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Isles of plenty

The Caymans: a Caribbean paradise ... operated in secret. A top Swiss banker turned whistleblower says he has the evidence

Tax gap reporting team
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A hoard of banking files from the Caymans – one of the most secretive British tax havens – are being supplied to the US authorities by a whistleblower who claims they detail worldwide tax avoidance.

The Cayman Islands – Caribbean territories under ultimate UK control – are currently the target of reformers. Alastair Darling was yesterday challenged in the Commons over allegations that UK banks have been using the Caymans for massive tax avoidance schemes. Barack Obama, before he reached the White House, was one of the senators who singled out the islands as a blot on the US fiscal landscape which ought to be investigated.

The whistleblower's documents have been seen by the Guardian. They record the names and transactions of hundreds of companies, trusts, funds and wealthy individuals - information protected by local and Swiss secrecy laws.

Some of the paperwork concerns legal tax avoidance structures. Other files are alleged to point to potential illegal tax evasion by individuals around the globe.

The thousands of pages come from Rudolf Elmer, chief operating officer for the Julius Baer Swiss bank office in Grand Cayman until he was sacked in December 2002. Elmer, 53, and the bank have been involved in a long dispute. The bank accused him of forging documents and making violent threats. Elmer has accused the bank of hiring private investigators to harass him.

Elmer says his documents include all the back-up data held on Julius Baer's computer server in the Caymans at the time he was sacked, including accounts, correspondence, memos and resolutions dealing with 114 trusts, 80 companies, 60 funds and 1,330 individuals.

The bank says Elmer inappropriately obtained some documents as part of "a misguided campaign" against them. They reject his allegations as baseless and say their activities complied with all applicable laws and regulations.

In September 2005 the Swiss authorities held Elmer in custody for 30 days. They have indicated that they intend to charge him with breaking Swiss bank secrecy laws and with sending threatening messages to two Julius Baer officials.

Last year Elmer posted some documents on the Wikileaks website, which specialises in material from whistleblowers. Julius Baer got the site closed down for alleged breach of confidence, but Wikileaks had the California court order overturned on appeal.

The legal action drew the attention of the US Internal Revenue Service, who contacted Elmer. He is co-operating with the IRS, and with financial specialists in the office of Robert Morgenthau, the district attorney of New York; and with the powerful sub-

committee on investigations chaired by Senator Carl Levin, which has a track record of probing offshore havens.

Elmer's disclosures follow the emergence of similar whistleblowers. One recently testified in the United States against the Swiss bank UBS, and another sold British and European authorities the contents of computer files from Liechtenstein bank LGT.

Elmer says his interest is in the network of tax havens. "People don't know how the system works. They may hear of some case, but the big picture always disappears into bank secrecy, professional secrecy with lawyers and accountants, and tax secrecy. But they need to know that this is a system which undermines our society, our democracy." He has lodged copies of files with Jack Blum, a veteran lawyer in Washington DC and an outspoken critic of the behaviour of tax havens.

Blum told the Guardian: "What Elmer is doing is extremely valuable in the process of educating people of the need for major reform. This is a system for enabling a certain class of people to avoid their societal duty, which is to pay tax."

We found and interviewed Elmer, now 53, at his new home on the Indian Ocean island of Mauritius. He used to be a part-time captain in the Swiss army, and is an accountant and auditor by training, and a lover of ballroom dancing.

He told us that originally, in 1987, he was proud to join the Zurich headquarters of Julius Baer, one of Switzerland's oldest and most respected private banks, handling some \$38bn of assets, mostly for wealthy individuals.

But Julius Baer told the Guardian that Elmer had inappropriately retained documents when he was sacked by them in December 2002. They said many "were altered to create a distorted fact pattern or supplemented by forged documents".

Elmer responded to us that he had changed the titles of files to make them more easy to identify and also wrote spoof letters to tax authorities, for example purporting to be from penitent taxpayers confessing their evasion. He said he had not distorted or altered the contents of any internal document.

The bank suggested that since Elmer had forged spoof letters, they would be surprised if we placed any reliance on information from him. We invited them to identify any document referred to which they regarded as forged. They did not.

The documents include details of numerous trusts in which wealthy people have placed capital. This allows them lawfully to avoid paying tax on profits, because legally it belongs to the trust. In the same way, the capital can pass to heirs free of inheritance tax.

The trust itself pays no tax, as a Caymans resident. The trustees can distribute money to the trust's beneficiaries but it is essential the trustees exercise their own control over the trust's assets. If not, the assets become once more the property of the person who sets up the trust- and may be taxed.

The paperwork now being handed to US authorities appears to include several cases where wealthy individuals sought to use trust money as though it were their own. When we put these cases to the bank, they told us they did not consider it appropriate to discuss the affairs of their clients through the media.

Some documents refer to a Greek shipowner who placed \$26.5m into a trust. Payments appear to be being made in and out without the knowledge of the trustees. The shipowner is said to have written letters referring to the trust as though it were a personal bank account. "The trust appears to be funding the settler's [founder's] shipping business," said one memo. Another speaks of "a risk that the structure could be regarded as a sham".

The Guardian emailed a summary of the documents to the shipping owner, who made no comment.

In other cases, the documents refer to:

- A memo by one Caymans financier, who did not leave a message on the answer machine of a UK client "in case the tapes are seized by the authorities".
- A memo about the affairs of a UK stockbroker whose trust was bluntly said to contain "undeclared money".
- Fears among Julius Baer staff that "we are rubber-stamping investment instructions" in relation to trusts set up by a London-based South American financier.
- Suspicions a German businessman sold a yacht which belonged to his trust and pocketed some of the cash for himself.

One file supplied to US authorities records concerns over a trust called Moonstone, opened on the instructions of the law firm of Dr Thomas Baer, former president of the Julius Baer bank, in the name of a man named Schuler. Caymans staff did not have a passport for Schuler and no way of knowing who he was. Nor were they able to verify where the money had come from. Dr Baer told us he could not discuss a case where documents might have been supplied by a criminal source and that he was bound by lawyer's confidentiality.

He added that Swiss banks were not allowed to open accounts without complying with "know your customer" rules; and that the leaked documents did not reveal what information was available to the bank in Switzerland, nor whether the required information was finally supplied to the Julius Baer Trust Company in the Caymans.

Other Elmer files refer to an alleged trust opened by a Mexican police chief accused of colluding with drug dealers; a Brazilian politician accused of corruption; and a trust allegedly established by Canadian businessman David Radler, now better known as the partner in fraud of former Daily Telegraph proprietor Conrad Black.

In respect of all of the contents of the files, Julius Baer told the Guardian: "All of the activities of our group companies and of the investment vehicles which you have referred to, including associated fee flows and interdependencies, are in full compliance with applicable laws and regulations. These activities are transparent to the regulatory and other governmental agencies in the jurisdictions in which they operate, to their respective external auditors and, with respect to investment vehicles, to investors in such vehicles."

Tax rate: 0%



Lawyers and accountants make up a tenth of the 52,000 population of the Cayman Islands, which are English-speaking, politically stable, in the US time zone, and with

zero taxes. This British Overseas Territory with palm trees and luxury hotels, measuring less than 100 square miles, is the fifth largest financial centre on the planet. Tax Justice Network campaigners estimate that tax havens collectively hold more than \$11.5 trillion. Some comes from tax avoidance. Each year the US may lose a total of about \$100bn in potential taxes, France about \$50bn, Germany \$30bn, the UK between \$20bn and \$80bn - and the developing world loses up to \$800bn in stolen capital. But in the Caymans, a prison sentence awaits anyone who discloses bank information.

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