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**Ethical Issues Regarding Offshore Accounts
and Foreign Clients**

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U.S. Noncompliance

1. A U.S. client tells his attorney that he has an undeclared foreign account. The attorney then describes the various programs that the client can enter into to become compliant. The client then says that he will handle this himself. He wants the attorney to continue to advise him on estate planning but to have nothing more to do with the offshore account. Can the attorney continue to represent the client?

Foreign Noncompliance

2. What guidelines and regulations govern U.S. advisors of foreign clients (attorneys, accountants, bankers)? What are the legal restrictions on which clients U.S. advisors can accept? What ethical guidelines are applicable?

Types of Noncompliance

3. There appear to be three different types of offshore criminal activity that potential foreign clients might have committed:
 - Drug dealing and terrorist activities;
 - Extortion and bribery;
 - Non-compliance with local tax laws.

How does the U.S. distinguish between these three in deciding whether a client's funds are "proceeds of crime"?

Level of Evidence

4. With regard to extortion and bribery, is an article in a newspaper making allegations against a client sufficient to prevent the advisor from taking on the client? What about an actual court proceeding? What about a court proceeding that has concluded with a finding of not guilty? What if there was a guilty verdict and the client has been fined or imprisoned, and the matter has now been concluded? Can the advisor take on the client at that point?

Due Diligence on Tax Compliance

5. With regard to local non-compliance with taxes, how much due diligence must the U.S. advisor conduct? Is it sufficient to advise the client to obtain local tax advice? Must the U.S. advisor be told the name of the local tax advisor and talk to the advisor on the phone? Is a written opinion of the local advisor confirming that everything the client has done and is doing is compliant with local tax law?

Different Countries

6. Does it make a difference if the client is potentially violating the tax laws of a country such as the UK or Canada, versus the laws of a Third World or former communist country? Or a current communist country (North Korea)?

Actions by Foreign Governments

7. So far we have been talking about the rules of the U.S. government applicable to U.S. advisors who take on foreign clients who may have violated foreign laws. Can a foreign governments pursue a U.S. advisor for assisting residents of the foreign country in evading the tax laws of that country? Has this happened?

Past History of Client

8. Hypothetical: Client recently became a resident of country B, which has no taxes. He wishes to create a U.S. trust and fund it with an account. He tells you that previously he resided for twenty years in Country A, which does require reporting of foreign accounts. Must you ask him if he reported the account when he resided in Country A? What if you do and he tells you this is a private matter? Can you represent him now in setting up the trust?

Planning to Avoid CRS Reporting

9. At present no countries have laws making it a crime to intentionally plan to avoid reporting under CRS, but some countries are considering such legislation. Can you set up a trust in the U.S. for a client who resides in a country that enacts such a law?

Chinese Compliance

10. A Chinese resident hires U.S. advisors to help him buy real estate and structure accounts in the U.S. He then moves to the U.S. China then alleges that this person was a corrupt government official who extorted funds from many Chinese and invested these funds in the U.S. China seeks his extradition, seeks to freeze all his assets in the U.S. and requests that all the U.S. advisors be prosecuted for money laundering. The former official claims that he was a whistleblower and is being persecuted for speaking out against extortion by others.

Chinese Compliance (continued)

What position is the US government likely to take? What is the potential liability of advisors who assisted this Chinese individual in purchasing U.S. assets? Should you have taken on this client in the first place?

US Firm Tax Me No More

- 1. US law firm TMNM advises XYZ corp. in a low tax jurisdiction about payments of compensation into offshore funds and need to file FinCEN 114s. XYZ pays fees of TMNM from its Panama and Belize bank accounts.
- Should A&B have done anything more on their advice? What about the receipt of the fees of XYZ?
- Should A&B have said anything about the information with respect of payments to agents?

US Firm Tax Me No More (2)

- 2. UVW, the subsidiary of XYZ, improperly routes payments through Z.
- What, if anything, should A&B do about the decision of XYZ to allow the statute of limitations to expire in lieu of a voluntary disclosure?
- 3. Z Tax Authority requests documents from TMNM re advise to XYZ.
- What should TMNM advise on the tax information exchange request? Do TMNM, A, and/or B have potential liability from a legal and/or ethics perspective? Do they have any conflicts of interest? Do they need their own counsel?

US Firm Tax Me No More (3)

- 4. A & B received a referral to help the Z Minister of Finance, who plans to defect, apply for asylum in US, & buy a mansion in NYC. The Minister wants their help on the transaction for a premium price. He wants A & B to do tax planning to minimize tax conseq. of his move to the US and for his children who live in the US.
- How should A&B respond to the request for help from the Minister of Finance?