The Pandora Papers and tax investigations in Canada

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The recent release of the “Pandora Papers” marks the third database leak containing confidential banking information regarding alleged off-shore tax havens and the identities of those who benefit from these accounts. The International Consortium of Investigative Journalists previously released the “Panama Papers” in 2016 and the “Paradise Papers” in 2017.

The Pandora Papers have exposed how off-shore accounts are systematically used to structure finances of highly affluent individuals, their corporations and trusts.[1] The leak contains bank statements, officer lists, jurisdictional information, and incorporation documents that are tied to a long list of named politicians, celebrities, and athletes. In Canada, these leaks have spurred growing calls for investigations into potential tax evasion and tax fraud.

While the trilogy of leaks seems to promise easy access for auditors and investigators, the reality is that so far these leaks have not been very fruitful. The Canada Revenue Agency (CRA) publishes the results of investigations into serious tax crimes on their website and includes statistics such as warrants executed, conviction rates, and the fiscal impact both lost and realized as a result of tax evasion.[2] At first glance these numbers are remarkable, for example in 2019-2020:

- 244 cases were referred for criminal investigation;
- 196 search warrants executed; and
- 33 files where charges were laid.

Since 2015, the CRA reports that it has collected approximately $5 billion through audits of high net-worth individuals and large multinational corporations. However, no individual has been successfully convicted in Canada despite a shift towards prosecutors seeking jail time and changes to the Voluntary Disclosure Program (the VDP) meaning that it is generally no longer available to individuals audited as a result of the leaks. Further information related to the narrowing of benefits and advantages of the VDP can be found in our previous article from January 2018.[3]

In the most recent Federal election, all major political parties promised to increase CRA funding and focus efforts on wealthy individuals and corporations to try to raise revenue

and close the so-called “tax gap.” Specifically, the Liberal Party has promised to increase CRA resources by $1 billion per year to “close Canada’s tax gap” and “combat aggressive tax planning and tax avoidance” found in the very structures and systems seemingly revealed by the Pandora Papers.[4] This follows the $1.9 billion in additional funding since Budget 2015 aimed at “strengthening tax compliance, with the objective of preventing underground economic activity, tax evasion and aggressive tax planning.”[5]

Given the campaign promises and the recent leak of the Pandora Papers, we expect to see the CRA increase their focus on trying to collect its fair share of tax revenue that is reportedly being improperly moved out of Canada.

There are a number of complexities encountered during tax audit and tax evasion investigations. These challenges, combined with the serious potential penal repercussions for engaging in tax evasion, it is critical to seek legal advice should one be subject to an audit and/or investigation. Members of BLG’s Tax Group and Investigations and White Collar Defence Group or the lawyers listed below are available to discuss any questions you may have regarding tax audit disclosures and how these leaks may affect you or your business.

[1] “Pandora Papers” , International Consortium of Investigative Journalists, *An ICIJ Investigation*, 2021.

[2] “Better results: The CRA at work for you”, Government of Canada, Date modified, October 2, 2021.

[3] “Don’t Delay; Disclose Today: Substantial Changes to the Voluntary Disclosure Program Take Effect March 1, 2018,” BLG Publication, January 11, 2018.

[4] “Forward. For Everyone.” (2021) at 75, Liberal Party of Canada.

[5] “Estimating the return of additional federal spending on business tax compliance”, Office of the Parliamentary Budget Officer, October 8, 2020.

By

Laurie Goldbach, Greg Rafter

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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