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Swiss Deal With I.R.S. May Hide Some Tax Cheats

By [LYNNLEY BROWNING](#)

When the [Internal Revenue Service](#) announced a deal last month that would force Switzerland to reveal the names of thousands of Americans suspected of offshore tax evasion, the agency called it a major step forward. But tax lawyers and former government officials have begun to question whether the deal might allow some large tax cheats to remain in hiding.

"It's possible that some large account holders will not have their names disclosed," said Barbara T. Kaplan, a tax lawyer at Greenberg Traurig in New York.

Under the accord, the Swiss banking giant [UBS](#) agreed to turn over information on 4,450 American clients suspected of using Swiss accounts to evade taxes.

Asked if some account holders might avoid detection, H. David Rosenbloom, a partner at Caplin & Drysdale in Washington, said, "How can that result not occur?"

Ms. Kaplan, Mr. Rosenbloom and other tax lawyers and former I.R.S. officials say that the deal, reached Aug. 19, contains a sealed document that outlines the criteria the Swiss government will use for selecting the American clients whose names and account details will be turned over to Washington.

While the I.R.S. and UBS have pledged to make the sealed document public by Nov. 17, the lawyers say that it is likely to be short on specifics, because the I.R.S. does not want people with offshore accounts to know the criteria it is using to pursue tax cheats.

Disclosing specifics would cause tax evaders who fall below the limits to feel safe from disclosure by their banks, and to see no need to come forward voluntarily to the I.R.S. In tandem with the Swiss deal, the I.R.S. is encouraging UBS clients to disclose their assets by Sept. 23 — a parallel program that underscores how the accord with Switzerland may not net everyone.

"The identification of the filters that were used" in the deal "is an explosive issue, probably both in the U.S. and in Switzerland," Mr. Rosenbloom said. "The criteria used represent the boundary between what Switzerland considers fraud" and "what the U.S. considers acceptable versus unacceptable tax avoidance."

An I.R.S. spokeswoman, Michelle Eldridge, declined to comment on the criteria.

Unlike United States law, Swiss law distinguishes between tax evasion, which is legal, and tax fraud, which is not. Hiding cash to evade tax is not fraud under Swiss law. In Switzerland, tax fraud includes making false statements and signing documents that disguise the owners of the offshore assets.

While Switzerland has agreed to expand its definition of tax fraud, it has not disclosed any specifics. Under the accord, UBS will turn over client names to the Swiss tax authorities, which will review them and decide whether to forward them to the I.R.S. As a result, tax lawyers said, some large, cash-only accounts may not be disclosed because Swiss authorities may find no evidence of fraud.

“There’s a great deal of ambiguity regarding who will be disclosed,” said William Sharp, a tax lawyer in Tampa, Fla., who represents UBS clients.

UBS has said that it has 52,000 American clients — the number originally sought by the I.R.S. and the Justice Department — meaning that it will disclose fewer than one in nine names. Those 4,450 clients hold a total of \$18 billion in assets.

“They are understandably trying to spook people into coming forward,” Mr. Rosenbloom said. “I doubt that strategy works for large account holders, particularly in a world where they will receive notice from UBS in advance of a disclosure. They will, of course, wait to see whether that notice arrives. And I suspect some will escape the filters.”

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