
Justice Dept Challenges Offshore Private Banking

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Federal prosecutors and the Internal Revenue Service are getting serious about pursuing Americans who have parked money in offshore bank accounts. Last month, the government disclosed the indictment of a high-ranking executive of the Swiss bank UBS. The indictment alleges that as many as 20,000 Americans have accounts with UBS totaling over \$20 billion dollars. The indictment charges that the income on such accounts – unreported to the Internal Revenue Service in violation of U.S. tax laws that require American citizens to report their world-wide income – amounts to over \$300 million per year.

Alarming, the indictment refers to the 20,000 American UBS depositors as "unindicted coconspirators", signaling that the government considers persons who failed to disclose the existence and income of off-shore bank accounts to have crossed the line into criminal conduct and that it may seek to prosecute them – if it can determine who they are. Swiss banking laws are notoriously secretive, but relationships among within the world banking community have become substantially more cozy in recent years, due in large part to the widely-recognized need to track money flowing into terrorist organizations. Therefore, it may be possible for the United States to obtain information from Swiss banks that it could not have obtained in years past. Last summer, the IRS served administrative subpoenas on UBS' American affiliates to produce the names of all Americans with funds on deposit with UBS. The Department of Justice has just announced that it is expanding its investigation beyond depositors at UBS to include two additional European banks, HSBC and Credit Suisse.

The Internal Revenue Service has a "voluntary disclosure policy" that allows persons who come forward and admit the error of their ways before they are contacted by the IRS to obtain immunity from criminal prosecution. Part of the voluntary disclosure policy generally requires the payment of all of the evaded taxes, plus penalties and interest – which can amount to a very considerable sum. But if the Internal Revenue Service tracks down the taxpayers before they contact the agency, they will still be fully liable for taxes, penalties and interest, and face possible criminal prosecution as well.

According to some sources, the IRS is currently considering a modified voluntary disclosure policy that will allow taxpayers who have deposits in unreported off-shore accounts to come forward and to settle up their tax debts in exchange for reduced penalties and possibly reduced tax payments. Stay tuned – this is only under consideration and there is no such "deal" on the table at this time!

For now, here are some observations and suggestions:

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- Any person with deposits into a foreign bank account who has not reported the existence of such account and paid taxes on any earnings from such account is likely to be viewed as potential criminal by the IRS and the United States Justice Department.
 - Any person with an unreported foreign bank account should consult with a lawyer and give serious consideration to whether a "voluntary disclosure" is an appropriate thing to consider. If you wait until you have been contacted by the government, it is likely too late to make a voluntary disclosure.
 - Any person with unreported offshore bank accounts must consider any contact by the IRS – no matter how routine such contact may seem – as potentially the first step in a criminal prosecution. Upon such contact, the taxpayer should decline to allow himself/herself to be interviewed or to provide any information at all. Contact a lawyer immediately (not your accountant – your communications with accountants under such circumstances are not privileged).

Gray Reed & McGraw Partner Tom Rhodus, former Justice Department attorney, has extensive experience defending tax evasion cases. Several other Gray Reed & McGraw attorneys have extensive experience as attorneys working for the IRS. Gray Reed & McGraw also offers counsel to offshore investors on how to proceed with international trusts and investments.