

**KPMG**

**STATEMENT TO CBC NEWS / RADIO CANADA  
August 28, 2015**

Thank you for the opportunity to respond to your questions. While we are unable to accommodate an interview(s) with any of our leaders, we would like to provide the following statements and ask that should you opt to use them in your story, they be used in their entirety.

Regards,  
Kira Froese  
KPMG, National Manager, Communications

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*Consistent with professional standards, KPMG is committed to treating our clients' private financial affairs as confidential. Therefore we cannot disclose, respond to, or discuss any specific client matters. In addition, with respect to the CBC's questions relating to tax matters dating back to 1999, aspects of this are currently before the courts and accordingly it is inappropriate for us to comment.*

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**CBC/RADIO CANADA REQUEST TO KPMG  
August 24, 2015**

Dear Mr. Hickey,

As you know, I have reached out to you a few times.

I am writing again today to outline some of the key topic areas we would like to ask you about, as well as to provide some greater detail about what we plan to report on.

We plan to broadcast and publish our stories on [cbcnews.ca](http://cbcnews.ca), radio, The National, as well as on Ici Radio-Canada in early September.

We would like to ask you again for an interview on the following topics.

**A) MNR v KPMG and the Unnamed Persons Requirement**

We plan to report on the case of MNR v KPMG T-283-13.

Court records show that the CRA contacted William Thomas and Elio Luongo personally on June 28, 2012 to inform KPMG Canada that it would seek an application to obtain the list of all of clients who had participated in KPMG's Isle

of Man Offshore Company Structure. On October 18, 2012, the Federal Department of Justice also sent a letter instructing KPMG to preserve all relevant documents in the matter, and to suspend all document destruction policies.

Court records also show that on February 18, 2013 Federal Court justice Simon Noël signed an order that authorized the CRA to obtain the names of clients, and related documents, involved in the KPMG Offshore Company Structure in the Isle of Man.

As you know, KPMG declined to hand over the list of names, and instead decided to fight the order in court. KPMG Canada hired the law firm of Osler at that time. Since the fall of 2013, the case has mostly been dormant in court. Court records indicate that KPMG Canada is having “confidential” behind-the-scenes discussions with the Department of Justice to resolve the matter out of court, and that the delay in those discussions relates to the “complexity” of issues in the case.

We plan to report on a variety of issues relating to MNR v KPMG, including why the case is taking so long to resolve and public policy questions around the implications of a delay in a case like this.

We would like to speak with you about the Offshore Company Structure and hear your personal thoughts on the structure itself, and the related court action.

We would like to know if, during the “complex” and “confidential” discussions KPMG is having with the Department of Justice, there has been an offer to settle. If there is an offer to settle, we would like to know if it includes an offer to provide the names of all of the high net worth clients to the Canada Revenue Agency. We would also be interested in speaking to you about how KPMG fits into the investigation, whether any third party penalties or fines are being discussed in this case, and whether or not there has been discussion about moving the case from a civil matter to a criminal investigation.

(In our stories, we will be looking at the legality of the Offshore Company Structure.)

## **B) The 1999 and 2000 Tax Alerts**

We also plan to report on the Offshore Company Structure itself, why it was set up, how it was marketed internally at KPMG Canada, and how KPMG Canada “targeted” wealthy Canadians.

We plan to report on a confidential internal KPMG document dated October 14, 1999, which has been filed in court.

The document, an internal KPMG “alert” says: “Internal Use Only -- Not for Distribution or Circulation Outside the Firm.” The document has the heading

“Offshore Company” and describes the “Product Profile” as follows: “This innovative product has been developed in response to the demise of the offshore trust as a tax planning vehicle for wealthy Canadian individuals. It uses a special type of corporation and emulates the private companies that have been used by wealthy Europeans. Among other things it can provide for: \* Investment and accumulation of assets with no tax; \* flexible estate planning, \* elimination of probate requirements and costs \* protection of assets from wealth, estate and inheritance taxes, \* protection from forced inheritance and community of property laws \* protection from creditors \* confidentiality \* the ability to receive distributions free of tax

Under the heading “Recent Success Stories,” the document names Barrie Philp (GVA) as having completed one engagement “so far” and that he has 5 in progress. “Projected fees in the GVA are approximately \$350,000 so far.”

Under the heading “Optimal Target Characteristics” the document says: \* High net worth individuals with a minimum \$10 million to invest offshore \* Individuals with existing offshore trusts which must be restructured after the 1999 budget proposals \* Shareholders of Canadian private and public companies with significant growth potential interested in an offshore estate freeze \* High net worth individuals concerns about creditor protection, estate tax, wealth tax, inheritance taxes, probate costs, forced inheritance laws, community of property laws etc.,\* individuals interested in philanthropic activities without the constraints of Canada’s charitable company rules

Under the heading “Pricing and Fee Arrangements” the document says: “Fees should be value-based in the range of 15 % of annual tax savings, 1 % of invested capital or other appropriate basis depending upon the application and the value to the client, with minimum combined fees and set up costs of \$100,000 to \$125,000, depending upon options chosen. This minimum fee range includes all legal costs and the first year’s minimum directors’, license, registration, secretarial and administration fees. Retainers required.

Under the heading “Service Delivery” the document names Barrie Phelps, Lloyd Heine, George Denier, Karen Azis and Denis Lacroix as “office/region product champions.”

We also plan to report on a second KPMG internal tax alert dated November 2, 2000 that indicates it was authored by you, and which has also been filed in court.

The subject line of the document says “Tax Product Alert: Offshore Company”. It is dated November 2, 2000 and sent to “All Canadian Partners, All Tax Professionals” from “Paul B. Hickey, National Tax.”

The document contains similar language to the earlier 1999 tax alert. It also says that Barrie Philp has “completed” 7 engagements and that Serge Bilodeau

(GMA) has completed 2 engagements. However, the “Optimal Target Characteristic” has changed from the original \$10 million investment to a “minimum \$5 million.”

This tax product alert was edited by “Paul B. Hickey” and Lori Dunn, Senior Manager, National Tax.

Again, we would appreciate hearing anything you would like to tell us about the above facts and documents. We would also appreciate hearing your perspective on all of this

### **C) The Offshore Company Structure**

Again, we would appreciate hearing from you on whether or not you feel the Offshore Company Structure constitutes legitimate tax planning by KPMG Canada, and what those reasons might be.

We would also appreciate hearing from you about your personal involvement in the OCS. We would be interested in hearing from you about why KPMG “targeted” high net worth Canadians who wanted to accumulate assets but pay “no tax” on those assets.

We would also be interested in hearing from you on how KPMG came to decide that it would take a 15 per cent fee of the taxes its clients ended up not paying to the federal treasury. We would also be interested in hearing from you how many clients participated in KPMG’s OCS, and how much money KPMG might have earned over the years from this structure. We would appreciate it if you could speak to us about the fees, retainers and percentages that were received by KPMG from the use of this OCS. We would also appreciate hearing from you about why KPMG does not want to release the names of the clients, and related documents, to the CRA.

We would also be interested in hearing from you about whether or not KPMG is being sued by any of its clients that took part in the OCS and, if so, whether they have been any out of court discussions on this matter.

We would also appreciate it if you could provide us with the names of any independent accountants or lawyers or any other tax professionals who could provide us with their assessments of the KPMG OCS.

### **D) The KPMG US criminal tax fraud case**

In our stories we plan to discuss the criminal charges filed in 2005 against KPMG US and several of its executives over its tax fraud case there. As you know, that case eventually led to KPMG US paying a substantial fine, as well as criminal convictions of some KPMG executives. We would appreciate hearing from you

about what similarities or differences you may see between the KPMG US case and the case of KPMG Canada and the Isle of Man OCS.

### **E) The Tax Court of Canada, the Cooper family appeal, and KPMG involvement**

The Cooper family of Victoria BC, which participated in the KPMG Canada Offshore Company Structure, was penalized by the CRA for not reporting income in relation to the OCS. The Cooper family is appealing those penalties through the Tax Court of Canada. KPMG lawyer Mark Meredith is representing the Cooper family in this matter.

Tax Court of Canada documents filed by the respondent (the Deputy Attorney General on behalf of the CRA) states that the Cooper family failed to report more than \$4 million in income. "The Appellant reported taxable income disproportionate to the lifestyle he enjoyed." Further the respondent states that the Coopers did not "gift" their money to an offshore company in the Isle of Man and that, in fact, the Coopers were the "true owners" of Ogral. Further, the respondent states that the nominee directors in the Isle of Man had no authority or influence over any matters respecting Ogral.

Court documents show that the father, Peter Marshall Cooper, was assessed unreported income of \$3,542,394 and gross negligence penalties of \$1,387,220. Marshall Cooper, one of the sons, was assessed \$321,028 in undeclared income and a further \$218,914 in gross negligence penalties.

Marshall Cooper, for example, paid a total of \$3,049 in taxes between the years 2002 and 2010. The father, Peter Marshall Cooper, paid a total of \$319 in taxes between 2003 and 2010. Mr. Cooper Sr. has received federal and provincial tax credits and supplements totalling \$5,431 since filing tax returns in Canada from 1999.

The documents also state that KPMG generated client fees from Ogral OCS between 2002 and 2008 based on, in part, taxes not paid to the federal treasury, of approximately \$300,000. The documents also says that the Coopers "falsely" held out that they had gifted the money.

The respondent also makes a series of allegations that KPMG itself was involved in a "deception" and a "sham" against the Canada Revenue Agency.

We have read KPMG's Notice of Appeal and will consider the points you are making. Still, the respondent makes a series allegations about the KPMG structure. Here is what we see of the criticism from the court documents:

- "The directors of Record, KPMG and the Coopers knew that the Coopers were the true owners of the Money held by Ogral."

- The appellant received “assurances provided by KPMG” in relation to the Isle of Man structure.
- The appellant was “highly involved” in the creation of Ogral and communicated “regularly” with the “various parties involved in the Ogral OCS, including...KPMG”
- The Coopers and KPMG knew “at all material times” that “the Coopers were the actual owners of the accounts...”
- That “the Coopers intended to, and did, control the Money.”
- The Coopers and KPMG also knew that “the Coopers had not gifted the Money to Ogral” and that “the Coopers could cause Ogral to be liquidated at any time...”
- The Coopers and KPMG knew that the “Coopers’ overall objective was to avoid paying income tax on income they earned in respect of the Money.”
- The respondent also states that Ogral was created “to deceive the Canadian tax authorities” and that Ogral is a “sham” and was “intended to deceive the Minister so that the Appellant...could receive taxable funds on a tax-free basis.
- And that “to avoid detection” by Canadian tax authorities... the Coopers knowingly and purposefully caused Ogral to be founded.
- And that “the parties to Ogral...wilfully presented its transactions as being different from what they knew them to be...”
- The Ogral OCS was “intended to deceive” the Minister so the Appellant...could receive taxable funds on a tax-free basis....while enriching all of the parties participating in the sham.”

We would appreciate any comments or thoughts you might have on the above court documents, or any additional information you may wish to provide.

Also, if there is anything I have not mentioned in the above topic areas that you feel are important for my understanding of events, we would appreciate any other information you wish to provide.

We hope you will consider responding to the above topic areas. You can reach me on my cell phone at 416-526-4704, or at this email address.

Please respond to this no later than Friday, August 28.

Sincerely,

Harvey Cashore  
CBC Investigations