

September 26, 2024 Summary: The Pasquantino Supreme Court case decided that wiring money to the USA to avoid tax back home is a violation of the federal mail and wire fraud statute, punishable by both a huge fine and

The Corporate Transparency Act results will now enable any country that has a Double Tax agreement with the US, such as Mexico, to issue a John Doe Summons to the IRS to obtain bank account info of identified entities controlled by Mexican residents. Likely banks chosen to spill the beans will be the large banks popular with Mexicans in Florida, Texas, and New

Mexico has a tax agreemnt with USA permitting John Doe Summonses. The US only has two tax treaties in Latin America (Mexico and Venezuela), and one pending tax treaty (Chile). On 21.6.2023 the U.S. Senate voted to approve the income tax treaty between the United States and Chile, clearing the way for its ratification.

#### So what happens if Mexico informs the IRS that the entity accounts were evading tax in Mexico



You get clobbered by both USA and Mexico tax authorities

### US Revenue Rule abrogated (in effect repealed) by

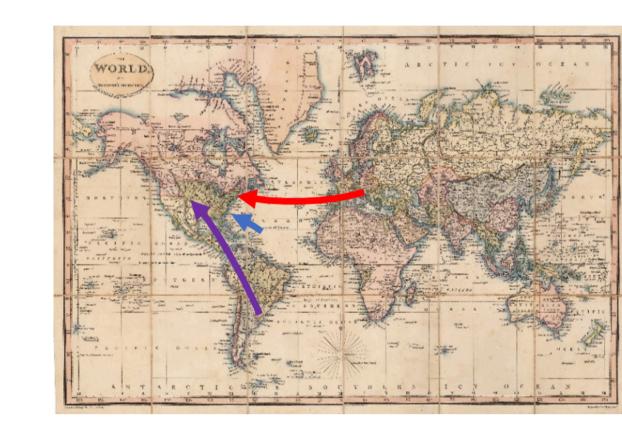
Paquantino • Usually, private litigants who obtain a judgment from a foreign court can seek enforcement of that judgment in the United States legal system. Foreign judgments are presumptively valid and enforceable, and the party opposing U.S. enforcement bears the burden of proving why the court should not enforce the foreign judgment. • However, this rule does not apply to the enforcement of foreign tax obligations. • Instead, under the common law revenue rule, U.S. courts may not enforce other nations' tax and revenue laws. Enter Carl and David Pasquantino, two brothers who were

into Canada to avoid Canadian excise taxes. • In their defense, the Paquantinos unsuccessfully invoked the revenue rule by claiming that the United States government "lacked a sufficient interest in enforcing the revenue laws of Canada." • The United States Supreme Court, considering the interplay between the revenue rule and the wire fraud statute, concluded that "a plot to defraud a foreign government of tax

prosecuted in the United States under the federal wire fraud statute for smuggling liquor

revenue violates the federal wire fraud statute. • So, as a practical matter, Pasquantino illustrates that the aspect of the revenue rule dealing with the enforcement of foreign tax claims has been abrogated (repealed) by the majority of the Supreme Court by allowing the indirect enforcement of the Canadian claim.

### Foreign tax evasion activities



• But plots to defraud governments of tax revenue include activities even more common than smuggling.

• Tax evasion is a crime and one that occurs in countries all over the world. If the activities that constitute foreign tax evasion occur in the United States with the use of interstate wires, then foreign tax evasion may constitute a violation of the federal wire fraud statute. • By definition, tax evasion is "the willful attempt to defeat or circumvent the tax law to illegally reduce one's tax liability." • As a practical matter, tax evasion can occur when a taxpayer lies about his income and

when a taxpayer hides income and structures transactions so that the taxpayer's

government is unaware of that income.

• One way to evade taxes is through the investment of monies overseas, not subject to tax by the host country and not, usually, in the country of residence. at least a trillion dollars fled from Latin America, Europe, and Asia to bank accounts and other forms of portfolio investment in the United States."

#### Oh, oh... use of mail and wire transfer to get money to the US



 Provided that these funds arrived in the United States via wire transfers, or under telephone, fax, or email communications, between the foreign national and the U.S. bank, the transaction, if intended to create undeclared which is untaxed income, to evade foreign tax, could be construed as subject to prosecution for Federal mail and wire fraud.

#### The Pasquantino Decision: A warning to would-be foreign tax evaders

• The federal wire fraud statute prohibits the use of interstate wires to conduct "any scheme or artifice to defraud, or obtain money or property using false or fraudulent pretenses, representations, or promises. • "The defendants filed a motion to dismiss, claiming that a scheme to defraud a foreign

government of tax revenue was not actionable under the wire fraud statute and that accrued tax revenue did not constitute property under the statute. • The district court denied the motion and the case went to trial. After several conflicting appeals over a few years, the case landed in front of the Supreme Court in 2005.

## Supreme Court on the fraud aspect

representations or promises.

• The Court first concluded that the defendant's conduct fell within the terms of the wire fraud statute, notwithstanding any impact of the revenue rule. • The wire fraud statute prohibits using interstate wires to effect "any scheme or artifice to defraud or for obtaining money or property using false or fraudulent pretenses,

 "According to the majority, the defendants' smuggling operations satisfied the two elements of the crime, (1) that the defendant engage in a "scheme or artifice to defraud, and (2) that the "object of the fraud...be money or property' in the victim's hands."

 The first prong of the statute, the scheme or artifice to defraud Canada of duties and taxes, was uncontroverted, so only the property requirement was in dispute. • The Court relied on its precedent to conclude that "Canada's right to uncollected excise taxes on the liquor petitioners imported into Canada is 'property' in its hands. • The court also cited Blackstone and the common law definition of fraud, both of which include depriving a victim of entitlement to money.

• Finally, the Court noted that "the fact that the victim of the fraud happens to be the Government, rather than a private party, does not lessen the injury.

# Supreme Court on the property aspect

scheme to evade foreign taxes."

vessel, or evades foreign taxes."

 After disposing of the property question, the Court turned its attention to the revenue rule, concluding that the revenue rule did not preclude the Pasquantinos' prosecution. • The common revenue rule—that courts will not enforce the tax laws of another sovereign —is first defined as the corollary of the rule that "the courts of no country execute the

penal laws of another." • In a two-part analysis, the Court first considered the revenue rule as it was understood when the wire fraud statute was enacted and then examined the purposes of the revenue

• The Court sought evidence that the revenue rule would have barred prosecution under the statute at the time the statute was enacted because, the Court reasoned, only that evidence would prove Congressional intent to exempt the present prosecution from the broad reach of the wire fraud statute. • The Court concluded that as of that date, there were no common-law cases that held, or implied, that the "revenue rule barred the United States from prosecuting a fraudulent

• The majority then examined the "common-law principle that crimes could only be prosecuted in the country in which they were committed," and analogized foreign revenue laws to foreign penal laws. • Several cases support the proposition that the common-law revenue rule forecloses a prosecution similar to that of Pasquantino because such a prosecution indirectly enforces foreign revenue laws. However, the Pasquantino majority viewed the domestic conduct of the defendants as

the reason for their prosecution. • The Court described the Pasquantino case as one of sovereign enforcement of the "sovereign's penal law," and rejected the argument that the Pasquantino prosecution's true purpose was the collection of foreign tax claims, an improper purpose under the

revenue rule. • Rather, here, the link between this prosecution and foreign tax collection was incidental and attenuated (having been reduced in force, effect) at best, making it not a case in which the whole object of the suit is to collect tax for a foreign revenue. • Further, the revenue rule never banned all enforcement of foreign revenue law. Defending its decision against the critique that it improperly gave extraterritorial effect to the wire fraud statute, the Pasquantino Court stated that "unlike the treaties and the antismuggling statute [cited by the defense], the wire fraud statute punishes fraudulent use of domestic wires, whether or not such conduct constitutes smuggling, occurs aboard a

• The Court stressed the domestic nature of the offense for which the defendant was being punished, noting that the defendants' crime "was completed the moment they executed the scheme inside the United States." • Finally, the Court also pointed out that in any event, the wire fraud statute punishes frauds executed 'in interstate or foreign commerce, so this is surely not a statute in which Congress had only 'domestic concerns in mind'.

### Pasquantino: A new weapon in the old fight against foreign tax evasion?

 Assume a Mexican resident has used a US trust, bank account, or US insurance policy to hide the investment monies from their tax authorities. • As in Pasquantino, a prosecution could begin through an investigation by US authorities on its motion or through a tip, or in response to a request for investigation by the tax evader's government. • It is established that the person engaged in the activities of opening the account and the investment of the funds through the use of interstate wires with the intent to evade

• To establish that the conduct indeed deprived the person's government of property due, the government simply would have to produce someone familiar with the domestic revenue code, although not necessarily an expert. • This witness would simply state that taxes were owed to the foreign government on the

underlying activities, and the Pasquantino requirements would have been fulfilled.

• At this point, the United States Department of Justice could bring the prosecution.

# How scary is Pasquantino for the Mexican tax evader?

 Up till now, Pasquantino may not have been the ultimate bogeyman, given the requirements to commence such prosecution. • Pasquantino's impact was rather modest. However, today's modern tools to combat these crimes, such as John Doe Summons and exchange on demand due to results of the Corporate Transparency Act (CTA) in 2024 bring this nightmare closer to home. Imagine an Exchange on Request being given to the IRS, based on the CTA results, and then being dobbed in as a tax evader. You get hit by both the US Federal laws as well as at home. A double whammy.

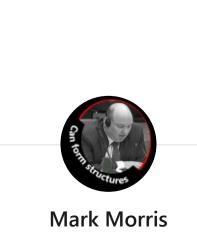
### Supreme Court agrees and abrogates the Common law revenue rule

• If you think this is scaremongering, you can read all about the Pasquantino case for a real Freddy Krueger movie at home.

The smuggling operation did not violate any federal alcohol statute or any applicable anti-smuggling statute, so the Pasquantinos and one of their conspirators, Arthur Hilts, were indicted under the federal wire fraud statute. The statute prohibits using wires, radio, or television to conduct "any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises. The statute was implicated when the Pasquantinos ordered alcohol over the phone

In a 5–4 Supreme Court decision, Justice Thomas delivered the opinion of the court, joined by Justices Rehnquist, Stevens, O'Connor, and Kennedy. The court held that prosecution for international tax fraud was possible in U.S. court under the federal wire fraud statute,

The court found the revenue rule to be inapplicable because U.S. officials brought the prosecution, rather than Canadian officials. The court also reasoned that the revenue rule is inapplicable because Canadian tax laws were incidental to the enforcement of the wire fraud statute.



CRS and CARF expert. No, truly.

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