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Skipped FATCA Disclosures Can Be Criminal

Mess with FATCA, and you might face criminal charges. That is one lesson from a five-count superseding indictment charging Panayiotis Kyriacou, Arvinsingh Canaye, Adrian Baron, and Linda Bullock with conspiracies to defraud the United States by obstructing the functions of the IRS in its administration of the Foreign Account Tax Compliance Act ("FATCA"). FATCA requires foreign financial institutions to identify U.S. customers and report information about their financial accounts. FATCA's primary aim is to prevent U.S. taxpayers from using foreign accounts to facilitate the commission of federal tax offenses. A grand jury had already charged Kyriacou, Canaye, Baron, Bullock with conspiracy to commit securities fraud and money laundering conspiracy, and the superseding indictment adds tax charges.

"As alleged in the superseding indictment, Kyriacou, Canaye, Baron, and Bullock agreed to defraud the United States by opening foreign bank and brokerage accounts without collecting FATCA information to report to the IRS," stated United States Attorney Donoghue. "The charges announced today reflect the commitment of this Office and our law enforcement partners to combat tax evasion by identifying fraudulent offshore safe havens that facilitate hiding financial assets from the IRS and to prosecute those individuals who violate U.S. tax laws."

"The Justice Department and the Internal Revenue Service are committed to investigating and prosecuting those who promote and facilitate the use of offshore bank accounts to evade U.S. tax," said Principal Deputy Assistant Attorney General Zuckerman. "We will continue to pursue those around the globe who seek to violate the Foreign Account Tax Compliance Act and to help U.S. taxpayers conceal such accounts from the Treasury Department and the IRS."

For Americans, transparency has become 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. And the IRS and Justice Department take FATCA seriously.

As alleged in the superseding indictment, between August 2016 and February 2018, Kyriacou, an investment manager at Beaufort Securities, and Canaye, a general manager at Beaufort Management, together with others, conspired to defraud the United States by failing to comply with FATCA. In the fall of 2016, an Undercover Agent contacted Kyriacou and stated that he was a U.S. citizen interested in opening brokerage accounts at Beaufort Securities from which he could execute trades in several multi-million dollar stock manipulation deals. In furtherance of the stock manipulation scheme, Kyriacou and Beaufort Securities opened six brokerages accounts for the Undercover Agent. Even though a U.S. citizen would be the beneficial owner of each account, at no time did Kyriacou or Beaufort Securities request FATCA Information from the Undercover Agent.

In July 2017, Kyriacou introduced the Undercover Agent to Canaye and advised that Canaye could assist with the Undercover Agent's schemes. After meeting with the Undercover Agent and discussing the stock manipulation scheme, in January 2018, Canaye and Beaufort Management opened six global business corporations for the Undercover Agent. The Undercover Agent's name did not appear on any of the account opening documents.

In June 2017, the Undercover Agent met with Baron, Loyal Bank's Chief Business Officer. During the meeting, the Undercover Agent explained that he was a U.S. citizen and was involved in stock manipulation schemes. The Undercover Agent further explained that he was interested in opening multiple corporate bank accounts at Loyal Bank. In July 2017, the Undercover Agent met with Baron and Bullock, Loyal Bank's Chief Executive Officer. During the meeting, the Undercover Agent described how his stock manipulation deals operated, including the need to circumvent the IRS's reporting requirements under FATCA.

In July and August 2017, Loyal Bank opened multiple bank accounts for the Undercover Agent. At no time did Loyal Bank request or collect FATCA Information from the Undercover Agent.

The charges in the superseding indictment are merely allegations. The defendants are presumed innocent unless and until proven guilty. However, these charges may be chilling to others seeking to sidestep FATCA's web of reporting.

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