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## Ernst & Young Pays \$123M To End Tax Shelter Case

By [Max Stendahl](#)

Law360, New York (March 1, 2013, 6:09 PM EST) -- [Ernst & Young LLP](#) has agreed to pay \$123 million to settle allegations its employees helped wealthy clients dodge more than \$2 billion in taxes as part of a scheme that spawned criminal charges, Manhattan U.S. Attorney Preet Bharara said Friday.

The firm admitted in a civil nonprosecution agreement that some of its employees and partners allowed about 200 high net-worth clients to engage in illegal tax shelters between 1999 and 2004. E&Y prepared tax returns that showed false tax losses and later defended some clients during [IRS](#) audits. The \$123 million represents the fees E&Y earned from those engagements.

Members of a small unit within E&Y, called the Strategic Individual Solutions Group, or SISG, made false statements in testimony to the IRS and when responding to IRS document requests. In particular, the employees claimed clients had engaged in certain transactions for legitimate investment reasons, rather than to defer, reduce or eliminate tax liabilities, E&Y admitted.

Four SISG members were convicted of criminal charges over the scheme in May 2009. In November 2012, the Second Circuit affirmed two convictions but reversed two others, citing insufficient evidence.

“Ernst & Young is pleased to put this matter from a decade ago behind us,” the company said in a statement Friday. “As the settlement with the U.S. Attorney’s office recognizes, these activities represent an isolated period in the firm’s long history of providing ethical and professional tax services.”

The case is part of a sprawling, long-running probe of tax shelters in the accounting industry. In 2005, [KPMG LLP](#) agreed to a \$456 million settlement. In June 2012, [BDO USA LLP](#) agreed to pay \$50 million as part of a deferred-prosecution agreement over a tax shelter scheme that generated at least \$6.5 billion in false tax losses for wealthy clients.

Prosecutors noted Friday that unlike at certain other firms, E&Y senior management did not participate in criminal wrongdoing.

Indeed, SSIG employees actively misled E&Y management about the tax shelters on some occasions,

prosecutors said in a statement of facts in the nonprosecution agreement. For instance, executives determined in 2000 that a tax shelter transaction called COBRA should no longer be used, but SSIG members “created a false cover story” to continue marketing another shelter that bore close similarities to COBRA, according to the statement of facts.

E&Y disbanded SSIG in 2003 and reached a \$15 million settlement with the IRS. At the time, the company also agreed to enhance its governance and risk management and set up an internal quality program designed to ward off future misconduct.

The government heaped praise on the firm for its cooperation in the investigation.

“The wrongdoing in this case by a small group of professionals at E&Y represented a deviation from the more than 100-year history of ethical and professional conduct by E&Y and its partners,” prosecutors said.

The individual E&Y defendants were indicted in 2007 and charged with conspiracy to defraud the U.S. government, to commit tax evasion and to make false statements to the IRS.

A New York federal jury found the four defendants guilty on all counts in May 2009. The conviction followed a 10-week trial, during which the government argued that the defendants had concealed details about the shelters from the IRS to create the impression they had a legitimate purpose, when their real goal was to hide funds from being taxed.

On appeal, the Second Circuit affirmed the convictions of two defendants, Robert Coplan and Brian Vaughn. But the appeals court threw out the convictions of Martin Nissenbaum and Richard Shapiro, agreeing that evidence used against them was not substantial enough for a conviction on conspiracy charges.

E&Y is represented by Lawrence B. Pedowitz and David B. Anders of [Wachtell Lipton Rosen & Katz LLP](#).

Case information was not immediately available.

--Additional reporting by Sindhu Sundar and Eric Hornbeck. Editing by Chris Yates.

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