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The Difference Between Privacy and Secrecy and Tax Evasion and Tax Deferral

There has been a lot written in the press recently regarding the Panama Papers. In case you haven't heard of the Panama Papers, it's a treasure trove of data leaked to the press regarding the creation of thousands of companies in Panama by the rich, famous and politically connected around the world to provide secrecy regarding their affairs as well as evade taxes in most cases. The leak of this data has led to the resignation of the prime minister of Iceland and has brought unwanted attention to Vladimir Putin, David Cameron and many other world leaders that had structures in Panama.

The Panama Papers has led to unwanted attention on the murky offshore industry and the ability to hide assets with shell companies and potentially evade taxes. The fallout has also led the foreign press to write some unflattering articles filled with innuendo about U.S. jurisdictions such as South Dakota, Delaware and Nevada, implying the same secrecy and tax

evasion is happening here in the U.S.

Nothing could be further from the truth. In South Dakota, which has passed favorable privacy laws enabling families to protect their names in case of a lawsuit or protect family members from each other when it comes to knowing the existence of a trust, there is a big difference between secrecy and privacy. Because of both IRS regulation and state bank regulation, none of these entities can escape strict Know Your Customer, Anti-Money Laundering and Bank Secrecy act compliance in order to open a trust and associated banks accounts. In order to open a bank account, you need to have a tax identification number that enables the IRS to ensure these entities don't escape federal taxes. South Dakota has created a favorable state tax regime where trusts don't pay any state tax. This creates potential state tax deferral opportunities for out-of-state families until trustees distribute proceeds into their home state. Tax deferral is not tax evasion nor is it illegal, as has been implied by the foreign press.

For more information, please visit www.panamapapers.icij.org.

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