

GERMANY

Prosecutors Probing Transfers by Volkswagen's Former CEO

by William Hoke

German prosecutors are reportedly investigating the embattled former CEO of Volkswagen AG for tax evasion on suspicion that he illegally transferred funds to Swiss bank accounts, including one in his wife's name.

Bild am Sonntag, a Berlin-based newspaper, reported July 29 that Martin Winterkorn transferred approximately €10 million to Swiss accounts in 2016 and 2017. Winterkorn resigned as Volkswagen's CEO in 2015, shortly after the U.S. Environmental Protection Agency announced that the company had installed software in its vehicles to give inaccurate readings during emissions testing so the cars would meet environmental standards. Other countries followed with similar investigations of the so-called defeat devices. In 2017 Volkswagen pleaded guilty to defrauding the U.S. government and obstruction of justice. As part of its plea, the company agreed to pay \$2.8 billion in criminal fines and \$1.5 billion in civil penalties. Product recalls have added billions of dollars more to the costs incurred by Volkswagen in the aftermath of the scandal. In May 2018 the U.S. Department of Justice charged Winterkorn with fraud and conspiracy.

The newspaper reported that Winterkorn transferred to his tax adviser's account funds that were then forwarded to Swiss accounts at Vontobel Bank. *Bild am Sonntag* said prosecutors in the Lower Saxony city of Braunschweig suspect that Winterkorn might have been trying to squirrel away money in Switzerland in case he is found liable for damages from the emissions testing scandal.

Neither the prosecutor's office, Vontobel, nor Winterkorn's lawyer responded to requests for comment.

Lars Kelterborn, a tax attorney with Luxem, Heuel, Prowatke Attorneys at Law in Cologne, said Switzerland's decision to share financial information with EU countries makes it much easier for German authorities to determine what the country's residents might have stashed away

in the banks of its neighbor to the southwest. "Thus, from a German perspective, Switzerland is no longer a safe harbor for people who are planning to hide their money from the German [tax authorities]," he said.

"There might be other reasons than tax fraud for Germans to wire their money to a Swiss bank," Kelterborn said. "One of many reasons is often to make it more difficult for creditors to get access to the money." Kelterborn said carrying out a German court order or garnishing a bank account in Switzerland can be costly and time-consuming. "So asset protection can be one reason to wire money from Germany to Switzerland," he said.

While spousal transfers up to €500,000 during a 10-year period are exempt from gift tax, Kelterborn said German family law allows married couples to compensate for gaps between their respective incomes. "If you prepare it the right way [using] notary contracts, it is not a gift that was made," he said. "It is a legitimate claim that was satisfied. Thus, no gift tax is triggered."

Kelterborn said he would be surprised if Winterkorn illegally tried to avoid payment of gift tax. "I assume his advisers . . . used a way [that was] in accordance with our tax law," he said. "For me, the most likely scenario is that he fulfilled a claim of his wife . . . to wire the money tax free to her bank account."

Bild am Sonntag reported that Winterkorn's lawyer said prosecutors had no right to extend their "Dieselgate" investigation in Volkswagen's emissions testing scandal into his client's private financial affairs and that Winterkorn is considering suing prosecutors for breach of confidentiality. "If prosecutors or people from the German IRS [are] giving information to the press, then they are breaking the law and they are liable in person, [and] the Federal Republic of Germany is liable for any damage resulting [from the violation]," Kelterborn said.

He added that generally speaking, prosecutors can use information from investigations like the probe into Volkswagen's emissions testing scandal for other purposes.

In November 2015 German prosecutors opened an investigation into Volkswagen to determine whether its employees violated tax laws when they understated carbon dioxide emissions data for 800,000 vehicles in Europe. The

authorities said the probe was focused on five Volkswagen employees accused of making false statements about carbon dioxide emission levels, which are used to determine the amount of tax due on each vehicle. The status of that investigation is unclear. ■