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23 DTR G-9

Tax Evasion

Wegelin Indictment Signals New Battleground In U.S. Offshore Evasion Fight, Attorneys Say

By Alison Bennett

The U.S. government's fight against offshore tax evasion will only continue to ramp up after the Justice Department indicted Swiss private bank Wegelin & Co. for allegedly conspiring to hide more than \$1.2 billion in U.S. assets from the Internal Revenue Service, attorneys said Feb. 3.

"I think it represents the drawing of a new battleground for the U.S. government in its long-running war against evasion," Scott Michel, president of Caplin & Drysdale, Chartered, Washington, D.C., told Bloomberg BNA in a Feb. 3 interview.

"The indictment lays out a road map for future investigations," Josh O. Ungerman of Meadows, Collier, Reed, Cousins, Crouch & Ungerman LLP in Dallas said Feb. 3.

'Unsettling Trends' Seen

Ungerman said in his view, the indictment exhibits "a number of unsettling trends" for U.S. taxpayers whose offshore accounts remain undisclosed.

"First, and most obvious, it is a criminal, not civil, matter," he said. "Second, the indictment includes a forfeiture component. And third, the indictment addresses actions that were taken to continue to hide accounts after the IRS had already pierced the veil of Swiss bank secrecy."

In the first-ever U.S. indictment of a foreign bank, the DOJ charged Wegelin Feb. 2 with conspiring with three client advisers to defraud the Internal Revenue Service and helping U.S. taxpayers conceal over \$1.2 billion overseas.

At the same time, the U.S. government seized more than \$16 million from Wegelin's correspondent U.S. bank (22 DTR GG-1, 2/3/12).

The civil forfeiture action "clearly sends a signal that just because a bank does not have a physical presence in the United States, that does not mean that the U.S. government has no remedies," Michel told Bloomberg BNA. "If a bank has assets in the United States, it is at risk."

Future of U.S.-Swiss Agreement Unclear

Practitioners said in interviews that the future of a possible agreement between the United States and Switzerland on revealing information on U.S. accounts at Swiss banks remains unclear following the DOJ's action, but new pressures have been created (see related report).

"I think this indictment means that everybody needs to get back to the negotiating table," Ungerman said. "I think everybody is pretty well incentivized."

He noted that at the end of January 2012, a handful of Swiss banks turned over millions of e-mails and documents to the U.S. government — information that will remain encrypted until a global settlement is reached on the treatment of the banks.

Among those banks, he said, are Credit Suisse, Julius Baer, and Basler Kantonalbank (20 DTR I-1, 2/1/12).

DOJ 'Not Going to Go Away.'

Asked about the impact of DOJ's actions on the U.S.-Swiss discussions, Michel said, "I would think that the combination of a criminal indictment and a forfeiture complaint is certainly going to demonstrate the seriousness with which DOJ is approaching this. The Justice Department is not going to go away here. It certainly shows intentions if those discussions don't advance along."

Bryan Skarlatos, an attorney with Kostelanetz & Fink LLP in New York, said, "The negotiations between the U.S. and Swiss banks are ongoing and this latest indictment means that the IRS is not going to back down. The indictment shows that the US is willing to indict a bank if the bank does not cooperate by providing information and turning over names of US taxpayers."

He added that, "It is likely that Bank Wegelin will have to agree to forfeit the \$16 million in UBS and agree to pay additional fines and cooperate with U.S. authorities in order to resolve the case."

Wegelin's Actions Seen Damaging

Attorneys said a key facet of the case is the government's charges that Wegelin actively solicited U.S. customers who previously had accounts at Swiss banking giant UBS and offered them a new way to conceal their assets after UBS entered into a settlement agreement with the DOJ to turn over account information.

DOJ will continue to look for banks and taxpayers who took a similar course of action, they said.

Wegelin "was intentionally seeking clients who wanted to hide their money," Kevin Packman of Holland & Knight LLP in Miami, told Bloomberg BNA Feb. 3. "It's pretty extreme, the things they did. You've got to believe other banks were doing similar things."

Ungerman said, "The IRS is concerned, and in some cases outraged, by the pattern of U.S. taxpayers fleeing a bank or country that is perceived to be breached only to turn around and use another bank or country that the taxpayer believes is safe from IRS inquiries. You're going to see a lot more people being indicted."

New Pressure to Join OVDI

All the practitioners interviewed for this story said the indictment is likely to send a clear signal to taxpayers to participate in the IRS initiative that allows voluntary disclosure of offshore assets in exchange for a set penalty structure and the chance to avoid criminal prosecution.

"This is going to be a wake-up call for some people," Ungerman said, noting that opportunities to come into the Offshore Voluntary Disclosure Initiative still exist for those whose information has not yet been turned over to U.S. tax authorities.

"This is another example that IRS is not going to just enjoy their victory and leave," he said. "They're going to continue to relentlessly go after these banks."

Taxpayers should move to get into the program now as the net of enforcement begins to tighten around the globe, Packman said. He said he has had clients interviewed at length about accounts in Panama and that banks are being scrutinized in Asia, India, Israel, and potentially Europe.

Playing on Uncertainties

He said other countries also are beginning to implement their own voluntary disclosure programs. "These governments are working together like never before," he said.

Michel, for his part, said IRS is continuing to mine the leads it is getting through the program and seeking information on other banks, and that in turn may lead to the government discovering those hiding their money.

"You just don't know what may happen," he said. "The Service is going to play on that uncertainty to coax people in."

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ISSN 1522-8800

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