

Exhibit A

(Plea Agreement)



*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

April 4, 2017

By Electronic Mail

Sabrina P. Shroff, Esq.
Allegra Glashausser, Esq.
Federal Defenders of New York
52 Duane Street, 10th Floor
New York, New York 10007

**Re: *United States v. Jeff C. Yin,*
S5 15 Cr. 706 (VSB)**

Dear Ms. Shroff and Ms. Glashausser:

This prosecution and the protection against prosecution, with respect to tax offenses, set forth below have been approved by the Tax Division, Department of Justice.

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York and the Department of Justice, Criminal Division, Fraud Section (together, "the Offices") will accept a guilty plea from Jeff C. Yin ("the defendant") to Count Seven of the above-referenced Indictment (the "Superseding Indictment"). Count Seven charges the defendant with conspiracy to defraud the United States, in violation of Title 18, United States Code, Section 371, and carries a maximum term of imprisonment of five years, a maximum term of supervised release of three years, a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, and a \$100 mandatory special assessment.

Pursuant to 18 U.S.C. §§ 3663(a)(3) and 3663A(a)(3), the defendant agrees to pay restitution to the Internal Revenue Service ("IRS") for the amount of additional tax due as a result of the offense, including the filing of amended returns, as determined by the IRS, of at least approximately \$61,674. The restitution amount shall be paid according to a plan established by the Court. If the Court orders the defendant to pay restitution to the IRS, either directly as part of the sentence or as a condition of supervised release, the IRS will use the restitution order as the basis for a civil assessment. *See* 26 U.S.C. § 6201(a)(4). The defendant does not have the right to challenge the amount of this assessment. *See* 26 U.S.C. § 6201(a)(4)(C). Neither the existence of a restitution payment schedule nor the defendant's timely payment of restitution according to that schedule will preclude the IRS from administrative collection of the restitution-based assessment, including levy and distraint under 26 U.S.C. § 6331.

It is understood that at least two weeks prior to the date of sentencing, the defendant shall file with the IRS, and provide copies to the Offices, accurate amended U.S. Individual Income Tax Returns, Forms 1040 for calendar years 2013 and 2014. Notwithstanding the immediately preceding paragraph, the defendant will pay past taxes due and owing to the IRS for calendar years 2013 and 2014, including any applicable penalties on such terms and conditions as will be agreed upon between the defendant and the IRS. The defendant will not contest the applicability of civil fraud penalties.

In consideration of his plea to the above offense, the defendant will not be further prosecuted criminally by the Offices and, with respect to tax offenses, the Tax Division, Department of Justice, for:

- (i) agreeing with others to pay and to aid and abet the making of payments, and paying and aiding and abetting the making of payments, to the individuals defined in the Superseding Indictment as the “Antiguan Ambassador” and the “Dominican Ambassador” in exchange for official actions related to a facility that Ng Lap Seng intended to build in Macau, China (the “Macau Conference Center”), including, among other things, the submission and revision of United Nations document #A/66/748, between in or about 2012 and in or about September 2015, as described in Counts One through Four of the Superseding Indictment;
- (ii) agreeing with others to transmit and transmitting payments from China to the United States and from the United States to the Dominican Republic, in furtherance of an effort to have the Antiguan Ambassador and the Dominican Ambassador take official actions related to the Macau Conference Center, between in or about 2012 and in or about September 2015, as described in Counts Five and Six of the Superseding Indictment;
- (iii) agreeing to defraud the IRS, between in or about 2013 and in or about Spring 2015, as described in Count Seven of the Superseding Indictment, including by (1) authorizing and/or facilitating payments for the benefit of the Dominican Ambassador to be made (a) via wires from China to a company defined in the Superseding Indictment as the “Dominican Company,” (b) to third-parties to cover personal expenses of the Dominican Ambassador, including his mortgage, and (c) to siblings of the Dominican Ambassador, and (2) arranging with the bookkeeper of the entity defined in the Superseding Indictment as “NGO-1” for the defendant to be paid in cash or checks made out to petty cash;
- (iv) endeavoring to obstruct and impede and obstructing and impeding the administration of the internal revenue laws, between in or about 2013 and in or about Spring 2015, as described in Count Eight of the Superseding Indictment; and
- (v) willfully failing to file Reports of Foreign Bank and Financial Accounts (“FBARs”) for (i) calendar years 2014 and 2015 with respect to account 6217866000001506127 at Bank of China, and (ii) calendar year 2012 with respect to account 820070241888 at HSBC, over which the defendant had signature or other authority;

it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.* In addition, at the time of sentencing, the Government will move to dismiss any open Count(s) against the defendant. This Agreement does not provide any protection against prosecution except as set forth above. The defendant agrees that with respect to any and all dismissed charges he is not a “prevailing party” within the meaning of the “Hyde Amendment,” Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

It is understood that all of the conduct set forth in subsections (i) through (v) of the preceding section constitutes either relevant conduct, pursuant to United States Sentencing Guidelines (“U.S.S.G.”) Section 1B1.3, or other conduct of the defendant, pursuant to U.S.S.G. § 1B1.4, that the Court may consider at the time of sentencing.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The November 1, 2016 Guidelines Manual applies to this case.
2. Pursuant to U.S.S.G. §§ 2T1.1(a)(1), 2T1.9, and 2T4.1(F), because the intended loss was approximately \$225,000, which is greater than \$100,000 but not greater than \$250,000, the base offense level is 16.
3. It is the Government’s position that, pursuant to U.S.S.G. § 2T1.1(b)(2), the base offense level is increased by two levels because the offense involved sophisticated means. The defendant agrees with the description of the offense set forth in subsection (iii) of page two of this agreement, but submits that the two-level enhancement under U.S.S.G. § 2T1.1(b)(2) does not apply. The parties agree not to appeal or challenge collaterally the Court’s determination, if any, of this issue.
4. Pursuant to U.S.S.G. § 3B1.1(c), because the defendant was an organizer, leader, manager, or supervisor in criminal activity other than that described in subsections (a) or (b) of U.S.S.G. § 3B1.1, the base offense level is increased by two levels.
5. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, the Government will move at sentencing for an additional one-level reduction, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 17 under the Government's calculation, or 15 under the defendant's calculation.

B. Criminal History Category

Based upon the information now available to the Offices (including representations by the defense), the defendant has no criminal history points.

In accordance with the above, the defendant's Criminal History Category is I.

C. Sentencing Range

Based upon the calculations set forth above, the defendant's Guidelines range is either 24 to 30 months' imprisonment under the Government's calculation, or 18 to 24 months' imprisonment under the defendant's calculation. Accordingly, the stipulated Guidelines range is 18 to 30 months' imprisonment (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 17, the applicable fine range is \$10,000 to \$95,000; at Guidelines level 15, the applicable fine range is \$7,500 to \$75,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party in any way suggest that the Probation Office or the Court consider such a departure or adjustment under the Guidelines.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between the Offices and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above,

should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. The Offices cannot, and do not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range of 18 to 30 months' imprisonment and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any fine that is less than or equal to \$95,000, and the Government agrees not to appeal any fine that is greater than or equal to \$7,500. The defendant also agrees not to appeal any restitution amount that is less than or equal to \$61,674, and the Government agrees not to appeal any restitution amount that is greater than or equal to \$61,674. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights the defendant may have to assert claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally,

on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.

It is further agreed that should the conviction following the defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.


It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than the Offices and, to the extent set forth above, the Tax Division, Department of Justice.

Apart from any written Proffer Agreement(s) that may have been entered into between the Offices and defendant, this Agreement supersedes any prior understandings, promises, or conditions between the Offices and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.


The parties understand that this Agreement reflects the special facts of this case and is not intended as precedent for other cases.


Very truly yours,

JOON H. KIM
Acting United States Attorney


By: 
Janis M. Echenberg
Daniel C. Richenthal
Douglas S. Zolkind
Assistant United States Attorneys
(212) 637-2597/2109/2418

ANDREW WEISSMANN
Chief, Fraud Section
Criminal Division
U.S. Department of Justice


By: 
David A. Last
Trial Attorney
(202) 616-5651

APPROVED:

Andrew D. Goldstein
Chief, Public Corruption
U.S. Attorney's Office
Southern District of New York

AGREED AND CONSENTED TO:


Jeff C. Yin

4/7/17
DATE

APPROVED:

Sabrina P. Shroff, Esq.
Allegra Glashausser, Esq.
Attorneys for Jeff C. Yin

4/7/17
DATE