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U.S., Switzerland Resolve UBS Dispute; Number of Account Holders to Be Revealed Unclear

Switzerland has agreed to process a request by the U.S. for information on U.S. clients of UBS AG, the IRS announced on August 19. The agreement, negotiated under the U.S.-Swiss tax treaty, resolves the dispute between the Swiss banking giant and the IRS over alleged use of UBS accounts to facilitate tax evasion. UBS account information will not be revealed directly to the Service but to Switzerland's Federal Tax Administration (SFTA), which will decide if the account should be disclosed to the U.S. "The two governments have worked to rebalance their relationship and encourage the voluntary tax system," Neil Sullivan, chair, AICPA FBAR Task Force, told CCH.

Accounts

The U.S. and Switzerland estimate that information on approximately 4,450 accounts will be provided by UBS to the SFTA. The SFTA will create a special task force to expeditiously review the accounts. The task force will make its first 500 decisions within 90 days of the request for account information from the U.S. The remaining decisions will be made on a continuing basis concluding no later than 360 days after the initial request for account information from the U.S.

"The criteria for selecting the accounts are being kept confidential," IRS Commissioner Douglas H. Shulman said during a Washington, D.C., news conference. "At the request of the U.S., the criteria (in an annex to the agreement) will not be published until 90 days after the agreement has entered into force," the Swiss Department of Justice said in a written statement.

Shulman reported that the targeted accounts held over \$18 billion at one point in time. Some of the accounts have been closed.

UBS will notify clients if the U.S. has requested information on their accounts. Account holders will be informed that they are subject to a final decision of the SFTA. Account holders may agree to voluntarily disclosures if they submit a waiver to UBS or the SFTA.

UBS account holders may seek to block disclosures in the Swiss courts, IRS officials acknowledged. "There is a requirement under U.S. law if the taxpayer chooses to appeal (to the Swiss courts) the individual must provide copies of the appeal to the U.S. Attorney General," an IRS official explained. "It is the responsibility of the account holder and not the Swiss government to notify the U.S. Attorney General."

Larger Number

Shulman sought to downplay statements by U.S. officials and media reports that the IRS was seeking information on 52,000 UBS account holders. "The 52,000 number was reported by UBS as all accounts with any U.S. connection. Many of these accounts were held by U.S. taxpayers who complied with the law."

Shulman also declined to confirm reports that the IRS will expand its investigation beyond UBS to other Swiss financial institutions. "The Swiss government is prepared to work with us regarding similar U.S. requests, if any, involving other financial institutions," Shulman said.

Civil Case

At the same time the U.S. and Switzerland entered into their agreement, the IRS and UBS signed a separate agreement to resolve pending civil litigation. The IRS began an action in the U.S. District Court for the Southern District of Florida earlier in 2009 seeking enforcement of a John Doe summons. The IRS and UBS will shortly file a stipulation with the court to dismiss the enforcement action relating to the John Doe summons.

Compliance Initiative

UBS has agreed to encourage participation in the IRS offshore voluntary disclosure initiative. "If a [UBS] customer gets a notification within the next few weeks, there is still time to come in under the voluntary disclosure initiative," Shulman said. However, once the Swiss government turns the names over to the U.S. "all bets are off," he cautioned.

Shulman declined to say how many taxpayers have requested to participate in the voluntary compliance initiative. "We are not giving out final numbers...a lot [of taxpayers] are coming in."

The voluntary compliance initiative is set to end in September. "There are no plans to extend the deadline past September 23, 2009," Shulman said. "This is consistent with prior practice in other voluntary disclosure initiatives," Sullivan noted.

"The IRS makes it clear that any U.S. taxpayer who has an undeclared foreign account may come under criminal investigation if they do not take advantage of the IRS's voluntary disclosure policy," James Mastracchio, partner, Caplin Drysdale, Chartered, Washington, D.C., told CCH. Under the voluntary disclosure policy, taxpayers can avoid criminal prosecution and take advantage of a modified civil penalty structure. However, once the IRS has a taxpayer's name and begins an investigation, a voluntary disclosure will no longer be available and the taxpayer will face stiff civil penalties and possible criminal prosecution, Mastracchio noted.

Web Posting

In related news, the IRS has posted information about some UBS clients on its website. The IRS learned the identities of these individuals under the deferred prosecution agreement with UBS. The individuals identified on the IRS website all pleaded guilty to filing false tax returns.

By George L. Yaksick, Jr., CCH News Staff