

Americans May Have 'Mere Hours' to Disclose UBS Accounts to IRS

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By Ryan J. Donmoyer

June 18 (Bloomberg) -- U.S. citizens and residents with UBS AG accounts are racing the clock to disclose their secret holdings to the Internal Revenue Service after the Swiss Parliament ratified an agreement to surrender the names of 4,450 bank clients, tax lawyers said.

Swiss lawmakers yesterday ended a standoff and approved the bank's settlement with the U.S., allowing the names to be transmitted to tax authorities as early as this week. Lawyers said Americans who ignored an IRS offer last year to reduce penalties in exchange for voluntary disclosures are now flooding their offices with calls seeking advice on how to avoid possible sanctions, which could include prison sentences.

"For UBS account holders, they have mere hours to run to the IRS and hope they can disclose the account before the Swiss hand the data over," said Asher Rubinstein, a partner at Rubinstein & Rubinstein LLP in New York who said he's been "getting panicked calls all week."

The Parliament's vote ends Switzerland's long tradition of bank secrecy and is a victory for the IRS and U.S. Department of Justice, which fought a two-year battle to gain access to the accounts. It also removes the threat of further civil litigation against Zurich-based UBS and additional fallout under criminal law.

'Move Quickly'

IRS Commissioner Douglas Shulman said yesterday he expects the Swiss government to "move quickly" to transmit the information.

"We will immediately follow up on the information we receive from the Swiss and we will vigorously enforce the laws against those who have attempted to evade their tax responsibilities by hiding their assets offshore," he said.

IRS spokesman Dean Patterson said "even though the special provisions of the voluntary disclosure program are no longer available, it's always a good idea for taxpayers to come forward on their own and disclose tax issues before we find them."

A UBS spokeswoman in New York, Karina Byrne, said the bank previously told the 4,450 clients their account data would be given to the Swiss Federal Tax Administration, which would then determine if it should be disclosed to the IRS.

The SFTA said yesterday in a statement that it had already reviewed 3,000 accounts to determine if they met the criteria for transfer to the U.S. under the accord. It said it had already disclosed the names of 500 consenting account-holders.

IRS Offer

About 15,000 Americans voluntarily reported secret offshore bank accounts to the IRS last year, after the tax agency offered to reduce certain penalties and not seek criminal charges. The program ran from March to October.

Robert Fink, a tax lawyer with Kostelanetz & Fink LLP in New York, said many of the 4,450 UBS account holders may already have come forward after being warned of possible disclosure by the bank and the Swiss government.

“The number of new names that the IRS will get will be far, far less than 4,450,” he said.

Americans who didn't take the IRS's leniency offer last year now face possible criminal charges, prison time and the loss of all the money in their Swiss accounts, plus “substantially more,” said Barbara Kaplan, a tax lawyer at the New York firm Greenberg Traurig LLP. Those who come forward before the IRS learns their identity by other means may still avoid prison, she said.

'Worst-Case Scenario'

“I think people are starting to realize that their opportunity to avoid disclosure has run out,” she said. “The worst-case scenario, including criminal prosecution, could ensue. It's worth taking the chance on the civil side to mitigate the chance on the criminal side.”

UBS, Switzerland's biggest bank, avoided U.S. prosecution in February 2009 by paying \$780 million, admitting it helped wealthy Americans evade U.S. taxes from 2000 to 2007, and handing over account data on more than 250 U.S. clients. The day after the settlement, the U.S. sued the bank, seeking data on 52,000 Swiss accounts.

UBS settled that case in August, agreeing to hand over as many as 4,450 names to the Swiss government to review before passing them on to the IRS.

Parliamentary approval became necessary after a Swiss court ruled in January that the agreement couldn't be enforced as it then stood. Swiss lawmakers ratified the deal yesterday after the lower house agreed to drop demands for a public referendum that would have caused a deadline for disclosure of the information to be missed.

Undeclared Assets

Under terms of the settlement between the two countries last year, Switzerland will turn over details of UBS accounts of U.S. residents that held more than 1 million Swiss francs in undeclared assets at any time between 2001 and 2008. Other benchmarks include U.S. citizens who were beneficiaries of "offshore company accounts."

In both cases, there has to be a suspicion of "tax fraud and the like," according to a statement distributed last year by the Swiss Justice Ministry in Bern.

The steepest penalty allows the IRS to seize the higher of \$100,000 or 50 percent of an offshore account's value when the holder deliberately didn't disclose it to the Treasury Department. That penalty can apply to multiple years.

Scott Michel, a lawyer at Caplin & Drysdale in Washington, said he had received two calls yesterday from clients considering a voluntary disclosure after the Parliament's vote.

Leniency for Volunteers

Michel said he and other tax lawyers hope the IRS will continue to show leniency to people who come forward, even without explicit offers to reduce penalties such as those last year.

"If they start hammering people with 100 percent or more penalties, people are going to stop making voluntary disclosures," Michel said.

At least 16 UBS clients have been charged with tax crimes in the case. Two UBS bankers and three other alleged enablers of tax crimes also have been charged. At least 150 other Americans are under criminal investigation, the Justice Department said last year.

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