

# Banks in Jersey are responsible for their customer's ta...

Published: January 13, 2026, 11:21 pm

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One of the commentators on [my article](#) in Comment is Free today said:

*I haven't paid much attention to the UBS case. Clearly if they were telling their customers that their accounts could be used to evade tax then they are complicit, and should be charged.*

*If however they were merely providing their customers with facilities that allowed those customers to be dishonest if they so chose, I am struggling to see how UBS are not being "fit and proper" - they are not their customer's keepers, after all.*

I have replied as follows, arguing that the banks are very definitely responsible for the tax evasion of their customers in places like Jersey - and already have a legal duty to stop it, which in my opinion they are ignoring:

*I am afraid that you have a rosy view of a bank's responsibilities with regards to their customer's money laundering. I would stress, tax evasion is money-laundering.*

*Every single person who is registered as an adviser with a money laundering authority must at all times be aware of the risk that their clients may be tax evading. If they ever have suspicion that this might be the case then they are duty bound to report that suspicion to their relevant money laundering authority. I stress, they do not need to prove that their client is money laundering. They only need to have a suspicion that they might be.*

*Now let us put ourselves in the position of a bank operating a portfolio of investments on behalf of UK-based person with that fund being based in a place like Jersey. The UBS website for the UK, linked above, implies that it sells a substantial range of products from Jersey to its UK-based clients. If they manage their clients assets in the same way as do many portfolio managers then a component of the funds that they manage will be kept in cash. On average 18% of a high net worth individual's portfolio is cash based according to Merrill Lynch. And let's be clear, what I'm saying here is not UBS specific - it could apply to any bank in Jersey, or another Crown Dependency tax haven.*

*When cash is held by a bank in Jersey on behalf of an individual the EU Savings Tax Directive comes into play. Although Jersey is not a part of the EU it and our other havens are deemed to be so by the EU for the purposes of this Directive for the good reason that for all practical purposes they are an integral part of the United Kingdom, with all its legislation being approved by London before coming into effect. As evidence that London has complete control of these places it did, without much difficulty, impose this Directive and the EU Code of Conduct on Business Taxation upon them all. The STD has been in operation since July 2005.*

*Since then any UK resident person holding a bank account in Jersey has a choice. They can either elect that details of the interest paid be sent to HM Revenue and Customs so that their tax declarations can be checked by that authority, or they can opt for tax at 15% (until July 2008) and 20% now to be deducted from that interest when it is paid to them, but in that case no information on that interest or their account is sent to HM Revenue and Customs. According to data published by Jersey at least 70% of account holders to whom the STD applies have elected to have tax withheld so that data is not sent to HMRC.*

*Now put yourself in the position of the bank's money laundering officer. They have to decide whether they have suspicion that the person making this choice is tax evading or not. What would you think if a person said that they would voluntarily pay tax early, albeit at a rate somewhat lower than that which would be due on their income in the UK, in exchange for information on that income not being sent to their domestic tax authority? You have to appraise this choice in the light of the clear and unambiguous stated intent of the EU Savings Tax Directive - which was to prevent tax evasion on cross-border interest payments. It has no other purpose. You have a simple decision to make. You can decide that you do think this person may be evading tax as a result of their decision, or you can decide that you have no suspicion of them evading tax. Any suspicion is enough to justify reporting in each and every case.*

*I will tell you what I think every single money laundering officer in every single bank in every jurisdiction to which this choice applies should do. I think they should send a list of every single customer who has elected for tax withholding to their money laundering authority on the reasonable grounds that they think the customer in question might be evading tax. After all those customers have issued a specific instruction that information should not be sent to their tax authority. Tax evasion explicitly requires that information not be sent to such authorities. Does telling you to not disclose give you any clear indication of their intent to make disclosure? How could anyone think it does when you also know that the choice they have made will provide them with sufficient anonymity to evade tax on the difference between their highest marginal tax rate in their home jurisdiction and the tax withholding rates applied to the interest in the place in which payment is made?*

*To put this in the context of the UK, from 2005 until 2008 a UK resident could, by opting for withholding, not tell HM revenue and Customs about the income they had received,*

*which suffered tax at 15% as a result. However as a result the could evade the almost certain higher rate tax liability at 40% which would arise on declaration requiring the payment of an additional 25% in the UK. The possibility of this evasion would be eliminated by the person opting to exchange information. It is created by choosing withholding. How could any money laundering officer anywhere not suspect their client was potentially tax evading as a result? And I stress: that suspicion is enough to require that a report be submitted, anywhere.*

*And yet I can say with near certainty that no bank's money laundering officer has formed this opinion. My evidence comes from the Jersey police report for 2006 that showed that during that whole year not a single suspicion of money laundering was reported to the police in that place and unsurprisingly as a result not a single case was detected. I have blogged this here.*  
<http://www.taxresearch.org.uk/Blog/2007/03/02/jersey-officially-a-money-laundering-free-zone/>

I should add that the following year, in 2007, the UK tax amnesty, targeted solely on customers of Barclays, Lloyds TSB, RBS, HBOS and HSBC resulted in over 40,000 people admitting that they use accounts with those banks for tax evasion purposes. Over £400 million of tax was paid. The Revenue say that a further 80,000 people are still subject to ongoing investigation. But I add, not one of those banks reported a suspicion of criminal money-laundering in the form of tax evasion in 2006 in Jersey although it is highly likely that up to half the accounts investigated were in that location.

Can the banks deny responsibility for reporting suspicion of this evasion?  
Unambiguously money-laundering law makes it clear that they cannot. And unambiguously they had the data on which to reasonably form that suspicion in 2006. And yet they made no reports.

What does this say about banks in the Crown Dependencies? I leave you to form your own opinion. I know what I think.

Now please prove (and I mean prove) me wrong.

Or start complying.