Foreign tax crimes, money laundering and criminal proceedings abroad

USA, UK, Germany, Austria: how to identify the foreign tax crimes and avoid criminal proceedings for the clients, the professionals & their entities?

Project of the new Swiss AML Law: what are your new obligations?

THURSDAY 30 OCTOBER 2014, ZURICH, HOTEL MARRIOTT

8.45 Opening speech by the conference chairman

9.00 Tax crimes: the UK approach
- The range of crimes a professional can commit under UK law in relation to tax
  - Tax crimes in statute and common law
  - Money laundering: how does this interact with tax offences in the UK?
  - Non-tax specific crimes: fraud, accounting offences, Companies Act offences, banking offences, bribery
  - The proposed “professional assistance” offence
  - Investigation and prosecution in the UK
  - Who can prosecute, who can they prosecute and what are they interested in?
  - Offshore accounts
  - Multiple jurisdictions and multiple prosecutors
  - Professional responsibilities in the UK
  - Reporting to the authorities: money laundering, tax avoidance schemes
  - Reporting to the regulators

Emma Hardaker, Director, Promontory, London

9.45 United States: are the laws new, or the interpretation new?
- Most of the laws have not changed in 30 years
- What potential offences are being committed?
  - Aiding and abetting tax evasion - criminal and civil aspects
  - Aiding and abetting and conspiracy claims under the Bank Secrecy Act regarding FBAR filings
  - Wire fraud and misuse of international monetary transfer infrastructure
  - Review of the indictments, NPAs, DPAs, etc.
- Criminal proceedings abroad against professionals
  - Evolving practice with respect to pursuit of non-US advisors with a particular focus on Swiss-related proceedings
  - Future developments - Will additional US pressure come to bear in future extradition requests and proceedings

Marnin J. Michaels, Partner, Baker & McKenzie, Zurich

10.30 Coffee break

11.00 Criminal offences and their prosecution in Germany
- The range of offenses, old and new: qualification in German law
  - Criminal and Administrative tax offences such as: tax evasion, negligent understatement of tax, customs offences as well as criminal preparatory measures
  - Applicable framework of penalties and sanctions
  - Assessment of penalties according to German case law
  - What offence are you and your customer committing?
  - Criminal and administrative risks under German criminal law both for professionals and the entity the professional acts for
  - Criminal tax offences and money-laundering under German criminal law
  - Criminal proceedings abroad against professionals & entities abroad
  - Proceedings against professionals acting abroad
  - Proceedings against entities abroad, the professionals work for
  - Voluntary self-disclosure to avoid penalties and recent developments in German Legislation and case law
  - Requests for mutual assistance in particular regarding cross border assistance between Germany and Switzerland
  - Future developments regarding mutual assistance and cross border data exchange

Beatrix Elsner, Senior Associate, Clifford Chance, Frankfurt

11.45 New tax compliance and criminal prosecution of the professionals under Austrian Law
- The profile of the riskiest professionals
  - Risk minimization measures
  - Financial advisors and the banking secrecy
  - Legal advisors and the professional secrecy
  - Voluntary declaration to avoid penalty
- New tax compliance
  - Tax treaty Austria-Swiss – financial criminal aspects
  - Automatic Exchange of Information / OECD common reporting standard
  - The qualification and the range of sentences of the different offenses in the Austrian law
  - Advices/actions/failures to create problems both for the clients and the professionals
  - Recent, current or forthcoming judicature
  - Austrian private foundations Versus “trusts” organized under the laws of the United States of America
  - Obligation to inform about the beneficiary
  - Commitment to the special asset dedication
  - Purpose of the private foundation: the fulfilment of a permissible purpose defined by the founder
  - Withholding tax on capital gains
  - Money laundering
    - Compliance rule “Know your customer”
    - EU “money laundering” directive 2005/60/EC and the implementation in Austria
  - External effect of the Austrian prosecution
  - Structures considered as illegal by Austrian tax authorities

Christoph Kerres, Partner, Kerres Partners, Vienna

12.30 Lunch

14.00 Double incrimination for tax related crimes committed abroad: in which cases is it possible? What are your risks?
- On what legal basis could the Swiss judicial authorities pursuit criminal or civil tax offences abroad?
- What protection does the Swiss legal system offer against extra-territorial application of foreign laws?
- What is the influence of the principle of reciprocity on the applicability of double taxation treaties?
- Which are the projected amendments to the criminal code with regards to tax-related crimes?

Marnin J. Michaels, Partner, Baker & McKenzie, Zurich
14:50 The powers of the foreign court in Switzerland (search, summons, seizure of documents ...) to what extent and what protections are available for the customer?

- The procedural/legal side (International Mutual Legal Assistance in Criminal and Civil Matters, art. 271 / 273 CC)
- The proceedings via the respective Hague treaties, etc.
- What foreign courts can do and what not and what procedures have to be followed, therewith also explaining what defences a concerned person has

Examples and advices
Daniel Marugg, Partner, Altenburger, Zurich

15:40 Coffee break

16:00 New situation created by the Project of the new Swiss AML Law

- The Project at a glance
- What are the new obligations of bankers? In particular:
  - Obligation to identify the beneficial owners of all unlisted companies?
  - Obligation to identify the physical persons controlling all legal entities?
  - Application of the PEPs regulation in terms of risk-assessment?
- What are the new reporting obligations of financial intermediaries?
- Obligation to report to MROS and the obligation of freezing the assets in the event of a suspicious activity report?
- Which measures will have to be taken and how to control the clients’ tax conformity?
- Will tax certificates brought by the clients be enough to protect banks and their employees from international proceedings?

Simone Nadelhofer, Partner, Lalive, Zurich

16:50 End of the conference