



# International Tax Evasion and Money Laundering *Criminal Prosecutions*

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# THE WOLFE LAW GROUP

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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# **International Tax Evasion and Money Laundering: Criminal Prosecutions**

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The US Attorney Criminal Resource Manual Sec. 2101, defines criminal conduct for which includes domestic money laundering transaction (18 USC 1956 (a) (1), and international money laundering transaction (18 USC 1956 (a)(2). To be criminally culpable for money laundering a defendant must:

- 1) Conduct (or attempt to conduct) a Financial Transaction;
- 2) Knowing that the property involved in the financial transaction represents the proceeds of some unlawful activity (Specified Unlawful Activity);
- 3) The property must be in fact derived from a Specified Unlawful Activity;
- 4) The defendant conducts the financial transaction with one of four specific intents (Specific Intent), which includes "intent to engage in tax evasion or tax fraud" (18 USC 1956 (a) (1) (A) (ii).

The property involved in the Financial Transaction (i.e. the actual source of funds) must be one of the specified forms of criminal activity identified by the statute in 18 USC 1956 (c) (7), or those incorporated by the RICO statute (18 USC sec. 1961 (1).

A "Financial Transaction" is defined under 18 USC 1956 (c) (4) as a Transaction which affects interstate or foreign commerce and:

- 1) Involves the movement of funds by wire or other means, or

- 2) Involves the use of a monetary instrument, or
- 3) Involves the transfer of title to real property, a vehicle, a vessel, or an aircraft or
- 4) Involves the use of a financial institution which is engaged in, or the activities of which affect interstate or foreign commerce.

Transaction is Defined: (18 USC 1956 (c) (3) as:

A purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition. With respect to a financial institution, a deposit, withdrawal, transfer between accounts, loan, exchange or currency, extension of credit, purchase or sale, any other payment, transfer or delivery by, through, or to a financial institution, or a safe deposit box.

In conducting the Financial Transaction, the defendant must have acted with one of the following four specific intents:

- 1) Intent to promote the carrying on of a Specified Unlawful Activity (18 USC 1956)(a)(1)(A)(i);
- 2) Intent to Engage in Tax Evasion or Tax Fraud (18 USC 1956)(a)(1)(A)(ii);
- 3) Knowledge that the transaction was designed to conceal or disguise the nature, location, source, ownership or control of proceeds of the specified unlawful activity (18 USC 1956)(a)(1)(B)(i)

4) Knowledge that the transaction was designed to avoid a transaction reporting requirement under federal or state law (e.g. in violation of 31 USC 5313 (currency transaction reports), or 31 USC 5616 (currency and monetary instrument reports) or 26 USC 6050 I (IRS Form 8300)

## **Criminal Prosecutions**

Criminal prosecutions by the US Attorney pursuant to 18 USC 1956 (a) (1) for domestic money laundering transactions arise when the defendant was involved in a felony under federal, state or foreign law. To prove a violation of 18 USC 1956 (a) (1), the prosecutor must prove (either by direct or circumstantial evidence) that the defendant knew that the property involved was the proceeds of a felony.

The Prosecutor need not show that the defendant knew the specific crime from which the proceeds were derived. The Prosecutor must only prove that the defendant knew that the property was illegally derived in some way (18 USC 1956 (c) (1)). The Prosecutor must prove that the defendant initiated or participated in a FINANCIAL TRANSACTION.

Each separate FINANCIAL TRANSACTION must be charged separately in a separate count (under the case of US v. Prescott 42 F.3d 1165 (8th Cir. 1994) which held that charging multiple financial transactions in a single count is duplicitous). For example:

- 1) Count #1: individual earns \$100k from criminal activity (1st offense)
- 2) Count #2: individual withdraws \$50k (2d offense)

3) Count #3: individual purchases an asset (e.g. car) with the withdrawn \$50k.

3 Separate Counts – each transaction is charged in a separate count.

Violations of 18 USC 1956 have the following penalties:

1) A maximum 20 year prison sentence and a \$500k fine (or twice the amount involved in the transaction, which ever is greater)

2) Under 18 USC 1956 (b), a civil penalty may be pursued as a civil cause of action. The civil penalty is not more than the greater of \$10k or the value of the funds involved in the transaction.

## **18 USC 1956**

For Money Laundering, 18 USC 1956 (a)(2) defines international money laundering transaction. The proceeds of a certain crimes committed in another country may constitute proceeds of a specified unlawful activity for purposes of money laundering.

Criminal prosecutions pursuant to 18 USC 1956 (a)(2) arise when monetary instruments or funds are transported, transmitted, or transferred internationally and defendant acted with the requisite criminal intent (i.e. promoting, concealing, or avoiding reporting requirements).

18 USC 1956 (c) (7)(B) includes in the list of specified unlawful activity certain offenses against a foreign nation. Proceeds of certain crimes

committed in a foreign country may constitute proceeds of a specified unlawful activity for purposes of money laundering statutes.

The intent to engage in tax evasion in a foreign country may support a claim of a FINANCIAL TRANSACTION, which the defendant knows is an unlawful activity (i.e. tax evasion), whose proceeds represent the proceeds of AN UNLAWFUL ACTIVITY with the specific intent to commit tax evasion. The proceeds must be in fact derived from an unlawful activity.

The specific intent was the crime of foreign tax evasion (i.e. a foreign tax crime). Under 18 USC 1956 (a) (1)(A)(ii) the intent to engage in tax evasion is a specific intent, with the proceeds from the tax evasion is property involved in a financial transaction which represents the proceeds of some unlawful activity.

So if a foreign national commits tax evasion in their home country, takes the illegal tax evasion proceeds to the US and purchases US assets with the tax evasion proceeds then they may be liable for not only money laundering (a 20 year felony) but also for related felonies of wire fraud (20 year felony) and mail fraud (20 year felony) if they use the US inter-state wires to purchase the assets (e.g. wire transfer the funds or use the telephone to effectuate the transfers) or mail fraud if they use the US mails to mail the checks used to purchase the assets or other correspondence related to asset purchases in the US.



