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Subject: Kobre & Kim Offshore Alert: U.S. Court Orders Disclosure of Offshore Bank Accounts

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U.S. Court Orders Disclosure of Offshore Bank Accounts — A Sure Thing for the IRS?

November 15, 2013

The U.S. District Court for the Southern District of New York ("SDNY") has authorized the Internal Revenue Service ("IRS") to issue summonses against five U.S. correspondent banks of the Bermuda-based The Bank of N.T. Butterfield & Son Limited and its affiliates (collectively, "Butterfield") in eight jurisdictions (including Bermuda, the Cayman Islands and Switzerland, among others). The summonses require the banks to produce records of unnamed and unknown account holders suspected of tax evasion.

Potentially, such an order could have serious consequences for many "tax friendly" jurisdictions in which the U.S. banks or Butterfield have a presence: most notably, the Cayman Islands and the British Virgin Islands. But can the U.S. courts or the IRS be sure that the offshore courts will enforce their orders or summonses?

The SDNY order follows close on the heels of a ruling of the Grand Court of the Cayman Islands that held that the agreement of the Cayman Islands Tax Information Authority ("CITIA") to four requests of the Australian Tax Office ("ATO") pursuant to a Tax Information Sharing Agreement for documents and information relating to two entities, were illegally and incorrectly granted. The Grand Court ordered, therefore, that the documents sent to the ATO should not be used and should be returned to CITIA or destroyed and further, that they should not be divulged in proceedings or otherwise in Australia. The Australian Court has refused to uphold the ruling of the Grand Court of the Cayman Islands — something which some Caymanian commentators have described as "disregarding the well-known principle of International Judicial Comity". Consequently, calls have been made for the revision of the

Tax Information Law and, in particular, that in the future each request made to the CITIA, be specifically sanctioned by a judge of the Cayman Islands before acceding to such a request.

Given the environment that has been created by this ruling and the Australian Court's apparent disregard of the principle of judicial comity, it may be that the enforcement of any future summonses for the divulging of information of Cayman Islands bank-account holders will be the subject of a hotly contested application to the Grand Court— regardless of the geographical origin of the applicant.

It bears further mention that compliance with orders similar to that of the SDNY runs the risk of breaching the provisions of the confidentiality laws of the Cayman Islands and other Caribbean jurisdictions.

About Kobre & Kim:

Kobre & Kim is an international litigation boutique with offices in the Caribbean, U.S., Asia and Europe. We have a breadth of experience advising institutional and individual clients in cross-border investigations relating to tax charges brought by the U.S. Department of Justice and the Internal Revenue Service Criminal Investigation Division or enforcement actions involving tax fraud, tax evasion, money laundering, and related violations.

Our team is comprised of Caribbean-based English solicitors and barristers (including three English Queen's Counsel), who have extensive experience litigating matters in various offshore jurisdictions and former U.S. federal prosecutors with inside knowledge of these government investigations. As a result, we are able to harness expert knowledge regarding offshore structures in support of defending professionals caught up in international criminal tax matters.

For more information please contact: www.kobrekim.com

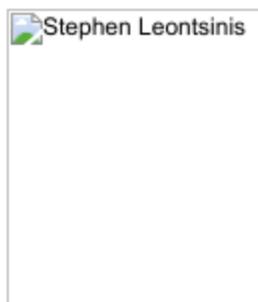
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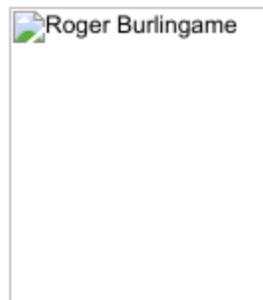


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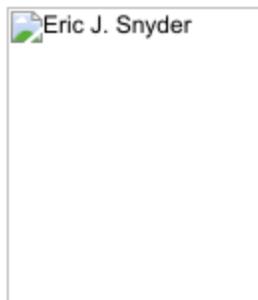
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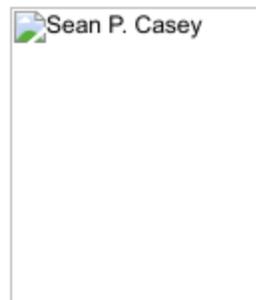
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