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Lionel Messi Is Fined To Avoid Prison; Why IRS Would Be Harsher

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If there was ever any doubt that star footballer [Lionel Messi](#) of FC Barca would not have to go to prison over his 2016 conviction for tax fraud, the last vestige of it is now dispelled. In Spain, his 21-month prison sentence has now officially been reduced to a €252,000 fine. Messi's father, Jorge, was convicted for tax fraud, too. Although he originally received the same 21-month sentence as his son, the father's prison term was cut to 15 months for his cooperation. Now, the senior Mr. Messi will pay a €180,000 fine rather than face a 15-month prison term.

The case is not the only big name criminal tax case in the high-stakes world of soccer. And it is not the only one involving offshore companies and taxes on image rights and endorsement income. There are often additional tax games to play when it comes to such forms of income. Of course, it seemed unlikely all along that either father or son would actually serve jail time. Under Spanish law, a prison sentence of less than two years in a tax case can be converted into what amounts to probation.



One of Messi's primary defenses in the trial was that he simply did not understand what was going on. He may well not have. He said that he signed many documents without reading their contents. In some cases, he even acknowledged that he took steps he didn't understand, such as visiting a notary's office to set up a company to handle his finances, without understanding the content or nature of what was being done. Yet prosecutors were tough on him, as they often are in the U.S. Even people with complex

affairs who rely on professionals and advisers to handle it all may not be able to entirely avoid responsibility.

Signing a tax return, for example, requires some accountability. An “I didn’t understand” defense often does not work in the U.S., either. According to the IRS, the test is whether there was a voluntary, intentional violation of a known legal duty. Willfulness is shown by your knowledge of reporting requirements and your conscious choice not to comply. Willfulness means you acted with knowledge that your conduct was unlawful—a voluntary, intentional, violation of a known legal duty. The failure to learn of filing requirements, coupled with efforts to conceal, may mean a violation was willful. Even willful blindness may be enough, a kind of conscious effort to *avoid* learning about reporting requirements.

If you don’t understand, ask. If something is being covered up, ask why. If there is a good reason to hide ownership from the public, at least make very sure that the ownership is not hidden from the government. A real hot button with the IRS is evasive conduct and anything that smacks of subterfuge. Hiding things *always* looks bad. In Messi’s case, the names of the beneficial owners of companies were hidden. The Messis had companies registered in the UK, Switzerland, Uruguay and Belize. Some of the primary charges against Messi and his father involved their use of these shell companies. They were designed to avoid taxes on 4.16 million euros of Messi’s income from image rights. It did not help that Messi’s name came up in the Panama Papers.

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. Using entities that look secret can make innocent activity [willful, meaning penalties or jail](#). There may be good business reasons for secrecy. But in tax filings at least, there is not. Conduct during an IRS audit is another huge issue. In many criminal tax cases, it was the taxpayer’s untrue statements or obstruction during the audit that brought them down. The tax returns themselves can be a smaller problem than the taxpayer’s conduct *during* the audit.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.