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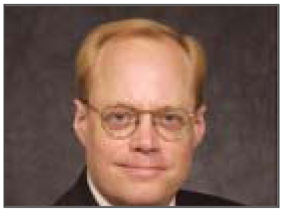

Robert W. Wood
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For Lionel Messi Or 'Hot Lips' Kramer, Secrecy Can Spell Tax Evasion

Argentinian star Lionel Messi, now earns $50 million a year and is #4 on Forbes' list of 100 highest paid athletes. Yet in the criminal tax charges he faces in Spain, it is hiding his identity that takes center stage. Spanish prosecutors say his tax evasion scheme relied upon hiding his name behind companies registered in the UK, Switzerland, Uruguay and Belize. The focus is on secrecy.

You can legally plan your taxes and be clever or even aggressive. But if you try to *hide* it, it shows you knew you're doing something wrong, prosecutors say. It is a familiar refrain in the U.S. too. Worldwide, secrecy is anathema. Invariably, the cover-up today is worse than the crime.

Swiss banking commenced its rapid fall in 2009 when UBS settled with the U.S. for depositor names and $780 million in penalties. Since then, the U.S. has peeled back layer after layer, in country after country, and institution after institution. Once the IRS and Department of Justice sliced through the Gordian knot of bank secrecy, Swiss banks settled or closed. Plus, banks worldwide have lined up to fork over everything under FATCA.

It's clear that secrecy is not just a problem for Mr. Messi. Secrecy is often the focus in U.S. cases too. Take Bernard Kramer of Florida, who at age 83, pleaded guilty to conspiracy and submitting false tax returns. His offences covered 25 years of maintaining a Swiss bank account he called "Hot Lips."

From 1987 to 2008 he deposited and withdrew amounts surreptitiously with help from his Swiss bankers. When UBS was under fire in 2008, Mr. Kramer took steps to keep it secret and move the account. By 2010, he had moved it to Israel, again, for secrecy. Mr. Kramer failed to report earnings on the monies or to declare the accounts on FBARs.

He regularly dealt with Swiss bankers using the "Hot Lips" code. Using code is classic tax evasion, as are amounts under $10,000 to avoid detection. When Mr. Kramer is sentenced, he could face up to five years in prison and over $600,000 in restitution and penalties. Speaking of prison, it's clear that the feds want more of it, as with Beanie Babies creater Ty Warner.

He is ranked #663 of Billionaires and #209 on the Forbes 400. Mr. Warner already plead guilty to criminal charges over a Swiss account and paid a whopping $53M for Offshore Tax Evasion. But at his sentencing, he got probation, and that lack of jail time irked prosecutors. The feds have appealed his probation and will argue for prison time on September 17 in Chicago. Secrecy may feature there too.

The U.S. has always taxed worldwide income, but it turns out more Americans had secret offshore accounts than ever could have been imagined. Government victories have been astonishing, which makes the continued presence of the IRS voluntary disclosure programs all the more alluring.

The IRS is in its 5th year of voluntary disclosure programs and about fifty thousand Americans have participated. Any taxpayers who have failed to come forward clearly face even bigger risks now. FATCA, the Foreign Account Tax Compliance Act, requires foreign banks to reveal American accounts holding over $50,000. Virtually the entire world has agreed, even Russian and China.

Americans must report worldwide income and must file financial disclosure forms known as FBARs. It's harder to claim ignorance now, and there is a new focus on willfulness. But the willful question can be subjective, and many taxpayers want to sugarcoat their facts. It is easy to forget the cash money belt or the frequent transfers of amounts just under $10,000 to avoid detection.

Those are bad signs. The IRS is worried that more people should go into the more traditional OVDP rather than the Streamlined program. After all, evaluating your own conduct can be tough. No matter how innocent you may feel in your heart, a purpose to disobey the law can be inferred by conduct meant to conceal.

It's one reason these are troubling facts:

1. Setting up trusts or corporations.
2. Filing some forms but not others.
3. Reporting one account but not another.
4. Using another passport.
5. Telling your bank not to send statements.
6. Using code words in communications.
7. Visits in person.
8. Cash deposits and withdrawals.
9. Moving money from one bank or country to another.
10. Not telling your return preparer.

Sure, maybe you have some of these, but your advisers told you to do it? A "they made me do it" defense is unlikely to absolve you. The IRS programs include the OVDP and the Streamlined program, but the latter requires a certification of non-willfulness. There's one Streamlined program for U.S. Taxpayers Residing Outside the United States. There's another for U.S. Taxpayers Residing in the United States.

The IRS can audit Streamlined participants, and you may be more vulnerable than you think. The IRS and Justice Department have suggested that the latter is being used by some people who should go for the more expensive but much more secure program known as the OVDP. Increasingly, there's need for caution.

Contact me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.