Tax avoidance – United Kingdom: Confidentiality, Tax Avoidance and Evasion August 22, 2013

Last Updated: 31 October 2013
Article by Howard Bilton

The Sovereign Group

Dennis Healy, when he was the UK Chancellor of the Exchequer, once said that "the difference between tax avoidance and tax evasion is the thickness of a prison wall." What he meant was that there is a fine line between illegal tax evasion, and legal tax avoidance. Put another way, if someone gets married and the unplanned consequence is that tax is saved that is lucky. If that person gets married and the main reason is to save tax, it is tax avoidance. If that person tells the tax authorities that they are married when they are not in order to save tax it is tax evasion.

Governments all around the world, need to find more money and are under great pressure to collect more tax. Tax departments are becoming more sophisticated and better at catching tax cheats. Many are mounting concerted campaigns to convince the public that tax avoidance is illegal and immoral. It is not the former but is arguably the latter. The public relations war is being lost by wealthy tax payers. The vast majority of the population is paid a straight-forward wage and has little or no opportunity to reduce their taxes. Even if there were tax saving possibilities it is likely that the fees for the required advice would be more than the tax saving. It is hardly surprising, then, that the majority do not like the idea that the wealthy minority employ professional advisors to reduce their taxes or simply hide their money, fail to declare taxable income and illegally evade tax.

As professional advisors, we clearly see nothing wrong in engaging in legitimate tax mitigation. That is not necessarily a view which the majority will agree with. See the furore over the tax planning undertaken by Amazon, Starbucks, Google etc. Frequently we find it necessary to point out to those who judge tax saving to be immoral that it is also possible for us to advise them how to pay more tax if they feel that any sort of tax saving is wrong. Rarely is that offer taken up.

There is a worldwide effort being made to prevent tax evasion. Swiss banks are now being forced to offer up details of clients so that their home tax authorities can check that the capital in their accounts has had tax paid upon it and that the revenue generated on the capital sum is also being taxed correctly. In many cases it appears that this is not the case and that some naughty people have been using Swiss bank secrecy to assist their efforts to evade tax by failing to declare correctly on their tax forms. Who would have thought it!

Another question we frequently hear asked is how the home tax authority will find out if an individual fails to declare their income correctly. It is a strange question from otherwise law abiding persons but the answer is that normally they find out because the tax payer tells them. The process of being caught out generally starts with a tax investigation. This could be triggered by an obvious disparity between lifestyle and declared income. Last Christmas the Italian authorities visited the ski resort of Cortina and started investigation procedures against the large number of Italian citizens who were arriving in Lamborghini’s and Ferrari’s but had been declaring either no income or only minimal income. They promised to conduct the same exercise on the Amalfi Coast this summer against those parking up in large boats. Investigations can start because another person is investigated and a connection is noted between them and the tax payer. Or it can start due to a random audit. Frequently the information which leads to an audit is supplied by an aggrieved ex-employee or spouse. Normally if a tax authority suspects that income is not being properly declared it will give the tax payer the chance to come clean and make a full disclosure of undeclared income. At this point the tax payer will have no idea what the tax authority knows – or if indeed they know anything. If the tax man does know about some undeclared income then he will not indicate what so the tax payer will have no information about what they are looking for. The burden of proof is always on the tax payer. They are guilty until proven innocent on tax matters even if their criminal code provides for innocence until guilt is proven beyond reasonable doubt on all other matters.

If the tax payer satisfies the authority that he has fully and properly declared everything previously undeclared the normal result is a tax bill, a hefty fine and interest. If he fails to come clean the normal result is criminal prosecution and frequently a prison sentence. Legend has it that a world famous jockey used to ride races all over the world and opened bank accounts wherever he raced. Most of what went into the foreign bank accounts was not declared as required back in his home country. On enquiry by his tax authority he reluctantly provided what he said was a list of all foreign bank accounts and undeclared income. He confirmed that this was indeed everything he had not previously declared. The tax authority then issued him with a substantial bill which he promptly offered to pay using a cheque drawn on an account he had failed to reveal. He went to jail for a number of years. Hence the joke that the only 18 stone man to ride a Derby winner was this jockey’s cell mate.

Most countries, have signed tax treaties which contain exchange of information clauses. All offshore financial centres including Gibraltar have been forced by the OECD to sign Tax Information Exchange Agreements (TIEAs) which can be used by onshore countries to obtain information about the ownership of offshore companies, trusts and bank accounts. Banking secrecy laws are being rolled back or removed altogether as evidenced by the details supplied recently by Lichtenstein and Switzerland to various tax authorities around the world.. The US have introduced FATCA which forces all financial institutions to automatically report any US client they deal with to the IRS. Other countries will be introducing similar acts soon. And finally if a tax authority cannot obtain the information legally then they are paying employees or ex-employees to “steal it” and give it to them. My law studies suggested to me that it was illegal to pay for stolen information or property but apparently this law does not apply to governments. Recently a Swiss banker who was actually jailed for assisting US citizens to evade tax was awarded US$120 million for handing over details of the tax evaders he had assisted. He did have to serve a year or more in jail as well but came out a rich man.

In short, banking secrecy and confidentiality has either completely disappeared or will completely disappear in the near future. Any tax plan which relies on the detail not being revealed is probably tax evasion and is almost certainly going to be discovered. The perpetrators, including their advisors, are likely to get into a great deal of expense and trouble. So get it right and seek professional advice. Getting it right will involve a degree of inconvenience and expense but should keep the tax payer out of trouble and out of jail. I suppose the other way of looking at it is that not seeking advice and just trying to hide taxable money involves two levels of saving: There is no need to pay professional fees and the end result is likely to be free board and lodge provided by your home penal authorities.

Do not take short cuts and just try and hide money. It will not work. There are legitimate structures available which will protect assets held abroad and ensure that the money within them is not subject to tax. So why risk being a tax evader if you can achieve the same savings and protection with a legitimate, legal and compliant structure?

Howard Bilton is a UK and Gibraltar barrister, professor at Thomas Jefferson School of Law, San Diego and Chairman of The Sovereign Group.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.