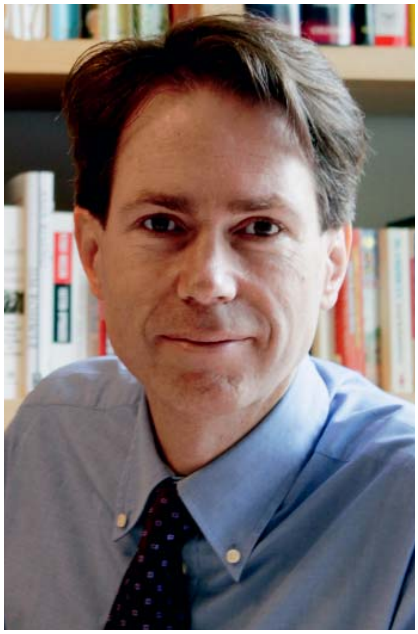
Dealing with the United States and the IRS



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Boris Johnson, the mayor of London, is American by birth. He is a British citizen and has lived in London since he was four years old. In 2014 Johnson sold his house in London. For a gain. He then received a completely unexpected – and large – bill from the IRS for capital gains tax. Shouting "Outrageous!" to the world, he refused to pay. In early 2015 he settled with the IRS for "an undisclosed sum". He announced thereafter that he would be giving up his U.S. citizenship.

In early 2014 a London businessman, who was born in America but moved to Britain as a child, received a huge tax bill from the IRS. For many years of unpaid taxes and unfiled returns. A lightning bolt from the blue. Which almost killed him. This businessman had founded and built a successful technology company, of which he was the majority shareholder. This company is considered under U.S. tax law a "Controlled Foreign Corporation" or CFC, thus making a large percentage of the income of the company to be treated as direct income to the individual, taxable at the individuals marginal (U.S.) rate. The businessman almost lost his business (and his wife) as a result. He settled, sum undisclosed. His U.S. citizenship is likewise toast.

In late 2014 a client came to see me. A banker. He had been a U.S. green card holder from 1984 to 2008. In 2013 he retired and received a lump sum payout of 3.2 million francs from his Swiss Pillar 2 (BVG) pension fund. In mid-2014 he received a bill from the IRS for 970,000 francs. Tax plus interest and penalties for not reporting his account. He wasn't even aware that his Swiss pension fund was considered a foreign financial account under U.S. tax law – and fully taxable. He settled.

Note carefully that everybody paid. Everybody pays. Not the original bill from the IRS. But a substantial figure. Not paying is not an option.

These are but three examples of what is a familiar litany to anyone working with Americans. You don't even have to have set foot in America in your entire adult life to get hit with a tax bill. For clients or families with any U.S. exposure at all, ignoring this liability is no longer an option. It must, must, must, be dealt with.

Let's put some perspective on this and why it is happening. In the U.S., the system has evolved over time. An aggressive, rapacious IRS – think velociraptor on acid – is kept in check by a huge industry of lawyers, tax accountants and other professionals whose objective and meaning in life is to minimize their clients' tax bills, thereby maximizing their own revenues – think velociraptors on steroids. The result is effective stasis. A battle of equals, waged in tax court, effectively checkmating one another. No one is even pretending the U.S. tax code makes sense, therefore, the protective structures and techniques used have evolved with the tax code.

Once you are outside of the U.S., however, the IRS – rapacious velociraptor – can do pretty much as it wants. To the extent and letter of U.S. tax law. Generally, there is little to no protection for many (most) people living overseas. Your client, sometimes the client's entire family, may be presented naked and defenseless to the velociraptor. Your, mine, our objective is to prevent even getting into this situation.

What do you as advisor do?

You must find and hire your own raptors. There is however a problem: You must find the right raptor for your clients' specific issue. Because raptors are specific, different raptors feed on different prey. There is a further problem: Because all this is relatively new, it can be difficult to work out among all the new entrants to the protection business, which raptors are good, which are merely competent and which are bad. And which are so bad they will make the situation worse.

You must also take steps to ensure that the advice and the structure – and it will almost certainly be a protective structure of some kind – is appropriate for your client. Often requiring a further raptor.

Over the next few years clients will continue to regularize. Advisors will need to use structures to achieve tax deferral, asset protection and succession planning objectives and provide investment flexibility. Structures must be U.S. tax compliant and usually compliant in at least one other jurisdiction. This presents much greater levels of complexity than what we have known in the past. Muddling through is not an option.

As Fatca continues to be implemented and automatic information exchange with associated cross-checking gathers pace, U.S. connections are being and will be exposed. This is a given. There is no doubt, no gray area, no place to run to, no place to hide. It must be dealt with. Pro-actively. Now.

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