

Offshore Tax Evasion - Another Perspective

After reading Gary Wolfe's excellent article entitled ["Offshore Tax Evasion: File Leaks Expose Secrets of the Rich"](#), it is important to note a few aspects of the reporting done to date that the media has failed to bring to readers' attention:

- a.) In many countries, including the US, it is not illegal or criminal in itself to set up an "offshore" or international account.
- b.) Once set up, the account may or may not have ongoing tax or reporting requirements depending on the country of the tax resident and ultimately how that account is structured.
- c) It is entirely likely (or really, a factual matter) that not all of these accounts identified will turn out to be illicit.

The statement or inference that all offshore account holders are tax evaders is no more true than the presumption that all onshore taxpayers are fully tax compliant. The latter, of course, is patently false. In 2009 in the US alone, it is estimated that there was a tax gap (or under reported tax liability) of \$400-\$500 billion. Also, the recent record penalties paid by HSBC (\$1.92 billion) for money laundering offenses (relating to Mexican drug cartels), along with other big names in the news such as ING, Lloyds, Wachovia and others, shows that the money laundering problem is not solely an offshore one, in fact, possibly the opposite as many offshore jurisdictions now have strict "Know Your Client" and anti-money laundering laws. Equally, the recent case involving the US and UBS wherein UBS paid a record \$780 million penalty and agreed to release the names of some 4,735 clients, demonstrates that some, if not all (as the media and government

agencies perhaps would have us believe), offshore account holders are non-compliant.

The point is that reports in the media tend to be skewed toward the sensational and fail sometimes to provide balanced reporting and thus, very often there is more to the story. And there is a story here, as clearly some taxpayers have been slow to get the message (of tax compliance and transparency) perhaps in no small part due to the fact that some offshore banks, notably some larger Swiss institutions, have shown an unwillingness, or perhaps, even an inability to transform their business model, that in past has relied heavily on bank secrecy. While others such as Lichtenstein, once home to anonymous numbered accounts, has been lauded for its prompt response to international pressures and enacting tax information agreements within Europe and the US.

In terms of financial jurisdictions, clearly there will be winners and losers as those who can, and will adapt to the new international climate of transparency will benefit, while those who do not, will continue to see erosion in their business and of their reputation. Frankly, the writing has been on the wall for those willing to acknowledge the signs. The failure of some is a denial of what has been a clear trend established some time considerable time ago (read: a decade or more).

In any event, it is imperative that clients take the proper legal advice to ensure that their international structures are compliant prior to their establishment and remain so during their existence. And for those clients that know (or suspect) that they are non-compliant, remedial steps can and must be taken immediately to avoid civil and/or criminal prosecution. The help is there for those who are willing.

Likewise for those high net worth clients that have not yet gone international but think it an important part of global diversification in terms of investment management, asset protection and greater regulatory flexibility, they need to understand that it is both a legal and prudent idea; with the proviso that it be done correctly. In the context of the US, there can be significant tax advantages with such planning that are Statutorily provided (on the assumption of course, that the rules and guidelines are followed) that exist as an intended result and until if/as/when the relevant laws are changed. Until that time, if it ever comes, taxpayers are freely permitted to reduce their tax liability to a legally guaranteed minimum provided that it is done so in a compliant and transparent fashion.

In the context of offshore planning, the days of "don't ask/don't tell" are decidedly behind us. Yes, there are still offshore tax evaders, much as there are still onshore tax evaders. What the media fails to note, or perhaps realize, is that this has been the case for some time now and that there is another side to the story.

Admittedly, compliant offshore tax planning may not sell many newspapers.

David Richardson
[Mid-Ocean Consulting Ltd.](#)