

# TIEA with US Just Favours One Party of the Treaty

Interview with Eduardo Morgan Jr., Chairman of the Board, Morgan & Morgan Group, Panama



**Link: The Panamanian government concluded a Tax Information Exchange Agreement (TIEA) with the US. What do you think about it?**

*Eduardo Morgan Jr.:* I have never seen a worse treaty. It demands that Panama shares information about US citizens with Panamanian accounts. This favours only the US as Panama's territorial tax system does not need information from the US. The US neither gives information on bank deposits from foreigners to any country (except for Canada) nor applies it the "know-your-client" rule to force the States to have information on the identity of the beneficiaries of corporations and LLCs.

**Link: What do you consider worst about this treaty?**

*Eduardo Morgan Jr.:* The worst part of the TIEA is that it is retroactive for three years. This violates the Panamanian constitution and de facto turns into criminals every US taxpayer with bank accounts in Panama – including Panamanians with dual citizenship.

This is an infringement of the Panamanian constitution: for lack of protection to Panamanian citizens and for turning them retroactively into criminals.

The treaty has still to be approved by the president and ratified by the National Assembly. It is so bad, one-sided and outrageous against human rights and good common sense that I

strongly hope it will not be approved without important revisions.

**Link: If the mafia, terrorists or drug traffickers want to hold money in banks, is this easier in the US or in Panama?**

*Eduardo Morgan Jr.:* In 1997, the director of the Financial Crimes Enforcement Network (FINCEN), the investigative arm of the treasury department, told me that he had sent undercover agents to open bank accounts in Panama and that they could not open even one. The same group went to Orlando, Florida, and was able to open all accounts it wished. In 2007, the same results were published by the newspaper "US Today" in a report on money-laundering in Panama and the US.

There is also the study of the Australian professor Jason Sharmar about money-laundering in the US and Panama's seriousness in controlling the misuse of its banks and corporations. It was reported in "The Economist" of 26<sup>th</sup> March 2009 under the title "The G20 and Tax Haven Hypocrisy" and indicates that Panama was one of five jurisdictions where it was not possible to open bank accounts or to buy shell companies without proper identification. According to this study, the US "is the worst on this score, worse than Liechtenstein and worse than Somalia". He was able to open bank accounts, buy LLCs or corporations without proper identification; in some

cases, the shell company he bought came with a bank account included. All this was also confirmed by the US Government Accountability Office (GAO) report of April 2006.

**Link: The US still accepts that several States harbour companies with unknown owners. Why?**

*Eduardo Morgan Jr.:* After the GAO report on misuse of corporations and LLCs for money-laundering, tax evasion and other crimes and the difficulty of the authorities to find the criminals because of the lack of information on their identities, US senator Levin presented a bill to make the "know-your-client" rules on the incorporation of companies and LLCs obligatory for the States.

In Panama, only lawyers can form companies and act as Resident Agents; together with the names and addresses of director and officers, their name and address are recorded at the Public Registry and on the internet. With this information and the lawyer's duty to know his client and to reveal him in case of a proper investigation, it is almost impossible not to find the culprit even if the company issued bearer shares.

In the States, this is not required and in some cases, not even the FBI was capable of finding persons accused of using a corporation for money-laundering. So far, the effort of senator Levin was futile due to very strong opposition from the States, especially from Delaware and Nevada, the leaders in corporation business. In Delaware, 25% of the budget comes from annual fees of corporations and LLCs sold mainly abroad for their characteristic to hide the owners' identity. For these companies, no report has to be presented, only the fees have to be paid, and if their activities are carried out abroad and the owners are foreigners, they are tax-exempt.

**Link: The Foreign Account Tax Compliance Act (FATCA) says that international banks will not be able to do business with US banks unless they provide information about US taxpayers. What about this argumentation?**

*Eduardo Morgan Jr.:* This legislation will have consequences: many banks will decide not to have US clients whereas other ones will charge US clients for the additional costs. Furthermore, this move will make it more difficult for US citizens to do business abroad. Considering that 46% of US company sales are carried out abroad, this will affect the competitiveness of US corporations and the employment in the US. The effect of FATCA will be contrary to its intention. Sooner or later, this piece of legislation will be amended.

**Link: Talking about tax havens: which country deserves this term, Panama or the US?**

*Eduardo Morgan Jr.:* Panama does not satisfy any conditions characterising a tax haven. The income tax on individuals and corporations is comparable to the US; foreign income is not taxed but this is not a decisive factor to consider a country as tax haven. Panama does not have any tax law benefitting only foreigners. But the US does not tax foreign passive investment (bank deposits' interest, capital gains, etc.) and does not give information on passive investment of their nationals to other countries. With the Qualified Intermediary agreement, it gives total anonymity to the clients of the foreign financial intermediary; not even the IRS is given the names.

**Link: And how is the situation of bank deposits of non-residents?**

*Eduardo Morgan Jr.:* I would like to quote from the study "Privately Held Deposits in Secrecy Jurisdictions" published last March: "The three jurisdictions holding the largest amount of non-resident deposits are: the United States, the United Kingdom and the Cayman Islands, each of which holds over USD 1.5 trillion dollars in private, foreign deposits. The United States is the largest holder, with over USD 2 trillion dollars." According to the study, the US also ranks highest on the Financial Secrecy Index identifying the jurisdictions most aggressive in providing secrecy in international finance.

**Experience:** Minister of Government and Justice, 1968. Personal Envoy of the President of Panama before the Government of Japan, 1979-1982. Ambassador of the Republic of Panama in Washington, D.C., USA, 1996-1998. Chairman of the Center for the Resolution of Conflicts in the Americas and the Caribbean, 2008. **Education:** LL.B., Universidad de Panamá, Law School, 1961. LL.M., Yale University, Law School, USA, 1969.

