

THE YACHT

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report

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No Place to Hide

The offshore banking system is under threat. The economic crisis has resulted in a backlash against the wealthy who have become an easy target for the media and for regulators. As rules are rapidly changing, time is of the essence when reconsidering one's position and course of action. Such are the contentions of Professor Robert Anthony of Anthony & Cie in Sophia Antipolis (near Nice in France), who presents his opinions on the state of our industry and suggests some solutions for owners in this witch-hunt on the wealthy. He also makes his case for companies like his own to provide the "Family Office" to oversee both UHNWIs' (Ultra High Net Worth Individuals) affairs and their fiduciary experts.

THE CURRENT EVOLUTION

UHNWIs (Ultra High Net Worth Individuals) are finding themselves more and more under pressure. Clinton started the campaign against offshore centres, and the trend continued under Bush. Presidents Sarkozy and Obama were voted into power during a malfunction of the international financial systems, which created an unprecedented environment of global unity to apply pressure on offshore centres. The major powers lobbied for exchange of information for tax purposes, not just for criminal issues. This has resulted in a major review of the different jurisdictions' domestic policies and coordination of their international policies.

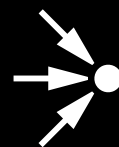
Previously, it was sufficient to have remote computer invoicing to be considered offshore. However, in the current fiscal climate, tax authorities are tracing transactions by looking at emails and recorded telephone calls in order to prove where the real management decisions are made. This will result in innovative litigation and amendments to domestic legislation. Where does this lead us?

THE CURRENT ISSUES

There are several problems going on simultaneously! Governments are currently on a witch-hunt to uncover undeclared bank accounts and untaxed income. Furthermore, many countries around the world are combining politically in their strategy to find new tax revenue and have agreed mutually

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to tighten their legislation. Treaties on the exchange of information have been amended and tax loopholes have been closed, even in countries which previously had total banking secrecy. Several bilateral agreements have been put into place with the UK, France, Germany as well as other highly taxed jurisdictions. Switzerland, Monaco, Andorra, Liechtenstein and Luxembourg have been pressurised to be more transparent. There are tax amnesties to encourage people to declare untaxed monies. Financial institutions in Switzerland and France have been subject to governmental pressure obliging them to denounce thousands of people in the USA, France and Germany.

RESPONSIBILITY

The bankers, fiduciaries and wealth managers, who can be imprisoned for aiding their clients with tax

Not only are professionals duty bound to denounce their clients should they identify tax fraud, but also employees, such as captains and crew (if they have knowledge of it) are deemed just as responsible as a yacht's owners.

evasion, are applying strict rules and lending criteria. The regulatory authorities are carrying out due diligence and audits to ensure the rules are enforced. Not only are professionals duty bound to denounce their clients should they identify tax fraud, but also employees, such as captains and crew (if they have knowledge of it) are deemed just as responsible as a yacht's owners.

THE RESULT

Due to lack of tax revenues, the UK has upped its personal tax rate to 50% for annual income over £150,000. The non-domiciled status has an annual charge of £30,000,

making it less attractive. Although a small sum for multi-millionaires, it is significant, as it has substantially reduced foreign nationals' confidence in the UK tax system. UHNWIs are starting to question whether this is the beginning of a new fiscal trend and the end of non-domiciled status. Consequently, many are now looking at alternative places to live.

France has passed legislation that is especially attractive to UHNWIs. One can never pay more than 50% tax on any taxable income including wealth tax, "taxe Foncière" and "Habitation" on one's main residence, as well as social taxes. On the basis that income

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can come from borrowed funds or an insurance policy (a single premium capital life policy known as an insurance wrapper), with this the taxable base can be substantially lowered or even eliminated. One can borrow against the capital value of the policy or on other assets or alternatively withdraw the capital from the policy tax free. One is taxed only on the income from the policy itself. The system in France means one withdraws capital and receives interest on a reducing balance.

Since 2008, new residents are exempt from wealth tax on foreign assets for five years. As there is no threshold system in the UK, declared UK income is more heavily taxed than in France. However, taking non-domiciled UK status needs careful consideration. It is attractive but doesn't preclude estate duty for UK residents after 17 out of 20 years in the UK. France doesn't apply estate

duties to insurance policies held prior to becoming a French resident, and policies do not need to be irrevocable.

With careful inheritance planning, estate duty can be mitigated on assets held by an insurance policy prior to coming to France. In a nutshell, as wealth tax is due after five years' residency and is included in the tax threshold, a multi-millionaire who owns an insurance policy taken out before arriving in France could be exempt from estate duty and wealth tax and even have little to no income tax exposure. Better than many other jurisdictions.

Many companies have run into liquidity problems creating cash flow headaches. Non-domiciled people often wish to inject capital into companies in financial difficulties, which may be income that has accumulated over a number of years.

Sometimes this has not been taxed, either because the person was non-domiciled or because they practised transfer pricing and collected the funds offshore. Now their business is unable to obtain new credit lines but needs cash. If the offshore funds are transferred, they may become transparent to the tax authorities and be subject to taxation, penalties and interest. The challenge is to free up one's assets legally without shooting oneself in the foot!

THE RESULT

Traditionally, multi-millionaires have delegated many aspects of their affairs. UHNWIs must take a hard look at their global tax position, inheritance planning and investment strategies as the rapidly changing economic conditions and new legislations have created uncertainty and confusion. We have seen banks go bankrupt and disappear, and others merge. We wonder about the



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remaining banks' stability. Even if the bank passes muster, their client advisors may have changed as many have lost their jobs or moved on. The family bank for generations has become a thing of the past!

The days of loyal relationships and confidentiality are gone forever. Trusts have also evolved and a case-by-case analysis is required to determine whether existing solutions are appropriate or if the trust is in the right jurisdiction. It is not all negative, as some talented people see this as an opportunity to set up new businesses.

THE EFFECTS

Up to now the professionals have tried to co-ordinate transactions between themselves. However, the issues raised by international legislation have made this much more compromising and relationships have taken a turn for the worse. Denunciation in the UK by accountants and lawyers means it is difficult for clients to seek advice or communicate their problems. A Family Office is in a prime position to advise clients on their affairs and delegate as necessary. This has special relevance with the new legislation implemented by governments relating to exchange of information.

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A Family Office is like a head conductor orchestrating a family's affairs. They have an independent role and good corporate governance – a return to traditional values. The custodial bank, fund manager and advisor are separate to avoid conflict of interest, at the same time enabling due diligence and transparency when evaluating an investment portfolio.

As a general rule of thumb, if you can't look through an investment nor understand it, then don't touch it. The same applies to insurance policies. How can a bank advise, insure, manage and hold assets and at the same time remain objective? There is still a place for taking good advice. Paying some tax is better than no longer being able to touch your money or losing your assets!

HOW DOES THIS AFFECT THE YACHTING INDUSTRY?

Owners will start looking for new solutions and restructuring their affairs. Countries like Luxembourg will become a more popular choice when flagging yachts. Financing will require more details on the origin of funds. Owners will be forced to organise their affairs in a manner that is acceptable to the G20 countries and financial institutions. Offshore banks will be dictated to by their head offices with little room for manoeuvre. Yards and brokers will be forced to know the source of funds and will be open to scrutiny. More people will operate in countries belonging to the G20.

As head conductors, Family offices could be well positioned to possibly play, a more important role, using the skills of their existing advisors where appropriate and protecting their clients and other professionals from being compromised. Owners

will be held responsible for crew's social security. Cash transactions will diminish and bank transfers will be more common. In simple terms, as banks will insist on more administrative transparency, global advice will become essential.

CONCLUSION

The evolution of legislation and complexity of the market will result in yacht brokers, managers and others involved in the industry needing administrative support. The problems are far wider for owners than to be dealt with individually by a tax lawyer, fiduciary company, banker or accountant. The Family Office can become a global 'master of ceremonies', co-ordinating the parties concerned, working alongside fiduciaries and brokers rather than in competition.

In many cases onshore solutions substantially outweigh offshore headaches. I am not against offshore jurisdictions as they may still have an important role to play. They are simply horses for courses and each case has to be judged individually.

By Professor Robert Anthony, Chartered Certified Accountant UK, Principal Partner at Anthony & Cie

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