

finishes the correction more than 30 days after discovering the excess benefit transaction, the IRS will consider all relevant facts and circumstances relating to the correction process to determine whether to treat the disqualified person as having satisfied the requirements for reasonable cause and not willful neglect. ■

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TNI-01

Treasury Enlists Private-Sector Help in Fight Against Terror Money

By Patti Mohr — patriciam@tax.org

Professionals at an American Bankers Association/American Bar Association seminar held last week in Crystal City, Va., discussed the possibility that tax lawyers and other non-financial-institution professionals might be asked to help curb money-laundering activities.

The ABA/ABA annual seminar on money laundering gave administration officials the opportunity to update financial institution professionals about the implementation of the USA PATRIOT Act (P.L. 107-56) and enlist bankers' help in identifying terrorist financial networks.

Addressing a crowded room of professionals, Treasury General Counsel David D. Aufhauser asked attendees to work as "gatekeepers at the financial borders" in the war against terror.

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'In the absence of great intelligence, we have to enlist watchdogs,' Aufhauser said. 'In a way, you are our default mechanism.'

Aufhauser said the U.S. government had been wrongly focused before September 11, 2001, on going after illicit money and has since rightly shifted its resources toward capturing "clean money" that is intended to kill. He said terrorism relies on a "huge financial enterprise" as its principal resource and appealed to financial professionals to help lawmakers identify and interfere with terrorist financial networks. He acknowledged that the USA PATRIOT Act augments the Bank Secrecy Act (BSA) and imposes a heavy burden on financial institutions.

Tax Professionals as Gatekeepers?

Meanwhile, the premier international task force that is charged with combating money laundering is examining the pros and cons of requiring tax practitioners to apply a due diligence standard for financial services.

The Financial Action Task Force on Money Laundering (FATF) is considering a proposal that would require tax and other nonfinancial professionals to adhere to the same international standards that currently apply to financial institutions. FATF is focusing on the following professions: casinos and other gambling busi-

nesses, dealers in real estate and high-value items, company and trust service providers, lawyers, notaries, accounting and tax professionals, and investment advisers.

FATF, an anti-money-laundering body set up by the G7 Summit in 1989, is currently revising a set of 40 international recommendations and guidelines for member and nonmember countries to combat money laundering.

If FATF decides to expand the scope of its 40 recommendations to nonfinancial businesses and professionals, it could require tax professionals to conduct due diligence of certain financial clients, to file suspicious activities reports (SARs), and to implement certain regulatory and supervision guidelines to guard against money laundering.

Daniel L. Glaser, Treasury's director for money laundering and financial crimes and representative to FATF, said FATF is now engaged in a very substantial effort to revise its set of recommendations to incorporate methods to fight terrorism and plans to finalize the revisions by June 2003. He said FATF has received 90 comments on potential revisions to the standards and continues to seek input from the private sector. It has posted its consultation paper and all public comments on its Web site (<http://www.fatf-gafi.org/>).

FATF is best known for its list of noncooperating countries, which include the Cook Islands, Egypt, Grenada, Guatemala, Indonesia, Myanmar, Nauru, Nigeria, the Philippines, St. Vincent, and the Grenadines, and Ukraine. FATF recently announced that it is collaborating with the World Bank and the International Monetary Fund to assess countries' compliance with FATF's 40 recommendations to curb money laundering and 8 recommendations to combat terrorist finances.

Last year, the 29-member task force announced plans to intensify its cooperation with international organizations and regional bodies that support anti-money-laundering initiatives and strengthen FATF's work regarding corporate vehicles, correspondent banking, identification of beneficial owners and controllers of corporate vehicles such as companies, trusts, and foundations, and regulation of nonbank financial institutions.

Glaser said FATF is deciding whether to broaden the definition of financial institutions, identify owners of corporate vehicles known as "bearer shares," and identify beneficial ownership information. More detailed information about FATF proposals can be found in its May 31, 2002, consultation paper.

Many of FATF's proposed changes could have significant implications for domestic laws that protect the attorney-client privilege. Current U.S. law does not require attorneys to report suspicious activities of their clients to federal authorities.

A Treasury official said the department is examining the complex gatekeeper issue as it relates to FATF and is taking the issue very seriously. Treasury does not currently have plans to amend current law as it relates to tax and other nonfinancial professionals.

Some observers suggest that the reporting requirement exemption leaves "a gaping hole" in the USA PATRIOT Act, which requires securities brokers and dealers to comply with lengthy and often burdensome reporting requirements.

The primary question is whether attorneys when acting as financial intermediaries should serve as the government's "gatekeeper" for money-laundering activities. The answer may rest on the distinction between providing legal advice and providing advisory financial services such as setting up offshore trusts.

Experts on the topic say only Congress has the authority to make changes in the law with regards to the attorney-client privilege. It could not be done through regulation.

Some countries have already enacted new laws. The Canadian parliament approved legislation last year, the Proceeds of Crime (Money Laundering) Act, that requires those who handle securities transactions to report suspicious activities by their clients to the federal government. The European Union has a similar money-laundering directive that would affect "independent legal professionals." The United Kingdom is currently implementing a new law that extends anti-money-laundering obligations to attorneys and accountants.

Many of FATF's proposed changes could have significant implications for domestic laws that protect the attorney-client privilege.

Louise Delahunty, partner, Peters and Peters in London, explained how the new directive affects attorneys working in the United Kingdom. She said the United Kingdom's Proceeds of Crime Act makes it a criminal offense to fail to report circumstances in which a person has knowledge, suspicion, or reasonable grounds for having knowledge or suspicion of money-laundering offenses. The law will apply to attorneys who plan or execute certain transactions, including the

buying and selling of real property and business entities, the organizing of funds needed to create, operate, or manage companies, and the creation, operation, or management of trusts, companies, or similar structures.

Offshore Private Banking

Financial professions at the seminar discussed the actions they need to take to comply with the law's new regulations on money-laundering enforcement.

Bankers at the conference said they are anxiously awaiting Treasury's final regulations on due diligence on offshore bank accounts. Section 312 of the USA PATRIOT Act gave Treasury until October 25, 2002, to issue the final regulation, but panelists at the conference said they think the regulation is very difficult for the department to write because it will apply broadly to different types of financial institutions.

Over the past year, Treasury has already issued numerous proposed, interim, and final regulations to implement the USA PATRIOT Act. Many of the regulations require financial institutions to perform stricter due diligence with respect to foreign financial institution clients.

Vázquez-Bello said foreign banks and institutions 'feel they have been unfairly walloped by' the USA PATRIOT Act.

One panelist provided attendees with the perspective of foreign banks in regard to the USA PATRIOT Act. Clemente L. Vázquez-Bello of Gunster, Yoakley & Stewart, P.A., in Miami, said the new law has had an "enormous effect on the international correspondent banking business." He said foreign banks and institutions dislike the legislation because they think it unfairly targets them and identifies them as culprits.

"They feel they have been unfairly walloped by this legislation," Vázquez-Bello said. He criticized several sections of the bill (sections 313, 319, 312, and 326) and said the law poses an "enormous territorial reach" by the United States.

Vázquez-Bello singled out elements of the new law that restrict the use of shell banks, provide an "extremely broad" definition of correspondent accounts, subject foreign banks to summons or subpoena by the United States, require due diligence on accounts managed but not located in the United States, and require U.S. banks to closely scrutinize banking partners in foreign jurisdictions.

A Treasury official emphasized that the goal of curbing money-laundering activities is complete-

ly separate and distinct from an objective to clamp down on tax havens. The official also stressed that the administration wants to "work shoulder to shoulder with all jurisdictions" in its war against terror finances.

Reporting Tax Evasion

Panelists at the seminar also discussed a new trend in the field that increasingly views foreign tax evasion as a money-laundering offense.

Gordon A. Greenberg, a partner at McDermott, Will and Emery in Los Angeles, said foreign tax violations are becoming the hottest and most difficult area of the law subject to court interpretation. He cited a cigarette smuggling scheme to evade Canadian taxes as an example. Perpetrators in the case were eventually charged with wire fraud, a predicate to money laundering.

"It is becoming unacceptable to move huge amounts of money without asking questions," Greenberg said. He challenged the attendees at the seminar to look for tax evasion and customs violations as part of their organizations' anti-money-laundering compliance program. He said professionals need to examine high-profile foreign government officials and political figures.

Jane L. Wexton, senior vice president and chief compliance officer at GE Capital, said the corporate compliance officer is not required to determine the nature of the money transaction but is obligated to report "peculiar activity."

Cases of foreign tax evasion pose a challenge to U.S. law with regard to international privacy issues.

The U.S. court system is handling the issue of foreign tax violations on a case-by-case basis. John Roth, chief of Justice's Criminal Division on Asset Forfeiture and Money Laundering, said he is neutral on the topic but said banks have an obligation to ensure they are not being used for illegal purposes. He said that although foreign tax evasion may or may not be a technical violation of the U.S. law, it is unethical.

At a separate event held last week in Washington, David B. Palmer, the acting chief of the IRS's Criminal Investigation Division, said money laundering is now a central element to the IRS's crackdown on abusive offshore trusts.

Palmer told attendees at the fall meeting of the American Institute of Certified Public Accountants' Tax Division that money laundering has become "an essential part of evading taxes" through offshore tax scams and complicated abusive shelter transactions by the "electronic movement of money through the world's financial systems." Defendants charged with money

laundering face stiffer penalties and longer prison sentences than do persons charged with tax evasion. Federal prosecutors are increasingly charging criminals on both counts because the nature of the transactions has been changed by the electronic movement of money through global financial systems.

Information Sharing at Work

Some speakers at the ABA/ABA seminar explained how government agencies work together to identify and disrupt terror finances. Information gathering at the Internal Revenue Service acts as an important piece of the overall anti-terror network.

Treasury reported to Congress last April that the IRS continues to perform the information processing and examination functions as is required by the BSA. The USA PATRIOT Act required Treasury to determine if it should maintain that role or transfer it to another agency. Treasury determined that the BSA information "is not only useful for developing money laundering investigations, but also is helpful in uncovering tax evasion or fraud schemes" such as abusive trusts, offshore tax evasion, and corporate evasion schemes.

Treasury's decision to maintain its BSA function meant the IRS would continue to process filings of Form 8300 at its Computing Center in Detroit. The law requires businesses and money transmitters that receive more than \$10,000 in cash to file a Form 8300 with the IRS in addition to filing a currency report with Treasury's Financial Crimes Enforcement Network.

The IRS is now able to share tax information with other federal agencies. Language originally included in the USA PATRIOT Act and later shifted into the Victims of Terrorism Tax Relief Act of 2001 (P.L. 107-134, formerly H.R. 2884) amended section 6103 to allow Treasury to share tax returns and return information with federal, state, and local law enforcement agencies investigating terrorism.

Forman said she wants tax professionals and financial institution practitioners to watch for certain 'red flag indicators' of terrorist activities.

Marcy M. Forman, director of the Customs Service's Operation Green Quest, explained how the law is helping investigators in the fight against terrorist financing. It enabled the Internal Revenue Service to notify terrorism investigators about a major case involving several charities

that channeled funds to known terrorist organizations located in the Middle East.

The case is ongoing, Forman said. Customs agents and IRS agents have prepared affidavits for 19 search warrants that allege money laundering, providing material support to terrorists, and false tax returns, among other violations.

IRS agents initiated Green Quest's investigation by sharing suspicious tax return information. Forman said the tax returns showed that \$1 billion in donations went to the charities over a one-year period even though their records did not reflect the donations. The investigation is focusing on income tax evasion by fraudulent claims for tax-exempt status and failure to report foreign bank accounts, as well as conspiracy to commit money laundering and providing material support to foreign terrorist organizations.

Forman said she wants tax professionals and financial institution practitioners to watch for certain "red flag indicators" of terrorist activities. Operation Green Quest considers the following characteristics to be suspicious activity:

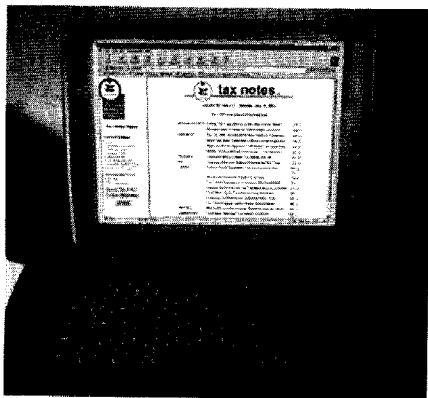
- charities that lack apparent fund-raising activity or do not receive small checks or typical donations;
- charitable organizations that send wire transfers to companies located in tax haven countries;
- "corporate layering" or transfers between bank accounts of related entities or charities for no apparent reason;
- large cash transactions to or from accounts that do not typically deal in cash transactions; and
- overlapping corporate officers, bank signatories, or other identifiable similarities associated with addresses, references, and financial activities.

"We want to work together," Forman said, adding that Green Quest's primary goal is training banking and trade professionals in detecting transactions indicative of terrorist financing. The task force coordinates with representatives from the Customs Service, the IRS, the Secret Service, the Justice Department, and many other agencies.

According to the task force, additional illicit enterprises that benefit terrorist organizations include drug smuggling; identity theft for profit; credit card, insurance welfare, and food stamp fraud; theft and resale of infant formula; counterfeit merchandise schemes; interstate cigarette smuggling; and alternative remittance systems. Dennis M. Lormel, the FBI's financial crimes section chief, said the bureau is working on a parallel track with Green Quest to trace charitable

funds back to the donor and track the funds to the operations. He said the FBI collaborates with the same federal agencies to search and investigate data. Also, the bureau has also created a Social Security number project to find and prosecute cases of identity theft. ■

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AICPA TAX DIVISION MEETING

Olson Sees Progress on Shelter Disclosure, Simplification

By Amy Hamilton — ahamilto@tax.org and
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Treasury Assistant Secretary for Tax Policy Pamela F. Olson and bipartisan taxwriting aides said last week that lawmakers are gaining ground in the fight against abusive corporate tax shelters and tax-motivated inversions — but held out little hope the issues would move in a lame-duck Congress.

Olson; Mark Prater, Senate Finance Committee minority chief tax counsel; and John F. Buckley, House Ways and Means Committee minority chief tax counsel, speaking to practitioners at the AICPA tax conference in Washington, delivered their reading on the remaining legislative tax priorities.

The bicameral tax aides suggested that because lawmakers are not scheduled to return to Capitol Hill until the week after the November 5 elections, it is hard to imagine wrapping up any of the languishing tax agenda items.

"It's a difficult proposition to move any new items," Prater said, adding that although there is "plenty of material" for a bundle of technical corrections for recently enacted tax bills, staff see no readily available vehicle.

Olson told reporters to expect a set of new regulations requiring corporations considering plans to reincorporate abroad for tax purposes to inform shareholders of their potential tax liability from any inversions-related revenue gains.

"One of the things that we think could improve compliance as well as put a chill on the transactions is to make sure that shareholders do get a 1099 . . . as if they had otherwise sold stock through a broker," she said, adding, "We're shooting to get them out by the end of the month."

More Sunshine, Please

Olson also said Treasury plans to follow up its latest abusive corporate tax shelter disclosure initiatives by exploring how to increase voluntary transaction identification and registration by promoters. "We are just beginning to think about what we might be able to do on a voluntary basis," she said.

Olson said that there will be significant disclosure guidance "coming down the pike" and mentioned additional modifications to Circular 230 and the section 6662 accuracy-related