

Breaking Down the UBS Settlement Agreement

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On August 19, 2009, the Justice Department and the Internal Revenue Service announced that the agreement with the Swiss government has been finalized.

The Department of Justice Press Release intentionally provides limited information with respect to the process and criteria that will be used to generate the list of names to be provided by UBS. In other words, the government is not tipping its hand.

From the information available, I have pieced together the following summary of the process for requesting information regarding undeclared offshore holders as well as other relevant information:

1. In order to initiate the process to gather account information, the IRS will submit a treaty request to the Swiss government describing the specific accounts for which it is requesting information. The IRS does NOT need to know the names before making the request;
2. Upon receipt of the treaty request, the Swiss government will direct UBS to notify the affected account holders that their information is included in the IRS treaty request;
3. Receipt of this notice will not by itself preclude the account holder from coming into the IRS under the Voluntary Disclosure Program, which is due to end on September 23, 2009;
4. IRS Commissioner Shulman stated in a press conference today that the IRS has no intention of extending the September 23, 2009 deadline of Voluntary Disclosure Program;
5. At some point in the process, the Swiss government will direct UBS to make the account information covered by the treaty request available for processing by the Swiss Federal Tax Administration;
6. The privacy of all account holders remains protected under Swiss law while the Swiss Federal Tax Administration determines whether to approve the request;
7. It appears that the account holders may contest the final decision of the Swiss Federal Tax Administration before the Federal Administrative Court;
8. It appears that the Federal Administration Court ruling will be the account holder's last chance to contest the disclosure to the U.S. government;

9. Information provided to the IRS through this process will be thoroughly examined for all potential civil and criminal tax violations;
10. The DOJ press release indicates that the IRS will assess any additional tax, interest and a number of applicable penalties including the penalty for the willful failure to file a Report of Foreign Bank and Financial Account (FBAR);
11. The UBS press release indicates that information concerning approximately 4,450 accounts will be provided to Swiss Federal Tax Administration in response to the treaty request;
12. IRS Commissioner Shulman stated that he expects that the IRS will receive information concerning more than 5,000 accounts from UBS alone;
13. IRS Commissioner Shulman also stated that the Swiss government is going to process requests for information from other financial institutions in a similar manner to the UBS case;
14. If the Swiss apply this process for requesting information to other financial institutions, this settlement is much larger than the UBS case. Effectively, the IRS will have a Quasi Settlement with ALL Swiss financial institutions.

For more than a year now, I have been diligently tracking the news related to the UBS case. On a daily basis, I read almost every UBS news article published and post the most the relevant articles to my website. I utilize all of my contacts within the government to get the best and latest information possible for my clients. In addition, I have represented numerous clients in the two prior offshore disclosure initiatives (OVCI & LCCI) offered by the IRS. My experience with the earlier programs has been extremely valuable in advising my current clients. My entire practice is dedicated to helping clients resolve tax problems!

Please call (305) 576-4242 to schedule a consultation.

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