



# Taxing Matters

## The CumEx scandal with Donal Griffin

**Alice** Hello, and welcome to Taxing Matters, your one stop audio shop for all things tax brought to you by RPC. My name is Alice Kemp and I will be your guide as we explore the sometimes hostile and ever-changing landscape that is the world of tax law and tax disputes. Taxing Matters brings you a fortnightly roadmap to guide you and your business through this labyrinth. In case any of you miss any crucial information or just want some bedtime reading, there is a full transcript of this and indeed every episode of Taxing Matters on our website at [www.rpc.co.uk/taxingmatters](http://www.rpc.co.uk/taxingmatters).

Today we are joined by Bloomberg finance reporter Donal Griffin. Donal reports on a range of financial markets and financial crime issues and for the past 18 months has been following the development of the CumEx scandal across Europe and beyond.

Donal welcome to Taxing Matters.

---

**Donal** Hey Alice, good morning.

---

**Alice** **So, what exactly is CumEx?**

---

**Donal** Okay, so what is CumEx.

Depending on who you talk to CumEx was either, again like this clever exploitation of loophole in German law or a criminal exploitation of weakness in dividend taxing laws across Europe.

People pay taxes on dividends across the world, you know, every time they get paid. There is nothing unusual about that, they're called withholding taxes. Every jurisdiction - more or less - imposes them; some shareholders are entitled to refunds on those taxes depending on where they are based in the world.

Historically owners of dividends, companies whether it's banks or hedge funds or asset managers, when they received dividends and when they pay taxes on those dividends they would often seek ways of reducing that tax burden, such as lending out their stocks around the time of the dividend and then getting them back a week later.

Banks in the City in London, and in the States for a long time as well, for years and years and years have engaged in a trading strategy that enables them and other investors to reduce the amount of withholding tax that they pay on dividends. And the way that that traditionally worked, and this was a widespread kind of quite well known strategy, the way that that worked is that let's say you have a party in jurisdiction A and a party in jurisdiction B, the party in jurisdiction A is about to receive a dividend from some stocks that they hold, and, let's say that they are going to pay a 25% tax on the dividends that they are about to receive. They don't fancy paying 25% tax on that so they get in touch with party B who is in another jurisdiction where he will only face a let's say 10% tax or a 5% tax sometimes, in the past, no tax at all. So, party A says "hey any chance I can lend you my shares for a week or so, two weeks, you don't pay any of the tax or you pay your 5% tax or whatever it is and then when the dividend date is over you pay me back my stocks and we split the tax savings."

So ultimately the person who is supposed to be paying 25% tax, that gets reduced to whatever it might be, you know, 15% or 10%.

And so that has been in play for years and again that was a widespread practise that took place between banks, pension funds, asset managers, took place all over Europe, all over the world.

CumEx was a way of exploiting that so multiple parties traded shares rapidly around the time that the dividends got paid thus making it harder to tell who exactly owned the shares at the time the dividends got paid and as a result multiple parties got in touch with Exchequers around Europe and said "hey there I'm entitled to a tax refund on these taxes that I paid on these dividends on these shares that I held, can you please send me a cheque for, you know, £1m or whatever", and that happened again and again and again. Even though the taxes only got paid once, multiple reclaim requests were made and were granted.

I mean, it's like you pay tax on your car and maybe there is a way of making a request for some kind of a tax refund at the end of the year and then I pop up and say I'm going to make the same request for that and we both receive a tax rebate for it because it is unclear who actually owns the car at the time.

So, in the end result of all this is Exchequers across Europe paying out tax refunds often to parties who never held those dividends at that time.

**Alice** **So, what volume of loss are we talking about here?**

**Donal** The multiple of loss we're talking about. German law makers say that CumEx has cost German taxpayers about €10 billion. The Germans realised what was going on and changed their laws around 2012, so it stopped then but up until 2012 they claimed that they took a €10 billion hit.

So that's €10 billion that German tax authorities paid out to parties who weren't entitled, they say, to receive it. So, the Germans say that's €10 billion, that could have been spent on teachers, health care, cops, whatever and that instead went to CumEx participants.

The Danes, who were also part of this, say that they paid out about €2 billion, maybe even a bit more I think, but the Danes definitely say about €2 billion and for the Danes that amounts to I think about 1% of their GDP, a huge amount of money.

Similar trading schemes took place in Austria and the Netherlands, Belgium, France. The exact sum, exactly how much was paid out, I'm not sure if we will ever know, you're talking about massive volumes in trades across jurisdictions from the early 2000s, mid-2000s up until about 2012-13, around that time.

So, I don't think we'll ever get a full sense of just how much money was paid out to CumEx participants, but it is in the tens of billions most likely. If you tot it all up across Europe the Germans alone say it's about €10 billion there, so it's the number is likely astronomical.

**Alice** **How did you come to be involved in this investigation and tracing the participants around the world?**

**Donal** A long story, I will be as succinct as I can, I promise.

So, two things dovetailed. CumEx investigations which I suspect was going to be your next question. The investigations into CumEx, especially in Germany, but also in Denmark, were beginning to kind of ramp up early last year or so and we can get to that in a second, so while these CumEx investigations were beginning to kick off in Continental Europe

But I guess it goes back to what I had said about CumEx being the biggest tax scandal that you've never heard of, you know, in that some of the biggest scandals that have taken place in financial services over the last decade in the wake of the financial crisis whether its, you know, rigging up LIBOR, rigging up FX markets, things like that; all of the various cases that came out of the financial crisis. At this stage they are quite well known if you move in financial markets: LIBOR rigging, FX rigging, things like that, everyone knows what they are, and they were really well reported at the time and extensively investigated.

Whereas, CumEx, which was going on at the exact same time as the rigging of these markets, CumEx, which was taking place across London and across Europe, when you bring it up it can often be met with kind of blank looks, you know, not just from my long suffering colleagues and editors who have to hear from me about this all the time, but also from, you know, from lawyers, from accounts, from people who work at banks - it doesn't really seem to have sunk in just how extensive this was, just how widespread it was, and the scale of it, the scope of it, just how impactful it was on German and Danish and Belgium and Austrian taxpayers; just how massive it was.

I don't think that has ever really sunk in and, to prove that point, I had never really heard of it until again the middle of last year or so, maybe early last year. You know, I'd see the odd headline about it; my colleague Karen Matusic in Frankfurt, who is our legal reporter - she covers the German courts, had been, you know, sort of slogging it out there and reporting on all these kind of stories that were, sort of, meandering their way through the courts about the early sort of CumEx investigations and I don't think we ever paid a huge amount of attention to it here in London.

And then myself and another colleague of mine in London, we were writing a story about this trading desk at Barclays that had been making hundreds of millions of pounds every year from various forms of kind of dividend tax arbitrage schemes. And it had figured out a way of making all of this money from kind of somehow managing to sort of arbitrage different dividend tax rates across Europe and it was, you know, very few people had heard of this desk both inside and outside of Barclays.

And the more people I spoke to about that desk, and I should state that, I mean, there was no suggestion that anything the desk was doing illegal or anything like that, they weren't doing CumEx or anything like that, but everyone I spoke to when I was trying to figure out what this desk was doing and why it was a big deal at all, CumEx kept coming up in these interviews, you know. A lot of the, again, the analysts or again her lawyers or whoever I would talk to, former traders, former bankers, they kept telling me to look at CumEx, you know.

And, that was the first time that I really started to jump into it. And I think by the end of the year, after I had kind of done this big Barclays story and began to fully get a sense of what dividend Arbitrage trading schemes were, that happened to dovetail with the first sort of landmark CumEx trial which began in Bonn, Germany late last year.

And that trial had been brought by, I think, by Cologne prosecutors against two former CumEx traders, one guy called Martin Shields, another guy called Nick Diable, both of whom were former Unicredit traders and they went on to set up a hedge fund and stuff like that. And they had both co-operated with prosecutors and outlined the workings of the industry over a few sort of epic days in court late last year and just gave all of these kind of statements to the court provided hours of testimony about what banks were involved, what interdealer brokers were involved, what hedge funds were involved, the traders themselves, you know, they named the banks, they named the dealers, they named the hedge funds, they kind of named everyone who they said they had ever worked with in CumEx. And that trial continued until earlier this year; they had pled guilty and they were found guilty.

And I think it was that coming together of those two things, of just me sort of jumping into dividend arbitrage for the first time through that Barclays story, but also the beginning of this CumEx trial late last year and just the way that that trial, sort of, lifted the lid on this whole industry. That just drew me in, you know.

It's been hard to let it go ever since. And most reporters who spend any real time digging around, but you do find yourself kind of hooked, if you're in any way passionate about what you do, as stories go it's kind of got it all, and I say that without being kind of, without being flippant about the massive amounts of taxpayers money that's at stake here.

It's got a massive scale - if you're talking about what makes a really important, really good, really compelling story - it's got massive scale; it's got billions and billions and billions of euros; it's got all, more or less, of the world's biggest banks, these traders when they turned up in court they named everyone from Barclays, Bank of America, ICAP, you know, they named hedge funds, they named the traders themselves, I mean, they just outlined how the whole thing worked, you know; and then you've got these extraordinary characters who got into CumEx as kind of, you know, mid-level traders in the city and within a couple of years generated extraordinary wealth for themselves, you know, extraordinary wealth, the kind of wealth that traders who come in and out of the city every day, they can only dream of making these kinds of fortunes - Martin Shields, one of the two traders I think he said he had made just from his time in a hedge fund, I think he said he made something like 13 million.

And that's a figure that, you know, when I put that figure to people a lot of people are like that's, he's lowballing that, you know, it could have been a lot more. I don't want to question whether or not Mr Shields was telling the truth but, yeah, there's for sure, the amount of money that we're generated by, again, traders who had, you know, had never risen to really high levels within the banks that they worked for until CumEx came along and they were able to generate massive, massive fortunes for themselves.

---

**Alice**      **You've mentioned a trial in Germany, what's happening to kind of redress this? What actions are European authorities taking?**

---

**Donal**      So in Germany, what they've done is, they have been investigating this for years - prosecutors in Cologne and Frankfurt, and I think perhaps in some other jurisdictions within Germany - they have been investigating this for years now and they have, I mean, so many suspects who they seem to be investigating

And their approach to this is very interesting. They have convinced a number of former CumEx traders to cooperate with them, and they've managed to get traders from kind of across the industry: there's again these Martin Shields, Nick Diable - they were former UniCredit traders who went out and set up their own hedge fund - they've got traders I think from Macquarie to talk, there's a number of other traders who used to work at some of the hedge funds that were involved in CumEx who have also been kind of cooperating and providing testimony.

So that has kind of resulted in a number of prosecutions so far. You've had a couple of court cases: one court case has already concluded, that was the one that ended earlier this year, the kind of landmark trial; you've got another court case that's just after really kicking off again involving the same UniCredit traders and another investment bank Warburg.

Exactly where the Germans go beyond that, I think that's one of the big questions about this and also perhaps what has a lot of people very spooked in the City I think because perhaps after this trial that has gone on at the moment the Germans could say "okay, look, you know, we've done a lot here, you know, we've gotten a couple of convictions, let's just kind of pack up and move on", or they could decide to just keep on going and keep on going through all of the testimonies that they've collected over the Summer for example.

I think we had perhaps thought that maybe things would start to wind down after that first trial concluded in March or so and then over the Summer I think in July the owner of a hedge fund that had been allegedly very active in CumEx, the hedge fund was called Duet. The owner of that fund, interesting guy called Henry Gabay. was arrested in an airport in the south of France, and he was on his way back to London, he was arrested, sort of packed off to a court in Aix-en-Provence, where he was extradited to Germany.

That seems to have been a real shot across the bows as well for the industry. I think it was one of the first times that the Germans had used extradition in that way. Mr Gabay has denied any involvement here.

So Mr Gabay, was arrested in the south of France, extradited to Germany, and then released I think that day, I presume pending further investigation, and we'll see where that one goes and Mr Gabay denies all wrongdoing and that will take its course.

But I think that was a real shot across the bows like I said, that the Germans, they weren't finished yet, let's say, and that there was definitely more to come here. Again, exactly how far they want to go, I mean, do they want to keep on going after individuals the way that they've been doing so far? do they want to go after the institutions themselves, is that going to happen? These are all just questions I suppose that we ask ourselves, I think sometimes us journalists we can be quite cynical about this stuffM sometimes, you know, investigations can sound like they're going to be really far reaching and then they all wind up with, you know, a couple of fines and the whole thing goes away.

One of the things that makes it so compelling though in that we don't, we don't know how far they're going to go, like, in terms of the things that we've heard so far, the things that have popped up, again, in testimony, some really senior people in finance have been named throughout this, I mean it brought in some of the biggest, most sophisticated investment banks in the world.

Again at a time austerity was kind of spreading across Europe, you had this kind of scheme that was going on, that was, you know, denying taxpayers all this money, we've written stories about, whether its Bank of America, Merrill Lynch, Deutsche Bank, Macquarie, UniCredit, I mean these really big, really important financial institutions. It will be really interesting to see what the Germans decide to do on that front, again will they continue to just pursue individuals? or will this ever amount to some kind of case against these institutions themselves? Who knows? Who knows? I'm not making a claim one way or another, you know.

---

---

Alice

**What about jurisdictions other than Germany, what are they doing in terms of enforcing or tracking down these funds?**

Donal

So, the Danes would probably be the most active after the Germans so far.

And what's very interesting about the Danes is that their interest in this really just extends to one individual hedge fund - I'm sure there are more players involved - but the main case that it has taken so far involves one hedge fund, which is called Solo Capital Partners, and everything that the Danes have done has kind of sprung from that one case.

And they claim that through what they call like, quite an audacious scam, the Danes say that they paid out something like \$2 billion or so in tax rebates that should never have been paid out.

And again, given the size of the Danish economy compared to the German economy, 2 billion for the Danes amounts to, I mean, it's a massive, massive chunk of their economy. It's about 1% of their GDP, you know, it's just a huge sum of money for them.

And again, the bulk of this would have been paid out they say in the years immediately after the financial crisis when the Danes like everyone else, I presume, were imposing kind of austerity and cuts in spending and stuff like that.

And this all went to Solo Capital Partners - this hedge fund - and related parties. The main beneficiary of all of this Danes clam was a trader called Sanjay Shah, who had worked in the City, worked for Rabobank, worked for ING, set up his own fund called Solo Capital Partners; the reason he called it Solo Capital he told us recently is that he wanted all the money himself hence Solo.

So, we interviewed Sanjay, Sanjay is in Dubai these days. He told us that, you know, he's facing a number of Danish related investigations. He has been told by his lawyers that if he leaves Dubai there is a pretty good chance he would be arrested, that there are criminal investigations into what Sanjay is alleged to have done and what Solo Capital is alleged to have done.

Sanjay Shah when we interviewed him, and we did a TV interview with him as well so your listeners can kind of check that out also, Shah claims he did nothing wrong. He claims that there was a loophole that him and Solo that they legally exploited to the tune of \$2 billion.

When we asked him whether or not it was ethical to have done so, giving him the benefit of the doubt for a second, let's say it was legal, let's say it was a loophole, should you have done it, like was this ethical given the sums, I mean his response was, bankers don't have morals, hedge funds don't have morals, we made the money legally. I mean, that was Sanjay's response and I mean, he spoke to us at length and repeated again and again that he's done nothing wrong.

So that's the Danes. So, you've got the Germans, you've got the Danes,

There are other jurisdictions that have an interest here. Exactly what they're going to do, obviously we don't know, but those jurisdictions I'd say include Belgium, Austria, Luxembourg, the Netherlands and France, I think. Other jurisdictions were involved here as well, but they are the ones that we pick up on the most.

How far those countries want to go? Who knows? Will they be as aggressive as the Germans have been, as the Danes have been? It's hard to tell, you know. Obviously, we'll just have to wait and see.

And then in the UK. That's one of the ironies of this, so much of CumEx took place in London, by banks and by hedge funds that were all based in London, or had massive operations in London, but CumEx never involved British stocks, it never involved British taxes, British dividends, so the British as a result were never impacted really by CumEx.

No fraud took place on British stocks on the British taxpayer, so HMRC might be entitled to say well, you know, "it's none of our business", I'm not saying they said that. But, it is an interesting one that so much of this was kind of led from London, but yet because it didn't directly impact British taxpayers, exactly where British tax authorities get involved here isn't clear.

However, we did report, my colleagues reported, I think just last month, that the FCA is currently investigating I think, is it 14 firms and six individuals. Obviously, you know, we haven't reported who those firms are or who those individuals are.

And I guess we can only presume that the FCA is investigating those companies, perhaps in conjunction or cooperation with other regulators in continental Europe.

So it all adds up to, as we've written already, it all adds up to a lot of pretty spooked former traders, you know, former officials at banks and hedge funds who are perhaps waiting for that phone call or that letter or that tap on the shoulder, you know.

---

---

**Alice**

**So, you've talked a lot about the traders and the banks involved, what about the brokers? Is there any development in relation to them?**

**Donal**

Sure, this is a really interesting one.

In the first of a landmark court case. When that former CumEx trader, Martin Shields, when he went before the judge and laid out how the industry worked, and he basically said that in every CumEx trade you've got a buyer, you've got a seller, but then you also have to have someone in the middle, which is the broker - the interdealer broker as they are known in the City - and this will traditionally be, you know, like a firm that kind of sits between two banks that are trading or between a bank and a hedge fund or a bank and an asset manager. Some of the best known of these brokers would be, you know, historically ICAP, BGC, Tradition, companies like that.

Now, according to Shields, he named a number of interdealer brokers that were quite active in brokering CumEx trades, he described them as the glue that held the system together because of their kind of unique role. So, what emerged, last week I think, one of the biggest interdealer brokers in the world is TP ICAP. TP ICAP came about a couple of years ago when Tullett Prebon, once one of the biggest brokers, bought out the voice broking operations of ICAP

In a London lawsuit TP ICAP, which has since taken over the old voice broking operations of ICAP, in a lawsuit that emerged last week, TP ICAP are now claiming that they were never told when they were taking over these operations, that there was all of this kind of regulatory investigation in the background that they now have to deal with.

Now, again, that court case will take its course and I think the party that they are suing have, I think they are trying to have the case dismissed and so we'll have to see where that one goes, you know. But the claim is that they were never informed of all of these CumEx related investigations.

And in the lawsuit which we reported on last week, it kind of again lifted the lid on what ICAP's alleged role in CumEx was and, you know, named one or two of the people who had been allegedly involved in kind of authorising ICAP's involvement in all of this. I mean, very interesting stuff and that one is likely to run and run.

I think the way that the lawsuit characterised ICAP's alleged involvement in CumEx, was something like the spider in the CumEx web. So according to the lawsuit ICAP is also facing a number of German investigations into the behaviour of two of its former brokers, one of its former directors, and again the lawsuit names a number of very senior former people at ICAP.

So, it just kind of shows that CumEx kind of draws in every last corner of the City: it brings in your European banks; it brings in your American banks; it brings in your hedge funds; it brings in your lawyers; it brings in your accountants; it brings in your auditors; and it brings in your interdealer brokers too. It spreads across the whole city, you know.

---

**Alice**

Well thank you very much Donal for taking us through the CumEx scandal.

As ever a big thank you goes to our miracle working producer Mary Mitchell, Josh McDonald who does all the work pulling each episode together, our music is from musical genius Andrew Waterson and of course a big thank you to all of our listeners for joining us.

A full transcript of this episode, together with our references can be found on our website at [www.rpc.co.uk/taxingmatters](http://www.rpc.co.uk/taxingmatters) and you can find Donal on Twitter at @donalgriffin1 and his articles on Bloomberg.

If you like Taxing Matters, why not try RPC's other podcast offering, Insurance Covered, which looks at the inner workings of the insurance industry, hosted by the brilliant Peter Mansfield and available on Apple Podcast, Spotify, Acast or our website.

If you have any questions for me, or for Donal, or any topics you'd like us to cover in a future episode please do email us on [taxingmatters@rpc.co.uk](mailto:taxingmatters@rpc.co.uk). We'd love to hear from you.

If you liked this episode please do take a moment to rate, review and subscribe and remember to tell a colleague about us.

Taxing Matters will be taking a short break for the festive period, so from all of us here on the Taxing Matters team, we hope you have a safe, happy and relaxing holiday period. Thank you all for listening and talk to you again in the New Year.



RPC is a modern, progressive and commercially focused City law firm. We have 97 partners and over 700 employees based in London, Hong Kong, Singapore and Bristol. We put our clients and our people at the heart of what we do.