Excerpt from eBook

Offshore Tax Evasion: The IRS and Swiss Banks

International Tax Evasion: Money Laundering

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Chapter 9 – 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.

Money Laundering

Money laundering may be linked to tax evasion. A violation of the money laundering statutes includes a financial transaction involving the proceeds of a specified unlawful activity (“SUA”) with the intent to either:

1. Promote that activity; 2. Violate IRC Sec. 7201 (which criminalizes willful attempts to evade tax);

3. Violate IRC Sec. 7206 (which criminalizes false and fraudulent statements made to the IRS).

The tax involved in the transaction (and which is avoided) may be any tax: i.e. income, employment, estate, gift and excise taxes (See: U.S. Dept. of Justice, Criminal Tax Manual, Chapter 25, 25.03(2)(a).

Under the money laundering statutes, the IRS is authorized to assess a penalty in an amount equal to the greater of the financial proceeds received from the fraudulent activity, or $10,000 (under 18 U.S.C. Sec. 1956(b)), the authority is granted by statute to the U.S. not the IRS, and is enforced either by a civil penalty or a civil lawsuit.

Violations of statutes for mail fraud, wire fraud, and money laundering are punishable by monetary penalties, civil and criminal forfeiture. (See 18 U.S.C. section 981 (a)(1)(A) which permits property involved in a transaction that violates 18 U.S.C. sections 1956, 1957 and 1960 to be civilly forfeited).

Civil forfeiture statutes include:

1. 18 U.S.C. Sec. 1956, which outlaws the knowing and intentional transportation or transfer of monetary funds derived from specified criminal offenses. For Sec. 1956 violations, there must be an element of promotion, concealment or tax evasion;

2. 18 U.S.C. Sec. 1957, which penalizes spending transactions when the funds are contaminated by a criminal enterprise;

3. 18 U.S.C. Sec. 1960, which penalizes the unlicensed money transmitting business.

Under 18 U.S.C. Sec. 981(b)(2), seizures are made by warrant in the same manner as search warrants. Under 18 U.S.C. Sec. 981(b)(1), the burden of proof is by a preponderance of the evidence. The property may be seized under the authority of the Secretary of the Treasury when a tax crime is involved.

Under 18 U.S.C. Sec. 982(a)(1)(A), if the offense charged is a violation of the Money Laundering Control Act, and the underlying specified unlawful activity is mail or wire fraud, courts may order criminal forfeiture of funds involved in the activity on conviction.

The U.S. Dept. of Justice Tax Division policy requires U.S. attorneys to obtain Tax Division approval before bringing any and all criminal charges against a taxpayer involving a violation of the Internal Revenue Code. Absent specific approval, additional criminal charges for wire fraud, mail fraud and money laundering would not normally be included (U.S. Dept. of Justice Criminal Tax Manual, Chapter 25, 25.01). If the additional criminal charges are approved, the taxpayer risks having the trust assets seized or forfeited.

Regarding asset seizure, the U.S. government may seize assets pursuant to a violation of the money laundering laws. In addition, the IRS has authority for seizure and forfeiture under Title

26. Under IRC Sec. 7321, any property that is subject to forfeiture under any provision of Title 26 may be seized by the IRS.

Code section 7301 allows for the IRS to seize property that was removed in fraud of the Internal Revenue laws. Code section 7302 allows the IRS to seize property that was used in violation of the Internal Revenue laws.

In the case of transfer of funds to an offshore trust, it can trigger a violation of U.S. money laundering laws and lead to asset forfeiture. For example, tax counsel may recommend a tax planning strategy, and provide instructions by telephone, email or U.S. mail, which include client's transfer of funds pursuant to tax counsel's instructions. These combined actions may trigger a violation of U.S. money laundering laws and lead to asset forfeiture.

Tax Counsel, Tax Evasion (and Money Laundering) Offshore Trusts

A U.S. taxpayer's failure to comply with U.S. tax law may implicate tax counsel in tax evasion. The IRS or the U.S. Dept. of Justice may allege that tax counsel aided and abetted the client in evading U.S. tax, if tax counsel:

1. Aided and assisted the U.S. taxpayer in the submission of materially false information to the IRS; Code § 7206(2), or

2. Assisted the client in removing or concealing assets with intent to defraud. Code § 7206(4).

For a U.S. taxpayer's transfer of assets to an offshore trust, despite receiving U.S. tax counsel's tax compliance recommendations, the U.S. taxpayer fails to comply with U.S. tax law, and tax counsel fails to ensure ongoing tax compliance, tax counsel may be implicated in money laundering.

If the U.S. taxpayer's tax noncompliance includes: tax evasion and transfer of the "tax evasion proceeds" to the offshore trust by wire transfer or U.S. mail, the transfer of funds may be classified by the IRS/U.S. Dept. of Justice as wire fraud or mail fraud, both of which are "specified unlawful activities" under the Money Laundering Control Act (18 U.S.C. Sec. 1956 and 1957), the U.S. taxpayer and their tax counsel may be criminally prosecuted for violation of the money laundering statutes.

Specified Unlawful Activities are listed in 18 U.S.C. section 1956(c)(7). SUAs are the predicate offenses for money laundering and come in three categories:

1. State crimes, 2. Federal crimes, and 3. Foreign crimes.

If the U.S. client transfers funds to an offshore trust under a tax counsel's tax-planning strategy and the U.S. tax client is not in compliance with U.S. tax laws (despite tax counsel's recommendations) then tax counsel may be exposed to IRS penalties:

1. Code section 6694 imposes civil penalties on tax preparers;

2. Code section 7212 imposes criminal penalties for interfering with the administration of the Internal Revenue laws.