Gimme Shelter: Offshore Tax Planning, Evasion and Investigation, from the Rolling Stones to Apple Inc. to Swiss Bankers to the Panama Papers

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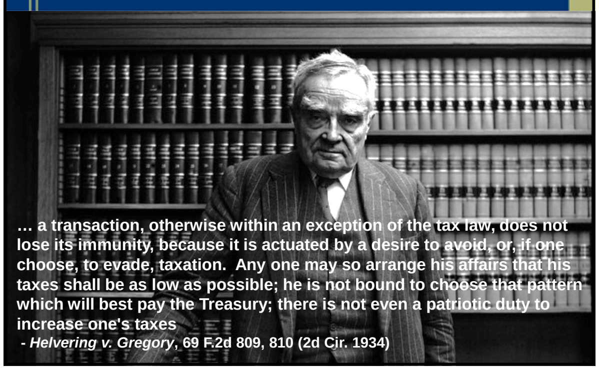
Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

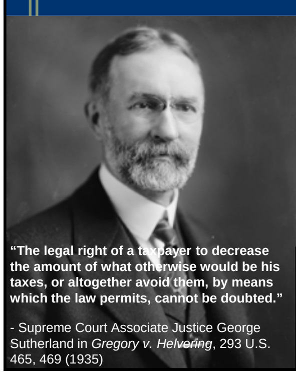
Second Circuit Court of Appeals Judge Learned Hand (#BestNameEver)



… a transaction, otherwise within an exception of the tax law, does not lose its immunity, because it is actuated by a desire to avoid, or, if one choose, to evade, taxation. Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes

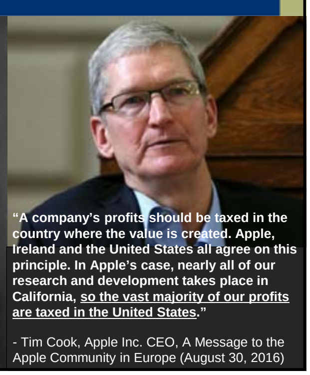
- *Helvering v. Gregory*, 69 F.2d 809, 810 (2d Cir. 1934)

Viewpoints and Perspectives



"The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted."

- Supreme Court Associate Justice George Sutherland in *Gregory v. Helvering*, 293 U.S. 465, 469 (1935)



"A company's profits should be taxed in the country where the value is created. Apple, Ireland and the United States all agree on this principle. In Apple's case, nearly all of our research and development takes place in California, <u>so the vast majority of our profits are taxed in the United States</u>."

- Tim Cook, Apple Inc. CEO, A Message to the Apple Community in Europe (August 30, 2016)

The U.S. Approach to Taxation of Income Earned Outside the U.S.

§ 61. Gross income defined

(a) General definition

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

(2) Gross income derived from business;

§ 63. Taxable income defined

(a) In general

Except as provided in subsection (b), for purposes of this subtitle, the term "taxable income" means gross income minus the deductions allowed by this chapter (other than the standard deduction).

The U.S. Approach to Taxation of Income Earned Outside the U.S.

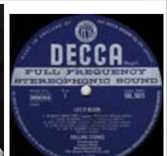
Individuals

- U.S. citizens and resident aliens, including those living abroad, are taxed on their worldwide income.
- Upon meeting the foreign tax home and bona fide residence or physical presence tests, a taxpayer may exclude an indexed amount of foreign earned income ($100,800 in 2015), as well as certain foreign housing amounts, and may take a credit for foreign tax paid.

Corporations

- U.S. corporations are also taxed on their worldwide income, and also may take a credit for foreign tax paid.
- Subject to certain limitations, U.S. corporations may defer taxation on certain income earned by subsidiary controlled foreign corporations until that income is brought into the U.S.

It All Started With Allen Klein



Rupie the Groupie is a Real Prince

a/k/a "Rupie the Groupie"

- Rupert Louis Ferdinand Frederick Constantine Lofredo Leopold Herbert Maximilian Hubert John Henry zu Löwenstein-Wertheim-Freudenberg, Count of Loewenstein-Scharffeneck, in Bavaria, Germany
- Merchant banker (Director of Leopold Joseph & Sons) and the Rolling Stones' business adviser and financial manager from 1968 to 2007.
- Architect of the Rolling Stones tax exile in the south of France, and the move of their intellectual property and earnings thereupon into low tax and no tax jurisdictions.

Sidebar: It's Only Rock 'n' Roll But I Don't Like It

"So far as the Stones' music was concerned, however, I was not in tune with them, far from it. Rock and pop music was not something in which I was interested.

I had heard some of The Beatles' music. Their music was sufficiently harmonic to be acceptable to people such as me.

I only really took against rock 'n' roll when I heard the Stones."

It's Only Tax Planning, But I Like It (Part I)

- The combination of the U.K.'s Foreign Earning Deduction and France's lenient taxation on big spenders were the keys to the Rolling Stones moving offshore in 1971.
- The UK has a territorial system of taxation, which means that if you stay abroad for long enough, any income earned outside the UK is not subject to taxation by the UK.

- This cliff occurs after approximately 305 days a year, which still allows a crafty traveler to visit home for about 2 months a year.
- French tax law was especially forgiving to foreign big spenders, and imposed no income tax upon foreigners who resided in France for at least a year and spent at least the equivalent of $500,000 per year in France.

Exile on Main Street

Jumpin' Jack Stash: It's Only Exile But I Like It

- Just in case you wondered how the Rolling Stones possibly managed to live in exile...
- Or wondered how they spent the required $500,000 (each) in a year in France.
- This is Nellcôte, on the Côte d'Azur in southern France.
- The Rolling Stones lived here and recorded Exile on Main Street in its basement.

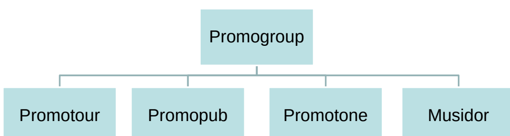
It's Only Tax Planning, But I Like It (Part II)

- Now that the Rolling Stones' UK tax issues were behind them and a resolution of the Allen Klein lawsuit would leave the band owning at least their future rights to their intellectual property, it was time for real tax planning.
- Mick Jagger, Keith Richards and Charlie Watts are the original Rolling Stones and have their assets treated jointly.
- Ronnie Wood is effectively an employee of the band and has his assets treated separately. Which isn't to say he's not fabulously wealthy in his own right—most of which wealth comes from touring.

It's Only Tax Planning, But I Like It (Part II) – The Dutch License "Royalty Conduit"

- Rupert set up a management company called Promogroup in the Netherlands, bringing in Dutch accountant Jan Favie to manage the Rolling Stones' holdings.
- Promogroup managed four subsidiary Dutch companies Promotour (concert touring), Promopub (merchandising), Promotone (video and music recordings and films), and Musidor (music rights). Each subsidiary holds a worldwide license to the IP in its area.
- Promogroup is called a Dutch license "royalty conduit" company, because as part of its management function, all of the royalties earned upon the licenses flow through it. This is done to prevent EU taxation of this income.

It's Only Tax Planning, But I Like It (Part II) – The Dutch License "Royalty Conduit"



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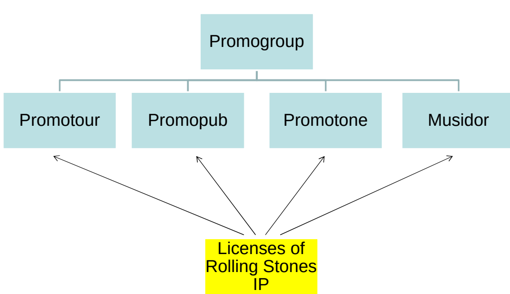
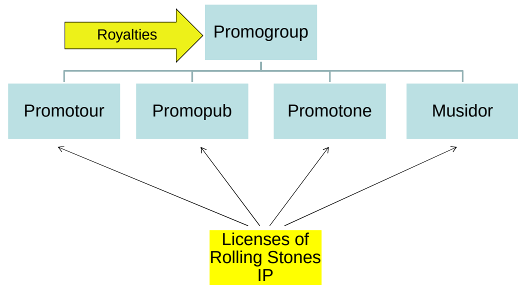


It's Only Tax Planning, But I Like It (Part II) – The Dutch License "Royalty Conduit"



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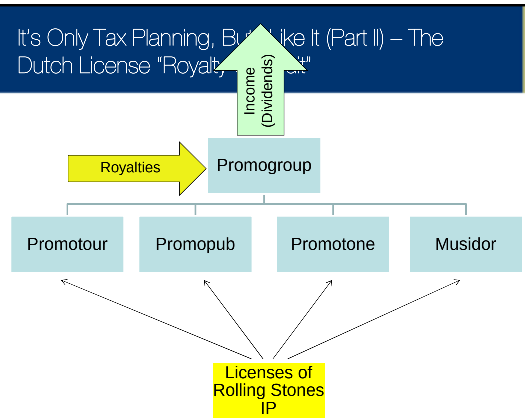
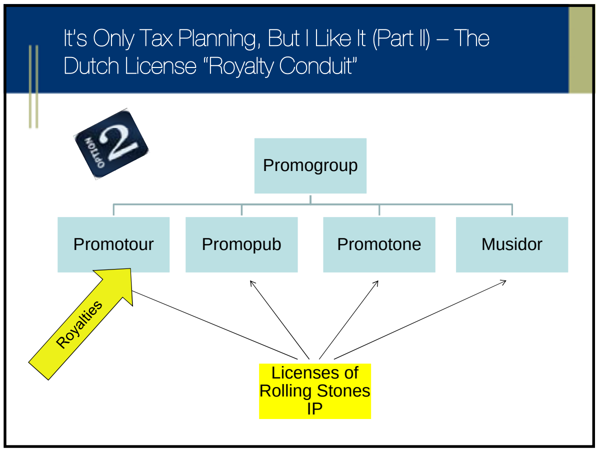
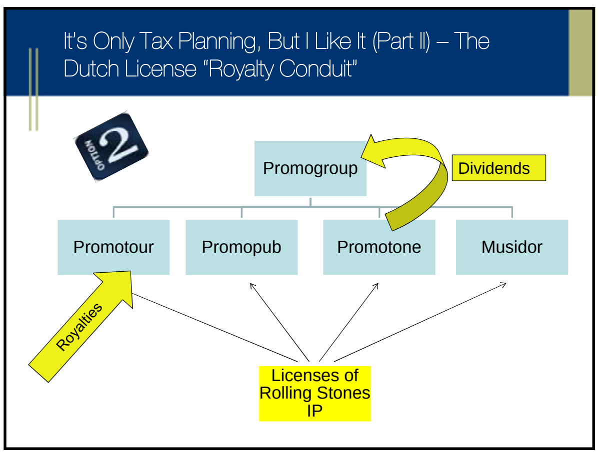
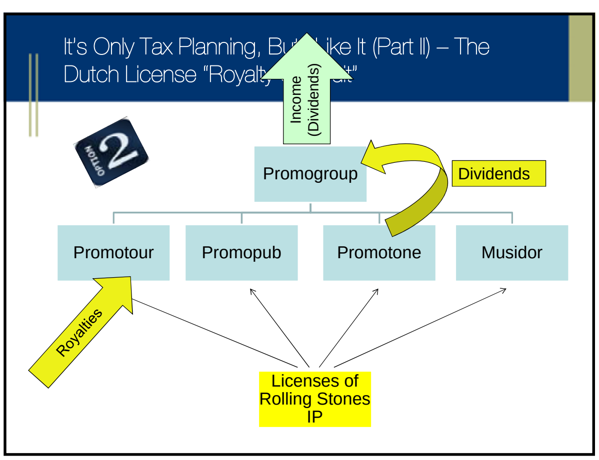


What Other Option Would Work?


It's Only Tax Planning, But I Like It (Part II) – The Dutch License "Royalty Conduit"
OPTION 2
Promogroup
Promotour
Promopub
Promotone
Musidor
Royalties
Licenses of Rolling Stones IP


It's Only Tax Planning, But I Like It (Part II) – The Dutch License "Royalty Conduit"
OPTION 2
Promogroup
Dividends
Promotour
Promopub
Promotone
Musidor
Royalties
Licenses of Rolling Stones IP


It's Only Tax Planning, But I Like It (Part II) – The Dutch License "Royalty Conduit"
Income (Dividends)
OPTION 2
Promogroup
Dividends
Promotour
Promopub
Promotone
Musidor
Royalties
Licenses of Rolling Stones IP

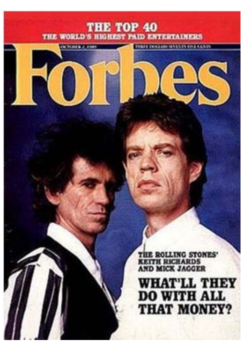
It's Only Tax Planning, But I Like It (Part II) – Dutch Treat

- This is the important part. **The Netherlands charges no tax upon royalties, dividends or interest, and has tax treaties with most countries at preferential rates**.
- Thus:
  - Netherlands tax treaties with foreign countries mean received income like royalties comes with low or no tax charged.
  - When the income sits in the Dutch license royalty conduit company, it incurs no additional tax, including no additional tax on interest earned.
  - When the income is distributed out to another EU or other country, tax treaties again permit the income to be passed at a low or no tax rate.
  - If that income had instead been originally received in the country to which the income was finally disbursed out of the Dutch license royalty conduit company, that income would have been taxed at ordinary income rates. In the case of the Rolling Stones, at rates as high as 83%.

It's Only Tax Planning, But I Like It (Part II) – No Wonder They're Smiling

In Dutch, it Ain't Much

- By using the Dutch license royalty conduit company shelter, Mick, Keith and Charlie paid $7.2 million in tax on their 1986-2006 earnings of $450 million, which equates to a tax rate of about 1.5%.



It's Only Tax Planning, But I Like It (Part II) – One Last Piece

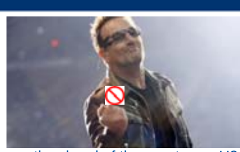
- The big question is where is the IP actually owned? It's just licensed by the Dutch companies. If the IP was owned in Netherlands, it could be subject to other taxes, potentially up to the 25.5% rate, or exit taxes if ever moved offshore.
- It makes sense that since they started over in 1971, and had left the U.K., that their IP is owned in a 0% tax jurisdiction. The speculation is that it is owned in Bermuda.

Et U2, Brute?

- 95% of U2's wealth is earned outside of Ireland.
- Between 1990-2005, U2 made $1.1 billion from touring, record sales, and songwriting royalties.
- Since 1969, Ireland has exempted the sale of original and creative works from income tax, including royalties on composing performed by musicians (while still taxing income from performances and merchandising).

- In 2006, Ireland planned to cap their tax-free treatment of the sale of original and creative works at $319,000, taxing the remainder at up to 42%.

With or Without U2



- In 2006, about six months ahead of the new taxes, U2 moved its music publishing business U2 Ltd. to Holland, with Jan Favie as its main director. U2 Ltd. is a Dutch license royalty conduit company and holds licenses for worldwide use of the published music.
- Other income earned by the band comes through the Netherlands Antilles, one of the Caribbean tax havens, which may have been done to limit income tax on performance and merchandise sales (not exempted by the artist law).
- The Netherlands Antilles may also be where the actual ownership of U2's IP is, so that once royalties are transferred out of foreign nations at low Dutch tax treaty rates, they pass through the Dutch sandwich without further taxation and come to rest in a final 0% jurisdiction.

U Pay Tax 2?
The Public Costs of Tax Structuring

- A caution to everything, U2 has faced controversy and years-long public scrutiny for going offshore.

Where in the World is all the Money Going?

~~Vacation~~ Tax Haven Country List

Table 1. Countries Listed on Various Tax Haven Lists

Caribbean/West Indies	Anguilla, Antigua and Barbuda, Aruba, Bahamas, Barbados,[a,e] British Virgin Islands, Cayman Islands, Dominica, Grenada, Montserrat,[a] Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and Grenadines, Turks and Caicos, U.S. Virgin Islands[a,e]
Central America	Belize, Costa Rica,[b,c] Panama
Coast of East Asia	Hong Kong,[b,e] Macau,[a,b,e] Singapore[b]
Europe/Mediterranean	Andorra,[a] Channel Islands (Guernsey and Jersey),[e] Cyprus,[e] Gibralter, Isle of Man,[e] Ireland,[a,b,e] Liechtenstein, Luxembourg,[a,b,e] Malta,[e] Monaco,[a] San Marino,[a,e] Switzerland[a,b]
Indian Ocean	Maldives,[a,d] Mauritius,[a,c,e] Seychelles[a,e]
Middle East	Bahrain, Jordan,[a,b] Lebanon[a,b]
North Atlantic	Bermuda[a]
Pacific, South Pacific	Cook Islands, Marshall Islands,[a] Samoa, Nauru,[c] Niue,[a,c] Tonga,[a,c,d] Vanuatu
West Africa	Liberia

It Sure Spends Like Real Money – CFC Profits Subject to Tax Can Outpace Country GDP

Even a small percentage of tax collected by the foreign country can be very lucrative especially when the tax is applied against an amount of money (CFC profits) that exceed the GDP of the country, and collection requires no more infrastructure than friendly tax laws and a mailbox.

Table 4. U.S. Foreign Company Profits Relative to GDP, Small Countries on Tax Haven Lists

Country	Profits of U.S. Controlled Corporations as a Percentage of GDP, 2004	Profits of U.S. Controlled Corporations as a Percentage of GDP, 2010
Bahamas	43.3	70.8
Barbados	13.2	5.7
Bermuda	645.7	1614.0
British Virgin Islands	354.7	1803.7
Cayman Islands	546.7	2065.5
Guernsey	11.2	—
Jersey	35.3	—
Liberia	61.1	—
Malta	0.5	—
Marshall Islands	339.8	—
Mauritius	4.2	—
Netherland Antilles	8.9	—

Source: CRS calculations, see text.

Notes: Dashes indicate data not available. Using 2008 earnings shares were 23.6% in Guernsey, 21.8% in Jersey, 31.0% in Liberia, 1.1% in Malta, and 6.6% in Mauritius. Based on the combined GDP in Curacao and St. Maartin, the share for the Netherland Antilles grew to 24%.

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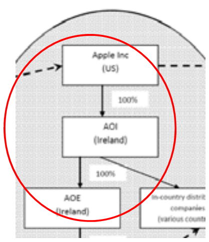
How I Learned to Stop Worrying and Love the Tax Incentives

Concept #1. Inclusion of Subpart F Income from Controlled Foreign Corporations

- One type of entity through which U.S. corporations conduct foreign operations (sales, manufacturing, etc.) is called a controlled foreign corporation, a "CFC."
- The CFC is a subsidiary of the U.S. corporation, and is incorporated and does business in a foreign jurisdiction.

Concept #1. Inclusion of Subpart F Income from Controlled Foreign Corporations

A foreign company is a CFC if U.S. shareholders own more than 50% of either the voting power or the total value of the CFC.



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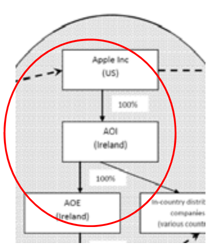

Under Section 951(a) U.S. shareholders owning 10% or more of the voting power of a CFC that is controlled by U.S. shareholdings are subject to Subpart F's inclusion of income.

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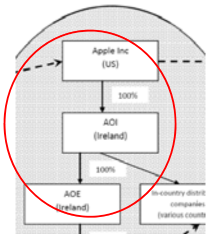

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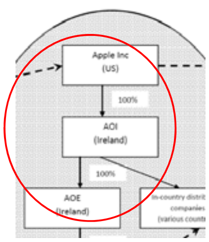

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§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) Person

The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

Concept #1. Inclusion of Subpart F Income from Controlled Foreign Corporations

- Historically, a major tax advantage to using a CFC to conduct foreign business was the opportunity for **income tax deferral** on income earned by that CFC.
- Generally, U.S. taxation could be deferred until the income was distributed as a dividend or otherwise repatriated by the foreign corporation to its U.S. shareholders.

Concept #1. Inclusion of Subpart F Income from Controlled Foreign Corporations

Subpart F of the Income Tax Code (26 U.S.C.) was enacted in 1962 to cause certain types of income earned by a CFC to become taxable to the CFC's U.S. shareholders in the year the income was earned, even if it was not distributed out of the CFC.

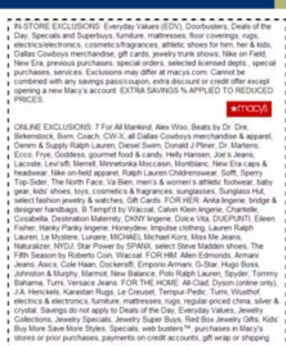
We call that taxable income "Subpart F income."

Concept #1. Inclusion of Subpart F Income from Controlled Foreign Corporations

- There are many different categories of Subpart F income, but it generally consists of movable income, like foreign based company income (FBCI) which includes:
  - Foreign personal holding company income (FPHCI) which includes investment income like dividends, interest, rents and royalties, and
  - Foreign base company sales income (FBCSI), which comes from the purchase or sale of personal property involving a related person, and
  - Foreign base company services income (FBC Services Income) for sales on behalf of a related person.
- The FPHCI is what we'll focus on today. **The FPHCI rules eliminate the deferral of U.S. tax on income from portfolio types of investments, *i.e.*, where the company is merely passively receiving investment income—dividends, interest, rents and royalties—rather than earning active business income.**

Concept #1. Inclusion of Subpart F Income from Controlled Foreign Corporations

Aren't there exclusions that apply when determining what is Subpart F income?


IN-STORE EXCLUSIONS: Everyday Values (EDV), Doorbusters, Deals of the Day, Specials and Superbuys, furniture, mattresses, floor coverings, rugs, electrics/electronics, cosmetics/fragrances, athletic shoes for him, her & kids, Dallas Cowboys merchandise, gift cards, jewelry trunk shows, Nike on Field, New Era, previous purchases, special orders, selected licensed depts., special purchases, services. Exclusions may differ at macys.com. Cannot be combined with any savings pass/coupon, extra discount or credit offer except opening a new Macy's account. EXTRA SAVINGS % APPLIED TO REDUCED PRICES.

★macy's

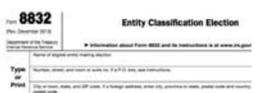
ONLINE EXCLUSIONS: 7 For All Mankind, Alex Woo, Beats by Dr. Dre, Birkenstock, Born, Coach, CW-X, all Dallas Cowboys merchandise & apparel, Denim & Supply Ralph Lauren, Diesel Swim, Donald J Pliner, Dr. Martens, Ecco, Frye, Goddess, gourmet food & candy, Helly Hansen, Joe's Jeans, Lacoste, Levi's®, Merrell, Minnetonka Moccasin, Montblanc, New Era caps & headwear, Nike on-field apparel, Ralph Lauren Childrenswear, Sofft, Sperry Top-Sider, The North Face, Va Bien, men's & women's athletic footwear, baby gear, kids' shoes, toys, cosmetics & fragrances, sunglasses, Sunglass Hut, select fashion jewelry & watches, Gift Cards. FOR HER: Anita lingerie, bridge & designer handbags, B.Tempt'd by Wacoal, Calvin Klein lingerie, Chantelle, Cosabella, Destination Maternity, DKNY lingerie, Dolce Vita, DUEPUNTI, Eileen Fisher, Hanky Panky lingerie, Honeydew, Impulse clothing, Lauren Ralph Lauren, Le Mystere, Lunaire, MICHAEL Michael Kors, Miss Me Jeans, Naturalizer, NYDJ, Star Power by SPANX, select Steve Madden shoes, The Fifth Season by Roberto Coin, Wacoal. FOR HIM: Allen Edmonds, Armani Jeans, Asics, Cole Haan, Dockers®, Emporio Armani, G-Star, Hugo Boss, Johnston & Murphy, Marmot, New Balance, Polo Ralph Lauren, Spyder, Tommy Bahama, Tumi, Versace Jeans. FOR THE HOME: All-Clad, Dyson (online only), J.A. Henckels, Karastan Rugs, Le Creuset, Tempur-Pedic, Tumi, Wusthof, electrics & electronics, furniture, mattresses, rugs, regular-priced china, silver & crystal. Savings do not apply to Deals of the Day, Everyday Values, Jewelry Collections, Jewelry Specials, Jewelry Super Buys, Red Box Jewelry Gifts, Kids' Buy More Save More Styles, Specials, web busters™, purchases in Macy's stores or prior purchases, payments on credit accounts, gift wrap or shipping

Concept #1. Inclusion of Subpart F Income from Controlled Foreign Corporations

There are many, including:

- The inclusion is limited to current E&P under Section 952(c)(1)(A).
- If the FBCI is less than 5% of gross income or $1 million, none of the CFC's income is FBCI.
- If the CFC income was taxed at 90% or more of the highest U.S. rate (so 35% x 90% = 31.5%), it is not FBCI.
- If the income is received from a related CFC in the same country that uses a substantial part of its assets in a trade or business in that country, it is not FHPCI.
- Certain FPHCI received from a related CFC that is not allocable or attributable to Subpart F income is not FHCPI. (This is the Section 954(c)(6) “Look Through Rule” discussed later).
- Certain FPHCI received from a related CFC that is not income effectively connected with a U.S. trade or business under Section 864, is not FHCPI.

Concept #2a. Dodging Subpart F Inclusion via the Check the Box Regulations


Form 8832

Entity Classification Election

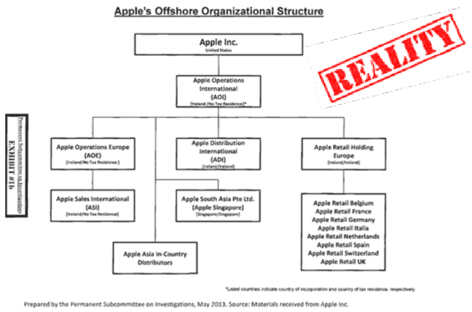
- 1997’s “check the box” regulations were designed to simplify the tax rules for determining whether for federal tax purposes an entity was taxed as a corporation, a partnership, a sole proprietorship or a “disregarded entity.”
- The election to be treated as a disregarded entity means that for tax purposes the entity will not be treated as an entity separate from its parent, the company that owns it.
- The “check the box” regulations allow lower-level CFCs to be collapsed into a top-level CFC for tax purposes eliminating Subpart F inclusion, since the money didn’t move.

Concept #2b. Dodging Subpart F Inclusion via the Section 954(c)(6) CFC "Look Through Rule"

- In 2006, the Congress enacted section 954(c)(6) (the “Look-Through Rule”). The Look-Through Rule allows U.S. corporations to redeploy active earnings of one CFC to another CFC without subjecting the earnings to current U.S. taxation under Subpart F. (Prior to 2006 they were treated as Subpart F income unless the taxpayer employed CTB.)
- The active earnings include dividends, interest, rents, and royalties that would otherwise have been taxed as Subpart F income.
- This rule only applies to the extent that such payments are attributable or properly allocable to active, non-Subpart-F income of the related CFC.
- Part of the Congress’ reasoning was that the tax consequences imposed by such movements of capital could already be avoided by the Check the Box regulations, and since these movements were appropriate for and affected international competition of multinationals, they should be available to more taxpayers by rule.
- This temporary rule and has been extended several times, now through 12/31/2019.

Concept #2. Check the Box Regulations and the CFC "Look Through Rule"

- Here's how this looks like from a tax standpoint:



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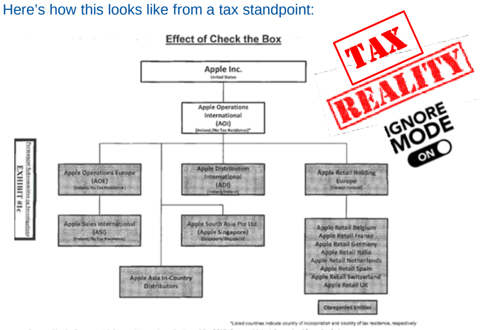


Concept #3a. Transfer Pricing and Section 482 Re-Allocations

- Transfer pricing refers to the setting of the price for goods and services sold between controlled or related parties. Here, it often comes into play when IP or IP rights (such as the right to receive royalties on a license) are transferred between a parent company and a CFC who most often sits in a low-tax jurisdiction, and can thereafter pay a low tax rate on its sales of products created from that IP.
- The Regulations apply an arms-length standard. The test is met where the results of the transaction are consistent with what would have been paid or charged if unrelated taxpayers had engaged in the same transaction.
- Under Section 482, the IRS can distribute, apportion or allocate gross income, deductions, credits or allowances between or among two or more organizations owned or controlled directly or indirectly by the same interests, if the IRS determines that such action is necessary in order to prevent evasion of taxes or to clearly reflect income.

Concept #3b. R&D Cost-Sharing Agreement

- In an R&D cost-sharing agreement, the parent company and the CFC are each assigned a specific percentage of funds and resources they must contribute to new products, determined by reference to a specific formula or methodology. Like transfer pricing agreements, cost-sharing agreements must reflect an arms-length agreement.
- Under the cost-sharing agreement, Apple retained the legal title to and all marketable rights to the developed property in North and South America, but ASI receives the marketing rights and the profits for the rest of the world.

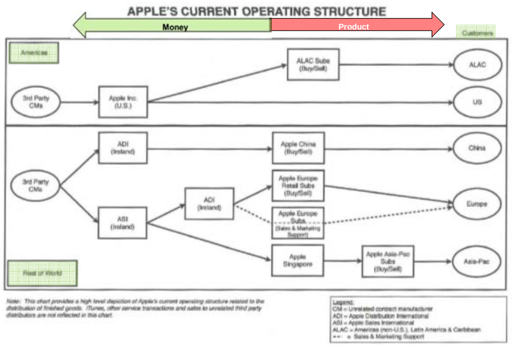
Apple/ASI Cost-Sharing Agreement

Apple's cost-sharing agreement established that Apple and ASI will share in R&D costs pursuant to the ratio of sales made domestically vs. internationally. In exchange, ASI pays no royalties to Apple for use of that IP--it just pays the cost-sharing rate.

A Cost-Sharing Agreement

- In the agreement, Apple Inc. and ASI agree to share in the development of Apple's products and to divide the resulting intellectual property economic rights. To calculate their respective costs, Apple Inc. first pools the costs of Apple's worldwide research and development efforts. Apple Inc. and ASI then each pay a portion of the pooled costs based upon the portion of product sales that occur in their respective regions. Roughly 40 percent of Apple's worldwide sales occurred in the Americas, with the remaining 60 percent occurring offshore. The cost-sharing agreement that Apple has signed with ASI and AOE is a key component of Apple's ability to lower its U.S. taxes. Several aspects of the cost-share agreement and Apple's research and development (R&D) and sales practices suggest that the agreement functions primarily as a conduit to shift profits offshore to avoid U.S. taxes. Bulk of Apple's R&D efforts, the source of the intangible value of its products, is conducted in the United States, yet under the cost sharing agreement a disproportionate amount of the resulting profits remain outside of the United States.

Apple's International Distribution Structure



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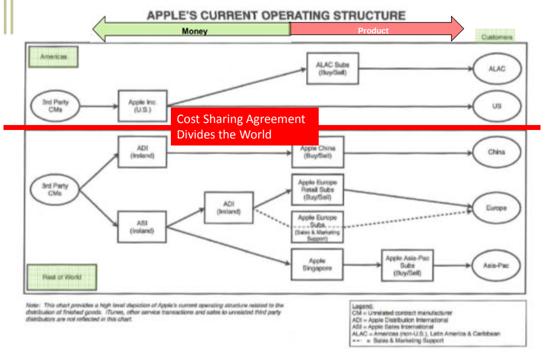


Apple/ASI Cost-Sharing Agreement

ASI underpaid for those international rights, by about 100%.

Cost Sharing Payments and Pre-Tax Earnings of Apple Sales International (Ireland)

	Cost Sharing Payments By ASI	Pre-Tax Earnings of ASI
2009	$ 600 million	$ 4 billion
2010	$ 900 million	$ 12 billion
2011	$ 1.4 billion	$ 22 billion
2012	$ 2.0 billion	$ 36 billion
TOTAL	$ 4.9 billion	$ 74 billion

Cost Sharing Payments and Pre-Tax Earnings of Apple Inc. (United States)

	Cost Sharing Payments By Apple Inc.	Pre-Tax Earnings of Apple Inc.
2009	$ 700 million	$ 3.4 billion
2010	$ 900 million	$ 5.3 billion
2011	$ 1.0 billion	$ 11 billion
2012	$ 1.4 billion	$ 19 billion
TOTAL	$ 4.0 billion	$ 38.7 billion

Source: Information supplied to the Subcommittee by Apple, APL-PSI-000129, 000381-384.

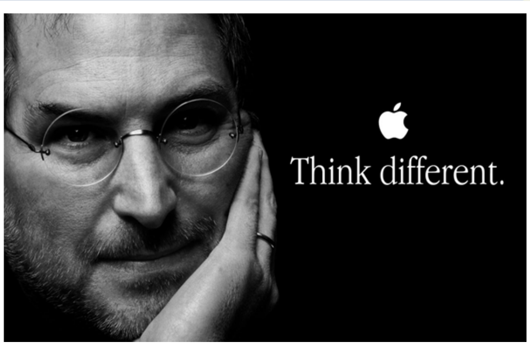
Diving Into the Deep End of the International Tax Planning Pool

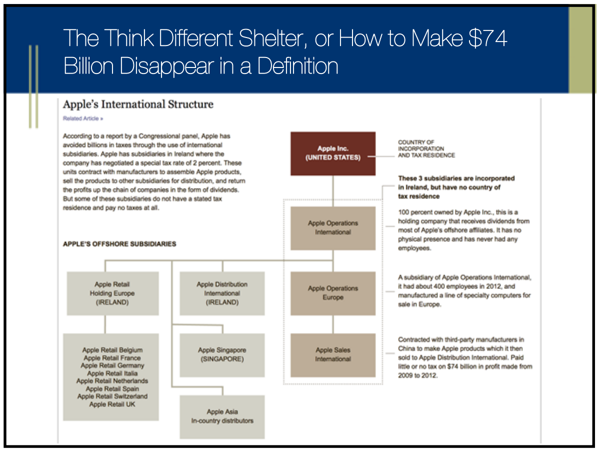
I Like Mike

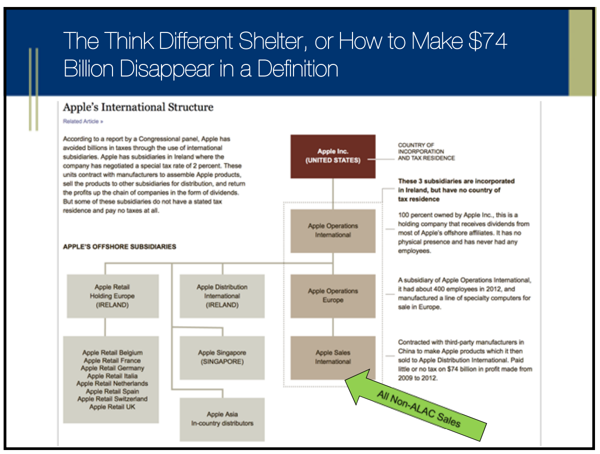
Where There's a Waldwill, There's a Way

- Waldwill Limited will eventually become Apple Operations International, a stateless entity filing no tax returns or paying any tax in any country, yet it received $29.6 billion from its disregarded subsidiaries between 2009 and 2012.

Nothing is Better than Something When You're Talking About Tax Rates




The Think Different Shelter, or How to Make $74 Billion Disappear in a Definition
Apple's International Structure
Related Article »
According to a report by a Congressional panel, Apple has avoided billions in taxes through the use of international subsidiaries. Apple has subsidiaries in Ireland where the company has negotiated a special tax rate of 2 percent. These units contract with manufacturers to assemble Apple products, sell the products to other subsidiaries for distribution, and return the profits up the chain of companies in the form of dividends. But some of these subsidiaries do not have a stated tax residence and pay no taxes at all.
Apple Inc. (UNITED STATES)
COUNTRY OF INCORPORATION AND TAX RESIDENCE
These 3 subsidiaries are incorporated in Ireland, but have no country of tax residence
Apple Operations International
100 percent owned by Apple Inc., this is a holding company that receives dividends from most of Apple's offshore affiliates. It has no physical presence and has never had any employees.
APPLE'S OFFSHORE SUBSIDIARIES
Apple Retail Holding Europe (IRELAND)
Apple Distribution International (IRELAND)
Apple Operations Europe
A subsidiary of Apple Operations International, it had about 400 employees in 2012, and manufactured a line of specialty computers for sale in Europe.
Apple Retail Belgium Apple Retail France Apple Retail Germany Apple Retail Italia Apple Retail Netherlands Apple Retail Spain Apple Retail Switzerland Apple Retail UK
Apple Singapore (SINGAPORE)
Apple Sales International
Contracted with third-party manufacturers in China to make Apple products which it then sold to Apple Distribution International. Paid little or no tax on $74 billion in profit made from 2009 to 2012.
Apple Asia In-country distributors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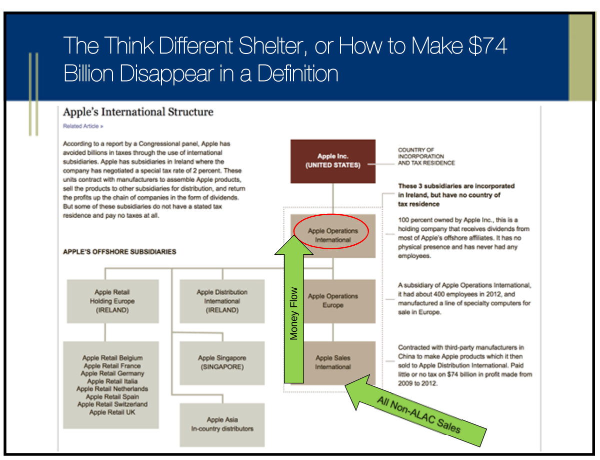
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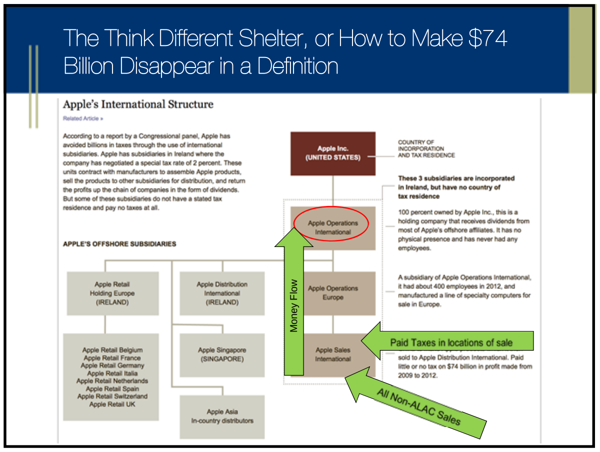
Apple's International Structure
Money Flow
All Non-ALAC Sales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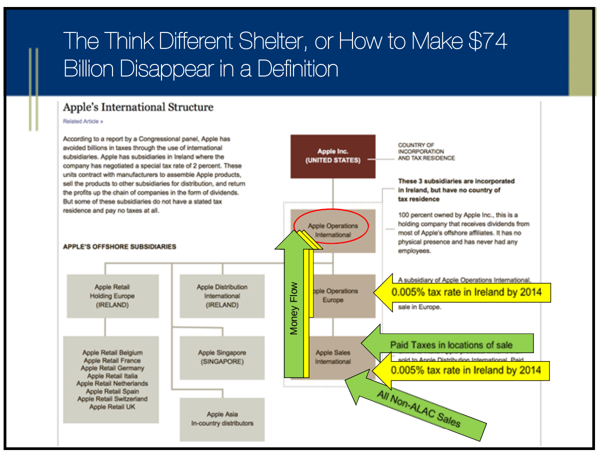
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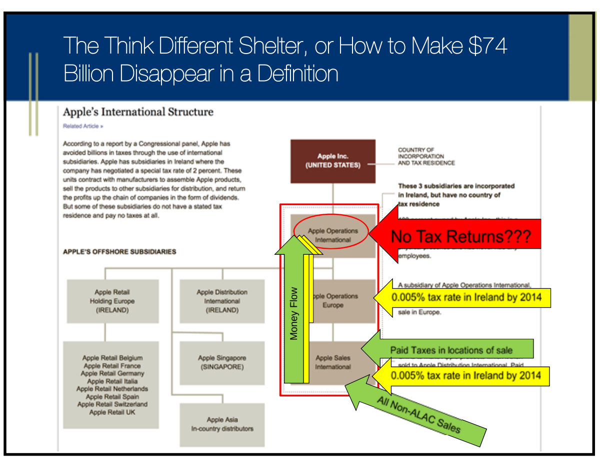
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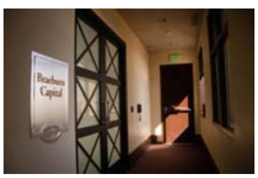
Companies Without a Country: for Tax Purposes AOI, ASI and AOE Remain "Stateless," Tax-less

- Ireland does not look to a corporation's place of incorporation when determining whether a corporation is subject to income tax in Ireland on its earnings. Instead, it looks to where the "management and control" occurs.
- Conversely, the United States does look to where a corporation is incorporated when determining whether that corporation is subject to income tax in the United States.

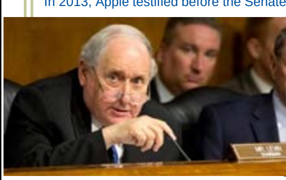
- Ireland's taxation by location of management and control versus the U.S.'s taxation by place of incorporation allows Apple to argue that AOI, AOE and ASI are taxable in no location.

And When it Does Patriate Income, It Avoids State Tax



Shocked, Shocked, I Say (Part I)

In 2013, Apple testified before the Senate Permanent Subcommittee on Investigations:



Chairman Senator Carl Levin:

"Apple has sought the Holy Grail of tax avoidance: offshore corporations that it argues are not, for tax purposes, resident anywhere in any nation."

Apple CEO Tim Cook:

"We pay all the taxes we owe."

The 1% Solution … is Simply Way Too Much if We're Talking About Tax

- 35% of Apple's income is earned in the U.S., 65% overseas.

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- 35% of Apple's income is earned in the U.S., 65% overseas.
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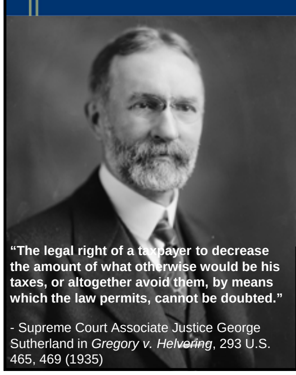
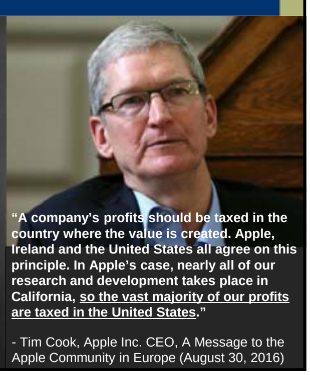


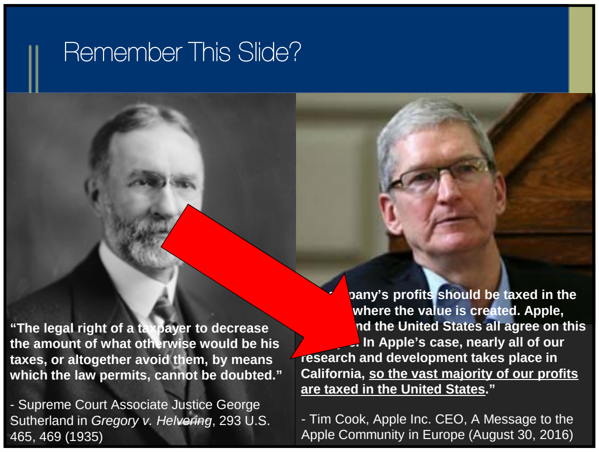
"The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted."

- Supreme Court Associate Justice George Sutherland in *Gregory v. Helvering*, 293 U.S. 465, 469 (1935)



"A company's profits should be taxed in the country where the value is created. Apple, Ireland and the United States all agree on this principle. In Apple's case, nearly all of our research and development takes place in California, so the vast majority of our profits are taxed in the United States."

- Tim Cook, Apple Inc. CEO, A Message to the Apple Community in Europe (August 30, 2016)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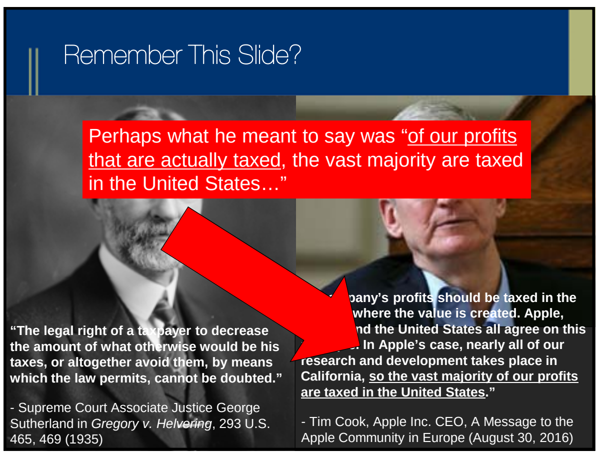
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Perhaps what he meant to say was "of our profits that are actually taxed, the vast majority are taxed in the United States…"
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Sad Apple … Pay
Apple Owes $14.5 Billion in Back Taxes to Ireland, E.U. Says
Pay

Shocked, Shocked, I Say (Part II) – At Least He is Consistent

August 30, 2016

A Message to the Apple Community in Europe

Over the years, we received guidance from Irish tax authorities on how to comply correctly with Irish tax law — the same kind of guidance available to any company doing business there. In Ireland and in every country where we operate, Apple follows the law and we pay all the taxes we owe.

Tim Cook

Irish Eyes Aren't Smiling – Why Ireland Doesn't Want Apple to Pay Up

Video Response: U.S. Treasury Secretary Speaks out against EU's Tax Order against Apple

Revenue
Cáin agus Custaim na hÉireann
Irish Tax and Customs

The Fall of the House of Swiss Bankers

It Was Going So Well, Until Bradley Birkenfeld Had To Spoil It

UBS AG
Mr. Peter Kurer
Bahnhofstrasse 45
8001 Zurich
Switzerland

March 17, 2006

Dear Mr. Kurer,

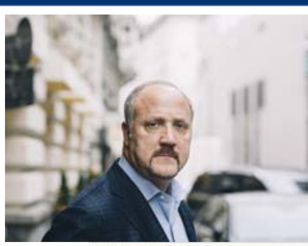
I wish to bring to your attention a very important matter. As an employee and officer of UBS (as well as a shareholder of UBS) I wish to invoke my rights listed under the UBS Whistleblowing Protection for Employees – Group Policy (1-P-000042), UBS Whistleblowing Policy – Corporate Center (9-P-001354) and UBS Whistleblowing Protection for Employees – WM & BB Supplementary Document (2-S-001014).

My submission refers to a UBS intranet three page legal document entitled "Cross-Border Banking Activities into the United States (version November 2004)" which can be located at (Wealth Management International, Americas International, Ot –

It Was Going So Well, Until Bradley Birkenfeld Had To Spoil It

3. Pursuant to this Agreement, UBS agrees that it shall pay to the United States a total of $780,000,000 (the "Settlement Amount"), which includes (i) $380,000,000 in disgorgement of the profits from maintaining the United States cross-border business from 2001 through 2008, of which $200,000,000 will be separately paid to the United States Securities and Exchange Commission (the "SEC") pursuant to a payment schedule set forth in the Consent Order and Final Judgment, and (ii) $400,000,000 for: federal backup withholding tax required to be withheld by UBS with respect to the Disclosed Accounts for calendar years 2001 through 2008; interest and penalties; and restitution for unpaid taxes, together with interest thereon, for undeclared United States taxpayers who were actively assisted or facilitated by UBS private bankers who met with these clients in the United States and

The Truth Hurts, and Can Lead to Jail Time



...nt of Justice
...Public Affairs

SHARE

FOR IMMEDIATE RELEASE

Friday, August 21, 2009

Former UBS Banker Sentenced to 40 Months for Aiding Billionaire American Evade Taxes

MIAMI – Former UBS banker, Bradley Birkenfeld of Weymouth, Mass., has been sentenced to 40 months incarceration by Judge William J. Zloch in Fort Lauderdale, Fla. On June 19, 2008, Birkenfeld pleaded guilty to conspiring to defraud the United States, the Justice Department announced today.

… But Can Also Lead to Money, Money, Money

… But Can Also Lead to Money, Money, Money

§ 7623. Expenses of detection of underpayments and fraud, etc.

(a) In general

The Secretary, under regulations prescribed by the Secretary, is authorized to pay such sums as he deems necessary for—

(1) detecting underpayments of tax, or

(2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same,

in cases where such expenses are not otherwise provided for by law. Any amount payable under the preceding sentence shall be paid from the proceeds of amounts collected by reason of the information provided, and any amount so collected shall be available for such payments.

(b) Awards to whistleblowers

(1) In general

If the Secretary proceeds with any administrative or judicial action described in subsection (a) based on information brought to the Secretary's attention by an individual, such individual shall, subject to paragraph (2), receive as an award at least 15 percent but not more than 30 percent of the collected proceeds (including penalties, interest, additions to tax, and additional amounts) resulting from the action (including any related actions) or from any settlement in response to such action. The determination of the amount of such award by the Whistleblower Office shall depend upon the extent to which the individual substantially contributed to such action.

… But Can Also Lead to Money, Money, Money


THE WALL STREET JOURNAL.

Whistleblower Gets $104 Million

Now a Felon, Former Banker Told U.S. About Tax-Evasion Tactics by UBS and Its Wealthy Clients

Summary Award Report

Whistleblower Name: Bradley Birkenfeld

Whistleblower Office Claim Number(s): 2009[redacted]

Collected proceeds based on information provided by whistleblower: [redacted]

Recommended Award Percent: [redacted]

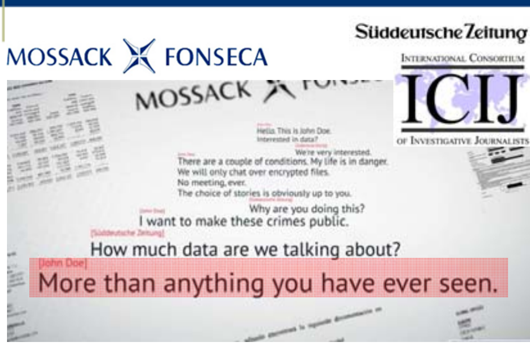
Recommended Award Amount: $104,000,000.00

This award recommendation is made under I.R.C. § 7623(b).

… And Fame, Fame I Tell You

Mossack Fonseca & The Panama Papers

It Was The Best of Times Until it Was The Worst of Times



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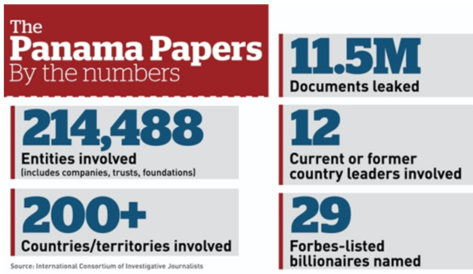
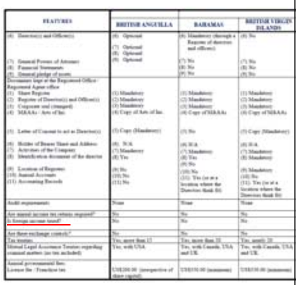


Champagne Wishes and Panama Dreams

MOSSACK FONSECA



Champagne Wishes and Panama Dreams

The Evil That Men Do

I See Nothing Wrong Here

"If an offshore firm is put to bad use, the company is no more culpable than an automobile factory that builds a car later used in a robbery."

- Ramon Fonseca

The Gang's All Here

How to Advise and Protect Your Clients Who Have Failed Their Reporting Requirements

Reporting Requirements, Generally

Reporting Requirements, Generally

How to Advise and Protect Your Clients Who Have Failed Their Reporting Requirements

- Is your client eligible to make a voluntary disclosure?
  - The taxpayer is not under civil or criminal investigation by the IRS,
  - The IRS has not received third party information alerting the IRS to the taxpayer's noncompliance (informant, another governmental agency, the media, foreign financial institution),
  - The IRS has not received information identifying the taxpayer from a criminal enforcement action (search warrant, grand jury subpoena), and
  - The income sources are legal.

How to Advise and Protect Your Clients Who Have Failed Their Reporting Requirements

Your Offshore Compliance Options IRS

- 2012 Offshore Voluntary Disclosure Program
- Streamlined Filing Compliance Procedures
- Delinquent FBAR Submission Procedures
- Delinquent International Information Return Submission Procedures

How to Advise and Protect Your Clients Who Have Failed Their Reporting Requirements

Your Offshore Compliance Options IRS

- 2012 Offshore Voluntary Disclosure Program ← Client Was Willful
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Client Was Willful

- 50% penalty on the 8-year high unreported asset value if the FFI was publicly identified as under investigation or is cooperating, or a 27.5% penalty if it has not,
- Plus the 25% FTF and 25% FTP
- Plus a 20% accuracy related penalty, plus the owed tax

How to Advise and Protect Your Clients Who Have Failed Their Reporting Requirements

Your Offshore Compliance Options IRS

- 2012 Discl
- Strea Comp
- Delin Submission Procedures
- Delinquent International Information Return Submission Procedures

Client Was Willful

- 50% penalty on the 8-year high unreported asset value if the FFI was publicly identified as under investigation or is cooperating, or a 27.5% penalty if it has not,
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How to Advise and Protect Your Clients Who Have Failed Their Reporting Requirements

Your Offshore Compliance Options IRS

- 2012 Discl
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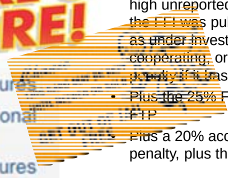

Client Was Willful

- 50% penalty on the 8-year high unreported asset value if the FFI was publicly identified as under investigation or is cooperating, or a 27.5% penalty if it has not,
- Plus the 25% FTF and 25% FTP
- Plus a 20% accuracy related penalty, plus the owed tax

How to Advise and Protect Your Clients Who Have Failed Their Reporting Requirements

Your Offshore Compliance Options IRS

- 2012 Offshore Voluntary Disclosure Program
- Streamlined Filing Compliance Procedures ← Client Was Not Willful
- Delinquent FBAR Submission Procedures
- Delinquent International Information Return Submission Procedures

How to Advise and Protect Your Clients Who Have Failed Their Reporting Requirements

Your Offshore Compliance Options IRS

- 2012 Offshore Voluntary Disclosure Program
- Streamlined Filing Compliance Procedures ← Client Was Not Willful
  - 5% penalty on the 6-year high unreported asset value
- Delinquent FBAR Submission Procedures
- Delinquent International Information Return Submission Procedures

How to Advise and Protect Your Clients Who Have Failed Their Reporting Requirements

Your Offshore Compliance Options IRS

- 2012 Offshore Voluntary Disclosure Program
- Streamlined Filing Compliance Procedures ← Client Was Not Willful and Lived Offshore
- Delinquent FBAR Submission Procedures
- Delinquent International Information Return Submission Procedures

How to Advise and Protect Your Clients Who Have Failed Their Reporting Requirements

Your Offshore Compliance Options IRS

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- Delinquent International Information Return Submission Procedures

Client Was Not Willful and Lived Offshore

- No penalty

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Client Reported All Income But Just Failed to Submit the Right Forms

- No penalty

Shocked, Shocked, I Say (Part III)

"We pay all the taxes we owe, every single dollar. We not only comply with the laws, but we comply with the spirit of the laws. We do not depend on tax gimmicks. We do not move intellectual property offshore and use it to sell our products back to the United States to avoid taxes. We do not stash money on some Caribbean island."

- Tim Cook, Apple CEO, testifying before the Permanent Subcommittee on Investigations (May 21, 2013)