- Reprints
- Enlarge Text

Recommend

0

A Spotlight on Deutsche Bank's Tax Shelter Role

By LYNNLEY BROWNING
New York Times

Published: Sunday, February 1, 2004 at 5:36 a.m.

Last Modified: Sunday, February 1, 2004 at 12:00 a.m.

THOMAS DENNEY, a property developer in upstate New York, got an unexpected telephone call one day at his office about a supposedly legal technique that would let him avoid paying millions of dollars in taxes. The call was from Mr. Denney's accountant at Pasquale & Bowers in Syracuse, which had prepared his tax returns for 15 years. The accountant suggested that Mr. Denney call BDO Seidman, a national accounting firm, which was working with a big Texas law firm, Jenkens & Gilchrist. Those two firms were collaborating on a tax shelter involving currency options that would be traded by Deutsche Bank A.G., the German financial powerhouse. Today, Mr. Denney, who lives in Cazenovia, N.Y., says he wishes he had never listened to the advice he received in that September 1999 call. Soon after he made the investments, which he says he believed were legitimate, the Internal Revenue Service decided that they were not, and he risks having to pay back taxes and interest on more than $2.3 million in income that he had sought to shelter. He and other taxpayers have filed suits against all the companies involved. His predicament sheds light on a little-noticed aspect of the multibillion-dollar world of tax shelters: the role of Deutsche Bank. Starting in the late 1990's, according to accusations in the lawsuits, the bank worked closely with accounting and law firms to carry out trading and lending for tax shelters set up and sold by such firms. Other banks, including HypoVereinsbank of Germany and First Union (now owned by Wachovia) of Charlotte, N.C., have been mentioned in other lawsuits or in a Senate finance subcommittee hearing last November as providing financing and trading for tax shelters. But no other bank, according to Mr. Denney's lawyer, David Deary of Dallas, comes up as often as Deutsche Bank in connection with questionable tax shelters. Deutsche Bank has not been accused by the government of any wrongdoing in relation to these tax shelters. The bank denies that it has violated any laws. And many tax experts support the bank's position, saying that because it did not actually set up and sell the shelters, as promoters do, it is unlikely to be punished by regulators. But Caglar Caglayan, assistant chief counsel at the California Franchise Tax Board, a state regulator that is trying to stop questionable shelters, said that if any of the lawsuits wind up in court, Deutsche Bank could find itself considered a promoter. That could make it subject to penalties or disciplinary actions by regulators. "A court will probably say, 'You knew what the transaction was, and yes, it was sold by an accounting firm, but your close proximity to the transaction makes you liable,' " she said. Because of the questions about shelters, some tax experts say the government should broaden its inquiry beyond front-line firms to include investment banks, such as Deutsche Bank. "They ought to target the counterparties as well," said Mark Gergen, a professor at the University of Texas at Austin School of Law. DEUTSCHE BANK has had its share of problems lately. Its chief executive, Josef Ackermann, and three telecommunications executives recently went on trial in Germany on charges that they approved improper payments to the chief of Mannesmann, a telecommunications company, during its takeover by Vodafone in 2000. Mr. Ackermann was then a Mannesmann board member. The bank is also under investigation for selling $446 million worth of Parmalat bonds last September, shortly before Parmalat, the Italian food company, was declared insolvent because of fraud. The bank owned as much as 5 percent of Parmalat last fall. Takeovers and bond sales are traditional lines of business for investment banks. But in the 1990's, a new area emerged for some of them, including Deutsche Bank: helping investors make the most of newfound dot-com wealth by working with accounting and law firms to handle highly aggressive tax-advantaged investments. In an amended class-action complaint, filed last August in the United States District Court for the Southern District of New York, Mr. Denney and five other people accuse Deutsche Bank and seven other parties of deliberately selling them sham shelters. BDO Seidman, Jenkens & Gilchrist and Pasquale & Bowers are among the co-defendants. BDO Seidman and Jenkens & Gilchrist are under investigation by the I.R.S. and the Justice Department over their role regarding shelters. Deutsche Bank declined to comment on Mr. Denney's complaint. Jerry Walsh, a BDO Seidman spokesman, said that the firm stood by the advice it gave. Jenkens & Gilchrist declined to comment. Pasquale & Bowers merged with another accounting firm, Dermody, Burke & Brown, in 2003. Virginia Limmiatis, director of marketing at Dermody, Burke & Brown, said, "We simply acted on behalf of our clients in terms of acting as a go-between." In the shelter Mr. Denney bought, known as a Cobra, for Currency Options Bring Reward Alternatives, Deutsche Bank bought and sold foreign currency options to generate gains and losses in equal amounts through partnerships and private corporations set up by Jenkens & Gilchrist. The options were held by one partnership, which was then dissolved and had its assets transferred to an S corporation, which has special tax advantages. In the transfer, only the losses were reported. The amounts of the trades canceled each other out, so there were no actual net gains or losses. Mr. Denney said in the lawsuit that he was told by BDO Seidman and Jenkens & Gilchrist that the losses could legitimately offset his total income for 1999. The cost of the shelter to Mr. Denney was $600,000 in fees to all parties, including at least

$23,000 to Deutsche Bank. In an interview, Mr. Denney said he invested his money shortly after a November 1999 conversation with David Parse, a Chicago broker-dealer for the brokerage arm of Deutsche Bank. By late 1999, the I.R.S. was already questioning Cobras - something that Mr. Denney says no one told him. The agency effectively banned the Cobra shelter in September 2000 by declaring it a "listed transaction," meaning that investors must report their use of it to the I.R.S. and that its promoters must keep client lists. For listed transactions, the I.R.S. denies deductions claimed by investors and seeks out the shelters' promoters. Deutsche says it stopped selling the Cobra in early 2000. The I.R.S. loosely defines a promoter, or organizer, as any person who participates in the organization, management or sale of a questionable tax shelter, or any person connected to the organizer. Even if the courts decide that Deutsche Bank was not an organizer, the company could face other repercussions from its involvement in shelters if it had any doubts about their legitimacy, according to one tax expert. Daniel Shaviro, a law professor at New York University, said that it was not wise for a company to sell or carry out a shelter if it had any concern that it might not stand up if challenged in court. Losing such a case, he said, could damage a company's reputation. Mr. Deary, the lawyer for Mr. Denney, said that in exchange for carrying out the trading, Deutsche Bank received a share of the fees charged, as well as commissions from trades and loans. Some of the overall fees, Mr. Deary contends, were calculated as a percentage of the tax losses to be generated, which is one sign of a questionable shelter. Deutsche Bank executives denied that the bank ever received any fees as a percentage of losses generated. Mr. Deary initiated a similar suit last July, saying that Henry Camferdam, a Carmel, Ind., businessman, paid more than $3.5 million in late 1999 to various parties, including Deutsche Bank and Ernst & Young, for a Cobra shelter. Mr. Camferdam said Mr. Parse of Deutsche Bank had also advised him on which currencies to pick. Mr. Camferdam said late last month that he was told by Ernst & Young that the shelter would legally shield $70 million but that the I.R.S. refused his claim. A spokesman for Ernst & Young said that "Mr. Camferdam's lawsuit is without merit." Mr. Parse referred inquiries to his superior, who referred questions to the bank's spokeswoman, who declined to comment on shelter-related litigation. Another suit may be on the way. Mr. Deary said a client of his in Silicon Valley was telephoned in early 2001 by a Deutsche Bank employee trying to sell him a variation on a Cobra shelter, and that shortly thereafter, the client received a visit from two Atlanta-based bank employees pitching the shelter. The client, he said, bought the revised shelter in July 2001, nearly a year after the I.R.S. ruled that the original shelter was questionable. Deutsche Bank declined to comment. THE lawsuits are not the only source of accusations concerning Deutsche Bank and tax shelters. Dozens of internal company memorandums and other documents, made public by the Senate subcommittee in November, also suggest that Deutsche Bank worked closely with several law and accounting firms now under I.R.S. scrutiny, to handle perhaps a dozen or so types of questionable shelters in the mid- to late 1990's and 2000. According to e-mail messages released in the hearing, top executives at the bank, including John Ross, then the president of Deutsche Bank's American operations, approved of its work on at least some shelters. Consider Blips, the acronym for a shelter called the Bond Linked Investment Premium Strategy, which was designed by KPMG, Deutsche Bank's auditor, and by Presidio Advisory Services, an investment firm with offices in Denver and San Francisco. Both firms are under I.R.S. scrutiny over tax shelters. Deutsche Bank has said that it handled 56 Blips transactions over September and October 1999, making loans of $7.8 billion to companies. In an e-mail message in September 1999, John Larson, managing director and co-founder of Presidio Advisory Services, told KPMG executives that he "spent a day working out of DB's New York office" that month. That day, Mr. Larson wrote, enabled him "to troubleshoot very effectively" a backlog of loans that Deutsche Bank was set to process for the Blips. "This made me think that a temporary Presidio outpost at the bank might be very helpful," Mr. Larson concluded. Deutsche Bank declined to comment on the message or on whether such an outpost was ever established. There are other examples of Deutsche Bank appearing to work closely with Presidio and KPMG. An e-mail message in November 1999 from Robert Pfaff, a Presidio co-founder, to Jeffrey Eischeid, then a supervising partner at KPMG's tax shelter unit in Atlanta, and another KPMG employee, said that "both Deutsche Bank and KPMG have requested that we replace our existing Blips product with a new product in 2000." Mr. Eischeid, most recently KPMG's tax partner in charge of personal financial planning, was placed on administrative leave last month, one of three senior KPMG executives to be forced out amid mounting government criticism of KPMG's suspected role in questionable shelters. Another shelter involving the bank was an OPIS, for Offshore Portfolio Investment Strategy. Deutsche Bank made 62 OPIS loans totaling $3 billion from June 1997 to March 1999, earning fees of $35 million. Internal Deutsche Bank presentation materials from 1999 outline more than a dozen types of shelters, including Blips and OPIS. In a statement last month, the bank said it "did not design, market, sell, or promote either the OPIS or Blips transactions, but had a limited role providing ordinary financial services as a lender and counterparty." The statement called the actions "appropriate and in accordance with all applicable legal and internal standards." Deutsche Bank said its outside law firm, Shearman & Sterling, had approved of its participation in the deals. A spokesman for the law firm said it stood by its advice to the bank.

A Spotlight on Deutsche Bank's Tax Shelter RoleBy LYNNLEY BROWNING

TheLedger.comFebruary 1, 2004 12:00 AM

<p>THOMAS DENNEY, a property developer in upstate New York, got an unexpected telephone call one day at his office about a supposedly legal technique that would let him avoid paying millions of dollars in taxes. The call was from Mr. Denney's accountant at Pasquale & Bowers in Syracuse, which had prepared his tax returns for 15 years. The accountant suggested that Mr. Denney call BDO Seidman, a national accounting firm, which was working with a big Texas law firm, Jenkens & Gilchrist. Those two firms were collaborating on a tax shelter involving currency options that would be traded by Deutsche Bank A.G., the German financial powerhouse. Today, Mr. Denney, who lives in Cazenovia, N.Y., says he wishes he had never listened to the advice he received in that September 1999 call. Soon after he made the investments, which he says he believed were legitimate, the Internal Revenue Service decided that they were not, and he risks having to pay back taxes and interest on more than $2.3 million in income that he had sought to shelter. He and other taxpayers have filed suits against all the companies involved. His predicament sheds light on a little-noticed aspect of the multibillion-dollar world of tax shelters: the role of Deutsche Bank. Starting in the late 1990's, according to accusations in the lawsuits, the bank worked closely with accounting and law firms to carry out trading and lending for tax shelters set up and sold by such firms. Other banks, including HypoVereinsbank of Germany and First Union (now owned by Wachovia) of Charlotte, N.C., have been mentioned in other lawsuits or in a Senate finance subcommittee hearing last

November as providing financing and trading for tax shelters. But no other bank, according to Mr. Denney's lawyer, David Deary of Dallas, comes up as often as Deutsche Bank in connection with questionable tax shelters. Deutsche Bank has not been accused by the government of any wrongdoing in relation to these tax shelters. The bank denies that it has violated any laws. And many tax experts support the bank's position, saying that because it did not actually set up and sell the shelters, as promoters do, it is unlikely to be punished by regulators. But Caglar Caglayan, assistant chief counsel at the California Franchise Tax Board, a state regulator that is trying to stop questionable shelters, said that if any of the lawsuits wind up in court, Deutsche Bank could find itself considered a promoter. That could make it subject to penalties or disciplinary actions by regulators. "A court will probably say, 'You knew what the transaction was, and yes, it was sold by an accounting firm, but your close proximity to the transaction makes you liable,' " she said. Because of the questions about shelters, some tax experts say the government should broaden its inquiry beyond front-line firms to include investment banks, such as Deutsche Bank. "They ought to target the counterparties as well," said Mark Gergen, a professor at the University of Texas at Austin School of Law. DEUTSCHE BANK has had its share of problems lately. Its chief executive, Josef Ackermann, and three telecommunications executives recently went on trial in Germany on charges that they approved improper payments to the chief of Mannesmann, a telecommunications company, during its takeover by Vodafone in 2000. Mr. Ackermann was then a Mannesmann board member. The bank is also under investigation for selling $446 million worth of Parmalat bonds last September, shortly before Parmalat, the Italian food company, was declared insolvent because of fraud. The bank owned as much as 5 percent of Parmalat last fall. Takeovers and bond sales are traditional lines of business for investment banks. But in the 1990's, a new area emerged for some of them, including Deutsche Bank: helping investors make the most of newfound dot-com wealth by working with accounting and law firms to handle highly aggressive tax-advantaged investments. In an amended class-action complaint, filed last August in the United States District Court for the Southern District of New York, Mr. Denney and five other people accuse Deutsche Bank and seven other parties of deliberately selling them sham shelters. BDO Seidman, Jenkens & Gilchrist and Pasquale & Bowers are among the co-defendants. BDO Seidman and Jenkens & Gilchrist are under investigation by the I.R.S. and the Justice Department over their role regarding shelters. Deutsche Bank declined to comment on Mr. Denney's complaint. Jerry Walsh, a BDO Seidman spokesman, said that the firm stood by the advice it gave. Jenkens & Gilchrist declined to comment. Pasquale & Bowers merged with another accounting firm, Dermody, Burke & Brown, in 2003. Virginia Limmiatis, director of marketing at Dermody, Burke & Brown, said, "We simply acted on behalf of our clients in terms of acting as a go-between." In the shelter Mr. Denney bought, known as a Cobra, for Currency Options Bring Reward Alternatives, Deutsche Bank bought and sold foreign currency options to generate gains and losses in equal amounts through partnerships and private corporations set up by Jenkens & Gilchrist. The options were held by one partnership, which was then dissolved and had its assets transferred to an S corporation, which has special tax advantages. In the transfer, only the losses were reported. The amounts of the trades canceled each other out, so there were no actual net gains or losses. Mr. Denney said in the lawsuit that he was told by BDO Seidman and Jenkens & Gilchrist that the losses could legitimately offset his total income for 1999. The cost of the shelter to Mr. Denney was $600,000 in fees to all parties, including at least $23,000 to Deutsche Bank. In an interview, Mr. Denney said he invested his money shortly after a November 1999 conversation with David Parse, a Chicago broker-dealer for the brokerage arm of Deutsche Bank. By late 1999, the I.R.S. was already questioning Cobras - something that Mr. Denney says no one told him. The agency effectively banned the Cobra shelter in September 2000 by declaring it a "listed transaction," meaning that investors must report their use of it to the I.R.S. and that its promoters must keep client lists. For listed transactions, the I.R.S. denies deductions claimed by investors and seeks out the shelters' promoters. Deutsche says it stopped selling the Cobra in early 2000. The I.R.S. loosely defines a promoter, or organizer, as any person who participates in the organization, management or sale of a questionable tax shelter, or any person connected to the organizer. Even if the courts decide that Deutsche Bank was not an organizer, the company could face other repercussions from its involvement in shelters if it had any doubts about their legitimacy, according to one tax expert. Daniel Shaviro, a law professor at New York University, said that it was not wise for a company to sell or carry out a shelter if it had any concern that it might not stand up if challenged in court. Losing such a case, he said, could damage a company's reputation. Mr. Deary, the lawyer for Mr. Denney, said that in exchange for carrying out the trading, Deutsche Bank received a share of the fees charged, as well as commissions from trades and loans. Some of the overall fees, Mr. Deary contends, were calculated as a percentage of the tax losses to be generated, which is one sign of a questionable shelter. Deutsche Bank executives denied that the bank ever received any fees as a percentage of losses generated. Mr. Deary initiated a similar suit last July, saying that Henry Camferdam, a Carmel, Ind., businessman, paid more than $3.5 million in late 1999 to various parties, including Deutsche Bank and Ernst & Young, for a Cobra shelter. Mr. Camferdam said Mr. Parse of Deutsche Bank had also advised him on which currencies to pick. Mr. Camferdam said late last month that he was told by Ernst & Young that the shelter would legally shield $70 million but that the I.R.S. refused his claim. A spokesman for Ernst & Young said that "Mr. Camferdam's lawsuit is without merit." Mr. Parse referred inquiries to his superior, who referred questions to the bank's spokeswoman, who declined to comment on shelter-related litigation. Another suit may be on the way. Mr. Deary said a client of his in Silicon Valley was telephoned in early 2001 by a Deutsche Bank employee trying to sell him a variation on a Cobra shelter, and that shortly thereafter, the client received a visit from two Atlanta-based bank employees pitching the shelter. The client, he said, bought the revised shelter in July 2001, nearly a year after the I.R.S. ruled that the original shelter was questionable. Deutsche Bank declined to comment. THE lawsuits are not the only source of accusations concerning Deutsche Bank and tax shelters. Dozens of internal company memorandums and other documents, made public by the Senate subcommittee in November, also suggest that Deutsche Bank worked closely with several law and accounting firms now under I.R.S. scrutiny, to handle perhaps a dozen or so types of questionable shelters in the mid- to late 1990's and 2000. According to e-mail messages released in the hearing, top executives at the bank, including John Ross, then the president of Deutsche Bank's American operations, approved of its work on at least some shelters. Consider Blips, the acronym for a shelter called the Bond Linked Investment Premium Strategy, which was designed by KPMG, Deutsche Bank's auditor, and by Presidio Advisory Services, an investment firm with offices in Denver and San Francisco. Both firms are under I.R.S. scrutiny over tax shelters. Deutsche Bank has said that it handled 56 Blips transactions over September and October 1999, making loans of $7.8 billion to companies. In an e-mail message in September 1999, John Larson, managing director and co-founder of Presidio Advisory Services, told KPMG executives that he "spent a day working out of DB's New York office" that month. That day, Mr. Larson wrote, enabled him "to troubleshoot very effectively" a backlog of loans that Deutsche Bank was set to process for the Blips. "This made me think that a temporary Presidio outpost at the bank might be very helpful," Mr. Larson concluded. Deutsche Bank declined to comment on the message or on whether such an outpost was ever established. There are other examples of Deutsche Bank appearing to work closely with Presidio and KPMG. An e-mail message in November 1999 from Robert Pfaff, a Presidio co-founder, to Jeffrey Eischeid, then a supervising partner at KPMG's tax shelter unit in Atlanta, and another KPMG employee, said that "both Deutsche Bank and KPMG have requested that we replace our existing Blips product with a new product in 2000." Mr. Eischeid, most recently KPMG's tax partner in charge of personal financial planning, was placed on administrative leave last month, one of three senior KPMG executives to be forced out amid mounting government criticism of KPMG's suspected role in questionable shelters. Another shelter involving the bank was an OPIS, for Offshore Portfolio Investment Strategy. Deutsche Bank made 62 OPIS loans totaling $3 billion from June 1997 to March 1999, earning fees of $35 million. Internal Deutsche Bank presentation materials from 1999 outline more than a dozen types of shelters, including Blips and OPIS. In a statement last month, the bank said it "did not design, market, sell, or promote either the OPIS or Blips transactions, but had a limited role providing ordinary financial services as a lender and counterparty." The statement called the actions "appropriate and in accordance with all applicable legal and internal standards." Deutsche Bank said its outside law firm, Shearman & Sterling, had approved of its participation in the deals. A spokesman for the law firm said it stood by its advice to the bank.</p><!-- Nothing to do. The paragraph has already been output -->

You Might Be Interested In

- Wounded Police Officer Awake, Talks to Family
- Lakeland Teen Killed in Accident
- 10-Year-Old Boy Drags Gator Home From Canal
- Teacher Confidential: Money Spent Unwisely?
- Immokalee Farmworkers Hoping to Meet Publix CEO are Disappointed
- Lake Gibson Senior Dies in Crash

From Around The Web

Comments are currently unavailable on this article

▲ Return to Top