

Breaking Developments in Tax Law
08/19/09

Agreement Between the United States and Swiss Governments Will Require UBS to Disclose 4,450 Swiss Accounts Held by U.S. Citizens or Residents

U.S. citizens or residents holding undeclared accounts with UBS AG (“UBS”) should take note of the agreement made on August 19, 2009, between the United States and Swiss governments to settle the U.S. Department of Justice’s lawsuit against UBS seeking the names of U.S. citizens or residents holding Swiss accounts with UBS. The agreement requires the disclosure to the Internal Revenue Service (“IRS”) of 4,450 UBS Swiss accounts held by U.S. citizens or residents. The Swiss government will notify the account holders that their names are being released to the IRS, although the account holders will have an opportunity to appeal the release of their names to a Swiss administrative court.

Holders of undeclared Swiss accounts with UBS have until September 23, 2009, to participate in the IRS’s Voluntary Disclosure Program (the “Program”). The Program allows U.S. holders of undeclared foreign accounts to disclose those accounts with the possibility of paying reduced tax penalties and avoiding criminal tax prosecution. Participation in the Program will require sending a statement to the IRS to provide details about the undeclared foreign accounts by submitting any un-filed or amended tax returns and Forms TD F 90-22.1, Report of Foreign Bank Account (“FBARs”) for any years between 2003 and 2008.

The IRS will review the disclosure for possible criminal or civil tax penalties. Criminal tax penalties include a fine up to \$500,000 and a prison term ranging from one to 10 years, but criminal tax penalties may be waived under the Program. Reduced civil tax penalties under the Program include (i) a 20 to 25 percent penalty on unpaid taxes owed to the IRS for taxable years between 2003 and 2008, and (ii) in lieu of multiple penalties for not filing tax returns or FBARs, a single 20 percent penalty based on the highest value of the account for each year between 2003 to 2008.

To be eligible for the Program, U.S. citizens or residents holding undeclared Swiss accounts with UBS will have to voluntarily disclose their accounts before the Program ends on September 23, 2009, and before their identities are released to the IRS. Any voluntary disclosures under the Program made after the IRS receives the names of the account holders with UBS Swiss accounts might not be eligible for reduced tax penalties or clearance from criminal tax prosecution. The agreement between the United States and Swiss governments does not indicate when UBS will disclose the 4,450 UBS Swiss accounts held by U.S. citizens or residents. Those account holders considering participation in the Program should take immediate steps to make the voluntary disclosure.

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