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Voluntary Offshore Account Disclosures Nearly Twice Initial Estimate, Shulman Says

More than 14,700 individuals have requested to participate in the IRS's offshore disclosure initiative, Commissioner Douglas H. Shulman said on November 17. The number is almost twice the initial projection of 7,500 participants. Shulman, speaking at a Washington, D.C. news conference, also described the criteria used to select accounts at Swiss banking giant UBS AG for possible disclosure to the IRS under the recent U.S.-Switzerland agreement.

Disclosure Initiative

In exchange for full disclosure of unreported offshore accounts, the IRS offered taxpayers a reduced penalty framework. The offshore disclosure initiative opened in March and closed on October 15, 2009. "Our efforts have brought thousands of taxpayers back into compliance," Shulman said.

Shulman declined to predict how much revenue will be recovered from the initiative. The U.S. Justice Department projected that taxpayers will pay "tens of millions of dollars" to the U.S. Treasury. "The Justice Department is pleased with the extraordinary results," Deputy Attorney General David W. Ogden said in a statement.

"While the IRS has stated that more than 14,700 persons have come forward under the initiative, we need to keep in mind that some of those persons were not "intentional" tax evaders, but were persons who either inherited a problem created by their ancestors or were immigrants to the U.S. who were not entirely clear on their U.S. tax compliance responsibilities," Daniel Gottfried, attorney, Day Pitney, LLP, Hartford, Conn., told CCH. "This is not to underplay the gravity of the issue for those intentional tax evaders, for whom the program was a lifeline."

UBS Customers

The U.S.-Swiss agreement calls for the Swiss Federal Tax Administration (SFTA) to evaluate 4,450 UBS accounts within 360 days of August 31, 2009. The SFTA has created a special task force to review the UBS accounts and determine if they fall within the criteria of the U.S.-Swiss agreement.

"I am not going to disclose the exact number. I am satisfied with the progress to date," Shulman said when asked how many UBS accounts held by Americans have been disclosed to the U.S. The Swiss Justice Department reported on November 17 that the SFTA has until the end of November 2009 to issue the first 500 decisions.

Although the temporary initiative has ended, taxpayers can still make a voluntary disclosure, James Mastracchio, partner, Caplin Drysdale, Chartered, Washington, D.C., told CCH. "If a taxpayer receives notice from UBS that account information is about to be released, he or she can make a voluntary disclosure to the IRS and avoid criminal prosecution; however, the penalties are different." The reduced penalty framework under the initiative would not be available, Mastracchio explained.

Criteria

When the U.S. and Switzerland reached their agreement in August, they kept confidential the criteria used to select UBS accounts for possible disclosure. The Swiss Justice Department of Justice explained that the agreement covers the following persons where there is a reasonable suspicion of tax fraud or the like:

- (1) U.S.-domiciled clients of UBS who directly held and beneficially owned undisclosed (non-W-9) custody accounts and banking deposit accounts in excess of one million Swiss francs (approximately US \$990,000) at any point in time between 2001 and 2008; and
- (2) U.S. persons (irrespective of their domicile) who beneficially owned offshore company accounts established or maintained between 2001 and 2008.

The monetary threshold is lower in certain cases, the Swiss Justice Department reported. If the conduct involves, for example, a scheme of lies or submitting incorrect or false documents that might result in the concealment of assets and the underreporting of income, the threshold includes holders of accounts containing assets of 250,000 Swiss francs. Additionally, accounts that generated revenues of more than 100,000 Swiss francs on average per year for a period of at least three years, and where these revenues were not reported to the IRS, may be subject to disclosure.

UBS account holders can appeal release of their information to the Swiss courts, Mastracchio explained. However, U.S. law would require them to notify the U.S. Justice Department of their appeal to the Swiss courts.

Global Reach

The Service's investigation into global tax evasion is not limited to Switzerland, Shulman emphasized. "We will be looking at (foreign) banks with a large number of U.S. clients." The IRS is still in the early stages of a multiyear-effort to put a "serious dent in offshore tax evasion," Shulman added.

"From a global perspective, the result is that countries like Switzerland, which have been dependent on the banking industry, are going to need to reinvent themselves to keep their educated and sophisticated workforce in place," Gottfried said. As Shulman was discussing the offshore voluntary disclosure initiative, news of a Liechtenstein tax reform proposal was released, Gottfried noted. "The proposal is designed to encourage additional businesses to locate in Liechtenstein and to support other financial service activities, aside from just banking."

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