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SWISS TAX EVADERS, AND THEIR HANDLERS, WILL ESCAPE JUSTICE

Getting away with it

Will the fresh revelations about tax evasion through HSBC's Swiss subsidiary actually lead to any major prosecutions? Previous tax fraud leaks haven't changed much.

BY IBRAHIM WARDE

THE French tax authorities, striving to combat fraud, keep replaying the hall-of-mirrors scene from Orson Welles's *The Lady from Shanghai* (1947) where the jealous husband's shots keep hitting the lady's reflection in the mirrors, and eventually she escapes. It will be the same for the investigation into HSBC's Swiss subsidiary, HSBC Private Bank (Suisse), after a whistleblower, computer engineer Hervé Falciani, leaked data on 106,000 accounts for 2005-07, including files that reveal the comments of the relationship managers who look after private clients. We know about this because the International Consortium of Investigative Journalists mobilised 154 journalists from 60 media outlets in 47 countries to pick over the data.

The client lists given to France's finance ministry in 2009, and later passed on to a number of foreign governments, name industrialists, politicians, monarchs (including the kings of Morocco and Jordan), entertainers and sportspeople, arms and drugs dealers, and a few financiers suspected of terrorist links. Most wanted to avoid paying tax. The revelations are embarrassing for the financial system, but are only the latest in a series that includes the offshore accounts leaks of 2013 and Luxembourg leaks of 2014, which revealed the scale of evasion using tax havens.

London-based HSBC has sought to limit the damage with an army of PR specialists who have been trying since 2009 to discredit Falciani, claiming that he stole the information, that the lists have been tampered with, that he is unreliable. Switzerland has issued an international warrant for his arrest on suspicion of theft and violation of banking secrecy.

Faced with the scale of this scandal, HSBC has acknowledged "past failures", in a distant time when "the compliance culture and standards of due diligence in HSBC's Swiss private bank ... were significantly lower than they are today" (1). It claims to have undertaken major cleanups in 2008 and 2012: two thirds of the accounts held by its Swiss subsidiary were closed; client assets fell by from $118bn in 2007 to $68bn in 2014; cash withdrawals of more than $10,000 are now strictly controlled; potential kleptocrats and “politically exposed persons” are closely scrutinised. The bank has offered its sincere apologies and sworn that its services are no longer used for tax fraud or money laundering.

Is this credible? HSBC is the world’s second largest bank, after the Industrial and Commercial Bank of China. It has been a serial offender, and has to date enjoyed relative impunity. Stephen Green, an ordained Anglican priest who had written a book on the importance of ethics, was its chairman from 2006 to 2010. Far from being punished, he was given a peerage in 2010 and then, as Baron Green of Hurstpierpoint, became minister of state for trade and investment in David Cameron’s government.

When the regulators eventually did go after HSBC, the damage was limited. In 2012 a US Senate committee accused the bank of involvement in drug trafficking, money laundering and terrorist financing (2), and US regulators fined it $1.9bn, an almost nominal amount compared to the profit on the illegal transactions (3). Neither HSBC’s clients, nor the “market” seem disturbed by the bank’s misfortunes. After the latest indiscretions, the *Financial Times* said: “Moralists and politicians won’t want to hear this. But the impact of HSBC’s Swiss private banking scandal on [the case for investing in the bank’s stock] can be summarised in a word — zip” (4).

Just open offshore companies

HSBC was less affected by the subprime crisis than its competitors, and has long boasted of steady profitability and unrivalled customer service. The Swiss affair began after the European Union Savings Directive of 2003, in force from 1 July 2005, which required Swiss banks to withhold 10% tax on the savings of EU citizens and pay it to the depositors’ home states, without divulging the identity of the depositors. The wealth managers quickly proposed countermeasures to their clients: the tax only applied to individuals, not companies, so they should establish offshore companies (in the Virgin Islands, Panama, the Bahamas) and open non-taxable accounts with HSBC. This was win-win: not only would clients not have to pay tax, but the bank would profit from the companies’ operating costs. Those wanting even greater discretion could hide their tracks by creating fictitious residencies or by asking the banks to refrain from sending them any account statements.

To attract more clients, HSBC had to use aggressive marketing. According to Falciani’s lists, between November 2006 and March 2007, $180bn passed through HSBC Private Bank (Suisse) accounts, and 1,645 appointments were made with HSBC representatives in 25 countries. In many countries, it is illegal for foreign banks to tout for business, and France, the US, Argentina, Spain and Belgium have launched investigations of HSBC Private Bank (Suisse) on suspicion of encouraging tax fraud, and touting for clients on their territory. HSBC is not the only bank guilty, and this is only the tip of the iceberg: regulators are targeting other banks, in particular the Swiss giant UBS.

Whether manoeuvres to reduce tax are classed as fraud, tax optimisation or financial engineering, they are a political problem. In a time of growing inequality, governments are imposing austerity policies on the grounds that they are short of money. Meanwhile, the privileged rich — individuals and companies — are trying to avoid tax on their assets. Digital giants such as Apple, Google and Amazon have turned international tax competition to their advantage and are quite legally getting away with paying minimal tax (5). In 2013 the OECD promised to stop underhand fiscal practices, but whether it will succeed is doubtful.

Ambivalence is everywhere. Jean-Claude Juncker, president of the European Commission, has promised to make the fight against tax evasion and fraud in Europe a priority. But during his 19 years as prime minister of Luxembourg, he encouraged multinationals to pay just a few tens of billions of dollars of tax in his country, thus depriving other European countries of hundreds of billions in tax revenues. In August 2009 Eric Woerth, France's (then) budget minister, claimed to have a list of 3,000 tax evaders. Hoping to avoid punishment, 4,725 taxpayers approached the tax authorities to regularise their situation. Only 68 of them were on Woerth's list.

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(1) "HSBC's response: 'Standards of due diligence were significantly lower than today' [http://www.theguardian.com/business/2015/feb/08/hsbc-responds-revelations-misconduct-swiss-bank]", *The Guardian,* 8 February 2015.

(2) "US vulnerabilities to money laundering, drugs, and terrorist financing: HSBC case history [http://www.hsgac.senate.gov/subcommittees/investigations/hearings/us-vulnerabilities-to-money-laundering-drugs-and-terrorist-financing-hsbc-case-history]", US Senate Committee on Homeland Security & Governmental Affairs, 7 July 2012.

(3) See Ibrahim Warde, "BNP Paribas's sins", *Le Monde diplomatique,* English edition, July 2014.

(4) "HSBC: current accountability", *Financial Times,* London, 17 February 2015.

(5) See *The Price we Pay,* a 2014 documentary by Canadian director Harold Crooks.

TRANSLATIONS

FRANÇAIS SwissLeaks ou la grande évasion

ESPAÑOL SwissLeaks o la gran evasión