Thoughts On The Edelman Indictment

What Might This Mean For Citizenship Taxation And Americans Abroad?

John Richardson – TaxResidentAbroad.com

March 20, 2025

IRS Medic Podcast – March 20, 2025 - YouTube

Introducing Mr. Edelman …

- A U.S. citizen living outside the United States since the 1990s (likely living permanently outside the USA)
- Self-employed entrepreneur
- Married to a Delphine who is NOT a U.S. citizen (nonresident alien for U.S. tax purposes and taxable by the USA only on U.S. source or effectively connected income)
- Non-compliant with U.S. tax obligations until 2015 (when he apparently entered the OVDP)
- Clearly associated with "foreign entities" since at least the early 2000s
- Alleged to have been a 50% shareholder in "Mina Corp Red Star" Enterprises (the other 50% was owned by a nonresident alien

On "Mina Red Star" Enterprises: 1. Not a CFC and Therefore No Subpart F

- If the information in the Justice Department press release is accurate then "Mina – Red Star" was NOT a CFC
- If the other 50% of shares were owned by a nonresident alien who was NOT Mr. Edleman's spouse there was no 5471 requirement and no attribution of income under the Subpart F rules
- He would (as a U.S. citizen) have been taxable on ONLY distributions he received and the sale of his shares in "Mina – Red Star" in 2000

On "Mina And Red Star" Enterprises: 2. Distributions/Dividends Taxed To Shareholders

- some question as to who owned the "Edelman" interest (Douglas or Delphine?)
- Edelman is a U.S. citizen and therefore the dividends would be taxable to him and the capital gains on the sale of the shares would be taxable to him
- Delphine (Mr. Edelman's spouse) is a nonresident alien. Assuming "Mina Red Star" is NOT a U.S. corporation, she is not taxable by the U.S. on either the distributions or on the capital gains from the sale of the shares.

(In 2020 the shares in "Mina Red Star" were sold for 40 million. If Delphine owns the shares then the U.S. can't tax that gain! If Douglas owns the shares then the U.S. can tax the capital gain.)

On "Mina Red Star" Enterprises: 3. Who Owned The Shares In "Mina Red Star"?

U.S. Tax Obligations and reporting requirements

Possibility 1 – Mr. Edelman – U.S. Citizen

- No 5471 requirement
- Taxable on distributions and capital gains

Possibility 2 – Delphine – Nonresident Alien

- No 5471 requirement
- Not taxable on distributions or capital gains

Mr. Edelman's Problems Appear To Begin With The 2015 OVDP Filing ...

- It is not clear how he reported his income and assets
- Evidence suggests that all U.S. tax filings assumed that Delphine (nonresident alien spouse) owned the interest in the corps
- This means that distributions from the corps and the cap gains from the sale of the shares would NOT be income to Mr. Edelman

What ifhe had never filed the OVDP stuff? Part of the OVDP was the filing of FBARs (where the government claims he underreported his accounts).

The Criminal Indictment Is Based MOSTLY On An Allegation That Edelman OWNED The Shares

- Criminal charges were brought against both Mr. Edelman and Delphine
- Charges based mostly on an allegation that they willfully misrepresented who owned the shares.
- Charges are then based on the following statutes:
- Title 18 (U.S. Criminal Code) - Sections 371, 1001and 2
- Title 26 (Internal Revenue Code) - 7201
- Tile 31 (5314 and 5322) - Mr. FBAR

The Allegation Is That Mr. Edelman Really Owned The Shares And That His Wife Did NOT!

Beneficial owner vs. Nominee …

Virginia La Torre Jeker wrote about this case in July of 2024 in Forbes:

"Mr. Taxman @IRS: Looks Like My Money, But It Really Isn't…"

https://www.forbes.com/sites/virginialatorrejeker/2024/07/08/mr-taxman-irs-looks-like-my-money-but-it-really-isnt/

Is This A Potential Problem For Americans Abroad? Who Really Owns The Family House?

- Edelman is an example where the IRS is clearly disputing who is the real beneficial owner of an asset that may be (legally) owned by the nonresident alien spouse
- This could be a problem for Americans abroad in the area of gifts, taxation of sale of principal residence, etc.
- Is a "Foreign Spouse Registry" next?
- Should marriage to a non-U.S. citizen be reportable?

Possible Implications For Americans Abroad? Commentary From @Yaacov2Times Yaacov Jacob

The Dangerous Precedent

The potential precedent set by the Edelman case extends far beyond the individuals involved, threatening to reshape the treatment of U.S. citizens living abroad. If the U.S. government succeeds in its prosecution, it could lead to increased scrutiny and taxation on foreign income, even when it is legally structured under non-U.S. spouses or held in foreign accounts not connected with the U.S. citizen themselves.

The broader legal and financial consequences are significant. The case could lead to a wave of new legal interpretations and challenges, with the U.S. government potentially reclassifying many expatriates' financial structures as fraudulent.

Long-term, the effects of this precedent could change how U.S. citizens abroad manage their finances. Individuals may need to reassess their financial strategies, seeking more conservative and transparent approaches to avoid potential legal issues.

Yaacov Jacob - https://www.linkedin.com/pulse/why-edelman-case-game-changer-us-citizens-abroad-jacob-cpa-us--btqmf/

Some Helpful Links …

The Indictment:

https://www.finance.senate.gov/imo/media/doc/usa_v_edelman_et_alindictment.pdf

Summary Of Facts:

https://www.taxnotes.com/research/federal/court-documents/court-opinions-and-orders/individual-charged-tax-evasion-scheme-has-his-release-revoked/7p57j

Justice Department News Release:

https://www.justice.gov/archives/opa/pr/former-defense-contractor-and-his-wife-indicted-evading-us-taxes-profits-selling-jet-fuel-us

Wall Street Journal:

https://www.wsj.com/us-news/law/douglas-edelman-alleged-tax-fraud-who-ee65ea61?st=fnj1Q6&reflink=desktopwebshare_permalink

Fascinating Article And Comments From The Wall Street Journal – March 18, 2025 - @MargotPatrick

The $7 Billion Defense Contractor Who Became One of America's Biggest Alleged Tax Cheats

"It was just another day in paradise when the Internal Revenue Service caught up with Douglas Edelman last July on the Spanish island of Ibiza."

https://www.wsj.com/us-news/law/douglas-edelman-alleged-tax-fraud-who-ee65ea61?st=fnj1Q6&reflink=desktopwebshare_permalink

More To Come … This story is far from over!

John Richardson

TaxResidentAbroad.com

X.com/ExpatriationLaw

March 20, 2025