Panama Analysis

ATU (Panama) SA

April 2017

1. Law No. 52

Law No. 52 of October 27th, 2016, which among other rules imposes accounting duties on all Panamanian legal entities entered into effect on January 1st, 2017.

From 2017, accounting records and supporting documents for all legal entities incorporated in Panama (both Corporations and Foundations) are required to be kept for a period of at least five (5) years. Although the new law does not stipulate any specific form of accounting, it states that the records should consist of a general ledger and a journal at minimum.

These records and documents can be prepared and kept outside the territory of Panama. Nevertheless, they must be handed over to the Resident Agent if a request is made. In addition, the Resident Agent must be provided with the physical address where the documents will be kept and the contact details of the person that keeps them under custody. If there are any changes, the Resident Agent needs to be informed within 15 days.

In case of violations of Law No. 52, a fine of USD 1'000 will be imposed and further penalties of USD 100 will apply for each day that the default continues. Furthermore, the Resident Agent will need to resign within 15 days if the accounting records are not organized upon request.

The new law also stipulates that a copy of the share register must be kept by the Resident Agent. Furthermore, a mandatory written approval must be provided by the exiting Resident Agent in order to change the Resident Agent in the future. This provision does help to increase credibility and legal certainty with regard to the Panama system but it also provides a strong tool to Resident Agents to block transfers of mandates.

The measures that were introduced with Law 52 can be seen as a direct result of the Peer Review of the Organization for Economic Co-operation and Development ('OECD') back in August 2016 as this report addressed some of the shortcomings of the Panamanian system at the time.

2. FATCA and CRS

In our Analysis from May 2016, we reported that the Intergovernmental Agreement ('IGA') between the U.S. and Panama in respect to FATCA had been signed on April 27, 2016. The step that followed was to 'legalize' this agreement. Therefore, on October 24, 2016, Law No. 47 was published, approving said IGA and putting into place the FATCA rules.

With Law No. 47, all Panamanian financial institutions that are subject to reporting will be obliged to automatically provide

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financial information corresponding to reportable U.S. Accounts to the U.S. Internal Revenue Service ('IRS'). The report will be made through the Panamanian General Directorate of Revenue ('DGI'). The DGI will then be in charge of making the exchange of information directly with the IRS. The first exchange on this matter is scheduled for September of the present year (2017).

We also mentioned in our previous Analysis that Panama had announced its commitment to implement Common Reporting Standard ('CRS') for 2018. Following this commitment, Law No. 51 of October 27th, 2016, was enacted, which establishes the regulatory framework for the implementation of the exchange of information not only regarding FATCA but taking into consideration CRS as well.

Furthermore, Panama has meanwhile approved the Convention on Mutual Administrative Assistance on Tax Matters of the OECD which will enter into effect on July 1, 2017. Panama will only exchange financial information automatically with countries that have an agreement directly with Panama (bilateral approach). Panama does stress on this important "pre-requisite" to carry out any exchange of information under CRS.

These recent changes and the new laws clearly show that Panama is making strong adjustments in transparency matters in order to avoid the possible treatment as an uncooperative jurisdiction, which endangers the diversified and international economy of the country.

3. Treaties & Agreements

3.1 Free Trade Agreements (FTAs) and international relations

The negotiations of the FTA between South Korea and six Central American countries (Panama, Guatemala, Nicaragua, El Salvador, Honduras, Costa Rica) – as a whole, organized by the Secretariat for Central American Economic Integration ('SIECA') – which had initiated in September 2015 and which were mentioned in our previous report finally reached a conclusion in November 2016. Then, the countries agreed on a final free trade deal. This is the first time that an Asian country reaches an FTA with six Central American Countries simultaneously.

The Panamanian Vice-president, Isabel de Saint Malo, and the president of the Parliament of Hungary, Lázló Kovér, held a meeting earlier this year in Panama regarding potential cooperation and commercial opportunities between the two countries. A visit in Hungary by a delegation of Panama is planned for May 1st, 2017 and will most likely lead to an increased cooperation on economical but possibly also taxation matters.

3.2 Double Tax Treaties (DTTs)

The number of negotiated DTTs remains at twenty (20). Panama has negotiated DTTs with the following countries:

Mexico	Spain
South Korea	Singapore
Italy	Qatar
Ireland	Israel
Belgium	Portugal
Czech Republic	Bahrain
Barbados	Luxembourg
Netherlands	France
U.A.E.	U.K.
Austria	Vietnam

At the moment, three (3) of the aforementioned DTTs have not been signed yet. These are the ones with Austria, Bahrein, and Belgium. The rest of these DTTs are signed by both parties, ratified and currently in effect. These are the DTTs with Mexico, Barbados, Spain, Qatar, Luxembourg, Holland, Singapore, France, South Korea, Portugal, Ireland, Czech Republic, U.A.E., U.K., Israel, and most recently the ones with Vietnam and Italy.

3.3 Tax Information Exchange Agreements (TIEAs)

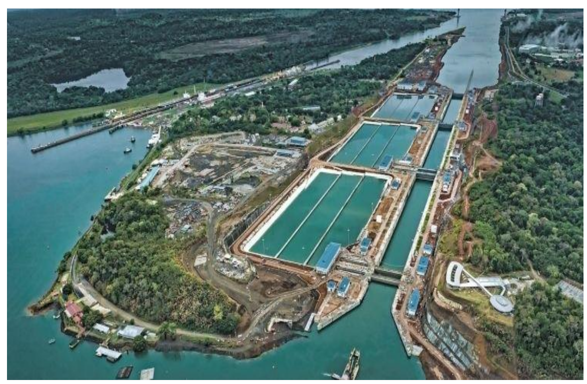
Panama has now increased the number of TIEAs to ten (10). It signed the tenth of these agreements with Japan in August of last year (2016). The other nine (9) TIEAs are with the U.S., Canada and the Nordic Countries.

Currently the only TIEA of this list which has not been ratified yet by both countries and which is therefore not in force is the one with Japan. All the remaining nine (9) are in force (U.S., Iceland, Canada, Finland, Norway, Denmark, Sweden, Greenland, and Faroe Islands).

4. Economy

Regardless of the infamous so called "Panama Papers" involving the leak of 11.5 million private documents from the Law Firm "Mossack Fonseca", Panama's economic situation remained very solid and stable. The country managed to recover from the big reputational hit initially caused by this scandal and finish off another impressive year, closing 2016 with a GDP growth of 5.2%.

One of the factors that played a major role in maintaining the Panamanian economy in such a satisfactory position was the beginning of the operations of the new set of locks of the Panama Canal (the Canal Expansion) inaugurated on June 2016.



More than 500 ships made their transit through the new locks in its first 6 months of operation. Given the numbers and taking into consideration that these set of locks only functioned during the second half of 2016, it is expected that this new route will generate some even more promising returns for the present year and the future.

Another factor that contributed to the economy, in spite of the negative publicity, was Foreign Investment. In fact, it was an outstanding year for this sector in Panama. The Ministry of Commerce and Industry ('MICI') reported that 25 new Multinationals were established in Panama throughout 2016. Even better, these international investments into Panama were well diversified and included companies like Estée Lauder Companies (U.S.), Mondo Iberica (Spain), the Ando Hazama Corporation (Japan), and Elbert Software (Argentina).

Panama currently has a total of 134 Multinationals, which account for approximately 800 million (USD) in foreign investment and generated more than 5'000 direct jobs by the year end of 2016. Besides creating direct jobs, a lot of local businesses thrive through their presence and executives brought into Panama often tend to invest in the country as well.

5. Conclusion and Outlook

Last year encompassed several changes marked by new legislation resulting from the OECD pressure, the implementation of FATCA, and the commitment to CRS. This year we might encounter a few more changes connected to Panama's commitment to more transparency.

However, the mechanism of how the system will actually work in practice is still difficult to predict as actual guidelines and experiences of the authorities which shall implement controls on the traditional offshore businesses in Panama are still missing.

Taking into consideration other jurisdictions, we cannot rule out the possibility that Panama might require that general information of entities seeking a harbor in Panama will also need to be physically kept in Panama in all type of business relationships.

Despite of those changes, Panama perseveres on going strong and lives up to the designation as "The Hub of the Americas". Through economic diversification, ongoing infrastructure projects and developments, a firm banking sector, the Panama Canal, and the continued trust of foreign investors, the Central American country provides many options that are likely to result in another positive year.

The forecast coming from the Ministry of Economy and Finance ('MEF') projects that the economic growth of Panama for 2017 will be at 5.8%. Although the country will face further challenges in 2017 and beyond, Panama can be expected to remain the leader of growth in the whole region of Latin America.

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