

IRS to Launch Prosecution of Another Foreign Bank for Aiding and Abetting U.S. Tax Fraud Similar to the Case Brought Against UBS

The United States Internal Revenue Service (“IRS”) is expected to “very shortly” launch another prosecution against a foreign bank similar to the case they pressed against Union Bank of Switzerland (“UBS”), an IRS agent said on Monday, March 15, 2010.

Linda J. Osuna, IRS Special Agent in Charge of the Tampa Field Office, stated she expected that the U.S. case against the foreign bank, which she declined to name, would be for “the same behavior that got UBS in trouble.” “Look very shortly, you’re going to see it...I would say within the month,” she said after addressing a money laundering conference in Florida.

Last year, Switzerland's UBS, settled two U.S. government lawsuits against it, by paying \$780 million in one case and also later agreeing to turn over the names of 4,450 account holders at its Swiss branches to U.S. authorities, although this last deal was blocked after a Swiss court ruled in favor of a UBS client, saying her actions did not constitute tax fraud.

The Swiss government plans to ask its parliament to approve the information handover deal it struck with Washington over the UBS case, so that the deal is binding and plugs the legal loophole it says is stopping it from honoring the Agreement. However, there is strong opposition to such a maneuver by large portions of the Swiss population.

The rulings by a Swiss court in January, and again in February, 2010, that such a transfer of account data would breach existing Swiss law has “thrown cold water” on the U.S.-UBS settlement, said Laura Stuber, counsel for the U.S. Senate Permanent Subcommittee on Investigations.

“It could result in the U.S. having to go back to court to get all 50,000 of the [UBS] account names,” Stuber told the conference, adding that more than \$18 billion was estimated to have been hidden from the IRS in the UBS accounts involved.

The IRS originally sought 52,000 names of U.S. persons allegedly holding accounts with UBS in Switzerland. The IRS originally brought a John Doe subpoena in U.S. District Court in Florida seeking to compel UBS to turn over the names. UBS did not, and the Swiss government intervened, claiming that such an act would impinge upon its sovereignty. The Swiss government seized the records of UBS so that they could not be turned over by UBS. The Swiss and the U.S. Justice Department then negotiated a “deal”; an Agreement, pursuant to an existing treaty, whereby, the Swiss would turn over 4,450 names meeting certain criteria as set forth in a special annex to the Agreement. The Annex effectively defined the most egregious U.S. tax violators.

Swiss law does not consider tax evasion as a crime, as opposed to tax fraud. Tax fraud requires some sort of affirmative deceptive act. Tax evasion can be accomplished by simply failing to act, such as failing to file an IRS W-9 withholding form. The distinction between the two has been an important part of Swiss public policy for decades. That distinction has thrown into question, as held by the Swiss Administrative Court, the Agreement with the IRS.

Additionally, Osuna said further tax evasion cases were likely to result from information brought to light by a voluntary disclosure program, which led to 14,700 individuals coming forward before an October 15, 2009 deadline to own up to holding previously undisclosed accounts overseas. The rush to voluntarily disclose was prompted by the specter of UBS turning over the names to the IRS before clients had a chance to fess up,

thereby, resulting in potential criminal prosecution, civil fines, and penalties, which in many cases would wipe out the entire account balance.

"Even after the October 15th date, we've had at least 2,000 more, they come in every day," she said. "Now, they won't get out of the penalties and interest, but they are hopeful to get back into compliance," Osuna added.

Treasure Trove of Data Possessed by the IRS Will Lead to Prosecutions for Years to Come

Osuna said that tax evasion prosecutions sometimes took time, but "I suspect you will see them coming, probably in waves, in the next six to eight months." Osuna declined to give specific details, but said the information brought to light by the tax amnesty program was "going to be a source of cases for years for us."

The U.S. Senate Permanent Subcommittee on Investigations, which is chaired by Michigan Democrat, Senator Carl Levin, has estimated that offshore tax abuse costs the U.S. Treasury \$100 billion a year in lost revenue and it is pressing for tougher legislation against tax havens, tax evasion, money laundering and financial fraud.

"We have the means to end offshore tax abuse if we have the political will to act," Stuber said.

Last month, a U.S. client of London-based Hong Kong and Shanghai Bank Corp. ("HSBC") pleaded guilty to conspiracy over assets stashed abroad to evade taxes, the first plea in recent U.S. government tax prosecutions to involve a foreign bank other than UBS.

HSBC, Europe's biggest bank, said last week that data on up to 24,000 Swiss client accounts had been stolen by a former employee and ended up in the hands of authorities in France, where the ex-worker fled. The accounts were from a swath of international clients, including many U.S. citizens. U.S. authorities were likely negotiating with the French through a treaty request to get the names of any U.S. HSBC clients involved.

Further, in 2008, the German government paid a reported 4.2 million euros (\$5.8 million) for a stolen CD-ROM containing the names of over 4,500 account holders at LGT Bank, Lichtenstein's largest bank. This stolen data is said to contain the names of clients from Europe and beyond. Criminal investigations and prosecutions have already taken place in Britain, France, and Germany based upon the LGT disclosure. In fact, former Deutsche Post chief Klaus Zumwinkel's Liechtenstein trust was uncovered in the LGT stolen data, and he admitted to tax evasion in a spectacular case.

Moreover, Credit Suisse, Switzerland's second largest bank said, on Sunday, March 21, 2010, that it is restricting its bankers' travel to Germany after authorities in Germany said they had launched 1,100 tax evasion probes against the bank's clients and were investigating Credit Suisse staff on suspicion of aiding tax evasion. This new probe was brought about by another stolen CD-ROM said to contain the names of 1,100 account holders. This new stolen data was also purchased by German authorities. Undoubtedly, pursuant to treaties between Western European countries and the U.S.; secret bank account data concerning U.S. persons will find its way to the IRS.

Given the charged political and prosecutorial climate surrounding offshore accounts these days, those U.S. persons who have been informed by a foreign government, including the Swiss Federal Tax Authority, that their names are in line to be turned over to the IRS, or those U.S. persons who have been informed by the IRS that they are the target of an investigation, or those U.S. persons who hold now, or who have held offshore accounts, would be well served to engage competent legal counsel, such as the Pascazi Law Offices as soon as possible,

to sort out their individual circumstances and potential liabilities. This is a situation, whereby, doing nothing could cost you a bundle, or worse, land you at a no frills hotel run by the U.S. Bureau of Prisons!

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Should you have any questions or concerns about your legal rights, and/or obligations in any legal matter, or transaction, do not hesitate to contact the Pascazi Law Offices for a free initial consultation.

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