

Jack Blum: The difficulty of taxing both individuals and corporations is really astonishing.

Naomi Fowler: This is the Corruption Diaries from the Tax Justice Network. I'm Naomi Fowler.

Jack Blum: I was educated in all of this when a reporter for BBC, who I knew well, came to me and asked me about an arrangement that was being offered by BBC to have half of his salary if he was resident in the U.S. paid in one of the U.K.'s offshore jurisdictions. Now, if that's going on with BBC as a sort of routine matter can you imagine how widespread that proposition is?

Naomi Fowler: Jack Blum experienced at close quarters both the good practices of accountants and lawyers, as well as attempts by some to get around the law.

Jack Blum: I had quite a bit of experience in dealing with the accounting firms, and there came a moment when I was approached by the now defunct accounting firm of Arthur Anderson. And it was a unit inside the company. They said, we're acutely aware of this offshore problem and we'd like your advice in what we have to do to make sure that we don't get caught up in the offshore difficulty. And I thought that was a wonderful assignment. And the main thing I said was that you have lots of affiliated firms because the way the accounting firms were organized was there would be separate firms in each individual jurisdiction. You have a number of firms who are using your name who are in the business of setting up offshore shell companies and various other machinery that's used by people to avoid taxation and avoid the law. And I recommend that you get rid of that business altogether and you instruct your worldwide partners that this is a business you don't want to be in because it can be nothing but trouble and you won't know about the trouble till it breaks and it's over your head. Well, the people I was dealing with really wanted to do that, and it was only a matter of months later that the firm collapsed because of the Enron scandal.

Now, in another case that I was involved in, I was helping a cooperating witness in a sale of tax shelters to Americans. And these were tax shelters that were obviously, and completely illegal. They involved creating artificial losses that taxpayers could use to avoid paying tax so they could report big losses against other income. And it was a real business and there was a unit inside Ernst & Young that was in fact selling these tax shelters and they had a lawyer who was cooperating who would, for an appropriate fee, turn out an opinion letter saying they were legitimate. The tax shelters were generating a massive amount of income and it was a big business.

There came a moment when all of this blew up and the Ernst and Young people were now under investigation and there was a criminal case being made against the activity of selling the tax shelters and I was working with a cooperating witness and my assignment, among other things, was to go through all of the communications from the unit inside the company to see what was in there and what it was that the client who was the cooperating witness had to talk about and explain to the government. I went through thousands and thousands and thousands of emails between and among the various partners who had participated in the scheme and the outsiders who were assisting those partners. What was striking, indeed shocking, was there was not a single email between the team that was doing all of this and the top management. And I can't say what the truth of the matter was, but I found it highly

implausible the top management didn't know what the unit was doing and didn't have an opportunity to say, no, that's something we'd rather not be doing. And I was sure of that because nothing had, had changed during the period the shelter sale business was underway and it was turning an immense amount of profit, indeed a large fraction of the firm's overall profit. And if senior management didn't know what they were doing, it was a pretty negligent senior management.

Ultimately, in that case, there were about three or four Ernst & Young partners who wound up going off to jail. And there was a lawyer involved who was writing these bogus letters, and I think he went off to jail as well. But that tax shelter business was really a rancid business.

Now, the, the difficulty - and this is a difficulty for the entire accounting and tax advisory world, is the space between helping someone organize themselves to pay relatively little tax, to take advantage of available credits and loopholes and the like, and when that goes over the line into an area of outright fraud. And that is part of your problem that, that both in the accounting business and in the law business, the temptation to veer into the illegal is enormous.

There have been many cases where large accounting firms, one way or another, have been involved in helping businesses and individuals avoid large amounts of tax. It's very hard to say, to speak to any individual case, it's clear that it happens, and it happens frequently. But the efforts of IRS to curb that kind of activity on the part of the accounting firms, is very difficult to make it effective. IRS has had a very difficult time effectively blocking misuse of accounting to avoid a legitimate tax. That is a problem that goes to ethics, it goes to training and it goes to a question of advice and when that advice is protected by lawyer client privilege and when it's not.

And the IRS has walked a line saying you are responsible for the tax return if you've prepared it and you know that it has questionable deductions or internal tax arrangements, you're required to tell us up front that this particular deduction or this particular structure is something that is debatable. That is a provision that has helped a bit, but it's still a big problem. There's no simple solution to how to address it because as long as there is a large financial incentive built into minimizing your taxes, people are going to work to minimize their taxes.

So now we get to a problem of when does it cross the line and is there a bright line to cross before you say, oh, this is really wrong and criminal. I had a long discussion and indeed spoke on this problem at a conference in Cochabamba, Bolivia Inter-American Bar Association conference. And I stood up and said that the job of the lawyer is to help the client obey the law. And a major ethical issue is when do I give advice and what kind of advice do I give when there's a real set of questions around? Well, when I was in law school, what I was taught was when you are dealing with a client and advising the client, and they say to you, what should I do, is this legal? You keep your client on the good side of that gray area, you don't let him wander into the gray area. And what happened with the bar is, too many lawyers believe their job is to figure out how to help their client get around the law, not how to obey the law. Well, when I brought that up at the conference in Bolivia, a lot of the audience began to laugh at me, literally laugh out loud as I was saying this. A couple of

people came up and acknowledged, yeah, this was a real problem. But it wasn't a way of gaining a lot of popularity.

Naomi Fowler: The Corruption Diaries is a production of The Tax Justice Network, made by Naomi Fowler and Jo Barratt. Interviews with Jack Blum were recorded over several days at Jack's home in Maryland by Zoe Sullivan.