

## Commanditaire vennootschap (cv)

For a CV, the same rules apply as for a vof. The difference is that a CV apart from the regular partners (the "managing partners") also has so-called silent partners. The silent partners bring money into the cv, but do not interfere with the business's further business. Each managing partner who meets the requirements applies to income tax as an entrepreneur. If he meets the hourly criterion, he can use the special arrangements for entrepreneurs.

The silent partner is not an entrepreneur because he is not directly liable for the company's debts. The income of this partner is taxed as "profit from business" and he also qualifies for business facilities related to investments (arbitrary depreciation and investment deduction). In the other business facilities, the quiet partner is not entitled.

For the VAT, the CV is as a whole entrepreneur. The VAT rules apply to the CV. If you employ on behalf of the cv staff, the cv will be subject to payroll taxes.

The cv is not a legal entity. Each managing partner is jointly and severally liable for the total of the debts of the cv. The silent partners run the risk of losing their capital. For the debts of the cv, they are only jointly liable if they are still interfering with the business in the company or if their name is used in the cv.

9125/2017

ECL-I; NL, RBOHA, 2013; 11429

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Authority

Date statement

Date publication

Case number

Jurisdictions

The Hague Court

04\_09\_2013

23-10-2013

09

Jurisdictions

Criminal law

Special features **First Instance - multiple instances**

Content Indicator

**An individual who, in association with others, has made incorrect and incomplete tax returns and failed to provide and maintain adequate accounting records. Straightforward money laundering.**

Locations

Rechtspraak.nl

FutD 2013-2644

**Charge**

Criminal law

Multiple penalty room

Park number: 09 / 997161-11

Date of issue: 4 September 2013

**Defence**

(Promis)

After Due Process the court hearing of The Hague found against the suspect. The following sentence was passed by the prosecutor:

**Defendant**

born on [birthdate] 1952 in [birthplace],  
[address].

### **1 The first court hearing**

The investigation was held at the hearing on 13 February 2012, 13 March 2012 and 21 August 2013.

The court has taken note of the claims of the prosecutor, Mr HC Vermaseren, and the counsel of the accused Mr. P. Geervliet.

### **2 The charge**

The defendant is - after further description of the impeachment at the hearing Of 13 February 2012 charged with the following that:

[X] Jurists BV at one or more instances located on or about the date 1 May 2006 - 19 January 2010 in The Hague and / or Apeldoorn and / or (elsewhere) in the Netherlands, (in each case) together and in association with one or more others, at least alone, (in each case) intentionally submitted a tax declaration as required by the Tax Act, as referred to in the General Act on state taxes, namely a (digital) declaration (s) Company tax in the name Of [X] Juristen BV for the periods 2004 and / or 2005 and / or 2006 and / or 2007 and / or 2008 (D-115)

Every submission was incorrect and / or incomplete. Each time this was done intentionally. Returns were made to the Inspector of Taxes 's- Gravenhage and / or Apeldoorn and / or (elsewhere) in the Netherlands submitted in the name Of [X] Juristen BV recording an understatement of taxable profit and or taxable amount, and at least one understatement of tax, specified, or submitted. while stating that (each time) too little tax was levied, the accused committed any of the offenses mentioned above and suspected (in each case) together and in association with one or more, at least alone, (every time) to which abovementioned illegal conduct (s) the suspect(s) in each case together and in association with one other(s), at least alone, (in each case) gave actual guidance; Jurists BV in one or more instances on or about 1st January 2004 to 9 November 2011 (each time) in the Hague and / or Leiden and / or (elsewhere) in The Netherlands, (in each case) together and in association with one or more others, at least alone, (each time) as the person who was obliged under the tax act to conduct an administration in accordance with the tax act requirements, intentionally failed to conduct such administration, or proper keeping of books, documents and / or other data. After all, Quadvlieg BV [QV] and / or its associates have intentionally kept no, or even incorrect or incomplete cash administration; or recorded all cash sales or receipts or records of processing cash and financial) administration.

Cash transfers were not recorded, and in each case no tax was levied thereby committing the offense(s) mentioned above and suspected (in each case) together and in association with one or more associates, at least alone.

The abovementioned forbidden conduct was carried out by the suspect (in each case) together and in association with one other at least.

Meanwhile the Defendant (or his associates) acted from 1 January 2004 to November 9, 2011 in The Hague and (elsewhere) In the Netherlands, England, Serbia and Luxembourg, alone or in association with one or more others, transferred up to a total of Euro 633,810, at least, at various times and in varying amounts up to Euro 633,810.

The suspect, and/or his associates transferred money which was received by [X] Juristen BV each time for private purposes, deposited in one or more private bank accounts whilst cognizant that his associate(s) knew the above amounts of money were in every case in whole or in part - immediately or indirectly - the product of crime; essentially money laundering.

### **3 Evidence Considerations**

#### **3.1 Introduction**

[X] Juristen BV (hereafter: QJ) is particularly [X] concerned with the sale of business structures and the maintenance thereof. These structures usually consisted of Nederlandse Commanditaire Vennootschap (CV) with a foundation as a partner and an English Limited company as a controlling partner and above this a Limited Trust company. These companies are established in England by [Y] (hereafter: Y) The Suspect is manager and advisor to [Y] This Limited company was founded by the Suspect and is based in England. The Co-suspect is a statutory director and material owner of QJ, based in The Hague.

In the period from May 1, 2006 to January 19, 2010, the defendant, tax advisor to QJ submitted a Corporation Tax return on behalf of QJ 2004-08 based on bank statements which had been supplied to him.

The sale of business structures by QJ takes place both for cash and bank transfer.

All sales are derived from the sales centre system: Document Centre Online (hereinafter: DCO). A comparison of this information with the declarations reveals that the cash sales with the declarations are not reported as sales, turnover.

The Suspect in February 2005 retrieved cash from QJ's premises (stored in a safe). These cash funds have not been declared in any country as revenue or income.

The Suspect has paid a lot of the cash he collected from QJ, into a private account in Luxembourg

The Suspect indicated that he had an amount of € 820.000,00 at some point in his private account in Luxembourg.

The Suspect has, in respect of a living costs, extracted funds from the account.

The Suspect taken some of these funds to Serbia, hidden in packages of € 100.000,00. The Suspect, under investigation had, during a search at the house [address] in The Hague on November 9, 2011 a sum of € 5,375.00 Seized.

The evidence above constitutes enough evidence for imprisonment without discussion. The court is of the opinion that the imprisonment is legal and can be convincingly proven and judged on the meaningful content of the evidence referred to in the footnotes.

The court must answer the following questions with respect to the Suspect:

1	Is the answer the declarations submitted for QJ 2004 to 2008 incorrect and / or Incomplete. If this is the case, the court must decide whether QJ is punishable and has the Suspect actually guided the offense.
2	Furthermore, the Suspect is charged as to whether he has given guidance to not properly administering cash management records.
3	Is the Suspect guilty of habitual money-laundering.

### 3.2 The Prosecutor

The prosecutor has taken the view that the charges under 1, 2 and 3 against the Accused can be legally and factually proved.

With regard to facts 1 and 2, the prosecutor pointed out that between 2004 to 2008, approximately € 1.8 million on cash sales are not accounted for in the financial administration - no cash administration was conducted - nor the same in declarations. These criminal acts of the Accused can be, according to the prosecutor, attributed also to QJ. Deliberately incorrect tax returns have been made, by the Suspects with the obvious intention of avoiding tax, a smoke screen was created.

Regarding to the legal and financial relationship between QJ and [Y]; intentionally, no effective administration. Indeed, in the manner of accounting, serious defects, which were known to QJ. According to the prosecutor's office the Suspect, in view of his leadership role in QJ, is liable as factual instigator of the criminal offenses .

In response to the defence adduced by the council, which can only be proved following the declarations in the years 2005 and 2006, the prosecutor states that it maintains its unrestrained duty to compensate the tax authorities loss. What is happening in the fiscal process is not, according to the prosecutor, leading to what can be identified in the criminal procedure.

In response to the remarks made by the council regarding the witness statements the prosecutor is of the view that she is not expecting them to confirm their accuracy.

Regarding Fact 3, the prosecutor pointed out that the suspects manipulated large cash amounts not accounted for in the books and originating from QJ, in Luxembourg bank has deposits. From these accounts, transfers have been made to the private account of a suspect in Serbia; to Ostrea Marketing Ltd. Part was used for living costs. In addition, the Accused from the Hague has made cash deposits to his bank account and has hidden huge amounts of money.

According to the Public Prosecutor, with regard to the long term, common money-laundering is the case.

### 3.3 The standpoint of the defence

The council has taken the view that the suspect, as charged should be released.

With regard to Facts 1 and 2, the council advocates that the Suspect is not guilty as charged in criminal proceedings, because he is not responsible for the content of tax declarations and the keeping a sound cash administration at QJ. The Suspect had a secondary role and, moreover, had no motive. The Suspect was not aware of how declarations were made. According to the council, suspects have a legal requirement to divorce the affairs of the Limited UK companies established by him, and QJ, who sold the structures in the Netherlands and administered them, with the intention that the [Y] future share of sales remained outside Dutch taxation jurisdiction.

The witnesses' statements regarding the actual role of the Suspect should be, according to the council, not having much

weight. Between the Suspect and the witnesses [witness 1] and [witness 2] there has been a dispute. Also they did not work for QJ. The testimony of witness 1 is also too general to serve as proof. Incidental facts like that the Suspect had for some time possessed a QJ bank card, drove in vehicles on behalf of QJ or acted as spokesman and contact, should be considered a matter of trust between [co-suspect] and suspect and the financial interrelation between QJ.

Alternatively, the council takes the view that the incorrect declarations are only possible for the years 2005 and 2006. Regarding 2004 no research has been done. It is not unambiguously established for the years 2007 and 2008 that the declarations are incorrect.

Regarding Fact 2, the council advocated that there was no cash administration, so that this also could not be proven. Furthermore, the council argued that the existence of the DCO defends suspects from the accusation that QJ performed a manifestly inaccurate administration.

As to Fact 3, the council argued that the suspect did not know about the money that he received for which no tax was paid.

### **3.4 The assessment of the prosecution**

#### **3.4.1 Fact 1**

To answer the question whether the declarations in the years 2004 to 2008 are incorrect and / or incomplete, the court should also answer the question as to what the financial relationship was between QJ and [Y]. Then the court should decide whether QJ is punishable and whether Suspect has actually given guidance to the illegal activity.

##### **3.4.1.1 Are the corporate tax returns incorrect and / or incomplete?**

*The statements in the dossier concerning the relationship between QJ. and [Y]*

According to the Suspect, the UK Limited companies were established in England by [Y] and the selling of these business structures were at the expense and risk of [Y] . QJ was the middle man. The prices of the business structures were determined according to [Y] . QJ was the representative and [Y] the beneficiary, QJ would receive a commission from (Y) for 70% of the sale. As regards revenue for the administrative maintenance of the structures, fees in relation to Companies House , QJ would receive 30% of the turnover of [Y], according to the Suspect. Also these commissions were owed to [Y] and was received as a cash settlement, according to suspect. The suspect took the View that both the cash payments from QJ as well as the payments from QJ's bank account were fully due.

After QJ purchased a safe in 2005, the accused received cash directly from that source. The Suspect always received the contents of the vault when he visited QJ.

Witness [witness 4] - the company manager of QJ has stated that the manner of paying was agreed. The co-suspect has declared that Invoices to QJ were paid by bank transfer and the suspect was paid by cash from the safe in the same way even before the safe was purchased. The statements and findings in the dossier concerning the declarations [Witness 5], who conducted the book research for the Tax Office, has stated that QJ, between 2004 to 2008 received non-reported revenue that reflects cash received.

In the submitted Corporate Tax Returns for the years 2004 to 2008 the cash turnover was not included, so undeclared. According to the calculation of the FIOD, the 2004 to 2008 total amount of €1,8 10,579.00 revenue is not accounted for in the declarations. Costs related to payments to [Y] in the declarations 2005 to 2008, and those affecting the profit and corporation tax, amount to € 433.207,00. The deficit calculated by the Tax Office up to and amounts to € 633,810.00

### **The conclusion of the court**

The court, on the basis of the dossier in the first instance found that [Y] in England, other than the establishment of UK Lt d. Cos., and the sending of mail, performed no actual work such as administration. The file shows that the Suspect in 2003 reported in the English Tax Office return that [Y] had no trade and no financial transactions took place, and was listed as Dormant. The court is considers that this does not make sense. Statements made by the Suspect confirm that [Y] sold through QJ business structures. There was an agreement between [Y] and QJ regarding the commission payable and suspect received salary from [Y].

The court finds that the Suspect and his co-defendant agree that QJ would receive certain commissions from [Y], or vice versa, but that between QJ and [Y] payment has never actually been settled. The Suspect has always got all cash turnover. Repayments to [Y] were also transferred to the defendant . It has not been said or found that the suspect subsequently paid commission fees to QJ.

Furthermore, the court determines payments to [Y] were not linked to invoices or underlying documents in QJ's records, nor included in cash turnover. Nothing has been found which was invoiced by QJ to the account of [Y], the Suspect or third parties, charged or were booked as commissions to [Y]

Regarding QJ's debt to [Y] on QJ's balance sheet, the court finds that there NO records have been found in the accounts showing how this debt is calculated. The Suspect could not give a conclusion on request. Nor are invoices, bills or other documents found within the balance sheet to [Y]

In the opinion of the court there is no legitimate reason for the turnover and payment cash or bank transfer attributable to QJ or [Y]. There is after all, one: the sales proceeds of the structures that have been sold or to be fully regarded as revenue from Q] or - as contended by the court judges, this turnover should be fully attributed to QJ. This follows from the fact that each is sold to all appearances by QJ. All Giro payments came into QTS bank account and Q.' these cash payments were also actually declared as revenue. In addition, [Y] according to the suspect himself is a sleeping partner, pays no sales tax and has not been found to pay commission to QJ.

This means that cash flow, which is not included in the declarations, is taken into account and the risk of QJ is that the debt position between QJ and [Y] is fictitious. Cash turnover is considered to be fictitious costs.

The court concludes incorrect and incomplete declarations over the years 2004 to 2008.

The court, apart from the council, is of the opinion that it can legitimately and convincingly prove that the declarations in the years 2004 to 2008 are incorrect and incomplete and state a too low amount of taxable profit and too low taxable income. In the control report, in the context of The tax method, how it has been drawn up is not part of the criminal record, the declaration for the year 2004 was not made and there was nothing for the years 2007 and 2008, the assessments were postponed by the FIOD; the fiscal loss has been calculated and sufficiently substantiated.

### **Is [X] Jurists BV punishable?**

In order to answer this question, the court must first decide whether the Legal person (QJ) addressed is in accordance with 47 of the General Law as laid down in national tax (AWR). Then the court needs the question the illegal - the incorrect and incomplete declarations - attributed to QJ. Finally, the court will answer the question is the accused deliberately acting on the part of QJ.

Is Q.J bound by the standard laid down in Article 47 AWR?

The court answers this question in the affirmative. QJ is a legal entity. On the basis Of Article 1 jo. Article 2 of the Corporate Tax Act 1969 is a legal entity taxable for corporate tax. On the basis of Article 6 and following and Article 42 AWR serves as the driver of the legal entity, or a person who is in charge of that It is appropriate to make the corporate tax return correct and complete. The court therefore finds that QJ is the addressee Of the Article 47 AWR

Can the criminal conduct be attributed to QJ? The court considers that, according to settled case law of the Supreme Court, for answering this question is important to determine whether the conduct has been conducted in the atmosphere of a legal person. One or more of the following circumstances may apply:

- It's about acting or omitting someone who either by virtue of one employment relationship, either of Others, for the benefit of the legal person;

- the behaviour fits into the normal business of the legal entity;

- the conduct has been the legal person in the business pursued;

- The legal entity is in possession of the behaviour or not and such or similar behaviour became apparent from the actual course of action accepted or accepted by the legal person.

Against this background, the is considering the behaviour in question - briefly

Tax returns - Financial and administrative in nature are and

Tax service calculated a loss over the years 2004 to 2008 of € 633,810.00. The court concludes that the incorrect and incomplete declarations have been made by the company. This leads to the judgment that the conduct under I has been carried out in the sphere of the legal person and in reasonability to QJ is attributable. QJ can therefore be considered as a perpetrator of the Item I charge.

Is there a deliberate act?

The difference between the declarations and the final turnover figures on the charged period was over € I At a specified sales amount Of approximately € 1.077.000,00 this is such a big difference that the court is of the opinion that the actual driver of this was fully informed or should have been.

In addition, the instigator appears to have been aware of the recordings of Cash is confirmed by the safe.

In view of this, the intention - including conditional designation - may be assigned to the legal person being credited.

In view of all this, the court answers the question as to whether it was mentioned in the imprisonment the accused has intentionally made incorrect tax returns.

#### **3.4.1.3 Is there a case of actual leadership by suspect?**

Now the prosecutor has chosen in this case not to prosecute QJ but the Suspect, the court sees the question of whether suspected as an actual leader

Criminal liability can be held for the punishment QJ.

The court considered the following:

It is established that the suspect in the charged period 'on paper' had no (direct) had control over QJ]. This is due to settled case law of the Supreme Council however, no criminal liability as an actual manager stands. Relevant is not so much how the business in a company is organisationally regulated, whether or not a person, together or not with others, "had a say", had influence.

The court further states that in accordance with established jurisprudence of factual leadership the Suspect may have been competent and reasonable, he nevertheless abandoned measures that could have been taken to prevent the breaking of the Law, and consciously accepting the significant opportunity he deliberately promoted it.

The findings and statements in the dossier

The Suspect has denied having actually led the filing of the Incorrect and incomplete Corporate Tax Returns.

The court is considering the actual role of suspect within QJ as follows:

The [co-accused] founded on the advice of The Suspect QJ\_ the name of the company was chosen by the suspect who founded [Y] in England, while Y is registered as "dormant" there.

[Y] did not record any accounts. The representation agreement between [Y] and QJ is according to the notes of the creditor unilaterally and subsequently instigated by the suspect. In addition, no supporting documentation found on bills between [Y] and QJ and the debt of QJ to I Y I. Moreover, it is found in the notes confiscated by the Tax authority the following: 'Questions [name] 2005. Debt to England as of 31-12-05, because there is a lot of profit in 2005

The Suspect stated that he had consulted with the creditor about the debt position between [Y] and QJ and agreed a figure. The Suspect was the person who picked up the cash and also received, according to the statement of [witness 4], a print-out Of the DCO in which the sales data and the manner of payment were mentioned. The file further shows that the suspect is represented by third parties as QJ's spokesman. In the administration QJ has recorded invoices and correspondence addressed to the Suspect or in which the Name of suspect referred to as reference or Contact. There was also a Q.] business card stating: 'Mr. [suspect] '. The dossier contains a letter from the Hague University, addressed to QJ, for the attention of the Suspect in which he is thanked for the student-offered opportunity to complete his graduation assignment at QL Among suspect are furthermore a pair of seized bank passes named [co-denied] [X] Juristen BV and [co-accused] Mr. R. [XI and Partners. Furthermole, in the administration of Q.' an invoice from [company] to IXI Juristen BV, [suspect] regarding an APK- approval of a Land Rover With the license plate [license plate]. u on the bill of Carglass About this car is listed as driver [X] / [Witness 4 declared that the Suspects' costs were paid via QJ. from the bank account of QJ.

In addition, payments have been made to the partner of suspect, has stated that he did not know how much was paid to [partner] and for which the payments have been made. The Investigation raised the matter of cash turnover at QJ. stating that he often had telephone contact with suspect. Debt balances [Y] with [co-denied] and possibly also the suspect were discussed. The estimated amount, submitted by [creditor] to both [co-defendant] as suspect.. The results of the reports and financial statements discussed [creditor] with suspect or [co suspect], or both. ,, [injured party] stated that the suspect made decisions within QJ.

Witness [witness 3], Who has worked at QJ from 3 1 October 2005 to 29 March 2006 declared that he has worked with the Suspect at QJ There was an interview conducted by the Suspect and the agreements on working hours. According to [witness 3] the Suspect wanted him to start by himself and let himself be hired by QJ. The Suspect had according to [witness 3] had a small office behind a Directors conference room. He was there almost every day according to [witness 3]. The Suspect was the manager and held the reins.

Witness 1 who worked for QJ from April 2004 until October 2005, stated that the Suspect proposed he work for QJ on a commission base, and paid [witness 1] cash out of his own wallet. According to [witness 1] the Suspect was the man in charge of QJ and made all appointments through him.

[Witness 2] stated that [witness 1] took cash with him in January 2005 and asked him if he wanted to work with him at QJ. According to [Witness 2] dictated suspect to [witness 1] what to do.

[Witness 5] stated that the suspect actually directed QJ, since he acted against major creditors, or when important events happened, acting as a point of contact when there was a conflict between QJ and a fiscal marketing team from Brabant. The Suspect, drove cars registered and owned by QJ and these privately insured, and with with a pass from QJ travelled abroad.

### ***The conclusion of the court***

The defence has argued that the statements of the witnesses [witness 1] [Witness 2] and [witness 3] are not reliable, the court considers that it sees no reason to doubt the reliability of those statements. The court takes into consideration that the statements are detailed and consistent, mutually supportive and moreover find support in objective data on file. The courts' conclusion, based on the aforementioned evidence, finds that he may be regarded as factual manager of QJ. The court further considers that the involvement of the Suspect in the incorrect and incomplete tax returns reveals his leadership in this illegal behaviour. The Suspect was directly involved in the flow of cash, not declared in QJ tax returns. Also the declarations contain erroneously fictitious costs in respect of [Y], and private expenditure recorded as business expenses. The court finds that the structure between [Y] and QJ and was established in order minimize taxation.

The court considers that the evidence of actual leadership with criminal intent sufficient. From the evidence, however, it follows that the defendant knowingly made incorrect and incomplete declarations, filed with the tax authorities.

The Suspect In the opinion of the court, in view of the above, not only failed to take measures to prevent the false declarations but knowingly presented false information to the Tax Office.

The claim by the suspect that he had debit card in the account of QJ because he [Co-defendant] had simply forgotten, is not credible.

The Suspect declared at the first hearing that he had forgotten this pass, while telling FIOD (tax office) that he knew nothing about a forgotten bank card. Unlike the Defence, the Court considers that circumstances such as possession of a debit card belonging to QJ, on behalf of QJ, acting as spokesman and contact, in consultation with FIOD and making appointments to discuss financial matters, are structural. The claim by the Defence of distrust between accused and [co-defendant] is disproven.

The court considers the evidence and concludes the case legally and convincingly proven.

The court is faced with the question whether the defendant has deliberately failed to perform and maintain a cash administration.

#### 3.4.2.1 Has a criminal act been committed?

The file shows that the digital information system - DCO - that, within QJ for the purpose of sales administration used was intended for sales

to produce necessary documents and register the client information.

[injured], whose office is located in Leiden, 53 stated that he from 2004 to

January 2011 54 performed the manual administration and by the method of single-entry bookkeeping

based on the submitted bank statements periodically QJ and underlying

modest. 55 The data from the DCO concerned [injured] not financial

administration. 56

[Witness 4]; November 14, 2011, stated that no cash administration existed or was planned at QJ

[witness 5] stated that the administration of QJ was chaotic and limited in terms of apparatus. Further, the

management made no commitment to an administration where it was possible to obtain an insight into the turnover from underlying data.

Furthermore, the administration according to [witness 5] behaved in such a way that it was not possible, within a reasonable time to understand the figures given for the declaration qualifying expenditure.

No copies of unsubscribed and issued invoices were stored at QJ. Nor were there copies of letters in which customers were asked to settle their annual contributions.

No copies of invoices or calculations regarding the payments of QJ to [Y].

Calculations by the tax Office for 2004 to 2008, show that there was no cash administration so that the cash flow was not included in the income tax return, amounting to € 633,810.00.

The court's finding is based on the aforementioned evidence and concludes that no cash administration was conducted, and no records were kept, while there had been a significant annual cash flow. According to the court, the DCO-system, for sales administration and obligatory under the General Law for the payment of State taxes was not used. Other methods used by the accused are not regarded as an allowable financial administration within the meaning of that Act.

The court rejected the defence submitted by the council that it cannot be proved that not all administration was unadhered to. In the opinion of the court, the fact that there is no cash administration is proven explanation by the non-existence of records. This also follows from the judgment of the Supreme Court of 14 February 1989, 89/266 DD.

It must be inferred from that judgment that there is concurrence between both illegal behaviours.

#### 3.4.2.2 Is [X] Lawyers BV guilty?

To answer this question, the court finds that a legal entity under Article 52 of the State Taxes Act is required to supply records in accordance with the requirements stipulated by the Tax Act. QJ is in contravention of this legal standard.

The court also refers to the definition of a legal entity, listed under 3.4.1.2 and concludes as follows: The conduct in question regarding proper cash administration as part of the normal operations of a corporation. The Tax Office calculated a discrepancy for 2004 to 2008 amounting to over € 1.800.000,00 unallocated as revenue and the tax loss as €633,810.00. The court concludes that the non-performance and maintenance of cash administration existed within the company. This leads to the conclusion that the bottom 2 alleged conduct is attributable to QJ. QJ can therefore be regarded as perpetrators of the bottom two at the alleged offense.

In answering the question whether there is wilful intent the court considers that, according to the written records of the Tax Office that the defendant knew that no cash administration was conducted. These written records frequently stated that there had been contact with the suspect: "For 2005 and 2006 they have all bank transactions on computer. However, not in cash. This is a warning sign. "All cash sales go directly into the vault, and are recorded. Someone from [Y] England has the key to the safe, no one else; and regularly empties the safe: the money goes to England. " The Suspect was the only one who emptied the safe.

The court, on the basis of that evidence, considers that no cash administration was input and stored, resulting in too little tax levied. The Suspect together with [fellow suspect], a senior person within QJ - where the court under 3.4.2.3 further investigates - this could modify the judgment of the court on the legal assessment of QJ.

#### 3.4.2.3 Is there actual leadership by the accused?

The court refers to 3.4.1.3 and it confirms the fact that the Suspect adopted actual leadership of the company. The court

considers as follows:

The court concludes that the Suspects' failure to conduct proper cash administration is to be regarded as de facto criminal behaviour. The accused has indeed established both [Y] and QJ; had full oversight of the turnover of QJ, via the DCO. (Financial management software) The defendant was also the one who received the cash earnings, which in no way can be found in the administration documents, The accused must have known - as an entrepreneur - what legal obligations stand under the Tax Act and further that cash flows in the administration must be included.

The court further holds that it follows from the evidence that the defendant knowingly and willingly failed to administer cash administration. To the court verdict, the defendant, given the above, by his actions not only failed to take measures to prevent illegal conduct but promoted it.

The court considers its accusations are legally and convincingly proven against the accused.

### 3.4.3 Fact 3

The court must answer the question of whether it has been proved that the accused is guilty of money laundering.

#### *The findings and statements in the file*

As already shown in the introduction of this judgment, part of the income; cash from QJ not recorded and not accounted for in the income tax returns, was deposited in a private bank account in Luxembourg and then hidden in Serbia. The Suspect also sent money to the account of Ostrea Marketing Ltd., which he confirms he was the only authorised representative.

The accused further stated, following a question from the tax officers with (regarding the search in the house at [address] in The Hague) he had in a bag € 6,000.00 to € 7,000.00. In his wallet was around €1,500.00. The suspect declared that he had €25,000.00 at his home in Serbia. Normally there is always such an amount of cash in his home.

The file also contains a report showing that the accused, in Prison in Alphen aan den Rijn, told his partner that she knows where the money is but not to take more than € 3,000.00 over the border to avoid problems.

From documents it is apparent that at the bank account [account number] [Partner], of the accused from July 6, 2004 to March 30, 2009 a total of € 111,530.00 was paid in cash. These payments were made in The Hague. This bank account has also received a total of € 39,880.24 from bank accounts in the name of QJ.

Underlying invoices or documents are not found in the records.

Furthermore, € 81730.00 cash was paid into the Suspects' bank account [account number] from January 12, 2004 to March 10, 2009.

Apart from one, all these payments were done in The Hague. Also this bank received an amount of € 6250.00 Mr. R. [X] Furthermore, from the account [account number] in the name of QJ or Mr. [X] and partners an amount equivalent to € 7530.12 was paid into the British bank account of the accused; June 16, 2005.

Underlying invoices or documents for all of these transactions are not found in the records of QJ.

Between December 4, 2006 to November 3, 2008 a total of € 125,064.42 was paid from [Account number] in the name of Mr. or QJ R. [X] and partners into three different bank accounts of [Y], two in Luxembourg and one in England.

No underlying invoices found in the records of QJ for these payments.

[Witness 5] stated that the amounts received by defendant were not recorded in the income tax returns. The tax loss calculated by the tax authorities for the years 2004 to 2008 amounts to € 633,810.00.

### **The conclusion of the court**

#### 3.5

The court is of the opinion that based on the aforementioned evidence that the defendant is guilty of money laundering to a total of € 633,810.00. By depositing actual cash into bank accounts the Suspect has, in the opinion of the court, converted the money into deposits. The said amount was not from legal trade, but derived from cash turnover from which corporate income tax has not been declared stated as owing by QJ to [Y]. The court for this purpose refers to what it has determined under 3.4.1.

The court rejected the defence conducted by council that the defendant did not know that these sums were subject to the tax.

The accused has deliberately submitted false and incomplete declarations and failed to conduct cash administration. The court refers to what has been proven under 3.4.1 and 3.4.2

The court considers it proven that there is a habit of money laundering because the accused has conducted these transactions, over a long period.

### **The evidence of Proof**

The court declares proven that:

1.

[X] Lawyers BV at from May 1, 2006 to January 19, 2010, repeatedly in 's-Gravenhage and Apeldoorn, in each case together and in conjunction with (an) other (s), intentional declarations to the Tax authorities, as provided in the General Law



State taxes, namely Digital Corporation tax declarations in the name of [X] Jurists BV for the years 2004 and 2005 and 2006 and 2007 and 2008 (D-115) each incorrect and incomplete.

As shown, [X] Lawyers BV and her accomplice (s) each deliberately transmitted income tax returns to the inspector of taxes at 's-Hague and Apeldoorn. [X] Lawyers BV knowingly stated an insufficient amount of taxable profit and submitted too little tax., while facts are always stretched to the levied whenever too little tax The prohibited conduct described above shows the suspect together again and in association with (an) other (s), has always been the leader.

2.

[X] Lawyers BV at times between January 1, 2004 to November 9:

In 2011 's-Gravenhage and Leiden, in each case together and in conjunction with (an) other (s), being required under the Tax Act to maintain records pursuant to to the Tax Code requirements, each has deliberately not passed such records and / or mandated conduct, storing books, documents and other data carriers, each has not preserved and / or mandated to keep cash administration or report all cash sales and revenue as recorded and processed, or included the processing of cash administration failed to keep cash records or information, while facts are distorted to result in too little tax being levied; an illegal act described above the suspect together again and in association with (an) other (s), has always been the leader;

3.

he between January 1, 2004 to November 9, 2011 in both the Hague, England, Serbia and Luxembourg, respectively, amounts to a total of Euro 633 810, - or thereabouts, has made available and has been transferred and converted, money amounts to a total of Euro 633 810, - or thereabouts, has made use of.

The accused, then and there received cash from [X] Jurists BV (cash sales), raised and spent for *private purposes* and paid into a private bank account, while he, the accused, knew the money in whole or in part - directly or indirectly - came from crime, and committed money laundering.

#### **4 The criminality of the acts**

No facts or circumstances have arisen which exclude criminality .

This provides the offenses specified in the decision.

#### **5 The criminality of the accused**

The suspect is also punishable, because no facts or circumstances have arisen which exclude his criminal liability.

#### **6 The punishment**

The claim of the prosecutor

The prosecutor has demanded the suspect sentenced to prison for a period of 15 months, less time spent in custody, including 6 months' probation with a probation period of two years. Also, the prosecutor has demanded that the suspect fined € 330.000,00, replacing nine months imprisonment.

The position of the defence Counsel has taken the position that the loss to the Tax office is now largely reversed in respect of the avoidance between 2005 and 2006. Furthermore, counsel argued that the accused is not convicted of similar offenses. Both of these circumstances, according to the legal counsel are a mitigating effect on the sentencing. In order to avoid repetition a partly contingent penalty can be imposed, according to the counsel.

#### **The court verdict**

After signing penalties consistent with the seriousness of the offenses committed, the conditions under which they are committed and based on the person and the personal circumstances of the accused, as it has been found:

The Suspect has controlled, for a long period, QJ, a company with large cash flows and has not made declarations of Corporation tax accounted for, and has included notional cost items in these declarations and in addition no cash administration conducted or recorded. In order to extract as much money from QJ and minimize taxation the accused, in England founded a company [Y]. No actual work was done by [Y]. Consequently, too little tax was paid; the government, and thus society is disadvantaged. It is a common fact that this type of crime is difficult to detect and not only leads to tax avoidance, but also leads to an undermining of the overall tax morality.

Nevertheless, to reap the benefits the suspect sought in this manner by setting up this structure deliberately tried to protect itself.

The accused has also laundered a substantial amount of money. Laundering is a criminal activity. Money laundering constitutes a serious threat to the legal economy and undermines the integrity of the financial and economic environment. Money earned by the commission of offences as part of a launder circuit has a disruptive effect. This effect is enhanced if the money is obtained through money laundering. Legalised money can be used for investments in the mainstream economy.

The court also has observed, from a copy from the Criminal Records Register of June 21, 2013 suspicious activity. This shows that the defendant has not been thus far been found guilty of criminal offenses.

To determine the degree of severity of the penalty the court has consulted (LOVS) with respect to fraud. From the file Defendant's involvement in a large number of cases of tax avoidance; € 633,810.00. As a standard in tax loss an amount of

five hundred thousand and one million: unconditional imprisonment applied for a period of eighteen to twenty-four months.

The court considers that the claim of the prosecutor's punishment the seriousness of proven facts is not sufficiently reflected. The court considers appropriate in the present case, imprisonment for a period of eighteen months. while the court takes account the length of time of the offenses, the initiating role of the accused as well as the sophistication and the guile of the structure set up by the accused in relation to the social damage. Also, the court in determining the duration of imprisonment weighs up the fine to go with it.

Given the basic anti-tax stance 'suspicious, and the fact that accused was engaged in the trading companies, the Court considers the risk of repetition. The Court sees reason enforce part of the sentence (Six months) suspended to try to prevent the suspect in the future repeating similar acts.

Furthermore, a fine the court considers appropriate is € 330.000,00. In establishing amount the court considers the capacity to pay of the suspect.

The claim of the prosecutor

## **7 The seized goods**

Furthermore, the prosecutor requested that the of objects (list of seizure, which is annexed to this judgment) with 1 to 11 and 14 to and will be forfeited with 18 numbered objects.

The position of the defence

Counsel has not commented on the seized objects.

The court verdict

The court will be the on the attachment list under 1 to 11 and 14 to 18 numbered confiscate objects. These items are subject to confiscation, as these objects and accessories are wholly or largely obtained by 1, 2 and 3 proven offenses. In establishing this additional punishment, the court took into account the accused.

The imposing penalties based on Articles:

- 14 a, 14b, 14c, 23, 24, 24c, 33, 33a, 51, 55, 57, 420bis and 420ter of the Code of Criminal;
- 68 and 69 General Law on State Taxes.

These recommendations have been applied, as it stated at the time.

The court, considers legally and convincingly proven that the defendants' summons under 1, 2 and 3 dependent facts submitted committed and proven:

With regard to count 1:

**complicity while under the tax obligation of holding information, data or provide records, intentionally providing inaccurate and incomplete records, and paying too little tax required by a legal entity, whilst being the de-facto owner committed prohibited acts several times;**

With regard to count 2:

**complicity in an being an administration under tax obligations in accordance with the tax law requirements, not holding records intentionally, while avoiding tax, the individual has in fact acted illegally on more than one occasion; failing to hold as required by tax law, documents or other data carriers, and not intentionally store information, while seeking to pay low taxation, while he instigated the prohibited conduct, committed several times;**

With regard to count 3:

**committing money laundering;**

proven facts; the defendant is punishable:

imprisonment for a period of **18 (eighteen) months** ;

Offset by time spent in remand. Implementation of the unconditional portion of imprisonment is imposed **6 (six) months** , will not be implemented,

such under the general condition that the sentenced person in front of the end of the here in two years of probation set is not guilty of an offense; suspect condemns to:

a fine of **€ 330.000,00** ; states that the fine in default of payment and story will be replaced by imprisonment for a period of 9 (nine) months;

explains the losses on the list under 1 to 11 and 14 to 18 numbered objects, namely:

1. € 9450.00;
2. € 2160.00;
3. € 200.00;
4. € 20.00;
5. € 2,000.00;
6. € 1,200.00;
7. € 3,000.00;
8. € 1,000.00;

- 9. € 350.00;
- 10. € 20.00;
- 11. € 5.00;
- 14. € 500.00;
- 15. € 500.00;
- 16. € 800.00;
- 17. € 200.00;
- 18. € 2000.00.

This judgment was passed by mr. E. Rabbie, president, Mrs. CW White and BT Beuving, Judges, in the presence of Mr. TM of Zwet, Registrar, and pronounced in open court on September 4, 2013.

1 When hereinafter reference is made to an official report is - unless otherwise stated - referred to ambtsedig a police report, drawn up in the legal form by (a) authorized opsporingsambtena (a) r (s). Where reference is made to file pages, this concerns the pages of the report with the file number 47873, "research Bad Bug 'the FIOD, office Haarlem, with attachments (numbered consecutively p. 1 t / m 848). Commencement Statement dated October 10, 2011, p. 81 (AH-002). Commencement Statement dated October 10, 2011, p. 78 (AH-002). A document, being a statement ambtsedige Corporation dated July 29, 2011, p. 778, 779, 782 (D-115), a document, being corporate tax return [X] Juristen BV 2004, p. 493 t / m 508 (D-001), a document, being Declaration corporation [X] Lawyers BV 2005 p. 509 t / m 522 (D-002), a document, being corporate tax return [X] Juristen BV 2006, p. 523 t / m 536 (D-003), a document, being corporate tax return [X] Juristen BV 2007, p. 537 t / m 543 (D-004), a document, being corporate tax return [X] Lawyers BV 2008, p. 544 t / m 550 (D-005). Official report of examination of a witness [injured] dated December 1, 2011, p. 468. Commencement Statement dated October 10, 2011, p. 83 (AH-002). Statement of witness in court on August 21, 2013, minutes of interrogation suspect [HJ] dated November 21, 2011, p. 392; official report of examination of a witness [Witness 4] dated November 14, 2011, p. 461. Process report of examination suspect [suspect] dated November 9, 2011, p. 350; official report of questioning defendant [defendant] dated December 2, 2011, p. 369. Minutes of questioning defendant [defendant] dated December 14, 2011, p. 375. Minutes of questioning defendant [defendant] dated December 14, 2011, p. 376. Minutes of questioning defendant [defendant] dated December 14, 2011, p. 375. Minutes of questioning defendant [defendant] dated December 14, 2011, p. 376. Transcript of enter and search for the seizure dated November 17, 2011. Process report of examination suspect [suspect] dated November 9, 2011, p. 345. Process report of examination suspect [HJ] dated November 21, 2011, p. 392. Process report of examination [witness 5] dated July 21, 2011, p. 453. Official report of examination of a witness [injured] dated December 8, 2011, p. 473. Minutes of joints disadvantage calculation, with attachment "Calculation tax disadvantage [X] Juristen Ltd "dated January 25, 2012, p. 339 (AH-032). Minutes of joints disadvantage calculation, with attachment "Calculation tax disadvantage [X] Juristen Ltd "dated January 25, 2012, p. 340 (AH-032). Minutes of joints calculation disadvantage with attachment "Calculation tax disadvantage [X] Juristen Ltd "dated January 25, 2012, p. 336 t / m 341 (AH-032). Process report of examination [HJ] dated November 22, 2011, p. 401. Statement of witness in court on August 21, 2013. A document, being a letter to [name], HM Inspector of Taxes, dated August 26, 2003, p. 608 (D-015A). A document, being written records of [injured], p. 653-754 (D-102); an document, being written records of [injured], p. 761 (D-105).

Official report of official proceedings dated October 17, 2011, p. 153 (AH-017) protocol on [Y] Company dated 25 January 2012, p. 165 (AH-020). A document, being written records of [injured], p. 734 (D-089). Minutes of questioning defendant [defendant] dated December 2, 2011, p. 370.

Process report of examination [witness 4] dated November 14, 2011, p. 462.  
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## **Conclusion: CRIME PAYS**