



Excerpt from eBook

IRS Tax Audits and Collections

International Tax Evasion: Money Laundering

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Gary S. Wolfe has over 34 years of experience, specializing in IRS Tax Audits and International Tax Matters including: International Tax Planning/Tax Compliance, and International Asset Protection.

As of July 2016, Gary Wolfe has internationally published 15 books and 28 articles. Gary has received 14 international tax awards from five different Global expert societies in LONDON/UK including being voted one of the 100 leading world's law firms with votes from over 150,000 voters in over 160 countries with the following award: Global 100 (2016) (KMH Media Group) - CA/US International Tax Planning Law Firm of the Year.

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PART III – International Tax Evasion

Chapter 10 - International Tax Evasion: Money Laundering

International tax evasion has been the “Sport of Kings” for centuries. Cloaked in secrecy, done surreptitiously, no one could ever prove it. The “Super-rich” (i.e. the top 1%) get away with “tax cheating” and used their “tax cheating proceeds” to buy assets; e.g., real estate, boats, planes, cars, diamonds and art (all of which may constitute “money laundering”).

The willful tax cheating by the super-rich may be “tax treason” defined: the betrayal of a trust, treachery; the offense of attempting by overt acts to overthrow the government of the state to which the offender owes allegiance.

So why do tax cheats get away with treason? Why do governments all over the world let the richest people cheat on their taxes and commit “tax treason”? What is the bottom line to tax treason? Is it that billions of people around the world suffer and live without adequate nutrition, housing, clothing, health care and education? Who is responsible for this tax mess?

With the proliferation of the Internet as an information database, after centuries of secrecy, the truth is coming out. Transparency is coming of age, and for the super-rich tax cheats, their days appear numbered.

Consider Recent Events in Spain and Africa

In Spain, there are 1,600 cases involving embezzlement, tax evasion, kickbacks and Swiss bank accounts, including: the former treasurer of Spain’s ruling party, indicted, the former head of the country’s Supreme Court resigned in disgrace. And now, Spain’s Princess, Cristina, could land in jail and topple King Juan Carlos and the Spanish monarchy.

In April 2013, Princess Cristina was indicted on charges of complicity in fraud, tax evasion, money laundering and embezzlement, the first member of a European royal family to be charged in a serious crime in centuries.

The case revolves around her husband, Duke of Palma, Inaki Urdangarin, who is accused of fraud, tax evasion, forgery and the embezzlement of \$7.8 million from regional governments through inflated contracts via their non-profit organization, Institute Noor.

Judge Jose Castro oversaw the Princess’ indictment, saying she gave her consent to her husband’s “shady deals”. A specially appointed anti-corruption prosecutor requested the indictments be dropped. On May 7, 2013 an appeals court ruled to dismiss the case in a preliminary judgment. Judge Castro is likely to pursue another indictment.

In Africa on 5/10/13, a 120 page Africa Progress Report was issued stating \$63 billion is lost annually in Africa through tax evasion, corruption, secret business deals, more than

all the money coming into Africa through aid and investment. Despite Africa's surging economic growth, fueled by a global resources boom, poverty and inequality have worsened.

Kofi Annan, the former U.N. Secretary General, who heads the panel that wrote the report, stated:

"It is unconscionable that some companies, often supported by dishonest officials, are using unethical tax avoidance, transfer pricing and anonymous company ownership to maximize their profits while millions of Africans go without adequate nutrition, health and education." The report stated:

"Revenues that could have been used to impact lives have instead been used to build personal fortunes, finance civil wars and support corrupt and unaccountable political elites. Revenue losses on this scale cause immense damage to public finance and to national efforts to reduce poverty. Some political elites continue to seize and squander the revenues generated by natural resources, purchasing mansions in Europe or the U.S. or building private wealth at public expense.

In the U.S., tax evasion is a felony (under Internal Revenue ("Code") Code section 7201) with a penalty of up to five years in prison. In addition, the crime of tax evasion includes other crimes for which a U.S. taxpayer may be prosecuted, including:

1. Obstruct Tax Collection. Under Code section 7212, a penalty of up to three years in prison;
2. Conspiracy to Impede Tax Collection. Under 18 U.S.C. §371, a "Klein Conspiracy" in which two or more persons agree to "impede" IRS tax collection, with a penalty of up to five years in prison;
3. Filing a False Tax Return. Under Code section 7206(1), up to three years in prison;
4. "FBAR" Violation. Willful violation re: disclose foreign aggregate accounts over \$100,000 up to ten years in jail. 31 U.S.C. Sec. §5322(b),

If federal prosecutors throw the book at tax cheats, they may face over 25 years in prison.

Tax evasion by itself is punishable by over 25 years in prison. In addition, separate crimes may include: money laundering, wire fraud and mail fraud (each of which are separate felonies punishable by 20 years plus, in prison). So if a tax cheat commits tax evasion, money laundering, wire fraud and mail fraud, their maximum penalties may be over 85 years in prison (with an additional 10 years if the violation affects a financial institution).

For U.S. persons who are involved with international tax evasion (i.e. they collaborate with tax cheats from other countries helping those international tax cheats commit tax

evasion and launder money), they may be held liable for money laundering, a separate offense, since foreign tax evasion is a predicate offense, a Specified Unlawful Activity (“SUA”); i.e. a foreign crime, which subjects the U.S. person to penalties for money laundering.

In the Pasquantino case, (96 AFTR 2d 2005-5392 (2005)), the U.S. Supreme Court determined that a foreign government (i.e. Canada) has a valuable “property right” in collecting taxes (in Pasquantino, “excise taxes”), The Supreme Court held that international tax evasion (i.e. taxes due to a foreign government) is a “Specified Unlawful Activity (“SUA”), which is both a predicate offense for money laundering (i.e. it is a “foreign crime”), and is a violation of the wire fraud statute (18 U.S.C. Sec. 1343) (i.e. the uncollected Canadian excises were “property” for purposes of the “fraud” element in the “wire fraud statute”).

In Pasquantino, the U.S. Supreme Court held that the defendant’s failure to pay taxes inflicted economic injury on Canada “no less than had they embezzled funds from the Canadian treasury. (Defendants) used interstate wires to execute a scheme to defraud a foreign sovereign of tax revenues. Their offense was complete the moment they executed the scheme inside the U.S., the wire fraud statute punishes the scheme, not its success.

International tax and estate planning may lead to tax evasion (and additional crimes: money laundering, mail fraud, wire fraud) if the U.S. taxpayer either fails to pay tax due to federal, state or foreign governments. The U.S. taxpayer may be culpable for violation of U.S. wire fraud laws, money laundering laws or mail fraud laws, which may lead to asset forfeiture.

Money laundering is the disguise of the nature or the origin of funds. It includes the transmutation of tax evasion proceeds into personal assets or 3rd party distributions (to family, friends, and others).

Income tax deficiencies (i.e. failure to pay tax due) which create “tax cheating” proceeds, when used to purchase assets or make investments may subject the taxpayer to separate felonies:

- Tax Evasion (failure to pay the tax due);
- Money Laundering. The use of proceeds from a specified unlawful activity, i.e. tax evasion, to purchase or make investments in assets which transmute the original illegal tax-cheating proceeds into another asset;
- Mail Fraud. The use of the postal system to effectuate a scheme to defraud. 18 U.S.C. Sec. 1341;
- Wire Fraud. The use of the telecommunications facilities to effectuate a scheme to defraud. 18 U.S.C. Sec. 1341.

