

UBS

UBS to divulge 4,450 account names, more expected

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By: Wayne Tompkins

The Internal Revenue Service will get a look at nearly 4,500 UBS Bank client accounts that the taxman believes are most likely to contain undeclared assets connected to offshore tax evasion.

The Swiss banking giant agreed Wednesday to turn over to the IRS the details of the suspicious accounts of American customers, ending an intense trans-Atlantic legal fight.

IRS Commissioner Doug Shulman said the accounts held \$18 billion in assets at one time. Many have since been closed, he said.

"I believe this agreement gives us what we wanted — access to information about those UBS account holders most likely to have been involved in offshore tax evasion," Shulman said.

UBS has an estimated 52,000 accounts of U.S. customers. He said the information about 4,450 accounts being relinquished to the agency were the ones most suspected of containing undeclared assets.

He said that other account holders appear to be in compliance with U.S. tax laws.

"Some of these cases will have criminal overtones. Some of these people are going to jail," said Andrew Hall, a partner at Hall Lamb & Hall in Miami who specializes in the trial of complex commercial cases. "You're going to see the Department of Justice and the U.S. attorney involved as well."

Hall has warned that financial professionals such as accountants could also become ensnared in the IRS's net, noting many clients did not prepare their returns on their own.

"It's going to raise a whole lot of issues as to what these guys did or didn't do," he said. "Some are going to be innocent, and some are not."

The two sides told a Miami federal judge last week they had reached a tentative agreement, but the details were not released until Wednesday.

Account holders will be notified before their names are released to the IRS. They will then have the ability to appeal their release before Switzerland's Federal Administrative Court.

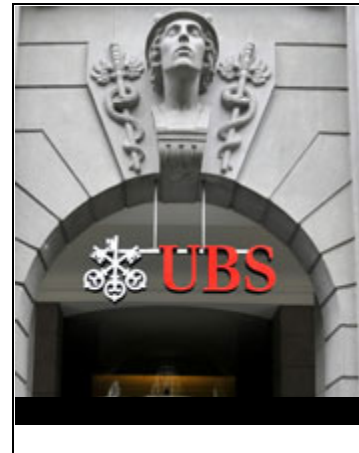
The process is expected to take several months, IRS officials said.

Shulman said the IRS, as a result of the UBS case, is aware of other financial institutions, law firms and other entities that help Americans hide assets offshore.

"We're going to have our targets set on all categories of folks," Shulman said in an interview with Bloomberg Television.

Shulman said the Swiss government has assured U.S. authorities that the release of the names conforms with both Swiss banking laws and the tax treaty signed by both countries. Shulman said the IRS reserves the right to resume its legal fight if any of the names are withheld.

"This issue is not going away, and people hiding assets and income offshore will find themselves



increasingly at risk due to our efforts in this area," Shulman said.

AGREEMENT VIOLATED

Marcos Kerbel, a veteran international banker and professor at Florida International University, said UBS violated not only U.S. law but a longtime understanding with its Swiss competitors.

"There was an agreement among the Swiss banks for many years that they would not do anything in any country to assist in violating either foreign exchange laws or income tax laws of the country," Kerbel said. "It's one thing for someone to leave the United States and go to Switzerland and do whatever they want to do. But the moment they came here to actively solicit and structure these things, they were totally out of line. What goes around comes around."

Clemente Vazquez-Bello, an international banking attorney with Gunster in Miami, said he questions how the 4,450 clients suspected of holding undeclared assets were selected.

"Somebody may have not declared an asset and not filed a fraudulent tax return," he said. "Are these the cases of the people that had the largest amount of assets that were hidden? Or are these the cases where there was evidence of tax fraud that the Swiss can justify, under their laws, that Switzerland has not caved in and has not allowed a violation of law by UBS?"

The result could be a spin war in which both sides try to claim they got the better of the other.

Vazquez-Bello said that the Swiss could say these cases involve tax fraud — false tax returns — so they fall under the treaty. The U.S. will counter that these are the largest cases with the most assets, these are the "big guys" we wanted to get.

"Which is the reality? Neither side wants to appear as if it caved in to the other," Vazquez-Bello said. "As we see these actions develop in the courts, we may be able to determine which it is. In this case, both parties cannot have their cake and eat it, too. It would be very unusual if all the bigger ones turn out to be tax fraud cases."

The Swiss Bankers Association issued a statement in support of Wednesday's agreement.

"The out-of-court agreement avoids a prolonged legal battle that would have had an uncertain outcome, and UBS can now continue with its consolidation process in an atmosphere free of this legal uncertainty," the association said.

Swiss Justice Minister Eveline Widmer-Schlumpf told a news conference in the capital of Bern that the deal lifts the threat of criminal prosecution against UBS, which could have endangered the bank's very existence and dealt a severe blow to the Alpine nation's economy.

"There was no alternative to this solution," she said.

Asked if other Swiss banks could be targeted for future prosecution in the United States, she said: "We don't expect this to be the case."

Under the agreement, the IRS will submit a treaty request to the Swiss government describing the accounts for which it is requesting information. The Swiss government will then direct UBS to initiate procedures to turn over information on thousands of accounts to the IRS.

The IRS will recommend criminal prosecution in those cases where the facts warrant such an action, as well as assess additional tax, interest and a number of applicable penalties.

Dennis Nason, who at one time headed an office of Credit Suisse and now runs a Miami consulting firm, said the release the U.S. clients' names is one more step in the erosion of Swiss bank secrecy and "indeed, worldwide bank secrecy."

"It will not be the final chapter by a long shot," Nason said. "Since one does not know the persons on the list, the action will undoubtedly prompt individuals to come forth on their own to the IRS while they still have that option rather than face indictment if they don't."

Nason said there could be far-reaching implications for international banking.

“Certainly governments in Latin America and elsewhere are following the proceedings closely to decide if they want to follow the precedent by requesting the U.S. banks or the government to turn over the list of all their nationals with accounts in U.S. banks as well,” Nason said, noting that may be difficult to refuse since the bar of probable cause has been lowered in this case.

“Now, the fact that one has an account in a tax haven is considered by the court in this case as a probable cause that they are avoiding taxes,” he said. “Prior to this ruling the government had to show that there was reason to believe or could prove that tax evasion was likely.”

UBS ADMISSION

The settlement resolves a six-month legal fight that put unprecedented pressure on the bulwark of Swiss banking secrecy. UBS, the world's second-biggest wealth manager, admitted in February to participating “in a scheme to defraud the U.S.” and agreed to pay \$780 million and disclose the names of more than 250 clients who allegedly hid assets from the Internal Revenue Service. A day later, the IRS sued the Zurich-based bank for information on as many as 52,000 clients.

Switzerland argued that any further disclosure would require the bank to violate the Swiss banking confidentiality law. The Swiss also threatened to seize the data sought by the IRS if U.S. District Judge Alan Gold ordered disclosures violating Swiss privacy law.

Since February, four UBS clients have agreed to plead guilty to failing to report their offshore bank accounts. Thousands of clients have avoided prosecution by voluntarily disclosing their accounts to the IRS.

A former UBS banker, Bradley Birkenfeld, pleaded guilty to helping wealthy Americans evade taxes and has cooperated with prosecutors. He is scheduled to be sentenced on Friday in federal court in Fort Lauderdale.

Birkenfeld was a banker for California billionaire Igor Olenicoff, who pleaded guilty in December 2007 to filing a false tax return that failed to declare accounts at UBS, where he once had \$200 million in assets. Olenicoff got two years probation and paid \$52 million in back taxes, interest and penalties.

At his guilty plea, Birkenfeld said UBS earned \$200 million a year by managing \$20 billion in assets and setting up sham entities for clients in tax havens like Panama and the British Virgin Islands.

Birkenfeld said as many as 60 UBS private bankers had trolled for clients at UBS-sponsored art shows, yachting regattas and golf and tennis tournaments. He said he toted customer checks to deposit in European banks and bought diamonds for one client, smuggling them to the U.S. in a toothpaste tube.

Another UBS banker, Raoul Weil, was indicted and declared a fugitive, and a third who ran the now-shuttered cross-border business, Martin Liechti, was held by the U.S. as a material witness for several months last year.

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This story includes reporting by the Associated Press and Bloomberg News.