more and more people are voting with their feet and their money, and going offshore. In all likelihood we will see more under-the-belt attacks like the Panama Papers, and the fight might even get dirtier. But these are not heavy-handed tactics of all powerful governments – rather, they are signs of desperation by governments trying to stop the unstoppable. It is ultimately big, unwieldy, meddling and unresponsive governments that are having to change their business model, not the small and nimble offshore finance centres.
- Globalisation is completely normal in many modern business families. A lot of kids these days are born with 2, 3, 4 or more citizenships at birth. This is much more common now, even than a decade ago, let alone a generation ago. For this generation, an international outlook is completely normal. They will look to live, work and do business in the most beneficial places and commuting either physically or virtually across national borders will be the norm.

Some people seem to think that doing business offshore can be outlawed. However, any lawyer can see there is no way you can draft and implement laws to prevent international business taking place. Well, there is... North Korea is an example. But I do not see the world taking that route.

What we certainly are seeing, however, is a change in two directions: substance and quality.

Substance and Quality means that international business must be really offshore, not just on paper. For example:

Out this season: Letterbox companies with nominee directors, issuing powers of attorney to the beneficial owners, and no proper accounting are on the way out. They will still be useful for some purposes, like simply holding dormant assets, but then they at least need to hire a proper auditor and move out of British territories like BVI and Anguilla that no longer welcome this kind of business. The best destinations for those still preferring classic offshore companies might be Belize, Nevis or Vanuatu.

In fashion are: Offshore companies with real physical presence, a real director offshore who knows something about the business, routinely holds genuine board meetings, makes decisions and signs documents offshore, on behalf of the beneficial owner who might be a Foundation or a Trust, are the new norm. These companies will have at least a hotdesking presence and a local bank account in their jurisdiction of incorporation, where the principals will typically visit from time to time... and they will also keep proper accounting records – even if they don't have to be filed anywhere publicly, business partners and bankers will insist on seeing audited accounts.

These changes are, to my mind, desirable and will improve the reputation of the offshore sector, making it easier for well-run offshore companies to do business internationally than it is today. Yes, there will be an increase in costs... but we are

not talking a return to the old days. Annual maintenance costs might become \$5,000 or \$10,000 instead of \$500 or \$10,000, but this is still within the range of every serious entrepreneur and will in many if not most cases remain much more attractive than the onshore alternative.

“Midshore” jurisdictions like Panama, Hong Kong and UAE are best positioned to take advantage of this trend, having many advantages for entrepreneurs seeking substance offshore, compared to islands like the BVI. From this list, Panama stands out as a business friendly nation, with a territorial tax system, an established financial services infrastructure with hundreds of banks and accountancy firms, and a local workforce that is relatively well qualified in terms of cost. Granted this is not Swiss quality, but it is not Swiss prices either. Probably the biggest thing Panama has going for it, when compared to its midshore peers, is its welcoming immigration policy – it is very easy for business executives to obtain residence in Panama for themselves, their families and their staff.

At the end of the day, I think this scandal will blow over. Just as Switzerland survived its various leaks, as did BVI, so will Panama. In fact, for Panama and for the offshore sector in general, the future looks bright.