



## All Overseas Bank Accounts More Vulnerable to IRS Scrutiny

TAXES, FOREIGN ACCOUNTS, HOLDERS, STOCKS, HEDGE FUNDS, IRS

Posted By: Mark Koba | Senior Editor

CNBC.com

| 21 Aug 2009 | 12:28 PM ET

Are the days of secret overseas bank accounts over?

This week's agreement by Swiss bank **UBS** to name US account holders is being seen as a watershed, leaving many wealthy Americans with foreign accounts scrambling to figure out what to do.

The agreement with UBS breaks the Swiss tradition of banking secrecy and is expected to force thousands of the bank's clients in America to disclose financial details to the Internal Revenue Service.

But the decision doesn't just affect UBS clients. The accord also allows the IRS to get account information from other Swiss banks if the agency suspects any tax evasion practices in those institutions.

The agreement also has encouraged the IRS to be more aggressive about going after all foreign bank accounts, no matter what country they're in.

"It's shock and awe by the IRS," says Bill Smith, director of CBIZ MHM's National Tax Office. "UBS is a big victory and they're going to use this to go after banks in places like the Cayman Islands and the Bahamas."

As a result, the settlement could lead to the criminal prosecution of Americans who used foreign bank accounts to evade paying income taxes.

- **Slideshow: The World's Safest Banks**

The US, in fact, has required all holders of foreign bank accounts to disclose details of their holdings for the past 39 years. But enforcement in the past has been lax, and bank secrecy rules have made it difficult for the IRS to make any kind of crackdown.

Now that's changing.

"The UBS situation altered the threshold of investigating off shore holdings," says Dennis Nason, former head of Credit Suisse in Miami, Florida. "And there's the Patriot Act, which gave

US authorities the ability to monitor all off shore accounts owned by Americans. They are using it now to track tax evasion— and with a bad economy, they want the money."

The IRS estimates as many as one million US taxpayers need to file foreign holding compliance forms in any given year, but only about 20 percent currently do so.

The IRS declined comment for this story. It referred all questions to its web site.

So who must report their holdings to the IRS and when? According to the government agency's web site, those who must file are: "Any US person who has a financial interest in or signature authority over any financial account in a foreign country, if the aggregate value of these accounts exceeds \$10,000 at any time during the calendar year."

Signature authority means that the person may not have money in the account, but has authority over the funds and controls the disposition of those funds

In addition to account holders of foreign banks, owners of hedge funds are now required to file FBAR forms— a decision made by the IRS two weeks ago.

But there is a current 'amnesty' for those who have not filed with the IRS on the income from a foreign bank account. This also includes foreign credit cards and brokerage accounts. They can report on such accounts by Sept. 23 of this year and avoid possible criminal prosecution. There are still some stiff penalties, however, including paying up to 20 percent of the largest account balance and tax on those earnings.

- **Slideshow: Gallery of Financial Crime**

But no other taxes are due from prior periods. "The amnesty program is mainly for the last six years," says Smith. "They're not going to go after people before that. There is a statute of limitations."

Most foreign account holders will have to be pro-active to get the amnesty.

"The voluntary disclosure program offers immediate relief," says Michael Rozbruch, a licensed CPA in Maryland and founder of Tax Resolution Services. "But to take advantage of it, most of the account holders must come forward before their names are turned over to the IRS."

But there is some wiggle room on amnesty says Martin Press, a Florida based tax attorney at Gunster, Attorneys at law. "Even in the case of UBS, where the government has the names, they will be looked at on a case by case basis as to whether it's too late for amnesty. That was part of the deal."

For those who reported income from the accounts on their regular tax returns, but didn't file a separate form on holdings in foreign bank accounts—known as the FBAR—don't have to go through the amnesty program. But they do need to file the missing FBAR form with the Treasury Department to avoid any possible penalties.

"For most people, its not a complicated form," says Smith. "It's mostly account information—how much is in there, the owners, addresses, the account number, who has control. It only gets a bit tricky if you have trusts and several accounts."

Normally, a FBAR is due by June 30 of the year following the year that the account holder meets the \$10,000 threshold. But just ten days ago, the IRS announced that if the taxpayers' only interest was signature or other authority, they do not have to file FBARs until June of 2010 for the year 2008.

And taxpayers who have a financial interest in a hedge fund or other co-mingled account also don't have to file until June of 2010 for tax year 2008.

Analysts say US taxpayers with foreign accounts should expect the IRS crackdown to continue.

"This is just the beginning," says Dennis Nason. "They will go after Swiss banks, and other off shore centers. To not file a FBAR is generally not an oversight, but a deliberate attempt to not report the account. Taxpayers have pretty much been warned."

© 2009 CNBC.com

URL: <http://www.cnbc.com/id/32508538/site/14081545/>

---

[Privacy Policy](#) . [Terms of Service](#)

© 2009 CNBC.com