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Tax Shelters Not Über Alles

Some phrases sound unsavory, even untoward. To some people, "tax shelter" is increasingly one of them. It's not the reducing taxes part that seems objectionable. It's the sense of privilege and presumed tax gerrymandering that seems to surround them. Shelters can even rekindle our collective disdain for Leona Helmsley's "Only the little people pay taxes."

Of course, there's a long history of taxpayers arranging their affairs to lawfully minimize their taxes. Despite Joe Biden's "paying higher taxes is patriotic" gaffe, some famous tax cases eloquently enunciate the proposition that it's perfectly OK to pay less:

> "Anyone may arrange his affairs so that his taxes shall be as low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one's taxes. Over and over again the Courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible. Everyone does it, rich and poor alike and all do right, for nobody owes any public duty to pay more than the law demands." *Gregory v. Helvering*. The author of this oft-quoted case was Judge Learned Hand.

For some, trying to whittle down tax bills is a veritable hobby, even an obsession. As a tax lawyer for the last 30 years, I thank goodness there are such hobbyists! See Five True Tales From A Tax Lawyer and Five

[More True Tales From A Tax Lawyer](#). But tax shelters are another matter, and as a general rule, best avoided.

The latest company to learn that truism was [Deutsche Bank](#). It agreed to pay $553.6 million to settle a dispute over fraudulent tax shelters that deprived the U.S. Treasury of billions in tax revenues. Deutsche Bank even admitted criminal wrongdoing, although a non-prosecution agreement makes clear the bank won't be prosecuted for its part in promoting in selling the bogus deals.

The period in question went from 1996 to 2002, and included such now infamous tax shelters as:

- Foreign Leveraged Investment Program ("FLIP");

- Offshore Portfolio Investment Strategy (["OPIS"](#));

- Bond Linked Issue Premium Structure ("BLIPS");

- Custom Adjustable Rate Debt Structure (["CARDS"](#)), Currency Options Bring Reward Alternatives ("COBRA");

- Currency Option Investment Strategy ("COINS");

- Family Office Customized Partnerships ("FOCUS");

- FX Digital Options;

- FX Digital Swaps;

- Treasury Shorts;

- Hedge Option Monetization of Economic Remainder (["HOMER"](#));

- Margate;

- Market Linked Deposits (["MLD"](#));

- Personal Investment Corporation (["PICO"](#));

- Partnership Option Portfolio Securities ("POPS");

- Partnership Option Portfolio Securities Lite ("POPS LITE");

- Presidio Bond; and

- Presidio FX.

Deutsche Bank participated in approximately 1,300 deals involving over 2,100 customers. Interestingly, the deal the German bank signed with the Justice Department made it clear the $553.6 million payment is penalty-like in nature for tax purposes. Somewhat unusually, the agreement included the express statement that:

> "It is further understood that Deutsche Bank will not take any deductions on its tax returns, or seek any other tax related benefit, for any of the financial payments it makes pursuant to this Agreement."

But precisely where does one draw the line between abusive shelters and legitimate techniques and transactions that work (or have a reasonable chance at working)? Watch this space for a definition. In the meantime, if a financial deal promising outsize tax benefits has an acronym, that's a bad sign.

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