Lessons From Europe's Big Soccer Tax Evasion Cases

by Robert W. Wood

Taxes have become a curious spectator sport. We all must pay them, and everyone has an interest in keeping their taxes as low as they can. Everyone knows that how you structure your affairs will impact your taxes. And celebrities are often in the hot seat, even facing potential criminal liability if the authorities say they have gone too far.

Real Madrid's Cristiano Ronaldo, the **world's highest paid athlete**, stands accused of tax evasion. Like fellow soccer star Lionel Messi - who was already convicted of tax fraud - Ronaldo's tax case is mostly about image rights and allegedly using shell companies to divert income away from tax authorities. These might sound like unique, multi-million dollar issues having nothing to teach regular-old taxpayers.

However, these cases contain surprisingly universal lessons. Hiding things nearly always looks bad. For Messi and his father, Spanish prosecutors focused on secrecy. The names of the beneficial owners of companies were hidden. The Messis had companies registered in the U.K., Switzerland, Uruguay and Belize.

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 also surfaced in the Panama Papers. Prosecutors allege that Ronaldo refused to provide Spanish tax authorities with complete accountings of earnings associated with his image rights.

Prosecutors claim that Ronaldo used an off-shore company, Tollin, to hide his income from tax authorities. They allege that Ronaldo filed tax returns that understated his income, defrauding Spain out of 14.7 million euros between 2011 and 2014. Ronaldo's agency, Gestifute, released a statement that off-shore structures are common for soccer players, and that Ronaldo's intent was always to comply with Spanish tax laws.

For Americans, the IRS requires worldwide reporting and disclosure, and the consequences of noncompliance can be severe. 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.

Advisers and accountability matter too. Messi's father Jorge may have had a much larger role than his son in setting up the chain of shell companies at the root of the criminal charges. The athlete's prison term was upheld at 21 months, but, his father's term was reduced to 15 months for his cooperation. 'Be accountable, and be transparent,' are surprisingly universal lessons, and certainly apply to America's tax system.

Signing a tax return requires some accountability. One of Messi's primary defenses in the trial was that he did not understand. He said he signed many documents without reading them. Such a defense may not work in the U.S. either.

According to the IRS, willfulness is a voluntary, intentional violation of a known legal duty. It is shown by your knowledge of reporting requirements, and your conscious choice not to comply. Even willful blindness, a conscious effort to avoid learning about reporting requirements, is enough. Prosecutors suggested that fit Messi.

As the steps that led Messi to be convicted and Ronaldo to be accused are picked over by commentators, accountability and transparency are key. If there are good reasons to hide your ownership from the public, make sure the ownership is not hidden from the government. Moreover, be careful about deals that appear to be almost entirely tax motivated.

For Ronaldo, prosecutors point to a large payment for image rights days before a Spanish tax law named for David Beckham Law was repealed in December 2014. The deal involved money for Ronaldo's image rights from 2015 to 2020. Given the facts, it may be hard for Ronaldo to say that he did not understand, or is ignorant of tax laws.

In virtually any tax system, everyone with income above a certain level must file a return. And in many cases - certainly with the IRS - you must sign tax returns under penalties of perjury. Maddeningly, the line between creative tax planning and tax evasion can be less clear than you might think.

Moreover, one can be prosecuted for failure to file, or for filing falsely. Famously, actor Wesley Snipes was convicted of three misdemeanor counts of failing to file tax returns. Filing falsely is a felony. As Snipes' misdemeanor convictions show, failing to file carries smaller penalties than filing fraudulently.

Snipes was one of the more high-profile criminal tax defendants in recent memory, facing prosecution on multiple serious felony tax evasion counts. In the end, it was a partial victory for Snipes, since he defeated the more serious felony counts. But he got prison time, reporting to jail on December 9, 2010. He was released in April 2013.

Many tax defendants who do sign and file tax returns try the, "I didn't read it" defense. American courts have consistently ruled that taxpayers have a duty to read their returns to ensure that all income items are included. Since as early as 1928, U.S. courts have held that even if all data is furnished to the return preparer, the taxpayer still has a duty to read the return and make sure all income items are included. See Mackay v. Commissioner, 11 B.T.A. 569 (1928).

In the U.S., most criminal tax cases come out of plain old civil audits. That fact alone is frightening. If an IRS auditor discovers something suspicious in a civil audit, the auditor can notify the IRS's Criminal Investigation Division. Notably, the IRS is not obligated to tell you that this criminal referral is occurring.

In fact, normally, the civil auditors will suspend the audit without explanation. You might be pleased, thinking that the audit is over, or at least mercifully stalled so that it might not ever resume. Meanwhile, the IRS can be quietly building a criminal case against you.

One big mistake is omitting income. Whether you receive IRS Forms 1099, W-2, K-1, or no reports at all, report all your income. If omissions of income are significant and do not appear to be unintentional, watch out. Excess or aggressive deductions are less likely to be viewed as seriously, but some of this is a question of degree.

False statements to the IRS are also a huge mistake. Conduct during the audit itself can be pivotal, and is one reason to hire professionals to handle it. Some of the allegations against Ronaldo relate to conduct during the audit.

The IRS is vast and imposing, but there is a discrete part of it that is criminal and not civil. If you are visited by an IRS Criminal Investigation Division Special Agent, you should consult with an attorney. You are not legally required to talk to them. In fact, the Fifth Amendment to the U.S. Constitution guarantees your right against self-incrimination. That means you can't be compelled to be a witness against yourself in a criminal case.

You might assume that by answering a few simple questions you will not hurt yourself or your position - especially if you are just a witness. Regardless of how adept you are at communication, speaking up may actually help the IRS build a criminal case against you. The IRS may (quite honestly) tell you that you are not the target of the investigation but merely a witness.

Even so, you are entitled to retain counsel. In the early stages of IRS criminal investigations, a person may be told he or she is a witness. You might think there is no harm in talking, that your cooperation will make it more likely that the IRS will appreciate you and leave you alone. Be careful. As the investigation continues, a witness can become a target.

Even if you are convinced you are merely a witness and will remain so, the U.S. Supreme Court has ruled that you have the right to assert your constitutional privilege against self-incrimination. See Bellis v. United States, 417 U.S. 85 (1974). The danger of getting flustered and misspeaking can be real. Particularly given the fluid nature of who is a witness and who is a target, statements you think sound innocent may not be.

Suppose you are simply asked if you do business with Joe or know Sally? If you answer falsely, you may face felony charges. See 18 U.S.C. Sec. 1001. Making a false statement can also be considered evidence of an attempt to conceal other criminal conduct. These risks can make it wiser to politely decline to answer questions, and have your attorney do so.

Big soccer stars and others in the limelight may be bigger targets. They may have much more income on their tax returns. But there are sobering lessons for all of us in these cases.