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Q&A: Swiss whistle-blower Rudolf Elmer poised to leak explosive new information on tax evaders

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Salman Shaheen speaks to Rudolf Elmer, the whistle-blower who has been fighting a long court battle after revealing on WikiLeaks the activities of his former employer, Swiss bank Julius Bär, in the Cayman Islands.

Rudolf Elmer's life was turned upside down after he found himself in the dock for breaching Swiss bank secrecy laws. For almost two decades, Elmer was employed by Julius Bär where his work took him to offshore financial centres around the world, counting and protecting the money of high-net-worth individuals, financial institutions and multinational corporations. He says he became privy to the Swiss bank's own tax avoidance practices while working as chief operating officer in the Cayman Islands for eight years until he was dismissed in 2002 after questioning his company's actions.

His next big leak could be a matter of months away if he is successful in his court case. If he loses, it may turn him into a refugee, but one with little left to lose by sharing what he has learned since his ordeal began. But, as he tells *International Tax Review*, not all leaks are helpful, and he is deeply critical of the journalism behind the Panama Papers reports, arguing it is important to make it clear to the public what is legal and what is not.

Salman Shaheen: In 2008, you handed over the details of 2,000 alleged tax evaders to WikiLeaks. How much data did you hold back?

Rudolf Elmer: In 2008, I uploaded about 30 cases of potential tax evasion cases on the WikiLeaks webpage. These represent only about 3% of 200 megabytes of data. However, with the WikiLeaks disclosure I wanted to make things known to the public but also to encourage foreign tax authorities to make contact with me.

SS: Why did you hold this data back at the time instead of revealing all of it at once?

RE: There were three reasons. Firstly, it is not my task to make all dubious clients publicly known, it is up to the relevant authorities.

Secondly, at the time it was crystal clear to me that I was going to enter into a long-lasting battle against the Swiss authorities because the tax commission of the state of Zurich and Zurich's prosecution office decided in 2006 that all confiscated data cannot be investigated by the Federal Tax Authority of Switzerland due to the fact that it was unusual to perform a house search in Switzerland and to get hold of data from an entity of the Cayman Islands. What a nonsense, but this was the wording of the ruling because the data I had was not stolen in the Swiss legal sense and therefore the data could have been used for investigation purposes even against Swiss tax evaders.

Thirdly, the Federal Tax Authority of Switzerland also accepted the decision of the Tax Commission of the State of Zurich in 2006 and did not appeal the decision with the Federal Court of Switzerland. As a relatively smart person, one must conclude that this was simply a political decision not only by the judicial system of Switzerland but also by the Swiss tax authorities. This was mind boggling because the Swiss authorities could have collected at least \$100 million related only to the Cayman shadow banking arm of Bank Julius Bär & Co. Ltd., Zurich – without taking the many Swiss tax evaders into account. Therefore, I had no doubt that I had to hold back from publishing all information because I began to ask myself if the Swiss authorities have turned to protect not only tax evaders but also other serious criminals who were part of the data. The serious criminals were documented not only on WikiLeaks and in the Guardian articles of 2009, but also in the documentaries 'Offshore Elmer and Swiss Bank Secrecy' and 'A Leak in Paradise'.

I also learned that the Prosecution Offices of Switzerland's real and true task is not to go after every criminal in connection with the Swiss bank secrecy law. The prosecution office's primary and key task is to protect the money-making-machine, the Swiss cash cow of bank secrecy. Therefore, the entire Swiss judicial system will go after any whistleblower like me who makes civil society aware of the abusive practice of Swiss private banking. On the other hand, the authorities will turn a blind eye towards any matters which are a threat to the money-making machine and which could spoil the reputation of the Swiss banking industry.

In exceptional cases, like in that of the Russian ex-minister Elena Skrynnik, the prosecution office opened an investigation and froze

assists of \$70 million. But sooner or later the investigation is closed – sometimes for very strange reasons. This happened last week with the *Skrynnik* case as well. I know this pattern from several cases and in particular the *Raul Salinas* case with the Asset Manager Curtis Lowell of Julius Bär (Frontline Documentary 'Murder, Money & Mexico'). I bet that the Federal Prosecution Office will close the case against FIFA in a few years as well because the FIFA headquarters in Zurich is a golden calf for Switzerland as well.

In addition, the message sent by the prosecution to me and stating I am only an ordinary criminal (Head Judge Peter Marti of the Higher Court of Zurich mentioned that in his personal remarks after having closed the public announcement of the verdict on August 23 2016), was that dubious clients have to feel comfortable and secure holding their assets in Switzerland. The hidden agenda is to prevent clients from moving either their financial assets or non-financial assets like art work, jewels, and gold coins in the banks' safes, or sell their Swiss real estate, etc. out of Switzerland. It is as simple as that and it fits into the picture that Switzerland does not have any real whistleblower protection laws in the private sector in place.

More importantly, it is also easier for the prosecution office to go after unprotected whistleblowers who show the truth than dealing with the brilliant lawyers of ultra-high-net-worth individuals and multinationals who defend the bank and its clients.

Lastly, it would not be beneficial for a career of a Swiss prosecutor, at least in the state of Zurich, to investigate and prosecute banks in the financial centre of Zurich. The revolving door-principle is not only known in the US but also known in Zurich. As a prosecutor, you would increase your salary multiple times if you join a financial institution as head of legal, as a compliance officer or even as a consultant.

These facts were eye openers for me and therefore I concluded I had to use the information very effectively in my fight against such a morally corrupt system in order to eventually put the spotlight on the truth and particularly on Swiss bank secrecy. The Causa Whistleblower Elmer is about to turn into Causa Swiss Bank Secrecy and its future, which in the end will be very beneficial to civil society globally.

SS: What kind of information do you possess that you might reveal in the future?

RE: It is known that I have data of Julius Bär Trust Company Ltd, Cayman Islands but I also stated when I spoke at the Frontline Club on January 17 2011 that more data has been given to me after 2008. Even the last few years I have been approached by many potential whistleblowers of different industries who have shared information with me.

SS: When might you reveal the rest of the data?

RE: I really hope that I might not need to reveal any more data and international authorities do their jobs. It happened recently with the Pakistan's former Prime Minister Nawaz Sharif for instance. He was excluded from Parliament due to his undeclared offshore wealth and a criminal investigation was launched.

In my case I do need to have the final ruling of the Federal Court of Switzerland stating that Swiss bank secrecy cannot be applied in the Causa of Whistleblower Rudolf Elmer. It will take at least another four months or even more because after the defeat at the Higher Court of Zurich, Zurich's prosecution office argued in its newly written appeal at the Federal Court that I also have violated the federal law of Switzerland. It is argued that Swiss Bank Secrecy must be applied extra-territorially, for instance to the person who performs IT support to Credit Suisse, Zurich in Mumbai and on top of it to all employees in the world of a bank institution which is domiciled in Switzerland. This is incredible reasoning but you never know if even the Federal Court could make a political decision because the money-making machine of Switzerland is at stake.

SS: If the court rules against you, might you still release the data?

RE: I think the first thing I need to do is to apply for refugee status in Germany, the US or even the UK, secondly take the case to the European Court of Human Rights, and lastly possibly spend some time in a Swiss prison because the prosecutors requested four and a half years' imprisonment. There is no doubt in this case I would have to leave Switzerland before revealing any data.

SS: Would you give it to WikiLeaks again, or some other organisation?

RE: WikiLeaks is not an option for me in the way it operates these days. I would also not consider providing the information to the International Consortium of Investigative Journalists because I want highly skilled people in tax matters who deal with that information in a professional way. In my view, the options are, for example, the Tax Justice Network or *International Tax Review*.

It is a fact that most of the offshore structures are legal, however, what you do with it is in many cases illegal – for example hiding beneficial owners or the transactions themselves, money laundering or even using clean money for dirty purposes. It is not easy to make these facts visible for the man in the street. On the other hand, I do not like, for instance, how *Süddeutsche Zeitung* [in the Panama Papers revelations] has made offshore structures public and well known people had to suffer because *Süddeutsche Zeitung* did not explain what is illegal about those structures. Obviously, most of the offshore structures are not legitimate – most of this type of business can be done onshore – but the missing legitimacy does not justify that someone's career is totally destroyed because the person is named in major newspapers and connected to the offshore world. We request fairness in sport and

in court proceedings and therefore fairness is also important in offshore matters.

SS: How has the ongoing court case affected your life?

The bottom line is that I have experienced my social and financial death and could not find a job due to defamation, harassment and psychological warfare against me and my family during the last 12 years in Switzerland. Even my wife was accused of violating Swiss Bank Secrecy and therefore she was not allowed to visit me when I was in solitary confinement for 187 days. There are still a lot of personal items confiscated by the police like family pictures, laptops, documents, etc. of my wife and my daughter since 2005.

However, my family and I have learned to handle this psychological pressure caused by Zurich's authorities and have reorganised our lives in ways that we can best handle the situation. Today, I am an activist and a pain in the neck in respect of the Swiss financial industry, the Swiss judicial system and for some media because they tried to spoil my name during the last 12 years. It is not easy for me to rebuild my reputation if major newspapers in Switzerland and even the Swiss Banking Association have called me publicly a mentally sick person, a thief, a betrayer, a blackmailer, a person who is only out for revenge, a person who cooperates with the Neo-Nazis, an ordinary criminal, etc.

SS: Do you believe leaks like yours, and LuxLeaks and the Panama Papers have had an impact on tax haven secrecy and the new global push for transparency?

RE: Yes, I think so. The money-making machine of tax haven secrecy is not very easy to explain to the man in the street because it is driven by a highly complex and abstract methodology which hurts civil society enormously. Therefore, the leaks have made it easier for everyone to comprehend a bit more about those secrecy jurisdictions, and to request change, or call simply for more transparency. However, transparency might not make the biggest difference because it only makes things visible. The biggest difference will be made if culprits and enablers are exposed to extensive prison sentences and the secrecy jurisdictions are sanctioned strongly if they do not cooperate.

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