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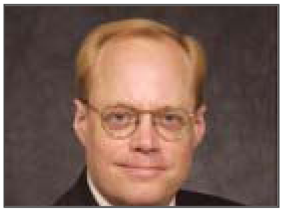

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Offshore Accounts Can Mean Jail, And Not Just In U.S.

Authorities in many countries do not prosecute tax crimes with the same degree of fervor as their counterparts in the U.S. For many reasons, America's IRS is the most feared tax agency in the world. That is especially so after the IRS and the U.S. Department of Justice have had such unprecedented success. Truly, they gutted Swiss banking like a fish.

Then there is FATCA, the global U.S. tax compliance law that is striking fear into the hearts of foreign institutions everywhere. As this most massive of financial disclosure laws kicks in, foreign institutions in most nations must turn over American depositors or else. Meanwhile, although many nations have complained about the loss of sovereignty FATCA imports, there's a bit of envy too.

After all, many other nations also are struggling with their tax collections. Like the U.S., many nations hope to stop the tide of taxpayers with offshore accounts that may thereby be shorting the taxman. The UK has been especially envious of the U.S. hard line, and now appears to be emulating it. Perhaps the UK will even best the IRS.

Currency Exchange (Photo credit: Images_of_Money)

The UK's HM Revenue & Customs has said that it has collected over £1.5bn from offshore tax evaders during the past two years. Yet the government wants more and knows more is out there. Outreach isn't enough, and the government now talks of an enhanced focus on criminal prosecutions.

Criminal tax cases in the UK have ramped up in recent years. However, most cases are still not prosecuted. In part, this is because proving that a person intended to evade taxes isn't easy. Yet a proposal has been floated to essentially *presume* tax avoidance intent, something almost unheard of in cases of this sort.

This shifting of the burden of proof—presuming tax avoidance guilt so that the accused must *disprove* it—would make a conviction in the UK easier than in the U.S. The topic is controversial. These new criminal standards in the UK would allow criminal charges based only on showing that money was taxable and undeclared.

Chancellor George Osborne has said that the government is considering this lower criminal standard, as well as harsher fines and increased jail sentences for those who are convicted. At present, offshore tax evaders can face severe fines, or even criminal prosecution and prison. But that is not enough to suit some in the UK's government.

The UK is also said to be considering rewards for whistleblowers who help identify untaxed offshore assets to the authorities. Yet it is the prospect of enhanced criminal charges for offshore tax transgressions that is big news. Taking a page from the IRS playbook, the UK is talking tough and looking the same.

If these plans come to fruition, it is likely that some will challenge the law's presumed tax evasion intent. Many UK professionals profess the view that these are scare tactics designed to lure in outliers who should declare their accounts and pay their tax before it is too late. That is a popular view in the U.S. too.

And if UK tax prosecutions do experience an uptick, most could be relatively minor charges that do not draw serious prison time. Still, the climate is different now. The 2011 settlement between the British and Swiss governments is expected to net the UK approximately about £3bn in previously unpaid taxes in 2013.

The U.S. with its hard line collection efforts and multiple but relatively expensive amnesty programs has done even better. Yet the carrot and stick are both in play in the U.S., and the stick may be growing bigger and bigger still.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.