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Lionel Messi Loses Appeal, Criminal Tax Case Heads Toward Trial



Lionel Messi. (JOSEP LAGO/AFP/Getty Images)

Argentinian superstar athlete [Lionel Messi](#) just lost a big one, an appeal to a Spanish court. He recently [scored his 400th goal](#) and earns over \$50 million a year, making him [#4](#) on Forbes' 100 highly paid athletes. At the World Cup he even won the Golden [Ball](#). And on image rights alone, between 2007 and 2009, he earned more than 10.17 million euros under contracts with Adidas, Danone, Pepsi-Cola, Procter & Gamble, and the Kuwait Food Company.

But a [Spanish court has rejected his tax appeal](#) against being named in a serious tax evasion case. It means his case goes ahead, and if he is convicted, it could even mean jail. Mr. Messi and his father stand accused of not paying over 4 million euros in taxes on earnings from image rights through shell companies in Belize and Uruguay. The younger Mr. Messi professed ignorance of the deals and even convinced prosecutors to call for the case to be dismissed.

However, the court says Mr. Messi “could have known and consented” to the creation of a fictitious corporate structure to avoid paying taxes and ordered the prosecution of the case to go ahead. Messi’s lawyers appealed but the court has stuck firm to the notion that one should know how their affairs are being conducted. “In this type of crime, it is not necessary for someone to have complete knowledge of all the accounting and business operations nor the exact quantity, rather it is sufficient to be aware of the designs to commit fraud and consent to them,” the court said.

There are multiple appeals still possible, and the fact that there’s no question of money to pay the taxes could help. The senior Mr. Messi already paid five million euros to cover unpaid taxes and interest. That could reduce any sentence should they be found guilty, which is still hardly a certainty. Yet the criminal tax case is worth watching.

Taxes have become a worldwide spectator sport, and the word of the decade is transparency. As Lionel Messi and his father face charges over what is being touted as a multi-million euro tax evasion scheme, Spanish prosecutors are focused on secrecy. They say the scheme relied upon hiding the names of the real owners of companies registered in the UK, Switzerland, Uruguay and Belize.

Americans are particularly unable to hide anywhere for any reason. [FATCA](#)—the Foreign Account Tax Compliance Act—is America’s global tax law. It requires foreign banks to reveal American accounts holding over \$50,000. The world has agreed, even Russian and China, and names are being revealed to the IRS.

Already in U.S. administrative cases with the IRS and tax prosecutions, trusts and companies are under fire. The IRS and DOJ use these common devices to enhance the willfulness that may be present. In many ways, the cover-up is worse than the crime. In some cases, such layers can make innocent activity [‘Willful’ Triggering IRS Penalties Or Jail](#).

A key element in Messi’s case seems to be the clandestine nature of the tiered arrangement. The deal was structured to keep his name hidden. The Spanish prosecutor alleges that money was routed through U.K. and Swiss companies and then to companies in Uruguay and Belize. The reason? To make it opaque.

Mr. Messi denies the allegations, but is understandably saying that his agent—er actually his former agent—did the deals without his knowledge. His father surely also had a larger role in the tax maneuvers than did the footballer.

All of this comes at a time when secrecy itself is under attack. The UK is moving to make company ownership entirely transparent. If current proposals pass into law, that may be replicated elsewhere. The topic of company ownership transparency is being discussed in Brussels too.

Nominee ownership used to be common. Nominees are straw-men listed as owners or directors of a company, but who are acting on behalf of someone else. As secrecy itself as come under attack, this once extremely common device is now more likely to be viewed as a problem that triggers others.

All indications are that Lionel Messi and his father have tried to settle their tax case and to pay the money and move on. But the message coming from Spanish authorities has been a stern one. They have been accused of evading 4.2 million euros in tax on earnings from sponsors. Details appear in the [formal complaint](#) filed by the prosecutor.

Today, secrecy and willfulness appear to be closely linked. Moreover, relying upon advisers may be necessary as a practical matter. Yet as Mr. Messi is finding, it comes with a cost.

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.