

**Unwelcome Attention
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“Fire and flames for a year; ashes for thirty”. That quote comes from Giuseppe di Lampedusa’s memorable book “The Leopard” about the fictional character Don Fabrizio, prince of Salina, living in Sicily in the 1860s. The book’s theme, about declining power and the advancing forces of democracy and revolution, is timeless.

Latin America has experienced those forces over its long history and while in this century democracy has not succumbed to revolution, economic decline has come to those countries in the region, including South America’s largest country, Brazil, that have relied heavily on exports of commodities as the demand for them dwindles. There may well be fire and flames for more than a year, even if there will not be ashes for thirty.

Although for Latin Americans dictatorships and expropriation are more an echo from the previous century, protecting what they have is even more important than ever before with the prevailing uncertainty that is not just regional, but also international. Had the perceptive Marcel Proust been alive today, he probably would have been the first contemporary writer this century (as he was in the last) to describe the permanent instability of our times which are, to my mind, equally precarious.

Nervous Latins like foundations and, not surprisingly, Spanish-speaking Panama, with its concentrated pool of corporate and fiduciary expertise, is often their first port of call; it has a proven foundation law that will not stray from civil law tenets, whereas its concept may well be tainted and misinterpreted in those jurisdictions with common law where it has been introduced.

Besides any other advantages, Panama only applies territorial taxes, so foundations with substantial income-bearing assets that are not within the country – whatever their type – will not need to make any local tax declarations.

Hurricane Alert

The problem confronting Latin Americans – not just those with foundations – is that although world economies are integrating, you cannot do the same with cultures; all you can do is try to understand them and shape a structure as best you can; ask Europe with its 24 official languages. If religious fervour in the Middle East needs this appreciation, in Latin America practitioners from Europe and elsewhere in the West have to understand the Latin culture of *confianza*, where privacy of an individual's affairs is paramount and only a tight-knit group of *confidantes* (usually family) are, normally, privy to them. This goes well beyond tax evasion, although governments in developed countries are quick to say that taxes are the sole premise for such secrecy; they are, admittedly, helped in this presumption by the fact that tax evasion is rampant in Latin America.

But sometimes perception does have to yield to reality, which is certainly so with the advent of the OECD's Common Reporting Standard and Europe's determination to have public registers which might shine a light on the activities of Latin Americans already worried about the level of security of official data in their own countries, not to mention – depending where they live – kidnapping, blackmail, violence or intimidation. If FATCA can be likened to a category 3 hurricane, CRS promises to reach category 5 in intensity in Latin America.

While Panama, the region's leading Spanish-speaking all-round offshore centre, has agreed with the principle of automatic exchange of information from 2018, President Juan Carlos Varela, with a nod to *confianza* and apprehension about how secure the confidentiality of information held by some other governments is, has said that exchanges will only be done on a bilateral basis, and provided a satisfactory degree of comfort concerning the protection of confidentiality is present. After all, America, will only exchange sensitive tax information subject to its own criteria which sets out stringent privacy and technical standards. Besides that, the US has refused to participate in CRS, even although critics point out that by not doing so, gaps in the transparency fence have been left for Latin Americans and others to drive a horse and carriage through; Tax Justice Network reckons that it is now the third most secretive jurisdiction.

Don Fabrizio was called the Leopard after the family crest. *Confianza*, embedded in Latin culture, has no crest, but it won't change its spots; adapting to the full glare of transparency is going to be a painful, prolonged journey for families in Latin America.

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