KPMG CANADA'S ISLE OF MAN OFFSHORE COMPANY TAX STRATEGY

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Introduction

Although Peter Cooper was an experienced businessman, he did not consider himself to be a tax expert. So, over the years Peter and his wife Irene had relied on professional tax and legal advisors to organize their personal finances. In 2000, when the tax-exempt treatment of distributions from one of the Cooper's trusts was about to expire under Canadian tax law, Mr. Cooper asked his accountant, Derrold Norgaard, a partner of KPMG Canada, what alternatives the Coopers had to replace the trust.[1] Norgaard and another KPMG Canada partner, Barrie Phillip, recommended that the Coopers transfer their trust's assets to an Isle of Man company (IOM company), which would in return gift to them its profits and earnings from investing the trust's assets.[2] After thoughtful assessment of the partners' advice, Mr. Cooper in 2001 retained KPMG Canada to convert their trust into an IOM company.[3]

Following the 2012 audit of their tax returns by the Canada Revenue Agency (C.R.A), the Coopers were notified that the IOM strategy was a "sham." Because the intention of the strategy was for the Coopers to receive - purportedly as tax-exempt gifts - taxable foreign investment income, the C.R.A. had assessed them taxes, interest, and penalties on more than $3.5 million.

The authors developed the case for class discussion rather than to illustrate either effective or ineffective handling of the situation. The case and its accompanying instructor's manual were anonymously peer reviewed and accepted by the ***Journal of Case Research and Inquiry, Vol. 4***, 2018, a publication of the Western Casewriters Association. Contact: Gretchen Lawrie, California State University, Los Angeles, 5151 State University Drive, Los Angeles, CA 90032, (323) 343-3000, Gretchen.Lawrie@calstatela.edu

Why would KPMG Canada, one of the largest accounting firms in the world with a reputation of being a respected auditor and tax expert, recommend to individuals, like the Coopers, that they should participate in offshore tax sham that could result in paying significant back taxes, interest, and penalties?

Overview of KPMG Canada's IOM Strategy

As part of the IOM Strategy, a KPMG Canada client would gift sums of money and/or property to an Isle of Man company, which held and/or invested the client's gifted amounts.[4] In return, the IOM company would gift to the client its earnings, profits, and/or the client's original purported gifts, which were treated as tax-exempt gifts for Canadian income tax purposes, and therefore not reported on the client's Canadian income tax returns.[5] To implement an IOM Strategy, KPMG Canada charged its clients either a fixed sum of $100,000 or a percentage of the clients' annual tax savings. From 1999 to 2003 and in 2007, KPMG Canada earned approximately $1.6 million in fees for implementing the IOM Strategy 16 times for 27 clients. Except for one time in 2007, KPMG Canada ceased implementing the IOM Strategy after 2003.[6]

Development of KPMG Canada's IOM Strategy

Starting in the late 1990s, KPMG Canada began to develop its IOM Strategy in response to legislative changes to "a tax planning vehicle" that had allowed Canadian immigrants to receive (under Canadian tax law) tax-exempt distributions from foreign trusts for a period of five years.[7] According to KPMG Canada, individuals who used the IOM Strategy, could: 1) receive tax-exempt distributions; 2) invest and accumulate assets free of tax; or 3) protect assets from wealth, estate, and inheritance taxes and creditors.[8]

At a 2016 hearing held by Canada's Standing Committee on Finance on Canada Revenue Agency's (C.R.A.) efforts to combat tax evasion and avoidance, KPMG Canada partner Gregory Wiebe testified that KPMG Canada had *"…conducted extensive internal and external due diligence…"* on the IOM Strategy and that it was *"absolutely"* legal under Canada's tax laws when it was developed in the 1990s.[9] Mr. Wiebe stated that during the development phase of the IOM Strategy, all tax aspects of the Strategy had been *"fully vetted."*[10] Specifically, two KPMG Canada partners had conducted *"detailed technical review[s]"* of the IOM Strategy.[11] After that, KPMG Canada's general anti-tax avoidance committee (Committee) reviewed the Strategy, and finally KPMG Canada's Managing Partner of the national tax practice approved it and signed off on it.[12]

During the Committee's review of the IOM Strategy, KPMG Canada partner Barrie Philip noted that *"if the funds acquired by the [IOM company]"* from the client were *"ultimately to be reacquired"* by the client, then *"there would be a very heavy onus"* on the client to demonstrate that he or she did not have a *"valuable legal interest"* in the IOM company and never intended to get the funds back from the IOM company.[13] If it could ***not*** be proven that the client had no interest in the IOM company, then Canada's anti- tax avoidance rules could apply. Also, if the client intended to reacquire the funds, it would be *"hard to argue"* that the IOM Strategy was not *"a trust, agency, or nominee relationship, or even a 'sham…'"*[14]

The Committee also concluded that the *"right tax policy result would be for no Canadian tax to apply if there was no ultimate distribution back to Canada…"* of the IOM company's assets.[15] But, if the client *"from the outset intended to receive distributions"* from the IOM company, then it would be plausible to argue that Canada's tax laws had been violated.[16] However, the Committee *"noted in passing"* that it would be difficult for the C.R.A. to criticize the IOM plan without evidence of *"moneys coming back to (or intended to come back to)"* Canada. But even if such evidence became *"… fact (if it were to do so) many [of the client's] taxation years"* could be statutorily barred from review by the C.R.A.[17]

In addition, during the development phase, a Canadian law firm and an Isle of Man law firm provided, at KPMG Canada's request, written opinions on the consequences of the IOM Strategy under Canadian and the Isle of Man tax laws.[18] The Canadian law firm, Fraser Milner Casgrain LLP (now Dentons LLP), concluded that any income or earnings a client received from the property he or she transferred to the IOM company would not be attributable to the client, since the client would have given a *"true gift"* to the IOM company, because after the transaction the client would not control the company and its members would not be the client's agents.[19]

For its IOM Strategy, KPMG Canada had *"developed a comprehensive implementation package"* and had arrangements with service providers, such as institutional shareholders, director and management service companies to support the Strategy.[20] The fees for the IOM Strategy were either about 15 percent of a client's annual tax savings, one percent of the capital invested in the Strategy, or another appropriate basis depending on the application and the value to the client. The minimum fee was $100,000 to $125,000 plus retainer.[21]

Marketing and Selling KPMG Canada's IOM Strategy

By 1999, KPMG Canada was marketing and selling its IOM Strategy to current clients and other high net worth individuals, who had a minimum of $10 million to invest in an offshore company."[22] KPMG Canada's National Product Champions, partners and other tax and financial professionals were members of marketing and sales teams. KPMG Canada partners and tax professionals were to *"identify and pass along"* to their tax services advisors the names of individuals who might be interested in an IOM Strategy.[23]

The IOM Strategy was specifically marketed to: 1) individuals interested in restructuring their tax-exempt immigration trusts because of potential changes to the law; 2) individuals concerned about creditor protection, estate, wealth, and inheritance taxes; 3) individuals interested in philanthropic activities without the restraints of Canada's charitable foundation rules; and 4) shareholders of Canadian private and public companies that had significant growth potential, who were interested in an offshore estate freeze.[24]

In initial meetings with potential clients, tax professionals were to discuss the *"primary benefits"* of the IOM Strategy, such as receiving tax-exempt income and protecting assets from creditors or former spouses. Other primary benefits for clients included avoiding: 1) estate fees, probate fees, succession duties and/or death taxes; 2) challenges to their wills; and 3) Canadian regulations on donations to charitable foundations. They were also to discuss with potential clients the risks of the IOM Strategy, such as the tax and penalty consequences if the C.R.A. were to determine that the Strategy violated Canada's anti-tax avoidance rules.[25]

KPMG Canada's Clients, Peter and Irene Cooper

Prior to immigrating to Canada in the mid-1990s, the Coopers followed the recommendations of their advisors at the accounting firm of Ernst & Young LLP. The Coopers set up a Trust in November 1996 in Liechtenstein with them as the beneficiaries of the Trust. Under Canada's Immigration Trust Rules (C.I.T. Rules) that were in effect when the Coopers immigrated, they could receive, as Canadian immigrants, tax-exempt distributions from their foreign Trust for a five-year period. Upon expiration of the five-year period, distributions from their Trust would no longer be exempt from Canadian taxes. [26]

Because the five year tax-exempt period was set to expire in 2001 - as well as the possibility that the government of Canada was going to repeal the C.I.T. Rules - Mr. Cooper contacted his accountant Mr. Norgaard in 2000 for advice *"as to possible alternatives"* to their Trust.[27] On October 15, 2000, Messrs. Norgaard and Philip recommended that the Coopers transfer as tax-exempt gifts the Trust's assets to a company incorporated in the Isle of Man, which would subsequently transfer its income and earnings as tax-exempt gifts to the Coopers. In October 2001, the Coopers retained KPMG Canada to replace their Trust with an Isle of Man company.[28]

On December 19, 2001, Ogral Company Limited was incorporated in the Isle of Man. On January 1, 2003, the Coopers' Trust transferred purportedly as gifts over $19 million to Ogral. Under Ogral's bylaws, the Board of Directors, by unanimous vote, could approve gifts to *"Eligible Persons,"* who were defined as the Coopers, their sons and their spouses, and their lineal descendants, of Ogral's income, earnings, assets and/or capital.[29] As per the Coopers' written requests, Ogral's board of directors approved, from 2003 to 2010, the transfer of more than $5.8 million to the Coopers. Claiming that the transferred funds were tax-exempt gifts from Ogral, rather than taxable income, the Coopers did not report the funds on their tax returns prepared by KPMG Canada. Based on a percentage of the Coopers' annual tax savings, KPMG's fees from 2002 to 2008 were approximately $300,000.[30]

Consequences for the Coopers

Following the 2012 audit of their tax returns, the C.R.A. determined that the Coopers had received $3.5 million of taxable foreign investment income from Ogral - not tax-exempt gifts - which they should have reported on their 2003 to 2010 income tax returns. In 2012, the Coopers were devastated to learn that the C.R.A. had assessed taxes and interest on the $3.5 million and had added a $1.38 million gross negligence penalty. They were fined $4.8 million for not notifying the C.R.A. of the funds being held for them in Ogral's foreign bank accounts.[31]

The Coopers Dispute the Assessment of Taxes on their Gifts from Ogral

Represented by KPMG Canada Law LLP, the Coopers in March 2015 filed an appeal with the Tax Court of Canada asking the court to reverse the C.R.A's tax, interest, and penalty assessments.[32] In their appeal, the Coopers stated that because Mr. Cooper was not a legal or tax expert, *"at various times in structuring [their] affairs, they had sought, considered and relied on the advice"* of respected professional tax and business law advisors to structure their financial affairs. Concerning the IOM Strategy, Mr. Cooper stated that he had *"sought and obtained sophisticated professional advice"* from KPMG Canada as to the possible alternatives to their Trust and had *"thoughtfully, deliberately, and carefully assessed"* the Firm's recommendation.[33]

In response, the C.R.A. stated that the IOM Strategy was created with the intention to deceive Canadian tax authorities, so that the Coopers could receive taxable income on a tax-free basis.[34] Further, the strategy was a "sham," because the Coopers and KPMG Canada had intentionally mischaracterized the transfer of their money to Ogral as a gift, despite knowing that the Coopers' overall objective was not to gift their money to Ogral, but to reacquire their initial investment in Ogral and to receive, under the guise of gifts, Ogral's earnings and profits.[35] Also, despite Ogral's corporate formation documents, as the *de facto* directors and shareholders of

Ogral, the Coopers controlled Ogral and had not relinquished control or ownership of the funds they had transferred to Ogral.[36]

Consequences for KPMG Canada

The C.R.A. did not bring criminal charges against KPMG Canada, its partners and/or employees for encouraging and/or assisting clients, such as the Coopers, to willfully evade taxes by using the IOM Strategy to receive taxable income on tax-free basis. KPMG was also not assessed civil gross negligence penalties for advising and/or assisting clients to evade taxes and/or making false statements or omissions on their tax returns.

The union that represents accountants, auditors, and financial professionals employed by the Canadian government is the Association of Canadian Financial Officers (ACFO). In May 2016, ACFO filed two professional misconduct complaints against KPMG Canada for violating the Canadian Chartered Professional Accountants' code of conduct, bylaws, and regulations by developing, marketing, and selling its IOM Strategy.[37] The ACFO claimed that KPMG Canada had acted *"contrary to the profession's reputation for competence and integrity"* and affected the *"public perception of the accounting profession."*[38]

In response, KPMG Canada publicly stated that the ACFO's complaint was defamatory *"nonsense*" and that all of KPMG Canada's tax planning work had and will continue to meet Canadian federal and provincial tax laws. Further, any review of its tax planning work would conclusively demonstrate that KPMG Canada's partners, professionals, and other employees had acted with the *"highest integrity and respect"* for Canadian tax laws.[39]

Consequences for Other KPMG Canada Clients

The C.R.A. assessed some of KPMG Canada's other IOM Strategy clients for taxes, interest, and/or penalties on their unreported income. Several other IOM Strategy clients were offered amnesty by the C.R.A. from future civil and criminal prosecutions, penalties, and fines in exchange for paying taxes and interest on their unreported income.[40]

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Appendix A
U.S. and Canadian Tax Law

Tax Planning

Tax planning is the process of reviewing options for decreasing, deferring, and/or eliminating a taxpayer's tax liabilities. U.S. tax laws do not prohibit taxpayers from using tax planning to reduce their taxes to the least possible amounts, but taxpayers are prohibited from using tax planning to avoid or evade taxes.[41]

U.S. Tax Laws: Tax Shelters

Although there is not one precise, agreed-on definition of the term tax shelter, a tax shelter is a law, a regulation, a transaction or series of transactions, a strategy or a scheme that shelters income from taxation. Some tax shelters represent lawful or legal tax avoidance and other ones represent unlawful or illegal tax evasion.[42]

In general, a tax shelter is legal because Congress concluded that the loss of tax revenues is an acceptable side-effect of tax laws that encourage certain types of investments or other activities.[43] For example, to encourage individuals to save for retirement, they can make pretax contributions to an individual retirement account (I.R.A.). Also, if certain requirements are met, they may be able to deduct their I.R.A. contribution from their income, thus reducing their tax liabilities.[44]

An illegal tax shelter can be a device, a strategy, a transaction, or a series of transactions that yield tax benefits, such as deductions, losses, or credits, that are used to reduce and eliminate taxpayers' tax liabilities without reducing their real economic income.[45] I.R.C. §6662(d) (2)(c)(ii) defines an illegal or abusive tax shelter as: 1) a partnership or other entity; 2) any investment plan or arrangement; or 3) any other plan or arrangement, if a significant purpose of such partnership, entity, plan, or arrangement is to avoid or evade federal income tax.[46] The I.R.S. has stated that some tax shelters are considered illegal or abusive because the tax benefits attributable to the tax shelter, like losses or deductions, *"…produce little or no benefit to society, or the tax benefits are exaggerated beyond…"* the intended benefits.[47]

Besides identifying certain tax shelters as illegal, the I.R.S. also maintains a publicly available list of tax shelters it has identified as potentially abusive, but not *per se* illegal, which are referred to as listed transactions.[48] Under I.R.C. §6707, individuals must notify the I.R.S. that they aid, assist, or advise on the promotion, organization, or implementation of a listed transaction and maintain a list of their tax shelter clients that is available upon request by the I.R.S. I.R.C. §6707A provides that taxpayers must disclose to the I.R.S. participation in a listed transaction.

U.S. Tax Laws: Abusive Offshore Tax Schemes

According to the I.R.S., taxpayers use abusive offshore tax schemes to evade taxes by hiding income in foreign bank accounts, brokerage accounts, trusts, companies, or partnerships. In general, abusive offshore tax schemes consist of multi-layered transactions used *"…for the purpose of concealing the true nature and ownership"* of a taxpayer's taxable income or assets.[49]

In an offshore tax scheme, generally, taxpayers transfer income and/or assets that would be subject to taxes to an offshore foreign bank account, trust, corporation, or other business entities located in countries with low- or no-income taxes. Taxpayers may directly transfer money and/or assets to an offshore bank account, trust, or business entity, or use methods to conceal transfers, such as fabricating the sale of their property to an offshore company.[50]

Subsequently, the taxpayers' income and/or assets are repatriated to the taxpayer with little or no U.S. taxes being paid.[51] The repatriation may be direct or concealed, such as the offshore company that may gift income, make a loan, or rent property to the taxpayer at zero or below market rates.[52]

U.S. Tax Laws: Consequences for Taxpayers

Taxpayers can be assessed taxes and interest on unreported or underreported income, as well as applicable civil and criminal fines and penalties.

Under I.R.C. § 6662(a) and (b), taxpayers can be assessed a 20 percent accuracy-related penalty on an underpayment of tax liabilities attributable to: 1) negligence; 2) intentional disregard of rules or regulations; or 3) substantial understatement of income, unless they can show that they had acted in good faith and that there was a reasonable cause for the underpayment. If a tax understatement is due to fraud, under I.R.C. § 6663(a), taxpayers can be assessed a 75 percent penalty.

I.R.C. § 6707A provides that taxpayers who do not disclose on their tax returns participating in a listed transaction, can be assessed a 75 percent penalty on the amount of the reduction of their taxes resulting from the listed transaction. For individuals, the penalty cannot be less than $5,000 or more than $100,000 and for corporations, partnerships, and other entities, the penalty cannot be less than $10,000 or more than $200,000.[53] Taxpayers can also be assessed accuracy-related penalties of 20 percent or more on an understatement of tax resulting from a listed transaction.[54]

Taxpayers can be charged, convicted, and/or imprisoned for tax-related crimes. For example, I.R.C. § 7201 provides that a taxpayer, who is found guilty of willfully attempting to evade or defeat any tax or its payment can be fined up to $100,000, or $500,000 and/or imprisoned up to five years.

U.S. Tax Laws: Consequences for Tax Return Preparers

Under I.R.C. § 6700, individuals that make or cause another person to make a false or fraudulent statement in connection with promoting, organizing, and/or selling an abusive tax shelter, can be assessed $1,000 or, if the individual can establish that it is less, the penalty equals 100 percent of the gross income from their tax shelter related activities.[55]

Individuals, including entities, such as accounting firms, who aid, assist, and/or advise on a listed transaction, do not provide or provide false or incomplete information about their listed transaction activities to the I.R.S., the penalty is the greater of $200,000 or 50 percent (or 75 percent if intentional) of the income resulting from their activities.[56] Also, if they do not provide a list of their advisees within 20 business days of the Service's request, the penalty is $10,000 per day.[57]

Under I.R.C. §§ 6694(a) and (b), penalties can be assessed against paid tax return preparers, who take unreasonable tax return positions or engage in willful or reckless conduct that results in an understatement of a taxpayer's tax liabilities. I.R.C. § 6694(a) provides that a tax return preparer, who prepares a return resulting in an understatement of a taxpayer's tax liabilities due to an unreasonable tax return position, can be assessed a penalty equal to the greater of $1,000 or 50 percent of the income derived from preparing the return. For tax shelters and listed transactions, a tax return position is unreasonable if there is no reasonable belief that the position would more likely than not be sustained on its merits, meaning that there is less than a 50 percent likelihood of the position being upheld if challenged by the I.R.S.[58] The penalty may not be assessed, if a tax return preparer can show that there was reasonable cause for the understatement and he or she acted in good faith.[59] Under I.R.C. § 6694(b), the penalty for preparing a return resulting in an understatement due to a willful attempt to understate tax liabilities or reckless or intentional disregard of rules and regulations is the greater of $5,000 or 75 percent of income derived by preparing the return.[60]

If a firm employs a tax return preparer, under I.R.C. § 6694, the firm can be assessed the same penalty if:
1) one or more members of the firm's principal management or officers or a branch office participated in or knew of the unreasonable position or willful or reckless conduct that caused the understatement;
2) the firm failed to follow or failed to provide appropriate procedures for review of the position for which the penalty is imposed; or
3) the firm disregarded its reasonable and appropriate review procedures through willfulness, recklessness, or gross indifference in the formulation of the advice, or the preparation of the return that included the position for which the penalty is imposed.[61]

Under I.R.C. § 6701, tax return preparers or anyone else that aids and abets in the understatement of tax liabilities can be assessed $1,000 for each individual tax return or $10,000 for each corporate tax return.
I.R.C. § 7201 provides that tax return preparers, who are convicted for willfully attempting to evade or defeat any tax or its payment, can be fined up to $100,000 ($500,000 in the case of a corporation) and/or imprisoned up to five years. Under I.R.C. § 7206, return preparers can be fined up to $100,000 or up $500,000 in the case of a corporation and/or up to three years in prison, if they are convicted of willfully assisting or advising in the preparation of fraudulent or false statements. I.R.C. § 7207 states return preparers convicted of preparing fraudulent returns, statements, and/or documents, can be fined up to $10,000 or up to $50,000 in the case of a corporation and/or imprisoned up to one year.

U.S. Tax Laws: Taxation of Gifts

The U.S. Supreme Court held, in Commissioner v. Duberstein, that a gift occurs when a donor gives something to a donee that proceeds from a detached and disinterested generosity and out of affection, respect, admiration, charity, or similar impulses of the donor. [62] Under I.R.C. § 102, the amount of cash and/or the value of property that individuals receive as a gift are not taxable.

Canada Tax Law: Tax Shelters and Abusive Tax Avoidance Transactions

Under Canada's Income Tax Act (I.T.A.), a tax shelter is defined as a gifting arrangement or a purchase of property arrangement where tax shelter promoters and/or advisors represent to potential donors and property buyers that the arrangements will generate tax losses, deductions and/or other tax benefits equal to or in excess of their donation or purchase price, which can be used to reduce and/or eliminate taxes on their income and/or gains.[63] Also, if the main objective of other types of arrangements is to obtain tax benefits that can be used to reduce and/or eliminates taxes, the arrangement is considered a "tax shelter-like arrangement." [64]

Some tax shelters are legal under the I.T.A., such as registered pension plans and registered education savings plans. But other tax shelters are illegal, such as art-flipping schemes were taxpayers donate art to a charity organization in exchange for a receipt showing an inflated appraisal value of their donated art. Using the inflated appraisal value, the taxpayers claim a charitable tax credit that is higher than the actual appraisal value of the donated art.[65]

Under the I.T.A., a transaction (or a series of transactions) is considered to be "abusive tax avoidance" if the transaction's sole purpose is to generate a tax benefit and the transaction is inconsistent with the "object, spirit, and purpose" of the tax rule used to generate the tax benefit.[66] If a transaction is determined to be abusive tax avoidance, the transaction can be invalidated, the tax benefits denied, and/or tax, interest, and/or penalties may be assessed against the taxpayer. [67]

Under the I.T.A., taxpayers can be assessed taxes and/or interest on their unreported and underreported income and penalties. One penalty is the civil negligence penalty under I.T.A. Subsection 163(2), which can be assessed against taxpayers, who knowingly, or under circumstances amounting to gross negligence, made a false statement or omission on their tax returns. I.T.A. Subsection 163.2(2) and 2(4) provide that civil penalties can be assessed against third-parties, such as tax preparers and advisors, who advised and/or assisted taxpayers in tax evasion. Under I.T.A. 239, criminal tax evasion charges can be brought against taxpayers and their tax advisors, preparers, planners, or promoters, who encouraged and/or assisted them in willfully evading taxes.[68]

Canada Tax Law: Taxation of Gifts

Under Canadian laws, a gift is "… the voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor." [69] For tax purposes, a gift is valid and tax-exempt to the donee, the one receiving the gift, if the donor: 1) had the intention to give a gift to the donee; 2) voluntarily transferred money or property to the donee; 3) owned the transferred money or property; and 4) did not receive a benefit and/or valuable consideration in exchange for the gift.

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Endnotes

[1] KPMG LLP of Canada (KPMG Canada) is a Canada limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative, a Swiss entity. KPMG Canada operates in over 35 locations in Canada with more than 700 partners and more than 6,000 employees (https://home.kpmg.com/ca/en/home.html).

[2] The Isle of Man is a self-governing, British Crown dependency located in the Irish Sea between England and Ireland (www.britannica.com/place/Isle-of-Man).

[3] Between Peter Marshall Cooper and Her Majesty the Queen, Notice of Appeal, Tax Court of Canada, 2015-1070(IT)G, pp. 3, 4, and 13 (March 17, 2015) (Cooper Notice); Between Peter Marshall Cooper and Her Majesty the Queen, Deputy Attorney General of Canada, Solicitor for Her Majesty the Queen, Amended Reply to Peter Marshall Cooper Notice of Appeal, pp. 11 and 15, Tax Court of Canada, 2015-1070(IT)G (July 13, 2015) (C.R.A. Reply).

[4] Canada, House of Commons, The Canada Revenue Agency, Tax Avoidance and Tax Evasion: Recommended Actions, Report of the Standing Committee in Finance, 42d Parl., 1st Sess., p. 22 (Oct. 2016) (2016 Report); KPMG LLP of Canada Offshore Company Tax Product Alert (Oct. 14, 1999); KPMG LLP of Canada Offshore Tax Product Alert (Nov. 2, 2000) (together Tax Product Alerts); KPMG LLP of Canada Potential Client Script (circa 1999); C.R.A. Reply, pp. 2 and 23.

[5] 2016 Report, p. 22; C.R.A. Reply, pp. 2 and 23.

[6] Canada, House of Commons, Evidence, the Standing Committee in Finance, 42d Parl., 1st Sess., FINA -17, p. 32 (May 3, 2016) (Wiebe Testimony).

[7] Tax Product Alerts.

[8] *Id.*

[9] Wiebe Testimony, pp. 1 and 5.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] KPMG Canada General Anti-Avoidance Committee Offshore Tax Strategy Memo (Jan. 2, 2001) (Committee Memo).

[14] Wiebe Testimony, p. 5.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] Tax Product Alerts.

[19] Fraser Milner LLP Opinion Letter to KPMG LLP of Canada, Joel A. Nitikman, pp. 16 and 17 (Oct. 25, 1999).

[20] Tax Product Alerts.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] Cooper Notice, p. 3; C.R.A. Reply, p. 15; Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) s 94 (I.T.A.).

[27] Cooper Notice, pp. 3 and 4; C.R.A. Reply, pp. 3, 14, and 15.

[28] C.R.A. Reply, pp. 14 and 15.

[29] Cooper Notice, p. 5.

[30] C.R.A. Reply, pp. 15-18, 25, and 33; Cooper Notice, pp. 5 and 7; Isle of Man Companies Act of 1931.

[31] C.R.A. Reply, pp. 1-2, 8-9, and 31-33; Cooper Notice, pp. 1 and 2; I.T.A. ss 162(7); 163(2); 162(7) and 233.3(3); Form T1135, Foreign Income Verification Statement.

[32] Cooper Notice, p. 17.

[33] Cooper Notice, pp. 2, 4, 13, and 16.

[34] C.R.A. Reply, pp. 29 and 36.

[35] C.R.A. Reply, pp. 27 - 30; Cooper Notice, p. 9.

[36] C.R.A. Reply, pp. 5, 17-18, 27 – 30, and 32-33; Cooper Notice, p. 9.

[37] "Financial officers union files complaint against KPMG over tax work on Isle of Man," Bruce Cheadle, The Globe and Mail (May 13, 2016).

[38] *Id.*

[39] *Id.*

[40] Harvey Cashore, David Sglins, Frederic Zalac, and Kimberly Ivany, "Canada Revenue Offered Amnesty to Wealthy KPMG Clients in Offshore 'Tax Sham,'" CBCNews, March 8, 2016 (www.cbc.ca/news/business/canada-revenue-kpmg-secret-amnesty-1.3479594); 2016 Report, pp. 22 and 42.

[41] Gregory v. Helvering, 293 U.S. 465, 469 (1935), *aff'g* 69 F.2d 809 (2d Cir. 1934); Yosha v. Comm. 861 F2d 494, 497 (7th Cir. 1988), *aff'g* 87 T.C. No. 1087 (1986).

[42] "The New Market in Corporate Tax Shelters," Joseph Bankman, 83 Tax Notes 1775-1777 (June 21, 1999).

[43] I.R.S. Pub. 550; Treas. Reg. § 1.6662-4(g)(2)(ii); Abusive Offshore Tax Avoidance Schemes – Talking Points, An Abusive Scheme Toolkit for External Stakeholders, I.R.S. (Oct. 2, 2017) p. 666 (https://www.irs.gov/businesses/small-businesses-self-employed/abusive-offshore-tax-avoidance-schemes-talking-points) (Abusive Tax Schemes) (Abusive Tax Schemes). [DELETE 2ND ONE]

[44] I.R.C. §§ 408 and 219.

[45] I.R.S. Pub. 550; "Tax Planning and 'Tax Sheltering': Is It More Than a Word Game?" Peter L. Faber, The State and Local Tax Lawyers, Symposium Edition (2006), pp. 25 and 28.

[46] Treas. Reg. § 1.6662-4(g)(2)(i).

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[51] *Id.*

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[53] *Id.*

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[56] I.R.C. § 6707; Treas. Reg. § 301.6707-1.

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[58] I.R.C. § 6694(a); Treas. Reg. § 1.6694-2.

[59] I.R.C. § 6694(a)(3).

[60] I.R.C. § 6694(b); Treas. Reg. § 1.6694-3.

[61] Treas. Reg. §§ 1.6694-2(a)(2) and 1.6694-3(a)(2).

[62] Comm. v. Duberstein, 363 U.S. 278 (1960).

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