

# Contemplating a Voluntary Disclosure?

## Issues to Consider

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If you are reading this article, there is a very good chance that you either have an undeclared offshore account or know of a family member that does. There is also a really good chance that you are trying to determine whether you should pursue the Offshore Voluntary Disclosure deal that is being offered by the IRS or continue to gamble on bank secrecy.

If you are expecting bank secrecy to rule the day, be very careful. The latest news reports indicate that UBS AG has entered into a settlement agreement with the United States. The settlement agreement details could be announced as early as tomorrow.

News reports have also indicated that UBS AG will NOT be paying the 3 to 5 billion dollar fine to the U.S. that was reported last month. Assuming that UBS AG is NOT paying a fine, it must be providing some sort of compensation right? That compensation will likely come in the form of names of undeclared account holders.

Why does this scenario make sense? Simple, the U.S. cannot allow UBS to fail because the ripple effect will be enormous. We already know that DOJ consulted with the Federal Reserve prior to assessing the \$780 million dollar fine to UBS in the criminal case. The fine should have been much worse, but to the DOJ's credit; it considered the big picture and the impact that a UBS failure would have on an already faltering global economy.

Some will argue that the Swiss will never allow for its bank secrecy laws to be violated and that there is not much risk that UBS will disclose the names. The Swiss will likely assert the UBS disclosure is consistent the requirements under the treaty and that its bank secrecy laws are NOT being broken.

How so you say? It is actually very simple. The Swiss will simply broaden the definition or interpretation of "Tax Fraud" when applying it to a given set of facts. The broader the definition, the greater the number undeclared accounts that will be captured by the criteria set forth. In other words, far more accounts will fit the new definition than under the criteria previously used to determine the initial 250 to 300 names that were already turned over to the U.S.

In the end, politics will rule the day because all of the parties involved need to claim victory. The Swiss claim victory by asserting that the UBS disclosure was consistent with Swiss law. The Swiss will likely assert that the names provided by UBS were a few bad apples that were engaging in fraudulent activity and therefore not entitled to bank secrecy protection.

The Obama Administration will claim victory as it has repeatedly asserted that it wants names of undeclared account holders. In addition, the Administration will point to the thousands of taxpayers that have flocked to make voluntary disclosures prior to the September 23, 2009 expiration of the offshore disclosure deal announced on March 26, 2009.

UBS will claim victory by settling this lawsuit which has been a dark cloud hanging over the bank for the past year. As for the disclosure, UBS will simply assert that it acted under the direction of the Swiss government.

Some will argue that the names provided will only consist of large dollar accounts that involved some sort of structuring or other fraudulent activity so their account is safe. This is simply not true. There are a number of ways that your offshore account can be discovered. Consider the following scenarios:

- a. **Anyone with knowledge of the account may turn you in for a reward under the IRS whistleblower program;**
- b. Your ex-spouse may turn you in;
- c. Your ex-spouse may turn themselves in and implicate you in the process;
- d. Your family member may turn you in;
- e. Your ex-employee may turn you in;
- f. Your ex girlfriend / boyfriend may turn you in;
- g. Your attorney or accountant who assisted you may turn you in;
- h. Your offshore banker may turn you in (ex. UBS AG);
- i. An employee of the bank may sell a disc which contains your account information to the government (ex. LGT);
- j. Your bank may close the account because it does not want your undeclared account on its books (ex. UBS, HSBC, Credit Suisse). What do you do with your check when the bank closes your account? and,
- k. You may simply get audited by the IRS.

Even if your offshore account is not at risk of being turned over and there is not much chance that anyone will turn you in because you have been top secret about your affairs, there are still other considerations to be had. The most obvious is that you are perpetuating the fraud on the U.S. Government.

You are leaving this fraudulent situation for your spouse, children or other heirs to inherit. Do you really want your heirs to inherit this type of legal problem? Are your heirs capable of keeping a lid on this account in the same manner that you have? Will your heirs have differing opinions about the account after you pass away that will eventually drive a wedge between them? If you are concerned about this happening, you need to take control of the situation while you are here and have the ability to do so.

There is general rule that I tell almost all of my clients, get to the IRS before the IRS gets to you. If you get to the IRS first, you are probably dealing with a **CIVIL** matter amounting to payment of back taxes, reduced penalties, and interest. If the IRS gets to

you first, you are probably dealing with a **CRIMINAL** matter amounting to larger penalties, interest, and the possibility of prison time.

Hire a qualified tax attorney and explore your options before it is too late. The deadline for the Offshore Penalty Framework is September 23, 2009.

**My Law Firm handles IRS Offshore Voluntary Disclosure Cases. To schedule an initial consultation, please call 305-576-4242 or visit our website at [www.mytaxlaw.com](http://www.mytaxlaw.com). Teig Lawrence, J.D., LL.M.**