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THE TAX LAWYER

FATCA Tax Lessons From Lionel Messi Prison Sentence

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Star footballer [Lionel Messi](#) of FC Barca was convicted of tax fraud in 2016. So was his father Jorge, who may have had a much larger role than his son in setting up the chain of shell companies that was at the root of the criminal tax charges. Messi had hoped that his appeal to Spain's Supreme Court would clear his name. But the convictions of both Messi and his father were upheld. So were their prison sentences, with Messi facing 21 months. Ironically, his father's sentence was reduced to 15 months for his cooperation in the case. But the star athlete's prison term stands at 21 months.

Even so, sources say that neither is likely to serve jail time. Under Spanish law, a prison sentence of less than two years in a tax case can be converted into what amounts to probation. Some of the lessons from the case are obvious, some less so. Be accountable and be transparent are surprisingly universal lessons, applying to America's tax system seamlessly. One of the biggest themes is bottom line accountability. Even people with complex affairs who rely on professionals and trusted advisers to handle their affairs may not be able to entirely avoid responsibility. Signing a tax return, for example, requires some accountability.



One of Messi's primary defenses in the trial was that he simply did not understand. He said that he signed many documents without reading their contents. In some cases, he even acknowledged that he took steps he didn't understand, such as visiting a notary's office to set up a company to handle his finances, without understanding the content or nature of what was being done. Such a defense may not work in the U.S. either. According to the IRS, the test is whether there was a voluntary, intentional violation of a known legal duty. Willfulness is shown by your

knowledge of reporting requirements and your conscious choice not to comply.

Willfulness means you acted with knowledge that your conduct was unlawful—a voluntary, intentional, violation of a known legal duty. You may not have *meant* any harm or to cheat anyone, but that may not be enough. The failure to learn of filing requirements, coupled with efforts to conceal, may mean a violation was willful. Even willful blindness may be enough, a kind of conscious effort to *avoid* learning about reporting requirements. Prosecutors had suggested that fit Messi.

A related lesson is about transparency. Hiding things *always* looks bad. Spanish prosecutors wisely focused on the Messis' secrecy. The names of the beneficial owners of companies were hidden.

The Messis had companies registered in the UK, Switzerland, Uruguay and Belize. Some of the primary charges against Messi and his father involved their use of these shell companies. They were designed to avoid taxes on 4.16 million euros of Messi's income from image rights. It did not help that Messi's name came up in the Panama Papers.

For Americans, transparency is becoming almost a necessity. The IRS requires worldwide reporting and disclosure, and the consequences of noncompliance can be dire. The resources of the U.S. government on these points are vast. [FATCA](#)—the Foreign Account Tax Compliance Act—requires foreign banks to reveal American accounts holding over \$50,000. With a treasure trove of data, the IRS now has the ability to check. In many ways, a cover-up today can be far worse than the crime.

Using entities that look secret can make innocent activity [willful, meaning penalties or jail](#). A key element in Messi's case was just that, the clandestine nature of the tiered entity arrangement. The deal was structured to keep his name hidden, which may have had some non-tax basis. But the Spanish prosecutor made it clear that the opaqueness of the deal was key. Messi and his father have been dogged by allegations of tax maneuvers for years, and their ordeal may be close to coming to an end.

But as observers try to learn from their mistakes, accountability and transparency are likely to be universal lessons. If you don't understand, ask. If something is being covered up, ask why. If there is a good reason to hide ownership from the public, at least make very sure that the ownership is not hidden from the government.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.