

Welcome and opening address

Global Tax Enforcement Conference
25 March 2015

Welcome

- **Carlos Martins**, Senior Associate Director, SG Hambros Bank (Gibraltar) Limited and Chairman of GACO
- **Samantha Barrass**, Chief Executive Officer, Gibraltar Financial Services Commission
- **Paul Astengo**, Senior Executive, Gibraltar Finance, HM Government of Gibraltar

Your Speakers

- **Clarissa Balmaseda**, Attaché, International Affairs, IRS-CI, American Embassy, London
- **Miriam Fisher**, Partner, Latham & Watkins LLP, Washington, D.C., United States
- **Brian McManus**, Partner, Latham & Watkins LLP, Washington, D.C., United States
- **Tom Maher**, Managing Partner, DQ, Isle of Man
- **Annemarie Hughes**, Partner and Head of Trusts & Private Client, DQ, Isle of Man
- **Sinead O'Connor**, Head of Regulatory & Compliance Services, DQ, Isle of Man
- **Fiona Fernie**, Partner, Pinsent Masons LLP, London
- **Reg Day**, Director, Pinsent Masons LLP, London
- **Chris White**, Partner, Hassans, Gibraltar

Which US politician said this?

Recently more and more enterprises organized abroad by American firms have arranged their corporate structures - aided by artificial arrangements between parent and subsidiary regarding intercompany pricing, the transfer of patent licensing rights, the shifting of management fees...which maximize the accumulation of profits in the tax haven - so as to exploit the multiplicity of foreign tax systems and international agreements in order to reduce sharply or eliminate completely their tax liabilities both at home and abroad.

Themes for today

- FATCA overview
- Unstoppable global momentum to exchange of info
- Information at fingertips fuels investigations
- Voluntary co-operation is often best tactic
- Conflict between duty to client & self preservation
- Assemble the right team in the right places
- After we have scared you, it's cocktail time!

Panel 1: FATCA in Practice, Part I

Brian McManus, Partner, Latham & Watkins LLP

Fiona Fernie, Partner, Pinsent Masons LLP

Reg Day, Director, Pinsent Masons LLP

Sinead O'Connor, Head of Regulatory & Compliance Services, DQ

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FATCA Evolution



Key Components

Registration	Remediation
New business take on	Reporting

Where should businesses be now?

- Registration complete
- Review of high value business underway and on target for completion by the end of June 2015
 - Remember three stages of review
 - Every calendar year end, re-identify what is high value business
- Project plan and resources identified for review of low value business

Where should businesses be now?

- Documented procedures for new business
 - Self-certification process and review against CDD
 - Application forms, letter of engagement, terms of business
- Reporting
 - Who and how

Practical challenges

- No implementing legislation yet and no guidance
- Diverging views of TCSPs
- Where is the client actually resident?
- Not enough information to do the classification/apply the financial assets test
 - What is a financial asset?
 - Will there be any wiggle room on the “managed by” test?
 - What is managed by?
 - Foreign companies

Practical challenges

- Sponsor status and implications
- Trusts – underlying companies
- Variations in how banks are approaching classification
- US not engaging with CRS and impact on procedures & classification

Practical challenges

- Client challenges classification/asks you to not report
- Reciprocity
- Terms of Business

ARR (UK only)

- Available to UK resident but non-UK domiciled individuals (RNDs)
- RNDs may be taxed on “remittance basis”
- Key difference: Balance/Value and Payments no longer reportable
- Instead, “movements of assets” to the UK from the Financial Account are reported – essentially to identify UK remittances
- Also, movement of assets from the UK to the Financial Account – mainly to identify assets settled by a settlor

ARR – Elections

- Data exchanged on tax year not calendar year basis
 - 2014: becomes 1 July 2014 to 5 April 2015
 - 2015: becomes 6 April 2015 to 5 April 2016, etc
- One-off election must be made on behalf of the entity - by May 2015 to include 2014 (can vary per CDOT)
- Account Holder makes annual election
- Account Holder self-certifies after end of tax year:
 - RND status/no HMRC challenge
 - Remittance basis of taxation claimed in tax return
 - Remittance basis charge paid if applicable

Common Reporting Standard

- Similar requirements in terms of reporting and knowing who you have to report on
- Based on tax residency rather than citizenship
- Importance of client communication
- 2017 implementation

FATCA – the ticking time bomb?

- The deadlines for reporting information are not that far away!
 - What will IRS/HMRC initial response to the data be?
 - How long before IRS/HMRC commences enquiries and investigations?
 - And what are the issues which might cause such an enquiry or investigation?



Panel 2: FATCA in Practice Part 2 – Questions and Answers Session

Brian McManus, Partner, Latham & Watkins LLP

Fiona Fernie, Partner, Pinsent Masons LLP

Reg Day, Partner, Pinsent Masons LLP

Sinead O'Connor, Head of Regulatory & Compliance Services, DQ

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25 March 2015

Reporting re trusts

- What information is reportable, if any, in respect of the settlor of a trust classified as an FFI where
 - The settlor is expressly excluded from benefit
 - The settlor is not part of the current class of beneficiaries
 - The settlor is a beneficiary
- What information is reportable, if any, in respect of the protector of a trust classified as an FFI?
 - Is this dependent on the protector's powers?

Reporting re trusts

- A trust which is an FFI holds the interest in various underlying companies with different business activities. One such company holds a bank account and the bank has asked for information on the controlling persons of the company. Who would be considered the controlling persons?
 - Would details of the trustees and their GIIN suffice or would the controlling persons of the trust have to be disclosed?
- Where the trustee agrees to undertake the reporting, does the bank need to report as well?

Reporting re trusts

- What information is reportable, if any, in respect of the following controlling persons of a trust who have elected to be part of the ARR
 - Resident non-domiciled settlor
 - Does the movement of funds to or from the UK include the initial settlement into the trust or only transfers on or after 30 June 2014?
 - Resident non-domiciled protector
 - Resident non-domiciled mandatory beneficiary
 - Resident non-domiciled discretionary beneficiary

Reporting re trusts

- A Gibraltar company underlying a discretionary Gibraltar trust. Both qualify as financial institutions. Settlor and beneficiaries are all UK residents. None of the beneficiaries have received any distributions. The settlor is excluded.
 - Is reporting required in respect of the settlor and would this be a nil equity value?
 - Note that IOM guidance says that where the settlor is excluded the equity interest is nil but will still be a financial account and hence reportable, *if appropriate*

Miscellaneous

- Client who is to be reported under FATCA, is introduced to Company A (regulated FFI) by another FFI, Company B. Does Company A need to get any formal confirmation from Company B that Company B is reporting the client? Is it sufficient for Company A to rely on the fact that Company B is regulated or has a GIIN?
- Do the reporting obligations for a Gibraltar fund rest with the fund or does the bank have reporting obligations?

Miscellaneous

- There are various categories of classification.
 - Which types of entities do not have to be reported on?
 - Is there a user friendly guide for classifying entities?

Reporting

- What will be the process?
- Any guidance about the method of reporting?
- How will the upload of the data take place?
- What are the earliest and latest dates for submission?
- Is the IRS schema going to be adopted?
- What if electronic submission is not possible?
- Is there any test facility available?

Panel 3: The Global Tax Enforcement Landscape

Miriam Fisher, Partner, Latham & Watkins LLP
Clarissa Balmaseda, Attaché, IRS – Criminal Investigation
Tom Maher, Managing Partner, DQ
Fiona Fernie, Partner, Pinsent Masons LLP
Chris White, Partner, Hassans

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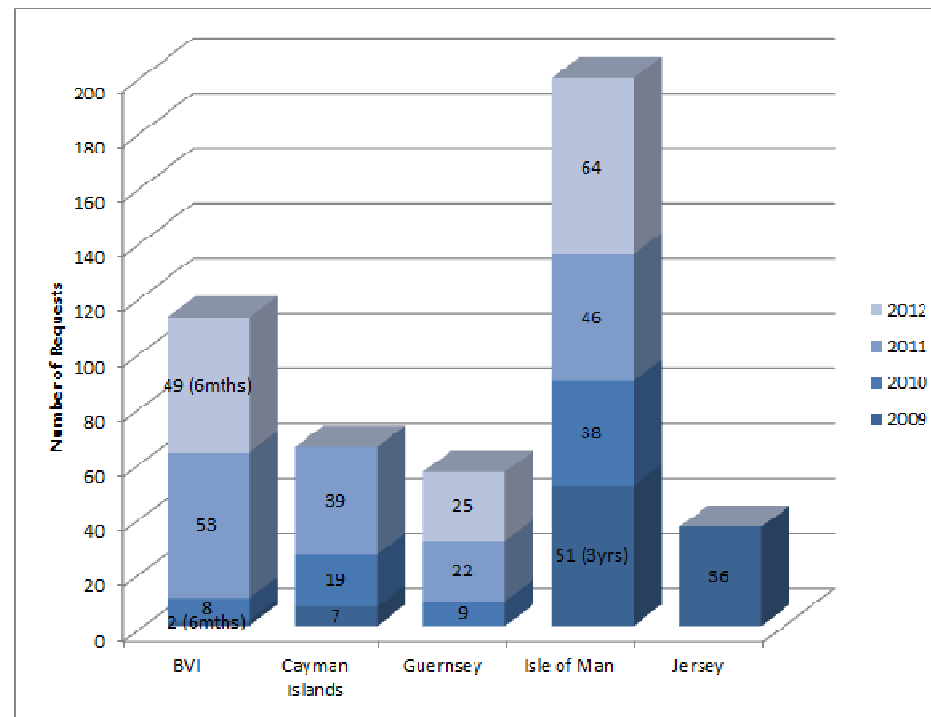
Gibraltar Key Dates

- 2000 OECD Report on “Tax Havens”
- 2002 Model TIEA developed
- 2002 Gib commits 27 February 2002 to transparency and EoI
- 2009 First TIEA – USA (31 March 2009)
- 2009 Member of Global Forum

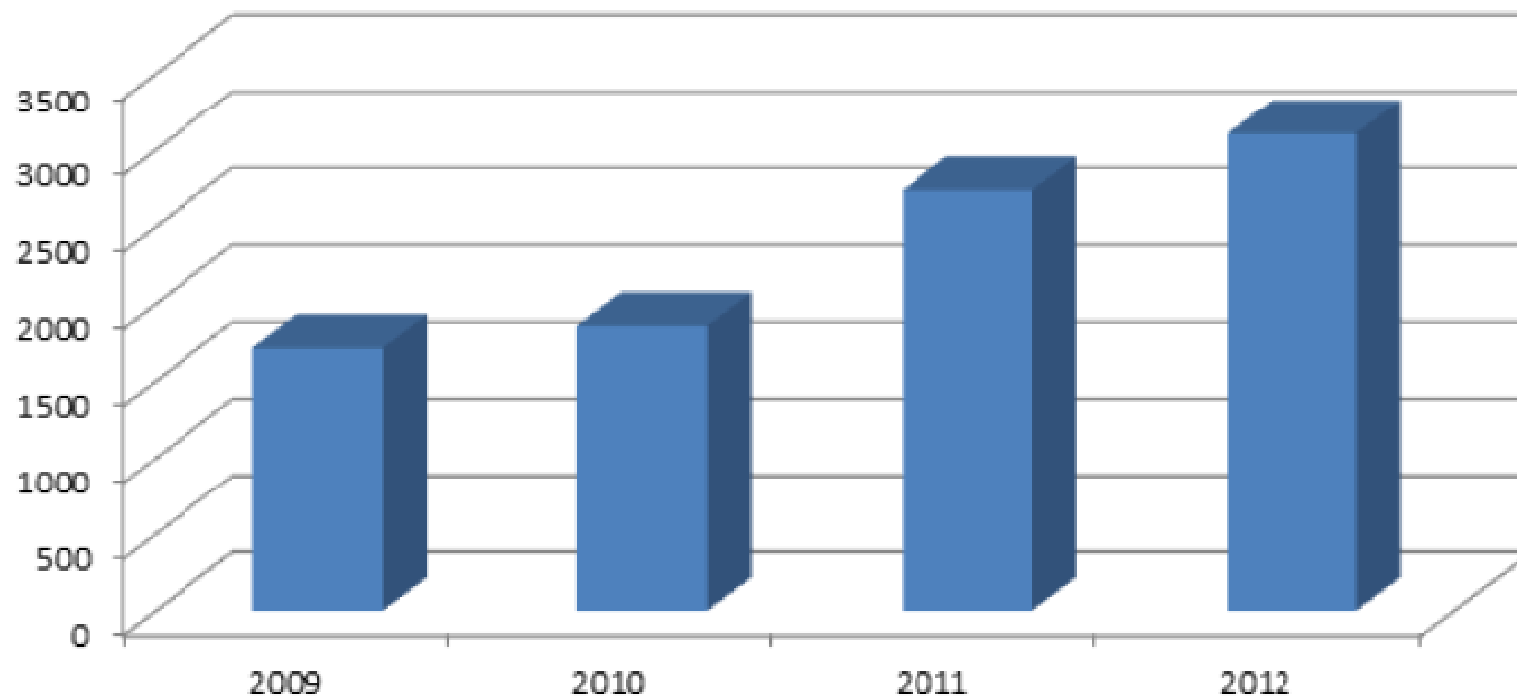
Gibraltar Key Dates

- 2013 EU Directive 2011/16/EU
- 2013 Convention on Mutual Administrative Assistance in Tax Matters
- 2015 27 TIEAs signed
- 25 March 2015 – Sinead O'Connor's birthday!

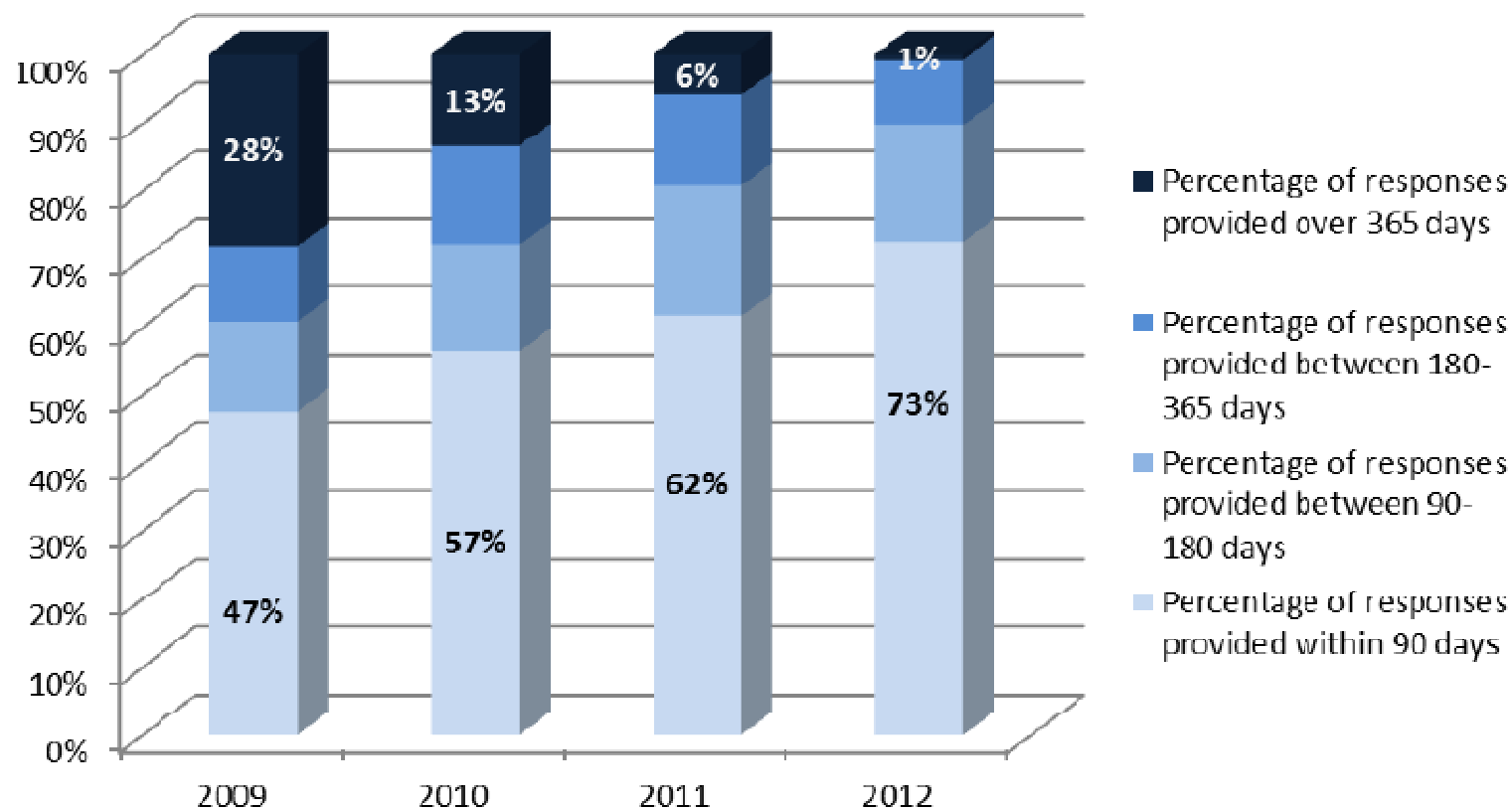
EOI Request Data



EOI Request Data – 23 Countries



EOI Response Times – 23 Countries



Gibraltar TIEA Statistics – Global Forum Annual Report

- 2011 – 2013: 96 TIEA requests from 12 countries
- 90 of which were complied with, 6 outstanding (Nov 2014)
- 10 declined for valid reasons

Gibraltar TIEA Statistics – Global Forum Annual Report

- 55% replied within 90 days of request from foreign authority
- 24% replied within 120 days of request from foreign authority
- Global Forum reports peers “generally satisfied” with experience

Global Forum Report – Nov 2014

TABLE OF JURISDICTION RATINGS	
Australia, Belgium, Canada, China, Denmark, Finland, France, Iceland, India, Ireland, Isle of Man, Japan, Korea, Mexico, New Zealand, Norway, Slovenia, South Africa, Spain, Sweden.	Compliant
Argentina, The Bahamas, Bahrain, Belize, Bermuda, Brazil, Cayman Islands, Chile, Estonia, Former Yugoslav Republic of Macedonia (FYROM), Germany, Ghana, Gibraltar, Greece, Grenada, Guernsey, Hong Kong (China), Italy, Jamaica, Jersey, Macao (China), Malaysia, Malta, Mauritius, Monaco, Montserrat, Netherlands, Philippines, Qatar, Russia, San Marino, Singapore, Slovak Republic, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Turks and Caicos Islands, United Kingdom, United States.	Largely compliant
Andorra, Anguilla, Antigua and Barbuda, Austria,* Barbados, Indonesia, Israel, Saint Lucia, Turkey.	Partially compliant
British Virgin Islands,* Cyprus, ¹² Luxembourg, Seychelles.	Non-compliant
Jurisdictions that cannot be rated because they cannot move to Phase 2	
Brunei Darussalam, Marshall Islands, Dominica, Federated States of Micronesia, Guatemala, Lebanon, Liberia, Panama, Nauru, Switzerland**, Trinidad and Tobago, Vanuatu.	Jurisdictions not moving to Phase 2

* The jurisdiction is undergoing a Supplementary review to improve its ratings.

** The launch of the Phase 2 of Switzerland is subject to conditions. Switzerland is undergoing a Supplementary Phase 1 review.

Some Recovery Stats

- 2013 Australia recovered €326m - over 400 EOI requests
- 2009 - 2013 Sweden recovered €139m - 230 TIEA
- 2010 - 2014 Sweden recovered € 208m – 7,142 voluntary disclosures

Some Recovery Stats

- France's VDS – by Sept 2014 31,000 disclosures netting €1.85bn
- Brad Birkenfeld (UBS) receives \$104m award, but US amnesty programme nets IRS \$5bn

Coordinated US Attack on Offshore Non-Compliance



US Congress

- FATCA
- Permanent Subcommittee on Investigations (PSI)



Executive Branch

- Treasury
 - IRS OVDP
 - IRS-CI
 - IRS LB&I
 - Treaties, IGAs
- DOJ
 - Swiss Bank Amnesty
 - Summonses
 - Prosecutions



Judiciary

- Convictions/
Acquittals
- Sentencing
- Civil Penalties

Chronology of US Offshore Enforcement

IRS/DOJ Enforcement

2000-2002: John Doe Summonses for Offshore Credit Cardholders

2003: Offshore Voluntary Compliance Initiative (OVCI)

2008: John Doe Summons to UBS

2009: UBS Deferred Prosecution Agt, \$780M Fine, Disclosure of 4,500 US-Related Accounts

2009: Offshore Voluntary Disclosure Program – OVDP Phase One

Congressional Action

2006: PSI Hearings on Offshore Tax Havens

2008: PSI Hearings on UBS

March 2010: FATCA Enacted

Chronology of US Offshore Enforcement

IRS/DOJ Enforcement

2011-2012: OVDP Expanded

2012: Wegelin Bank Forfeiture and Indictment

2013: DOJ Swiss Bank Disclosure Program Launched

2014: Credit Suisse Guilty Plea \$2.4B Fine; new modifications to OVDP

2014: Category II Swiss Bank Disclosure Commences

2015: Initial FATCA Disclosures; Treaty Requests Commence; More Scrutiny for Banks

Congressional Action

2014: PSI Hearings on Credit Suisse

2014: FATCA Implementation

US Global Tax Enforcement Results

US Impact

- US Taxpayers
 - 50,000+ OVDP Participants = US\$7B+
- Swiss Banks
 - 2 DPAs, 2 Guilty Pleas/ 1 Forfeiture; US\$3B+ Fines
 - ~12 Pending Investigations
 - 106 Applications for NPAs
- Prosecution of US Taxpayers & “Enablers”
 - 89:12 Convictions
 - 1:2 Acquittals
 - 77 Cases Pending

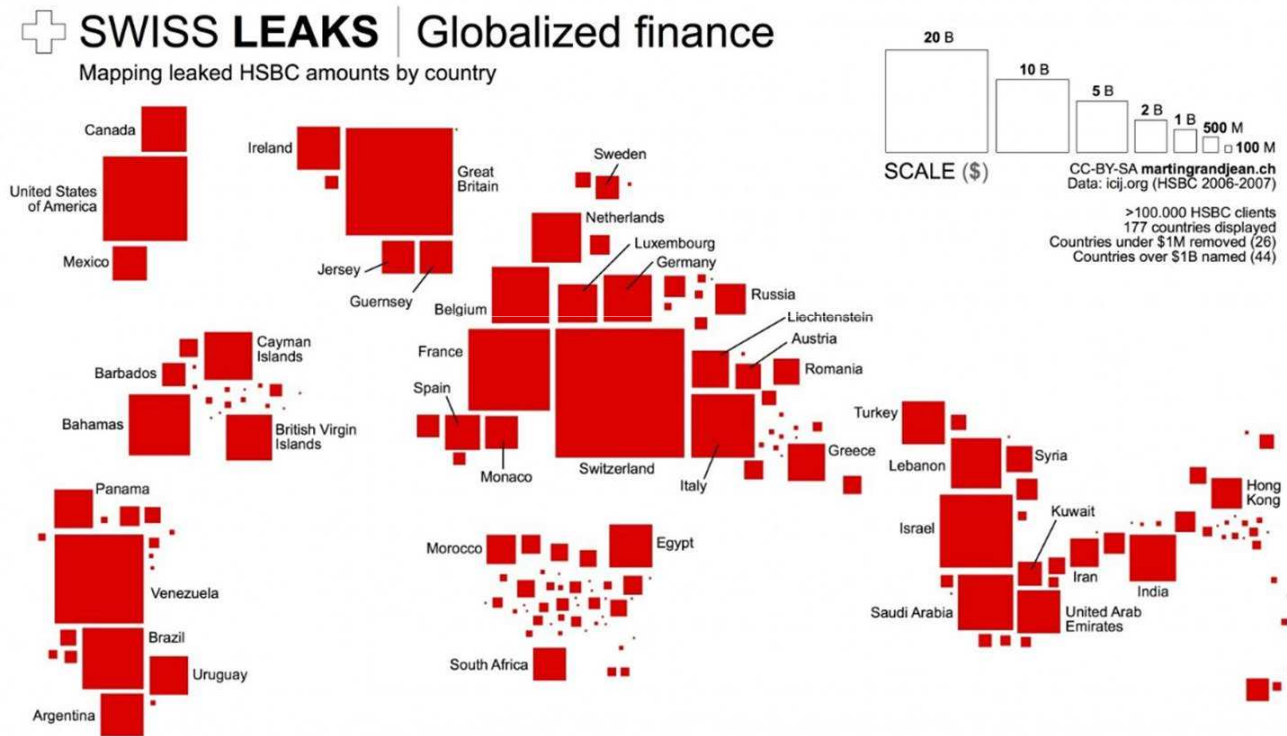
Global Impact

- 100+ Countries with FATCA IGAs in effect
- Leads shift US focus beyond Switzerland
- EU and many countries benefit from lead sharing and step up tax enforcement
- G-20 endorses OECD plan for Common Reporting Standard for multi-lateral financial info sharing to increase tax compliance

US Global Tax Enforcement Toolbox

- DPAs, NPAs, Non-Target Letters
- Penalties and Fines
- Independent Monitors
- Criminal Investigations, Prosecutions, Pleas
 - US Accountholders
 - US/Foreign Enablers
 - Banks
- Coordination with Regulators
- US Correspondent Bank Forfeitures
- Whistleblower Rewards
- Undercover Operations
- Extradition
- Inter-Agency Leads
- John Doe Summonses
- Amnesty Programs
 - Individual
 - Institutional
- Tax Treaties, TIEAs, MLATs
- FATCA IGAs, Direct Cooperation Agreements
- Intergovernmental Info. Sharing
- FATCA Withholding Sanction/Enforcement
- Legislation, Regulation
- Congressional Hearings
- Publicity

Swiss Leaks



Washington Post, Feb. 18, 2015

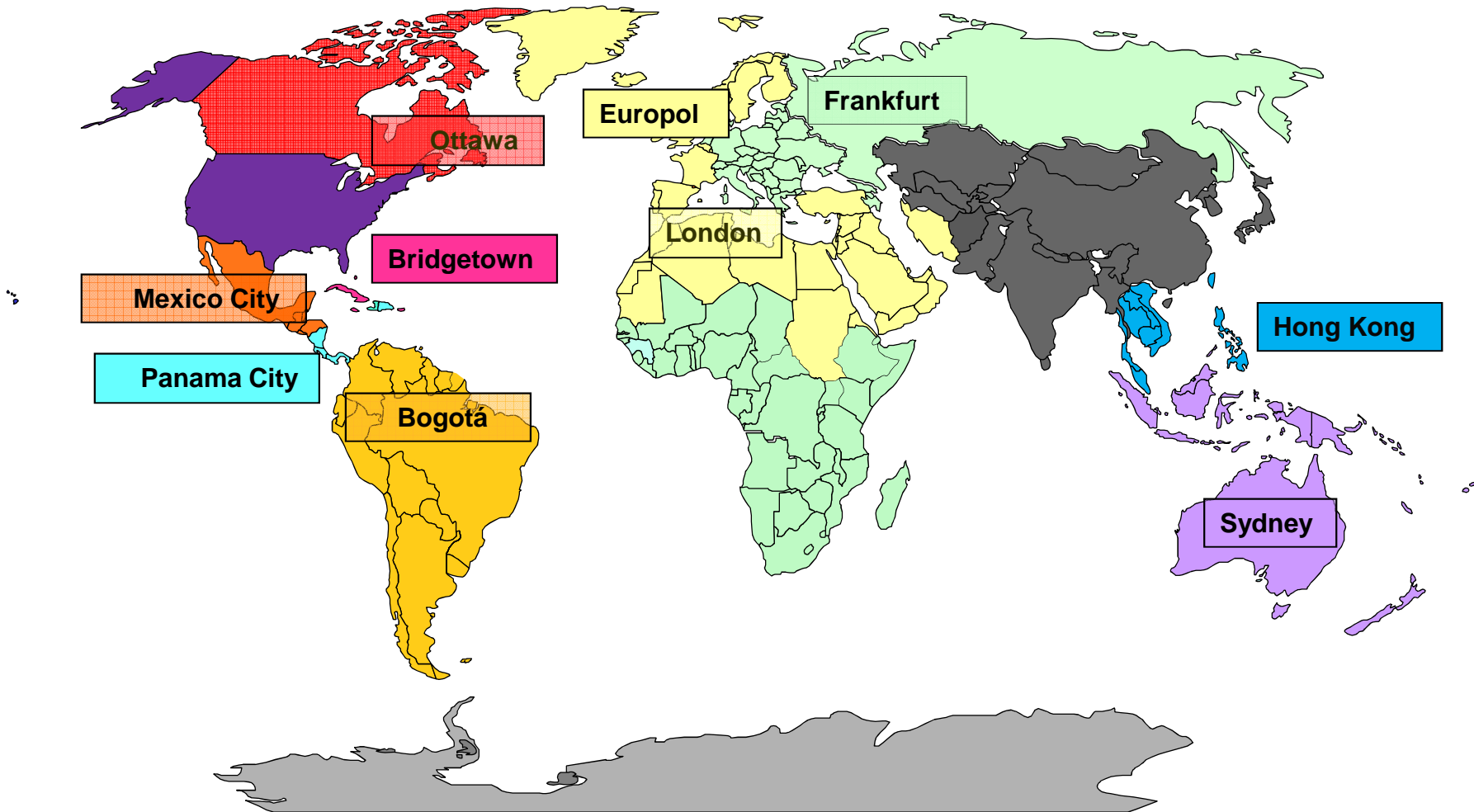


- 3,500 employees worldwide
 - 2,500 Special Agents
- IRS CI is the only agency with jurisdiction over federal tax violations (Title 26)
 - We focus on tax laws and tax convictions
 - Title 31 BSA; Title 18 Money Laundering/Conspiracy
- CI has special agents assigned to 25 field offices across the U.S. and in 10 foreign countries including Colombia, Mexico, Panama, Barbados, Canada, Great Britain, Germany, Hong Kong, China, Australia and Europol



Internal Revenue Service

Criminal Investigation





Operational Priorities

IRS CI's Enforcement Strategy in support of the IRS Strategic Plan for 2014-2017).

Core Mission Tax:

- **International Tax Fraud**
- Fraud Referral Program
- Abusive Tax Schemes
- Identity Theft
- Return Preparer Fraud
- Questionable Refund Fraud
- Employment Tax



Operational Priorities

Other Financial Crimes

- Public Corruption
- Virtual Currency
- Cyber Crimes
- Frivolous Arguments Program (FRAG)

Narcotics-Related Financial Crimes

- Organized Crime Drug Enforcement Task Force (OCDETF)
- Transnational Organized Crime (TOC)



IRS-CI International Priorities

- To **identify promoters** that aid and abet U.S. taxpayers who evade tax and foreign financial reporting requirements through expanding CI's global presence, data mining projects, and **monitoring information and intelligence** received from all sources.
- To **identify emerging international enforcement trends and issues**. IO will continue to identify emerging issues by **intelligence sharing** and working with other U.S. and foreign law enforcement, foreign governments and the IRS civil business unit - Large Business & International.
- To expand participation in significant **bilateral international investigations** with our foreign law enforcement partners which have an impact on the U.S. financial system. In addition, IO will be fully committed to complying with investigative requests received from the international law enforcement community and continue to develop processes that **promote the sharing of information**.



FY 2014 IRS-CI Statistics

	Total	International
Investigations Initiated	4,297	226
Investigations Completed	4,606	289
Number of Convictions	3,110	150
Conviction Rate	93.4%	86.7%

Total Value of Seized Assets	\$ 4,267,477,686
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SUBJECT CRIMINAL INVESTIGATION (SCI)

IRS Criminal Investigation conducts SCI's in two distinct formats:

ADMINISTRATIVE INVESTIGATIONS – Are conducted solely by IRS special agents according to established CI procedures. These investigations **do not** include participation by other Federal or State agencies or include involvement with the United States Attorney's Office (prosecutors) prior to referral to the Department of Justice.

GRAND JURY INVESTIGATIONS – Are conducted by IRS special agents in conjunction with other law enforcement partners. These investigations use the grand jury in its investigative capacity. These investigations are directed by the United States Attorney's Office or the US Department of Justice, Tax Division.

The Special Agent Toolkit

- **Sources of Information:**
 - Government Records
 - Business, financial, professional and educational records
 - Investigative Databases
 - Informants
- **Special Investigative Techniques include:**
 - Undercover Operations
 - Consensual Monitoring
 - Use of Confidential Informants
 - Use of Cooperating Witnesses
- **Other Investigative Techniques:**
 - Search and Seizure Warrants
 - MLAT, TIEA and Tax Treaty Requests



Internal Revenue Service

Criminal Investigation

Methods to Exchange Information





Internal Revenue Service

**Criminal
Investigation**

Methods to Exchange Information

International
Foreign Bribery
Task Force
(IFBTF)

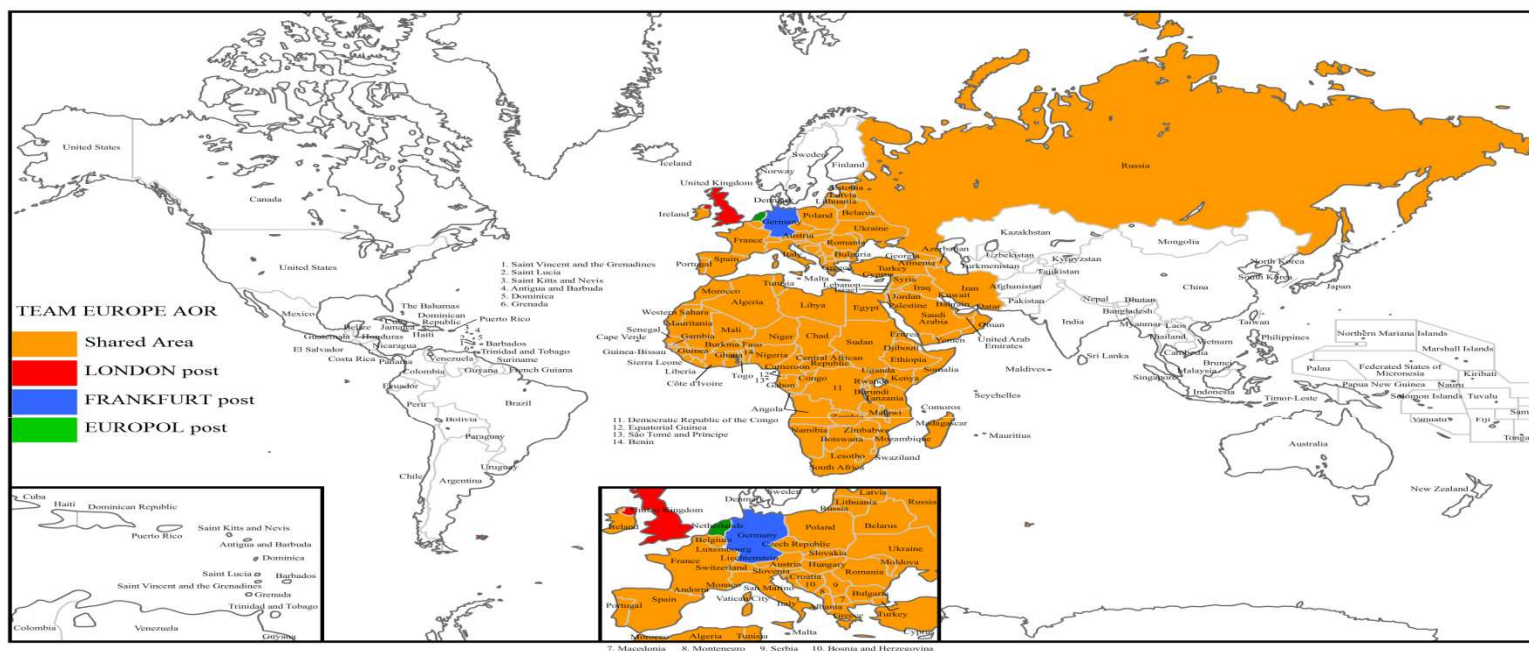
Five Eye Working
Groups
OC, Criminal Tax
Symposium

Joint Terrorism
Task Forces



Internal Revenue Service Criminal Investigation

US Engaging with UK and European Law Enforcement



HMRC's graduated and proportionate approach to tax evasion

- Education and support to those who wish to comply
- Campaigns targeting specific areas of risk.
- Harder interventions targeting specific sectors and locations where there is a high risk of tax evasion, including hidden wealth.

HMRC's graduated and proportionate approach to tax evasion

- Disclosure agreements.
- Mixture of civil and criminal sanctions for those who do not wish to engage.
- Centre of excellence within HMRC to co-ordinate approach to offshore evasion.

HMRC Policy on Tax Evasion

- To deal with fraud by the use of cost effective civil fraud investigation procedures wherever appropriate.
- Criminal Investigation will be reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate.
- Heinous category offences.

HMRC Policy on Evasion

- Prosecute more people who break the law:
 - More resources to increase tax evasion cases brought before the criminal and civil courts;
 - Local task forces to identify and deal with tax cheats, using criminal and civil powers;
 - Additional 200 criminal investigators to increase the number of people prosecuted for tax evasion from 165 in 2010/2011, to 565 in 2012/2013, and to 1,165 in 2014/2015.
- Use data and new technology – CONNECT (of which more later).

Timeline: HMRC offshore initiatives

- 2007: Offshore Disclosure Facility opens.
- 2009: New Disclosure Opportunity opens.
- 2009: Tax agreement with Liechtenstein / opening of LDF.
- 2011: Tax agreement with Switzerland;
OCU comes into existence;
New offshore penalties of up to 200%.
- 2013: Swiss agreement comes into force;
Crown Dependencies Disclosure facilities open;
G8 secures automatic exchange of information as the new standard.

HMRC next steps on tax evasion

- Existing offshore penalty regime extended and a new aggravated penalty of moving hidden funds to avoid the CRS.
- Existing tax disclosure facilities will close early at the end of 2015:
 - Liechtenstein Disclosure Facility;
 - Crown Dependencies Disclosure Facilities.

HMRC next steps on tax evasion

- A new time-limited disclosure facility will be introduced in 2016
 - No protection from criminal prosecutions;
 - Higher penalties.
- A new strict liability criminal offence for offshore evasion.
- New penalties that link the penalty for evasion to the underlying assets, in addition to existing tax geared penalties.

HMRC next steps on tax evasion

- A new criminal offence of corporate failure to prevent tax evasion or the facilitation of tax evasion.
- Enablers will pay a fine equivalent to that paid by the person who was helped to evade tax.
- Naming and shaming those that enable tax evasion.

HMRC next steps on tax evasion

- Legislation to require financial institutions and tax advisors to notify their customers that:
 - HMRC is being sent data on offshore accounts;
 - Changes to penalties for evasion;
 - Final opportunity to disclose tax irregularities before HMRC receives offshore data and opens investigations.
- Extension to the Crown Dependencies and Overseas Territories?

Information Exchange

- UK has led in developing and implementing a new global standard of automatic exchange of tax information:
 - Commitment to early adoption by 44 jurisdictions;
 - Step change in tax transparency and clamp down;
 - Provides HMRC with greater ability to “find” the non-compliant.

HMRC's response to exchanged data

- Harnessing the power of data:
 - Huge and expanding range of data – 1.5million lines/year on offshore savings;
 - Holds more data than the British Library;
 - Sources include: tax returns, Sch36 notices issued to UK banks, ODF, NDO, info exchange under EUSD, mutual legal assistance agreements and many more.

HMRC's response to exchanged data

- Used to:
 - Join up the dots between the various sources;
 - Build up a comprehensive picture;
 - Identify Risk.

HMRC's response to exchanged data

- And they DO join up the dots!
- “CONNECT” has already made 4billion connections to identify areas where tax collection is at risk.
- Already brought in an extra £1.4 billion of tax revenue by investing £45 million in this advanced technology.
- It is effective: eg client disclosure under the LDF challenged within 24 hours by HMRC – Australian accounts not included in the disclosure!!

Gibraltar Approach to Co-operation

- Government's approach to transparency & EoI
- Judiciary's approach to global co-operation
- EU and Global Forum

Panel 4: Inside a Global Tax Investigation, Part I

Brian McManus, Partner, Latham & Watkins LLP

Annemarie Hughes, Partner, DQ

Sinead O'Connor, Head of Regulatory & Compliance Services, DQ

Chris White, Partner, Hassans

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Overview

- TIEA procedures
- What to do when you get a TIEA Request
- Who do you tell?
- Do you challenge?
- Client confidentiality issues - TIEA context
- Best practices to avoid criticism, investigation, prosecution

Who do you tell?

- Regulator
- Insurers
- File STR with GFIU
- Client – tipping off issues?
- STR now doesn't “wipe the slate clean”

What do you do?

- Get files ready asap (inc electronic records). Clock ticking
- Ask your client for full background
- Exit relationship?
- Consider a challenge to TIEA
- Who is paying your fees/legal fees? Terms of business
- AML issues – adequate consideration

Do you challenge?

- Court challenge v Administrative challenge
- Can client force you to challenge?
- Offshore case update
- Gibraltar Court's approach to challenge
- Court challenge public?
- Will a challenge antagonise foreign authority?
- Legal fees

Client confidentiality

- Notice compels disclosure
- Ensure terms of Notice are accurate/clear
- Date range
- What if Notice flawed and you don't challenge?
- Complex confidentiality considerations in Part II Panel for voluntary disclosures

Be prepared

- How well do you know your client? How good was your DD?
- How independent and unfettered were you?
- How will Regulator/GFIU react?
- Are you a facilitator or enabler?
- International drive to increase money laundering prosecutions
- Spot the lessons to learn now and adapt take on procedures - “hindsight approach”
- Terms of business – review and amend now

Panel 5: Inside a Global Tax Investigation, Part II

Brian McManus, Partner, Latham & Watkins LLP
Clarissa Balmaseda, Attaché, IRS – Criminal Investigation
Tom Maher, Managing Partner, DQ
Fiona Fernie, Partner, Pinsent Masons LLP
Reg Day, Director, Pinsent Masons LLP

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Subject Criminal Investigation

STEPS FOR CONDUCTING A SUBJECT CRIMINAL INVESTIGATION

- **Conduct Critical Interviews**
 - Subject of Investigation
 - Accountant/Tax Return Preparer
 - Business Partners
- **Conduct Third Party Interviews**
 - Co-workers
 - Neighbors/Associates
 - Witness with knowledge to alleged crime/financial transaction/documents



Subject Criminal Investigation

STEPS FOR CONDUCTING A SUBJECT CRIMINAL INVESTIGATION

- **Securing Evidence**
 - IRS Summons (administrative case)/Grand Jury Subpoena
 - Business Records
 - Bank and other Financial Records
 - Special Investigative Techniques
 - Search Warrants
 - Surveillance
 - Undercover Operations



Subject Criminal Investigation

STEPS FOR CONDUCTING A SUBJECT CRIMINAL INVESTIGATION

- **Evaluation of Evidence**
 - Financial Analysis
 - Identification of critical witnesses/testimony
 - Elements of the Crimes
 - Venue
 - Statute of Limitations
 - Sufficiency and burden of proof



Subject Criminal Investigation

STEPS FOR CONDUCTING A SUBJECT CRIMINAL INVESTIGATION

- **Special Agent Report**
 - Theory of the Case
 - Method of Proof
 - Presentation of Evidence to support Elements of the Offense
 - Witness Testimony
 - Financial Evidence and Analysis
 - Willfulness
 - Potential Defenses/Rebuttal
 - Recommendation of Criminal Charges



Who is Involved in the Investigative Process?

Special Agent

- Conducts Investigation
- Prepares Special Agent Report and Evidence Exhibits

Centralized Case Review

- Conducts an in-depth review of the Special Agent report to ensure the evidence supports the recommended charges

IRS Criminal Tax Counsel

- Conducts a legal review of the investigation
- Offers a conference to the subject in administrative investigations only
- Prepares a Criminal Evaluation Memorandum



Who is Involved in the Investigative Process?

Supervisory Special Agent

- Reviews Special Agent Report
- Ensures final changes have been made or addressed

Special Agent in Charge

- Referral authority to the U.S. Department of Justice

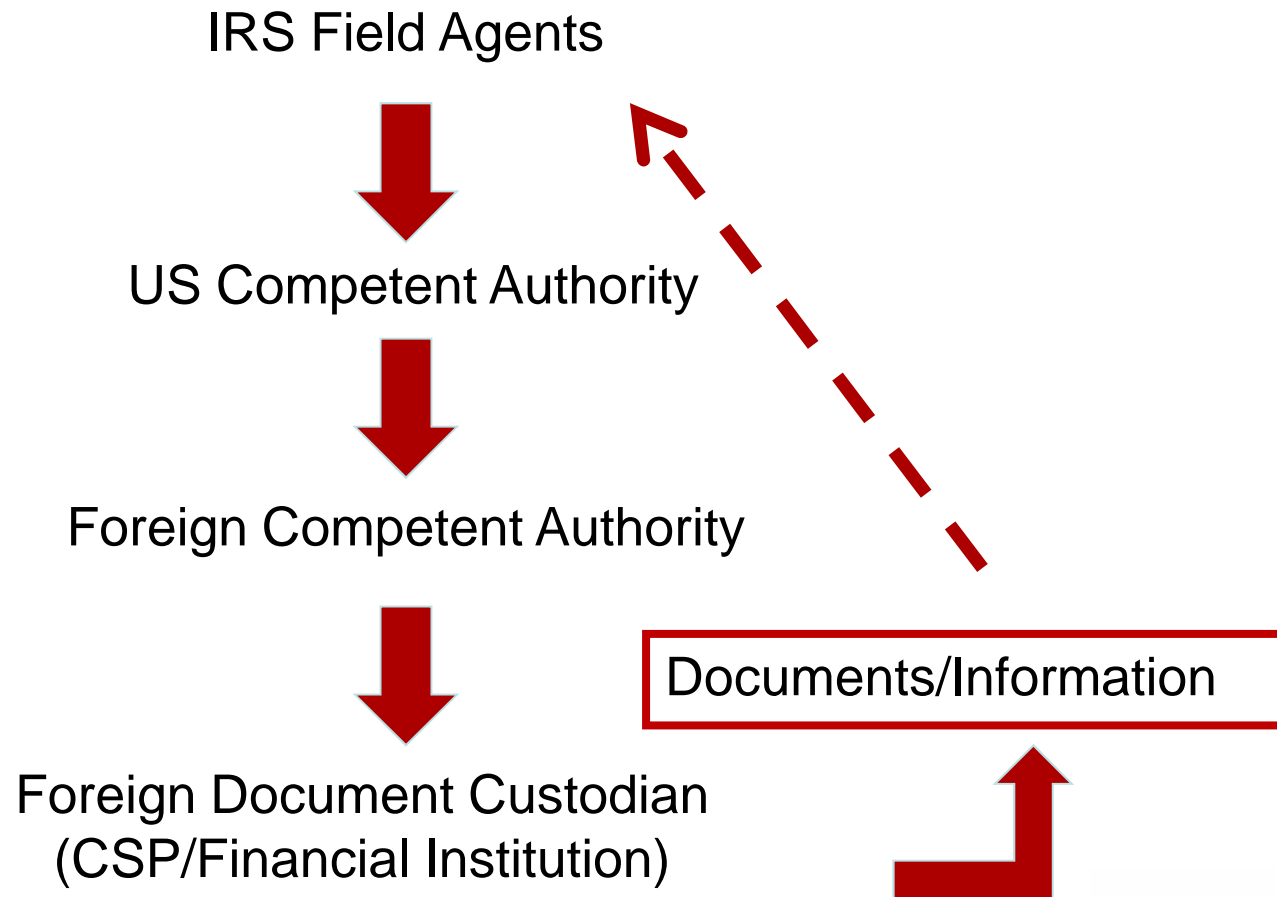
U.S. Department of Justice – Tax Division

- Conducts a legal review of the investigation
- Authorizes tax offenses to be charged
- Authorizes plea agreements to tax offenses

United States Attorneys Office

- Prosecution

US Tax Treaty Request Process



Proactive Strategies to Manage Risk

- Is your business prepared to interface with US tax authorities?
- Are your due diligence and compliance procedures adequate?
- Are potentially culpable employees still employed at your company?
- Is your current staff adequately trained?
- Are you sensitive to potential whistleblowers?

Proactive Strategies to Manage Risk

- Are you exercising care and adequate diligence as new US-related clients approach your company?
- Are you susceptible to parallel inquiries from your local tax authority or those of other countries?
- Do you know what to do when a treaty request arrives or an IRS criminal investigator appears at your door?

We can help.

Hypothetical: The IRS Resurfaces

Approximately six months after the production of documents to the IRS in response to the TIEA request, you get a call from an IRS criminal agent asking you to voluntarily submit to in-person interviews. The stated purpose is to obtain some “context” regarding the documents and your client’s transactions in Gibraltar.

The agent inquires as to your availability for an interview in the next four weeks.

Your Team

- Assemble a team
- Legal counsel in Gibraltar and foreign country whose tax authority is making the inquiry
- All counsel must work together to formulate a strategy to ensure that a consistent message is being transmitted to each government
- Clearly decide who is doing what
- Assume foreign government will confer with Gibraltar and other relevant jurisdictions and have documents from many sources already

Foreign Legal Analysis – Conflict Issues

- Foreign Court or Government analysis and substantive tax/legal treatment of Gib structures, Gib bank accounts
- Conflict with Gibraltar legal analysis
- Sham trust or company, not respecting Gib rule of law on sham principles or corporate veil
- eGaming important industry in Gib is not immune.
“Pokerstars is a bank” – Hom case June 2014 (USA)

Dealing With Your Client

- Communication
- Level of disclosure to the client. Interests aligned?
- Same representation: depends on structure in Gib and parties' potential culpability
- Obtaining consent from client to cooperate
- Application to Court necessary (e.g. trustee)?

Dealing With Your Client

- Funding the legal representation
- Contractual terms with client
- Insurance policy
- Regulatory concerns
- AML/Crime (Money Laundering & Proceeds) Act

What are you?

- Investigatory classifications (witness, subject, target)
- What do they mean?
- Who determines?
- Duty to inform individual of status?
- Changes in status
- Impact of a classification

Interview Considerations

- Interview requests
- Purpose and nature
- Identifying interviewees
- Setting parameters (e.g. duration, recorded, provision of further documents)
- Interview location (Gib v foreign country)

Interview – getting ready

- Proffer/immunity letters
- Interview preparation & mechanics
- Whether to educate the interviewee
- Document review
- Witness themes
- Key advice: “Tell the truth”

Panel 6: Future of Global Tax Enforcement and its impact on Gibraltar

Brian McManus, Partner, Latham & Watkins LLP

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Global Tax Enforcement Conference

25 March 2015

What's next and why?

- Comprehensive tax enforcement
- What to expect from the US/UK
- What to expect from EU, IMF, Moneyval
- “Tax haven” label still applied – Miliband
- Gibraltar's role & offshore's future

What's next?

- Beneficial Ownership Register (aka “Kidnappers’ charter”)
- Has the Chief Minister received the original Miliband letter yet?
- Banks de-risking. HSBC Jersey closing all UK customer accounts
- FATCA/CRS will lead to TIEAs which will lead to investigations
- Increased number of AML prosecutions

Digital Currency

- Gibraltar increased interest in digital currency
- Consider Isle of Man position - open for reputable business which meets necessary standards and regulations. Will be regulated by IOM's AML regime
- First Digital Currency Exchange "CoinCorner" established on the Isle of Man July 2014
- FATF Report on Digital Currencies 30 June 2014
- Suspicion and mystery still to be dispelled

Trends – Beneficial Ownership

- Transparency in Beneficial Ownership
 - FATCA due diligence requirements
 - IRS-CI announces priority focus on use of shell companies and other anonymous corporate structures
 - US investigates use bearer securities in furtherance of tax evasion
 - US focus on use of Bitcoin and virtual currencies
 - FinCen Proposal would mandate USFIs collect and provide to US beneficial ownership data, limited to “only natural persons”
 - FATF (G7) Guidance advocates beneficial ownership transparency and publicly available company information
 - OECD Agreement for Automatic Exchange of Information with maintenance and exchange of beneficial ownership information

Beneficial Ownership in the Headlines

- *US v. Bandfield , et al.* (E.D.N.Y. Sept. 2014) (false Form W-8BEN hiding US beneficial ownership of accounts and used to circumvent FATCA reporting obligation is alleged as a “badge of fraud” in recent tax, securities, money laundering indictment)
- *John Doe Summonses re: Sovereign Management and Legal* (Dec. 2014) (based originally on a DEA lead, IRS issues John Doe summonses to major US couriers, money transfer, clearing house and banking institutions to identify US users of offshore corporate service provider advertising anonymity and tax advantages)
- See also “*Stream of Foreign Wealth Flows to Elite New York Real Estate,*” *New York Times* (Feb. 8, 2015)

Trends – Increased Institutional Risk

“No financial institution, at home or abroad, is too powerful to be held accountable for wrongdoing.”

– US Attorney General Eric Holder

- Credit Suisse felony plea for tax evasion in 2014 marks a turning point (and a likely blueprint) for US prosecution of financial institutions, permitted to survive through the cooperation of regulators and extraction of huge fines

Trends – Focus on Executives

- US Department of Justice response to outcry over US failure to hold bank executives accountable for financial fraud
- US Department of Justice actively recruits whistleblowers of financial crimes and warns of harsher institutional punishment where companies fail to come forward with evidence of individual culpability
- Bank files, account manager data and customer disclosures make past conduct transparent
- Mid-level executives pressured under plea deals to provide evidence against more senior executives
- But see *US v. Weil* (Nov. 2014 acquittal of senior Swiss bank executive)

Trends – Is the Past Behind Us? Not Yet

- Recent intense focus on HSBC's pre-2009 conduct based on public release of journalists' analysis of client data
- No protection offered under prior US DPA
- UBS faces new US probe concerning bearer investments
- Adequacy of banks' remedial efforts under scrutiny

Trends – Is the Past Behind Us? Not Yet

- US following the money trail out of Switzerland, starting in 2008 –

“Foreign clients withdrew as much as \$109.3 billion to pay fines to governments in their countries of residence, PwC said Aug. 27 in its Swiss private banking study. About \$273.3 billion was repatriated or transferred to another financial center, according to the document.”

– Bloomberg BNA (August 29, 2014)

Global Coordination vs. Tax Avoidance

- Worldwide shift toward multilateral information sharing to combat tax avoidance
 - G20/OECD
 - G20 finance ministers endorses plan to automatically exchange information on a reciprocal basis by end of 2018
 - Common Reporting Standard (CRS) for Automatic Exchange of Financial Account Information based on IGA system released by OECD in July 2014. No withholding under the CRS.
 - Base Erosion and Profit Shifting (BEPS) Action Plan

Global Coordination vs. Tax Avoidance

– European Union

- Proposal to update the 2011 Directive on Administrative Cooperation in the Field of Taxation to implement automatic exchange of information from 2015 on a wide range of assets; update to Savings Directive (automatic exchange of information relating to savings income)
- Proposal for Corporate Registers of Beneficial Ownership
- Scrutiny of “Sweetheart” Corporate Tax Deals fostering unfair tax competition

Impact on the Financial Sector

- Increased Regulatory Compliance
- Increased Cross-Border Information Gathering
- Increased Domestic and External Scrutiny Presents Financial, Reputational, Potentially Criminal Risks

Compliance Burdens

- An ever-growing array of externally-developed standards designed to increase transparency, ease of exchange and ultimately tax compliance
 - Currently present a confusing mix of definitions and standards that may differ from country to country for the same organization
 - Also present multi-jurisdictional enforcement scenarios
 - Common standards and best practices likely to evolve over time

Increased Cross-Border Information Gathering

- Automatic exchange through FATCA/OECD/EU proposals
- Coordinated audits by multiple jurisdictions
- Treaty requests becoming more common
- Increased and successful use and enforcement of summonses by US tax authorities
- Increased “on site” information gathering activity by US tax investigators

Questions?