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White Collar Defense and Investigations

With Comprehensive Panama Papers Database to Be Released Today, and White House Call for Comprehensive Action to Combat Offshore Tax Evasion, Affected Individuals Should Consider Immediate Action to Mitigate the Risk of Criminal Prosecution

Action Item: Today at 2:00 p.m. (EDT), a massive database of information from the leaked "Panama Papers" files will be made public for the first time, identifying the real owners behind over 200,000 offshore companies set up by the Panamanian law firm Mossack Fonseca. The database release today follows closely on the heels of President Obama's call to tighten U.S. laws and regulations to combat tax evasion through the illicit use of secret offshore bank accounts and shell companies. Individuals who believe they may be identified in the Panama Papers as the beneficial owner of an offshore company should consider prompt action to mitigate the risk of criminal prosecution and harsh financial penalties. The Internal Revenue Service ("IRS") currently offers a number of voluntary disclosure programs for individuals with unreported foreign financial assets, but time is of the essence and immediate action is required in order to qualify for such programs in light of the imminent release of more "Panama Papers" files.

At 2:00 p.m. (EDT) today, the International Consortium of Investigative Journalists ("ICIJ") will release a searchable database containing information on more than 200,000 offshore entities that are part of the "Panama Papers" investigation. The database is believed to be the largest ever release of records regarding the creation and maintenance of secret offshore companies and the identities of the individuals behind those companies. The information in this database comes from the Mossack Fonseca law firm in Panama and, according to ICIJ, includes "information about companies, trusts, foundations and funds incorporated in 21 tax havens, from Hong Kong to Nevada in the United States" and "links to people in more than 200 countries and territories." The database is expected to offer an unprecedented window into the previously-secret world of offshore tax evasion and the use of shell or nominee entities to conceal the identity of the real owner of the underlying assets.

The first release of Panama Papers records on April 3, 2016, which comprise over 11 million Mossack Fonseca files, sparked a global outcry over offshore tax evasion. In the United States, the Justice Department has opened a criminal investigation into the offshore tax schemes believed to be exposed by the Panama Papers leak, and New York's Department of Financial Services has ordered 13 foreign banks to turn over records regarding their dealings with the Mossack Fonseca firm. Last Thursday, the Obama Administration announced significant

steps to crack down on money laundering, corruption, and tax evasion in the wake of the Panama Papers leak, and called upon Congress to quickly act to pass legislation addressing these issues. In particular, the White House announced the following:

- New rules to increase transparency and disclosure requirements that will enhance law enforcement's ability to detect, deter, and disrupt money laundering, terrorist financing, and tax evasion, including long-awaited final regulations on "Customer Due Diligence" that require financial institutions to know and keep records on who actually owns the companies that use their services;
- New regulations that expand upon existing law by adopting "Customer Due Diligence" requirements for certain prepaid credit and debit cards;
- New rules that close a loophole allowing foreigners to hide assets or financial activity behind anonymous entities established in the United States; and
- New legislation that would increase transparency into the "beneficial ownership" of companies formed in the United States by requiring that companies know and report their true owners.

The Obama Administration also called upon the Senate to finally approve tax treaties that have been pending for several years that would help crack down on offshore tax evasion.

The Panama Papers database to be released today by ICIJ is expected to include the names of thousands of offshore entities formed by Mossack Fonseca and, most importantly, the identities of the true owners behind such companies. ICIJ has stated that the database will not, however, include bank account records, emails and other correspondence, passports, or telephone numbers.

Individuals who have used offshore companies and believe they may be implicated by today's data release by ICIJ should consider taking immediate corrective action. The Internal Revenue Service has long maintained a number of well-publicized voluntary disclosure programs that afford non-compliant U.S. taxpayers the opportunity to avoid criminal prosecution by self-disclosing their non-compliance to the IRS, explaining the facts and circumstances of non-compliance, and paying back taxes, interest, and penalties. The most popular voluntary disclosure program offered by the IRS is the Offshore Voluntary Disclosure Program ("OVDP"), which is directed at non-compliant taxpayers with secret offshore assets. U.S. individuals identified as beneficial owners of secret offshore companies may take advantage of the OVDP to avoid criminal prosecution, but only if they commence the voluntary disclosure process before the IRS learns of their non-compliance from third-party sources, including whistleblowers. The IRS may take the position that a voluntary disclosure occurring after public release of an individual's name through the Panama Papers disclosure is too late and deem them ineligible for OVDP protection. Thus, time is of the essence, and individuals concerned about being named in the Panama Papers database should act quickly and consider whether a voluntary disclosure to the IRS is warranted. Inaction is not a viable option.

Since 2009, the United States has undertaken an aggressive enforcement campaign to combat offshore tax evasion using secret bank accounts in Switzerland and other tax havens, and the use of offshore structures to obscure the identity of the real owner of financial assets held outside of the United States. The following statistics tell the story:

- The Justice Department has criminally charged more than 100 U.S. accountholders that evaded U.S. tax laws using hidden offshore accounts, and nearly 50 individuals (mostly foreign nationals) who assisted them.

- Due to aggressive law enforcement actions, 80 Swiss banks have admitted to engaging in criminal conduct and paid more than $1.3 billion in penalties.
- Under threat of prosecution, more than 54,000 individuals have come forward to disclose their offshore accounts to the IRS through the OVDP and other voluntary disclosure programs, paying more than $8 billion in tax, penalties, and interest.
- Under the Foreign Account Tax Compliance Act signed into law by President Obama in 2010, more than 150,000 foreign financial institutions have agreed to report customer information to the United States, in an effort to ensure that tax cheats cannot hide assets offshore.

Blank Rome's Offshore Tax Compliance Team regularly advises clients as to the U.S. tax consequences of maintaining undisclosed offshore assets, and the compliance options available to such individuals to mitigate risk. Our team includes former federal prosecutors and Justice Department trial attorneys and experienced tax attorneys well-versed in the intricacies of the OVDP and other IRS voluntary disclosure options. Please contact a member of our team should you have any questions regarding the Panama Papers or any other aspect of offshore tax compliance.—

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