



# Duke Law Firm, P.C.

Your International Asset Protection Resource

## ASSET PROTECTION NEWSWIRE

### Increased Disclosure Requirements for Foreign Financial Accounts

As of January 2009, any U.S. person who has ownership or authority over foreign accounts having a value of at least \$10,000 is subject to new filing requirements under the TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). The revised requirements include significant changes concerning who must report and make an FBAR filing, and what must be included in the filing. The U.S. Government is using the FBAR as a tool to force foreign governments and banks to comply with U.S. tax reporting laws.

[More Details](#)

### Bonus Newsletter Next Month

Next month we are sending to our subscribers the March newsletter from the Esquire Group, LLC, of Las Vegas, Nevada. The Esquire Group's newsletter focuses on domestic tax issues. Subscription details will be provided should you wish to subscribe.

### Review of Wills and Trusts

The applicable estate tax exclusion amount is now \$3.5 million. This increase and changes in the values of the assets that may comprise the estate require a careful review of existing estate planning documents to ensure that the original intent is being met.

[More Details](#)

### Proposals for Estate And Gift Tax Changes

A proposed House Bill calls for retaining the estate tax applicable exclusion amount of \$3.5 million with a \$2 million generation-skipping transfer tax exemption.

[More Details](#)

### The Declining U.S Dollar Is an Irreversible Trend

Three principles are critical to assessing trends across time. The trend must: (1) be decisive to the business or the individual; (2) be irreversible; and (3) have a clear trajectory.

[More Details](#)

### Good Intentions Gone Wrong

"I want to see people get a job. I want to see people get enough to eat. We have never made good on our promises ... I say after eight years of this Administration, we have just as much unemployment as when we started ... and an enormous debt to boost!"

[More Details](#)

Volume 6, Issue 1, February 2009



### Announcing ...

*The annual exclusion for present interest gifts, originally \$10,000 (and \$12,000 in 2008), increased to \$13,000 per donee for 2009.*

### Should You Trust a Land Trust?

We did not learn about them in law school, yet they are hugely popular with promoters. What is a land trust, and why are U.S. courts not buying?

[More Details](#)



# Duke Law Firm, P.C.

Your International Asset Protection Resource

## ASSET PROTECTION NEWSWIRE

### *In this Issue*

Increased Disclosure Requirements for Foreign Financial Accounts	<a href="#">2</a>
Review of Wills and Trusts	<a href="#">2</a>
Proposals For Estate And Gift Tax Changes	<a href="#">3</a>
The Declining U.S. Dollar Is an Irreversible Trend	<a href="#">3</a>
Should You Trust a Land Trust?	<a href="#">5</a>
Good Intentions Gone Wrong	<a href="#">6</a>
Clifford Chance Wins Latest Round in India Tax Dispute	<a href="#">8</a>
Cravath's Presiding Partner: Time to Kill the Billable Hour	<a href="#">9</a>
UBS Swiss Accounts Fare Well at IRS So Far	<a href="#">10</a>

### **Increased Disclosure Requirements for Foreign Financial Accounts**

Effective January 1, 2009, the U.S. Department of Treasury mandated “the use of a revised form for the reporting of foreign financial accounts.” This relates to the TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR). The instructions include significant changes such as clarifying those who must file and the requirement for detail in reporting covered accounts. The revised FBAR must be filed by any U.S. person who has a financial interest in or signature authority, or other authority, over one or more financial accounts in a foreign country if the aggregate value of the accounts exceeds \$10,000 at any time during the calendar year.

Foreign countries/jurisdictions and their banks, as withholding agents, have found themselves under increased pressure to cooperate with the U.S. as reports have surfaced of foreign financial institutions assisting U.S. citizens in hiding income and assets. Federal regulations, especially of the Internal Revenue Service, have made it a priority to ensure disclosure of foreign financial accounts. The FBAR revision is one primary example of the attempt by government enforcement officials to ensure stricter compliance with U.S. disclosure laws.

The definition of “U.S. person” now includes a citizen or resident of the U.S. or a person in and doing business in the U.S. This definition apparently requires foreign citizens who are physically present and doing business in the U.S. to file the FBAR. Previously, U.S. person included citizens and residents of the U.S., domestic partnerships, domestic corporations and domestic estates or trusts.

Accounts owned by a trustee of a trust now must be reported not only by a beneficiary with a greater than 50% beneficial interest in the trust but also any person who “established” the trust if a “trust protector” is appointed. A “trust protector” is defined as a person responsible for monitoring the activities of the trustee who has the authority to influence trustee decision or to replace or recommend the replacement of the trustee.

The definition of “financial accounts” is also expanded and includes, among others, foreign mutual funds, foreign hedge funds, foreign annuities, debit card accounts and prepaid credit card accounts.

The FBAR now requires the maximum value determined by guidelines set forth in the instructions, instead of the value of the accounts within predesignated ranges, such as, “under \$10,000,” “\$10,000 to \$99,000,” etc. The official exchange rates at the end of the year are required to be used to convert the value of foreign currencies. Each account must be valued separately on the FBAR. In addition, the revised FBAR requires the type of foreign account to be stated (bank, securities, or other).

The first revised FBAR to be filed will be on or before June 30, 2010, for the calendar year January 1 through December 31, 2009. The failure to file the required FBAR for prior years potentially subjects one to significant potential civil and criminal penalties. Duke Law Firm has for many years assisted clients in filing late FBARs, which must be done because failure to file a report may be a criminal offense if one learns that he is required to file the FBAR and fails to do so.

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### **Review of Wills and Trusts**

Those clients whose wills or revocable trusts contain language/provisions for funding the by-pass trust (or family trust) in the amount of the applicable estate exclusion amount must understand that this amount is now \$3.5 million and may continue to be this amount under the proposed House Bill.



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## ASSET PROTECTION NEWSWIRE

Example: Some families should have their estate planning documents reviewed in light of the current changes and apparent continuing law providing for the estate tax applicable exclusion amount of \$3.5 million. Assume that at the time your will or trust was drafted, the value of your estate was \$3 million. Assume further that at the time your will or trust was drafted, the estate tax applicable exclusion amount was \$1 million. Under that formula at the time of the signing of the will or trust, \$1 million would pass into a by-pass or family trust and the remaining \$2 million would pass to the surviving spouse (either outright or in trust, depending on the language of the will or trust document). Let's further assume that the estate continues at the value of \$3 million. In 2009, the full \$3 million will pass into the by-pass or family trust, leaving no assets to pass outright to the surviving spouse or to a marital trust for the surviving spouse. The original intentions of estate planning as accomplished in the estate planning documents may have changed as a result of this increase in the applicable estate exclusion amount, as well as the fact that many assets are now under deflationary adjustment due to the credit-induced boom that resulted in a liquidation of those malinvestments and a bust. Another problem, however, is that with all the fiat money injected into the system by the Federal Reserve (Central Bank) and borrowed by the U.S. Treasury, future inflationary price rises will necessarily result.

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### Proposals For Estate And Gift Tax Changes

A proposed House Bill calls for retaining the estate tax applicable exclusion amount of \$3.5 million with a \$2 million generation-skipping transfer tax exemption. The proposed House Bill also calls for disallowance of any further minority discount valuations for families, except for active trades or businesses. The U.S. Treasury Department is pushing to disallow zero-out GRATs and require that the GRAT must provide a minimum 10% retained value to the settlor who creates and funds the GRAT.

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### The Declining U.S Dollar Is an Irreversible Trend

*John M. Walker, Esq.*

According to H.G. Wells, looking across time into the future required not a magical crystal ball but a time machine. Sadly, he chose not to reveal the working plans for such a device in his novella.

However, Professors W. Chan Kim and Renee Mauborgne do give us a framework to use in their book Blue Ocean Strategies. The key to looking across time relies not on projecting the trend itself. Instead, it arises from developing insights into how a trend will change the value of what is deemed to be important to the business or to the individuals that will be affected by the trend. Once the trend is identified, the professors instruct us to imagine the market at its logical conclusion, working backwards from that vision and identifying what must be done now to profit from the trend.

According to Kim and Mauborgne, three principles are critical to assessing trends across time. The trend must: (1) be decisive to the business or the individual; (2) be irreversible; and (3) have a clear trajectory.

Applying this "looking across time" analysis to the monetary policies of the U.S. Government and Federal Reserve Banking System leads us through the following analysis.

What is the Trend?

The continuous decline in the value of the U.S. dollar is the trend we are considering.



# Duke Law Firm, P.C.

**Your International Asset Protection Resource**

## **ASSET PROTECTION NEWSWIRE**

### Is the Trend Decisive?

This trend is decisive to Americans because it erodes our overall net worth and purchasing power. U.S. investments that are tied to the dollar, such as the stock market and domestic mutual funds, have fallen dramatically. Over the past few months, double-digit percentage decreases are common in retirement plans such as 401(k)s, 403(b)s, and IRAs. U.S. residential and commercial real estate values are also declining.

### Is the Trend Irreversible?

This trend is irreversible. The monetary policy as promoted by former Treasury Secretary Paulson, Federal Reserve Chairman Bernanke and championed by former President Bush was heavily supported by the Democrats and many Republicans in Congress. This policy has been to drastically increase the money supply in the U.S. financial system by turning Federal debt into money, thereby decreasing the purchasing power of our currency. During the November elections, the Democratic Party increased its majority status in both Houses of Congress, and President Obama has pledged new, massive Federal spending in an effort to stimulate the economy.

At the heart of this trend and ensuring it is irreversible are a private banking cartel and a disastrous Federal law. Both are protected and dangerous. The private banking cartel is the Federal Reserve Banking System. The disastrous law is the Community Reinvestment Act of 1977 (CRA).

The Federal Reserve Banking System, also known as the Federal Reserve or the Fed, was created in 1913 through the Federal Reserve Act. The Fed became our country's fourth attempt to create a central bank. The stated, primary purposes for creating the Fed were to address bank panics resulting from the failure of "wild cat" banks and to create an elastic money supply for business expansion. To paraphrase one of my high school history teachers who told us that the Holy Roman Empire was neither "Holy," nor "Roman," nor an "Empire," it is shocking to realize that the Fed is neither a "Federal" nor a "Reserve" banking system.

The Fed is instead a privately owned banking cartel that is in partnership with Congress and the Treasury to create fiat money (out of thin air—primarily through computer entry) for the purpose of making loans to the U.S. Treasury and funding Congressional spending.

G. Edward Griffin has written extensively on the Fed. He estimates that the cash "reserves" the Fed maintains amount to less than three one hundredths of a penny for each dollar the Fed has created and placed into the U.S. money supply. Instead of these nearly insignificant cash reserves, it is the taxes paid to the Treasury and the assets of the people that are the real reserve. Should any large corporate, institutional or government loan go south, it is the taxpayer who funds the "bailouts" of these loans "for the public good." The taxpayers and their assets back these loans; interest payments continue to flow to the Fed; and Congress keeps its money machine in operation. Hence, the U.S. taxpayers and their assets are the real lenders of last resort.

After nearly 100 years, this cozy partnership between the Fed and Congress is still going strong. Within the past few months, the Fed has already committed over \$700 billion in new loans to the bailout of Wall Street financial firms and is expected to commit another \$800 billion. Congress committed several billion dollars channeled through the Fed to General Motors and Chrysler. Now states teetering on financial ruin, such as California, are openly seeking a bailout of tens of billions of dollars. The precedent for the Fed bailing out a municipal government was set in 1975 when Congress urged the cartel to bail out New York City with \$2.3 billion "for the public good" rather than letting the city slide into an embarrassing bankruptcy.

The Community Reinvestment Act of 1977 (CRA) is younger than the Fed but is proving to be just as dangerous. The CRA forces banks and other financial institutions to make mortgages to people who could not pay them back. (*see* 12 U.S.C. 2901 *et seq.*). These mortgages have been euphemistically dubbed "sub prime." When they inevitably crashed in huge numbers, they were euphemistically re-dubbed "toxic assets."

The CRA mortgages were guaranteed by the Government Sponsored Enterprises (GSEs) of Fannie Mae and Freddie Mac. These GSEs would "purchase" any mortgages made under the CRA that went bad. These institutions became tremendous and were exempted from accountability and from following generally accepted accounting practices (GAAP). It should come as no surprise that these behemoths became terribly mismanaged. Real investigations into this mismanagement have been largely blunted by Congress.



# Duke Law Firm, P.C.

**Your International Asset Protection Resource**

## **ASSET PROTECTION NEWSWIRE**

The CRA is still being enforced and has become a political sacred cow. Fannie Mae and Freddie Mac are still guaranteeing the questionable loans required by the CRA. Exacerbating this matter, Congress has and is continuing to enact laws that allow certain classes of people in foreclosure to force the mortgage holders to renegotiate the defaulted and at risk mortgages at steep discounts. Thus, the banks cannot foreclose on certain, protected non-performing debts. This action will further weaken the banks, likely leading to more rounds of “bailouts” for the “public good.”

The Fed’s increasing infusion of dollars into the U.S. financial system, as well as the expanding interventionist policies by the Congress, will continue to vastly expand the supply of dollars in the face of declining asset values. An increase in the money supply without a corresponding increase in underlying asset values decreases the purchasing power of the currency. With Congress showing no political will to turn off the money machine or repeal the CRA and the Fed receiving interest payments on the money it creates for the bailouts, the trend of continuous decline in the value of the U.S. dollar is clearly irreversible.

### What is the Trend’s Trajectory?

Foreign currencies that trade against the U.S. dollar will be worth more and more as the value of the dollar decreases. Soon, the dollar will no longer be the world currency. China has already replaced the dollar with a “basket of other currencies” to act as its new reserve currency. China is one of the major purchasers of our national debt.

With the money supply being expanded so quickly and in such vast amounts, the result will likely be a hyperinflation reminiscent of the late 1970’s Carter Malaise. Foreign capital and domestic capital will flow out of the U.S. economy at an accelerated rate. Eventually, Congress may have to enact currency control laws in an attempt to stem the outflow of this capital. Once such laws are enforced, U.S. citizens and entities will find it very difficult to legally invest in foreign assets or currencies.

### How to Profit from this Trend?

The first and obvious step is to stop investing in debt. Practical exceptions are legitimate mortgages on primary residences and business facilities or necessary short-term business loans. Credit card debt and borrowing to finance speculative ventures should be curtailed and balances aggressively paid off.

The next steps center on moving out of U.S. dollars. Many strategies are well publicized, such as investing in precious metals and coins. For well-heeled individuals or businesses, one lesser well-known strategy that some of our clients have found worthwhile is investing in foreign currencies or foreign assets that trade against the U.S. dollar. This strategy requires utilizing recognized and IRS-compliant offshore planning structures, and tends to work best when the management of these transactions and investments are left to competent offshore asset managers. In most cases, these managers can work directly with domestic certified financial planners and registered investment advisors.

Businesses and professionals who are positioned to facilitate non-U.S. dollar investments should be able to profit from this trend. As mentioned above, certified financial planners and registered investment advisors can work directly with offshore asset managers to give their wealthy clients access to investments and investment strategies that are difficult or impossible to execute in the U.S. Attorneys and accountants can make foreign diversification available to their wealthy clients as well by working with the Duke Law Firm in a similar manner.

Duke Law Firm can create the necessary IRS-compliant structures and make introductions to offshore asset managers and custodial banks we have come to trust.



# Duke Law Firm, P.C.

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## ASSET PROTECTION NEWSWIRE

### Should You Trust a Land Trust?

*John M. Walker, Esq.*

In the world of real estate investing, the land trust is touted by many as an indispensable asset protection tool that protects the investor from everything ranging from prying eyes to sue-happy plaintiffs to court judgments. U.S. courts have not joined the ranks of the enamored. As an asset protection tool, the land trust is falling flat, proving to be of no value at all when subjected to judicial fire.

Could it be that the judges are just uninformed? A land trust is based on case law from Illinois that formed the foundation of a business trust. A land trust is a revocable (non-permanent) variation of the business trust that is modified to hold real property as its asset. The Illinois business trust was patterned after the general business trust originating in Massachusetts. The business trust was designed to help business owners protect their assets from creditors.

Currently the business trust is available in many states, including Delaware; however, not all states recognize the business trust. The states that do recognize the business trust generally require the trust to be formally created with specific documents and filed with the Secretary of State in the state where it is formed. By contrast, the land trust is a private document that is not filed anywhere. A business trust is usually taxed as a corporation. The land trust is not recognized by the IRS, so the taxes must be paid by the beneficiaries of the land trust.

In a business trust, as in all legitimate trusts, the beneficiaries have no control over the assets. The trustee holds the legal title to the assets and manages them for the benefit of the beneficiaries. The trustee must control those assets. By contrast, in a land trust the beneficiaries control the assets. Although the land trust appears to be controlled by the trustee, it is the beneficiaries who control the trustee. Thus, the beneficiaries exercise de facto control over the trust assets through a figurehead trustee.

This level of control by the beneficiaries is the crux of the problem land trusts cannot overcome when subjected to legal challenges. The 1996 federal bankruptcy case of Higashi v. Brown (No. 95-03072, 1996 WL 33657614) illustrates the danger. The court determined that the beneficiary of the trust had complete control over the trust assets. Because of this control, the court reasoned that the trust was established solely to evade and frustrate creditors. The court held that the trust was nothing more than a sham with the transfer of the assets to the trust being a fraudulent transfer. Thus, the transfer was invalid, and the assets were removed from the trust and made subject to the claims of the creditors.

One steadfast principle in asset protection planning holds that the more control an owner has over the asset the more likely a creditor or claimant will be able to reach that asset. With courts reclassifying a whole range of "trusts" as fraudulent transfers because the beneficiaries retained too much control, this principle is well founded. In addition to land trusts, other "trusts" that are commonly dissolved include common law trusts, constitutional trusts and a whole range of other cleverly named and heavily marketed "trusts."

Even if the land trust and its brethren did not have the beneficiary control issue, they all are irretrievably doomed as legitimate asset protection devices because of their very nature as revocable trusts. In other words, the land trust is not permanent in nature as it can be revoked at any time by the person or entity that established the trust (i.e. the "grantor"). Should a legal challenge arise, the court can simply order the trusts dissolved. Unless the grantor wishes to go to jail for contempt of court, the revocable trust will in fact be dissolved by the very person who was relying on it for "bullet proof" protection.

For all its current popularity, the land trust and its relatives are worthless as legitimate asset protection tools.

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### Good Intentions Gone Wrong

America's Great Depression generally refers to the years of 1929-1932, but that is not accurate. America's Great Depression generally refers to the years of 1929-1932, but that is not accurate. Henry Morgenthau, Jr., one of the most powerful men in America, was, according to Eleanor



# Duke Law Firm, P.C.

**Your International Asset Protection Resource**

## ASSET PROTECTION NEWSWIRE

Roosevelt, the only person who could tell her husband that Mr. Roosevelt was wrong and get away with it. On May 9, 1939, Henry Morgenthau, Jr., the Secretary of the Treasury, called a meeting of the Democratic members of the House Ways and Means Committee. With all Mr. Morgenthau's power, he was feeling helpless at this meeting in 1939. He was speaking about the New Deal to those Democrats and stated the following, which comes from the book *NEW DEAL OR RAW DEAL?--FDR'S ECONOMIC LEGACY HAS DAMAGED AMERICA* by Burton Folsom, Jr.:

We have tried spending money. We are spending more than we have ever spent before and it does not work. And I have just one interest, and if I am wrong ... somebody else can have my job. I want to see this country prosperous. I want to see people get a job. I want to see people get enough to eat. We have never made good on our promises ... I say after eight years of this Administration, we have just as much unemployment as when we started ... and an enormous debt to boost! (Morgenthau Diary, May 9, 1939, Franklin Roosevelt Presidential Library.)

The book further states at page 2, "In these words, Morgenthau summarized a decade of disaster, especially during the years Roosevelt was in power." Although 1939 was better than 1932 and 1933 when The Great Depression was at its height, 1939 was still worse than 1931, which was close to being the worst unemployment year in U.S. history.

It appears that most professors of economics, and certainly most so-called financial experts associated with the federal government, believe that it is settled that FDR's New Deal brought America out of The Great Depression. This is false! World War II got America out of The Great Depression. We listen to these economic and financial experts close to the government, and fail to associate the so-called "financial and economic experts" at CitiBank, Merrill Lynch and even the white shoes firm, Goldman Sachs, to their lack of understanding of basic monetary and economic concepts. Also, they apparently do not understand that lower than market rates of interest cause a credit-induced boom, followed by a bust. These apparently greedy financial experts did not and still do not understand that lower-than-market interest rates established by the Federal Reserve cause a credit-induced boom in the economy and malinvestments (investments that should not have been made) that eventually must end in a bust. These so-called experts today, who advised the former President and who are advising the current President, just do not get it.

We do not have a liquidity crisis in this country. Anna Schwartz was interviewed by the Wall Street Journal in an article published on October 18, 2008, titled "Bernanke is Fighting the Last War." Mrs. Schwartz is the widow of the economist Milton Freedman. That article stated: "In the 1930s, as Mrs. Schwartz and Freedman argued in 'a monetary history,' the country and the Federal Reserve *were* faced with a liquidity crisis in the banking sector. As banks failed, depositors became alarmed that they'd lose their money if their banks, too, failed. So bank runs began, and these became self-reinforcing: 'if the borrowers hadn't withdrawn cash, they [the banks] would have been in good shape. But the Fed just sat by and did nothing, so bank after bank failed. And that only motivated depositors to withdraw funds from banks that were not in distress' deepening the crisis and causing still more failures." The article continues: "But 'that's not what's going on in the market now,' Mrs. Schwartz says. Today, the banks have a problem on the asset side of their ledger—'all these exotic securities that the market does not know how to value.'" The reason we are in this crisis is because there were lower-than-market interest rates with an easy availability of credit that caused a boom with malinvestments (investments that should not have been made) and then, finally a bust.

The Secretary of the Treasury can raise money only through three methods: (i) taxation; (ii) borrowing from the public, such as from China and Japan, our largest creditors, individuals, corporations, mutual funds; and (iii) borrowing from the Federal Reserve. China has loaned money to the U.S. Treasury so that these loans, as disbursed by the Treasury, can be used by Americans to buy goods produced and sold by China. But China is now having its own economic problems with many migrant workers returning to China due to economic problems around the world with no employment available. Thus China may not continue propping up America to the extent it has in the past. The U.S. Treasury is concerned about raising taxes because people see the direct impact of their tax payments on their federal income tax returns. Thus, the U.S. Treasury is focused on the third method: borrowing from the Federal Reserve. The Federal Reserve is a privately owned organization that issues the Federal Reserve notes that are given legal tender. Please note when you look at your dollar bill, at the top it contains the words "Federal Reserve Note." This I.O.U. note is given legal tender status by the U.S. Government and at the bottom, it says "One Dollar," or "Ten Dollars," etc. It is a Federal Reserve note (I.O.U.) issued by the Federal Reserve. When the U.S. Treasury borrows from the Federal Reserve, the Federal Reserve creates money out of thin air, primarily by computer entry, and the so-called money (notes) is nothing more than fiat money. Nothing backs this fiat money (credit), such as gold. This fiat money, issued by the privately owned Federal Reserve, is backed by the



# Duke Law Firm, P.C.

Your International Asset Protection Resource

## ASSET PROTECTION NEWSWIRE

assets of Americans. Few Americans, including professional economists, understand the operations of the Federal Reserve, the issuance of fiat money and the borrowing thereof by the U.S. Treasury. Most people believe that money (in this case, fiat money) is a commodity and has inherent value. Money is a medium of exchange that is valued and measured by its purchasing power. When the currency is not tied to a commodity, such as gold, the continuing issuance of this fiat money (notes) by the Federal Reserve causes a continual erosion of the purchasing power of the currency. The U.S. Treasury is obligated to repay this fiat money and, once again, the U.S. Treasury can only repay these loans by further borrowing from the Federal Reserve, increasing taxes, or by borrowing from third parties such as China and Japan.

Fiat money eventually leads to higher inflation price rises or hyper-inflationary price rises. Remember that the true definition of inflation is the creation of money (fiat) and credit out of thin air (computer entry or printing Federal Reserve notes). The consequences of inflation are a general rise in prices or potentially hyper-inflationary price rises. The stage has been set by the former chairman of the Federal Reserve, Alan Greenspan, and the current chairman, Ben Bernanke, together with the U.S. Treasury, for future high inflationary or hyper-inflationary price rises--the consequence of issuing fiat money (notes) created out of thin air.

I often ask people who work hard and bother no one what they will do with a so-called "stimulus check" that they may receive. I ask specifically "Will they go out and spend it?" The answer is always "no." So what will you do with the money (notes)? They respond with "pay bills." My response then is "because you live in the real world, you know more about real economics than most of professors of economics holding doctorates in economics, as well as the so-called experts advising the former President and the current President of the United States of America."

### *In The News*

#### **Clifford Chance Wins Latest Round in India Tax Dispute**

Anthony Lin

[Legal Week](#)

January 06, 2009

Mumbai's Chhatrapati Shivaji Terminus

Supporting an appeal by [Clifford Chance](#), the Bombay High Court has ruled that a foreign law firm may only be taxed in India on work performed in the country.

London-based Clifford Chance had previously been ordered by India's Commissioner of Income Tax to pay taxes on all of the fees -- around \$3 million -- that it earned on work performed on four energy infrastructure projects undertaken in India between 1996 and 1998.

The Magic Circle law firm primarily advised non-Indian participants on U.K. law aspects of the projects, and much of the work was handled outside of India. Clifford Chance challenged the assessment, arguing that only around \$871,000 in fees actually billed in India should be taxable.

The Bombay High Court took up the case after India's Income Tax Appellate Tribunal ruled in September 2001 that the nature of the work should determine its taxability in India. In rejecting Clifford Chance's appeal, the tribunal determined that the "territorial nexus" between the firm's fees and the projects in India meant all of the fees, wherever billed, accrued or arose in India and were taxable nationally.



# Duke Law Firm, P.C.

Your International Asset Protection Resource

## ASSET PROTECTION NEWSWIRE

But in a decision dated Dec. 19, the high court reasoned that "[i]ncome arising out of operations in more than one jurisdiction would have territorial nexus with each of the jurisdictions on actual basis. If that be so, it may not be correct to contend that the entire income 'accrues or arises' in each of the jurisdictions."

Clifford Chance's lawyer, former Indian solicitor general [Harish Salve](#), argued that, in the case of a legal professional rendering advisory services, the services could only be considered to have been rendered at a place where the professional is personally present. Any other rule would create chaos and uncertainty, Salve maintained.

The high court agreed, ruling that "for a nonresident to be taxed on income for services, such a service needs to be rendered within India, and has to be part of a business or profession carried on by such person in India."

Decisions by the Bombay High Court and other Indian high courts are appealable to the Supreme Court of India.

The issue of taxation has been a sore point for international law firms targeting key developing markets like India and China. In both countries, authorities and local bar groups have occasionally floated broader taxation on work handled abroad but tied to matters or transactions within those countries' borders.

<http://www.law.com/jsp/law/international/LawArticleIntl.jsp?id=1202427217678>

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### Cravath's Presiding Partner: Time to Kill the Billable Hour

The American Lawyer  
Aric Press  
January 7, 2009

In [an opinion piece in the current issue of \*Forbes\* magazine](#), Evan Chesler, the presiding partner at [Cravath, Swaine & Moore](#) calls for the end of the billable hour. "The billable hour makes no sense, not even for lawyers," Chesler, a prominent litigator, writes: "If you are successful and win a case early on, you put yourself out of work. If you get bogged down in a land war in Asia, you make more money. That is frankly nuts."

In his *Forbes* piece, Chesler analogized lawyers to building contractors. He wrote that when he hired Joe, the contractor, to renovate his kitchen (Joe, the plumber, evidently was booked on a cable television show), he and Joe decided on what the job was worth and agreed on a price. When Joe finished the work three weeks ahead of schedule, Chesler paid him a bonus.

In an interview, Chesler says that he would prefer a system where a lawyer and client assess the value of the job, agree on a price, review progress quarterly and have a success fee for a victory or a favorable settlement. "Clients know when they've achieved a successful resolution," he says. "The point I'm trying to make is that at the start we should define what the goals are and what the value of the matter is to the client. We need to create an alignment of interests between the client and the lawyer."

Chesler says that he's been raising this issue with clients and in private talks for the last few years. Thus far, he says that he has "just a few situations, in the single digits" with clients who have abandoned the billable hour. "There's a lot of inertia, a lot of 'the devil you know' in this area," he says.

Client fees have been an issue for Cravath recently. In December, when the firm announced it was cutting its associate bonuses to roughly half of the 2007 payments, Cravath made a point of announcing that its fees would be frozen in 2009. This was not completely helpful to corporate customers as the firm refused to publish its fee schedule. The only publicly



# Duke Law Firm, P.C.

**Your International Asset Protection Resource**

## ASSET PROTECTION NEWSWIRE

available fee information from the firm was filed in mid-2008 as part of a long-running employment discrimination case. In that matter, a midcareer litigation partner posted his billable rate at \$875 an hour, a \$205 an hour increase since 2004.

Chesler's *Forbes* essay is the latest entry in a growing conversation about the prospects for change in the way big firms do business. (See, for example, Susan Beck's recent Innovation Agenda reports on The Am Law Daily, available [here](#), [here](#), and [here](#).)

The debate over the billable hour has ebbed and flowed over the decades. It has picked up recently, stimulated in part by [an article](#) in the August 2007 edition of the *ABA Journal*, "The Billable Hour Must Die," by the novelist Scott Turow, who is also a litigation partner at [Sonnenschein Nath & Rosenthal](#). Similarly, efforts aimed at promoting fixed fee and/or value billing arrangements [have been discussed](#) periodically, too.

This time it may be different: Talk is cheap, Evan Chesler isn't.

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### UBS Swiss Accounts Fare Well at IRS So Far

January 8, 2009

By Arden Dale

NEW YORK -- A wide range of people continue to turn themselves in to the Internal Revenue Service for not reporting taxable securities in UBS-managed Swiss bank accounts, and so far seem to be avoiding serious punishment.

However, some may ultimately face civil or criminal penalties for evading taxes as the IRS and the Department of Justice review the accounts, according to a tax attorney.

The DOJ is looking into whether a group of 19,000 UBS clients evaded U.S. tax-reporting requirements through Swiss bank accounts. The probe centers on UBS's cross-border business, which allowed U.S. residents to bank with UBS AG bank branches in Switzerland. (UBS is closing the business, and began that process before the DOJ started investigating the firm.)

#### Getting a Pass

"Just because you get a pass from the IRS does not necessarily mean you will get a pass from the DOJ," said Edward M. Robbins Jr., a partner at the law firm Hochman, Salkin, Rettig, Toscher & Perez in Beverly Hills, Calif.

Doctors, lawyers, financial-services executives and others have been caught up in the UBS matter, as owners of the Swiss accounts. Many are older people who inherited accounts from relatives. At issue is whether account holders failed to report U.S. securities they held in the accounts to the IRS, and in that way avoided paying tax on them.

The DOJ is investigating whether UBS advisers helped clients evade paying tax on U.S. securities held in the Swiss accounts. The Securities and Exchange Commission is also probing whether UBS Swiss brokers engaged in activities that required them to be registered with the SEC.

The IRS has seen a steady increase in voluntary disclosures, most of them involving taxpayers with undisclosed foreign accounts, according to IRS spokesman Bruce I. Friedland. Tax attorneys estimate that hundreds of taxpayers have turned themselves in recently. The DOJ declined to comment.

#### Get There First



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Voluntary disclosures work only if the person approaches the IRS before the agency has identified the problem. To qualify, he must meet four conditions. First, the IRS or DOJ mustn't be auditing him already; second, the money in question must be from a legal source (in the case of UBS, this would be money held in the account); third, he must reveal any other tax improprieties he has committed, such as underreporting business income or overstating expenses; and last, he must pay all back taxes and any penalties, or make good-faith arrangements to pay.

Bryan Skarlatos, a partner at Kostelanetz & Fink LLP, a New York law firm that specializes in tax controversy and tax penalties, said he isn't "aware of any criminal indictments or even any civil penalties being assessed" so far.

A number of taxpayers have been successful with their voluntary disclosures to the IRS, according to Mr. Skarlatos. In these cases, the agency acknowledges the person qualifies provided he pays owed taxes or arranges to pay taxes, penalty and interest. The IRS can still assess civil penalties, but the criminal exposure "is greatly reduced or eliminated," said Mr. Skarlatos.

UBS said it is continuing to cooperate with the investigations.

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