

Doing nothing has a price

Some journalists have called the Panama Papers a flop. But a focus on tax evasion misses other key issues, writes Ron Pol.

Within days of a limited release of some of the so-called "Panama Papers", some journalists have already labelled it a "flop", cleaving to a new narrative that there's no evidence of Kiwis avoiding tax.

This demonstrates a fundamental misunderstanding of the Panama Papers and New Zealand's foreign trusts regime.

A narrow focus on tax evasion inadvertently accelerates an impression that "there's nothing here". Of course there's no evidence of Kiwis using New Zealand offshore trusts for tax evasion. Kiwis can't use them.

Only foreigners can use New Zealand offshore trusts to evade taxes in their home countries.

A focus on tax evasion misses other important issues.

It has been said that "only" a few hundred Kiwi firms were established by Mossack Fonseca. Whatever the number, it is almost completely meaningless.

Mossack Fonseca has been described as the tip of an iceberg. The reality is less prosaic. The Panamanian law firm's documents are revealing, but represent the tiniest fraction of what's really going on.

With 5 per cent or so of the market, Mossack Fonseca was one of the biggest wholesalers of corporate vehicles. For some clients the firm was closely involved. Those files will be revealing.

But mostly Mossack Fonseca established companies for more than 14,000 legal and accounting firms, banks and other intermediaries worldwide. The files of those other firms will reveal far more about the real clients than Mossack Fonseca's documents.

Many more New Zealand offshore trusts may have been set up by other firms, whose records remain secret.

A Dutch law firm is renowned for inserting New Zealand offshore trusts into long chains of opaque structures spanning multiple jurisdictions.

Scores of New Zealand legal, accounting and company incorporation firms may have set up a great many more. At last count, New Zealand has more than 100 specialist trust and company service providers, according to Government records.

For New Zealand policymakers, the question is not whether Kiwi offshore trusts were used for illicit activities. Establishing that comprehensively will require significant resources, and political resolve, over many years.

From a crime prevention perspective, the real question is whether Kiwi offshore trusts can be used for illicit activities. They are used for legitimate purposes, but the design of New Zealand offshore trusts also



President Obama didn't wait for the results of a review to take action on corporate vehicles in the US.

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Ron Pol's "inconvenient truths" about the leaked files

I Limited release: Only basic company data has been released, without personal identification. The International Consortium of Investigative Journalists (ICIJ) sought to balance privacy with public interest. It's easy to find politicians, but "unknown" people with details excluded may be innocent or criminal users of corporate secrecy vehicles. Even if their corporate vehicles are exposed, criminals not known by journalists could remain hidden in plain sight.

I Only one cog in a big machine: Tax evaders might use just one firm like Mossack Fonseca, or a local firm, but arms traffickers, cartels, despots and their money launderers typically use more complex webs of corporate structures and multiple service providers in different countries. Neither Mossack Fonseca nor other law firms used might know who really owns them, or what the companies were used for.

I Unknown owners: Mossack Fonseca admitted they don't know the beneficial owners of many of the firms they established, so their files are incomplete.

I Nominees: Many documents have "owners" listed as companies and nominees such as lawyers, with further details held in registries and legal, accounting and incorporation firms elsewhere, making tracing real owners almost impossible.

I Transactions hidden: It's difficult to trace the real owners of opaque corporate vehicles. It's harder still to track what transactions hundreds of thousands of those shell companies and trusts actually engaged in, such as arms, drugs and human trafficking and money laundering.

I Few "smoking guns": Anyone anticipating a vast treasure trove of easily reportable illegality will be disappointed. Likewise, claiming that the lack of such evidence is a "flop" is disingenuous, or demonstrates fundamental misunderstanding. At best, the ICIJ release exposes small pieces of many puzzles, requiring painstaking expert investigation and international co-operation to follow criminal trails.

I Insufficient to enforce: The ability to use Mossack Fonseca documents to base prosecutions on is limited, due to the nature of the documents, the manner in which they were obtained, and the form in which they've been released.

I Investigators in the dark: Law enforcement agencies with greater capability for identifying criminal misuse have not had access to the files. Proactive enforcement agencies elsewhere have only just started to gain access to underlying documents independent of the ICIJ data, which might form the basis of actionable evidence.

makes them an almost perfect vehicle for undertaking criminal transactions undetected, and for hiding vast amounts of criminal proceeds.

We could wait until any number of reviews, inquiries and years of investigations reveal the full details of some of the ways in which New Zealand offshore trusts may have been used as criminal getaway vehicles.

President Obama didn't wait for the results of a review, or what the Panama Papers might reveal, or years of investigations to find out exactly how similar vehicles were misused.

Last week, he recognised that the design of similar corporate vehicles in the United States can be misused by criminals, and sought to close it down. There are arguably a few gaps in his



Ron Pol

plan, but decisive leadership has sought to close the most glaring holes.

We have a similar choice. A senior minister, in response to a recent parliamentary question, said New

Zealand's anti-money laundering regime is designed to prevent crime. That's true, for the most part.

In some ways, however, we don't meet international standards, and in others our laws (and those standards) are not as effective as they could be, if crime prevention really is our goal.

New Zealand's offshore trusts regime is one of the most egregious gaps. It doesn't prevent crime. The design of New Zealand's offshore trusts regime inadvertently enables and facilitates crime.

As a nation, is that what we want? If we do nothing, apart from a flurry of new stories unearthed by journalists, the issue probably will fall away, for a while. But proactive enforcement agencies elsewhere have already started criminal investigations, not least just about every US three-letter acronym enforcement agency.

And Canadian authorities have already gained direct access to new sources of evidence.

If New Zealand offshore trusts are being used as part of the secrecy and ownership webs of drug cartels, arms and human traffickers, despots, and possibly even terrorists, continued complacency will hardly augur well for any future administration.

It may take years to come out in the wash, but if we don't bother even to close off the criminal elements, the risk of losing our reputation on the world stage can only increase.

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