



# White Collar Defense and Investigations

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## **Foreign Bank Account Enforcement Update: The Justice Department Closes the UBS Case While the IRS Announces That a Second Amnesty Program Is Likely**

*By Matthew D. Lee*

The Justice Department has dismissed its landmark case against Swiss banking giant UBS AG, announcing that the bank has successfully complied with the terms of its Deferred Prosecution Agreement entered into in February 2009. Under the terms of that agreement, UBS avoided criminal prosecution by admitting it helped U.S. citizens hide money in secret Swiss accounts, agreeing to pay \$780 million in penalties, and providing the IRS with the names of more than 250 of its U.S. customers who were suspected of committing tax fraud. The day after that agreement was signed, the Justice Department filed suit against UBS in federal court to enforce a "John Doe" summons seeking to force the bank to turn over the names of the approximately 52,000 U.S. citizens holding bank accounts at UBS. Following much diplomatic wrangling, the U.S. and Switzerland eventually reached an agreement that UBS would turn over account information on 4,450 U.S. clients of UBS through a specified treaty process.

In a statement issued on November 16, 2010, IRS Commissioner Doug Shulman announced that the U.S. had withdrawn its "John Doe" summons against UBS, characterizing the event as "yet another milestone in our ground-breaking efforts in the international tax compliance arena." Shulman stated that to date, the IRS has received

approximately 4,000 accounts through the treaty process, and expects that the final count of UBS accounts from all sources to exceed 7,500. The IRS also announced that nearly 15,000 U.S. taxpayers made voluntary disclosures regarding secret foreign bank accounts during the term of the special Offshore Voluntary Disclosure Program which ended on October 15, 2009. After October 15, another 3,000 individuals made voluntary disclosures regarding foreign bank accounts. Meanwhile, the Justice Department continues to prosecute selected account holders, with over twenty criminal cases filed against UBS customers, bankers, and advisors and more expected to follow.

While the Justice Department's withdrawal of the "John Doe" summons directed to UBS closes a significant chapter in the foreign bank account enforcement saga, it is clear that the IRS and the Justice Department have no intention of ceasing their enforcement efforts in the international arena. Much speculation is focused on which bank and/or country will be the next target, particularly as funds flow out of Switzerland in the wake of the UBS affair. Even as media attention has been focused primarily on UBS and its account holders, Commissioner Shulman has repeatedly emphasized that the IRS focus on international tax compliance "has never been about one bank or one country"

and warned last month that “[w]e have additional cases and banks in our sights right now.” In a speech delivered on December 9, Commissioner Shulman commented that the IRS has been mining the vast data it has received through the Voluntary Disclosure Program for leads involving banks, advisors, and promoters all over the world, including Asia and the Middle East.

The U.S. government’s crackdown on international tax evasion has not gone unnoticed by financial institutions worldwide. For example, Israel’s largest bank, Leumi, is demanding that its depositors declare either that they are not U.S. citizens or disclose their accounts to the IRS. U.S. citizens who refuse to comply risk having their accounts closed. It has also been widely reported that the Justice Department has commenced a criminal investigation of U.S. taxpayers with accounts at HSBC in India and Singapore. With both the IRS and Justice Department ramping up their efforts to curtail offshore tax avoidance and evasion, individuals with undeclared foreign accounts can no longer assume that they will remain undetected or protected by foreign banking secrecy laws.

In another significant development, the IRS announced on December 9 that a second amnesty program for holders

of secret foreign bank accounts would likely be offered in the near future, a recognition that many holders of secret accounts still have not come forward to declare their holdings, particularly in light of the uncertain civil penalty structure applicable to post-October 2009 disclosures. Commissioner Shulman made clear that there will be fundamental differences in any subsequent amnesty program, and that taxpayers taking advantage of the second amnesty program will not receive the same deal offered to taxpayers who made disclosures before the initial program ended in October 2009. The IRS said that details regarding the second amnesty program would be forthcoming.

Individuals with questions about foreign bank accounts, or who are considering making a voluntary disclosure to the IRS regarding foreign bank accounts, should consult experienced tax counsel to understand the benefits and risks of the voluntary disclosure process. Blank Rome LLP has significant experience regarding foreign bank account reporting and IRS voluntary disclosure practice, and can assist individuals in navigating the voluntary disclosure process. ■

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