

IRS Continues to Crack Offshore Bank Secrecy - Risks Mount

Back-to-back developments this week regarding the U.S. government's criminal tax investigation of UBS AG ("UBS") - Switzerland's largest bank - reaffirms the feds' aggressive investigation of undisclosed offshore accounts used by U.S. taxpayers to allegedly hide income from the Internal Revenue Service ("IRS"). Offshore accounts are increasingly common in our globalized economy. Not disclosing such accounts, however, is increasingly risky.

On February 18, 2009, the U.S. Department of Justice ("DOJ") entered into a deferred prosecution agreement ("DPA") with UBS in which the bank agreed to disgorge the identities and records of a certain number of its U.S. clients who have offshore UBS accounts - accounts that the government alleges were used to hide taxable income or assets from the IRS. On February 19, 2009, DOJ then filed a civil lawsuit in federal court that seeks to force UBS to disclose the remaining identities and records of all of its U.S. clients with offshore accounts at UBS - allegedly more than 50,000 individuals with accounts holding many billions of dollars in assets.

These two developments are vivid examples of the federal government's commitment to pursuing U.S. taxpayers who are using offshore accounts to allegedly hide assets from the IRS and evade taxes. Given this enforcement campaign, U.S. taxpayers with undisclosed offshore accounts held through any foreign bank - not just UBS - should make an informed decision about whether to disclose these accounts to the IRS now in an effort to avoid potential criminal prosecution, and/or enhanced civil penalties.

UBS Immediately Discloses Certain U.S. Client Accounts

UBS entered the DPA with the DOJ in order to avoid a criminal conviction for conspiracy to defraud the IRS for UBS' alleged role in helping tens of thousands of U.S. clients hide assets from the IRS by use of offshore accounts from 2001 to 2007. In addition to paying the US government a total of \$780 million in disgorgement of profits, unpaid taxes, and penalties and interest, UBS also has agreed to cooperate with the government's ongoing criminal investigation of the use of overseas accounts. Chief among the terms of UBS' cooperation is its agreement to disclose immediately to the government the identities and account information of a certain number of UBS' U.S. clients. UBS' disclosure represents a significant parting of the veil of secrecy that Swiss banks traditionally have used to protect their account holders from foreign inquiry.

The Government Will Pursue the Identities of Additional Taxpayers

The DPA explicitly provides that it does not resolve the IRS' outstanding 2008 "John Doe" subpoena served upon UBS, which seeks the identity and records of all U.S. clients of UBS with offshore accounts. In the DPA, UBS reserved its right to argue in U.S. courts that Swiss banking law prohibits UBS from disclosing this information to the IRS, and the DOJ reserved its right to continue to litigate for the disclosure of this information. On the day after entering the DPA, the government filed a petition to enforce the pending "John Doe" subpoena. This petition and its detailed supporting documents reveal that the government is seeking what it describes as the names and records of more than 50,000 U.S. taxpayers with offshore UBS accounts. If obtained, the DOJ and the IRS can use this client information to pursue criminally or civilly any U.S. taxpayer who has used an offshore account to avoid paying taxes and/or not disclose on required reporting forms the existence of any account worth over \$10,000.

The Investigation Will Expand Beyond UBS Clients

The government's commitment to pursuing U.S. taxpayers with undisclosed offshore accounts represents a concerted and extremely effective campaign waged by the IRS, the DOJ, and the U.S. Senate, which has held

lengthy hearings on this issue and has issued subpoenas to other financial institutions also under scrutiny. The media further has reported that the DOJ has expanded its investigation into foreign bank accounts to include banking giants Credit Suisse and HSBC. Given the pace of events, other banks also will likely come under scrutiny. It is therefore incumbent on all taxpayers with undisclosed offshore accounts - including but not limited to accounts at UBS - to come quickly to an informed decision regarding whether to disclose their accounts in a preemptive bid to avoid or minimize the risk of potential criminal prosecution or enhanced civil penalties. Involved taxpayers should seek experienced defense counsel.

If you have any questions or comments about this E-Flash, please contact Peter Hardy at phardy@postschell.com, or Matthew Newcomer at 215-587-1076 or mnewcomer@postschell.com.

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