

## Tax Man Cometh — and Is Looking For Your Overseas Accounts

By Peter Zeidenberg

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The secrecy surrounding so-called tax havens was once thought to be inviolate. But nothing lasts forever, and the walls that have protected tax havens are beginning to crack. Those changes will have enormous ramifications for the banking world in general and for U.S. citizens with funds in overseas accounts in particular.

Some U.S. citizens opened offshore accounts with a belief that their account information would be kept secret from the prying eyes of the government. It now appears that those who relied on these expectations of secrecy may be gravely disappointed.

The Department of Justice and the IRS are now acting in concert to obtain access to banking records previously thought by most observers to be well beyond the reach of the U.S. government. While the final outcome of those efforts is still not certain, it's clear that the tide has turned on bank secrecy, and what was once unthinkable is becoming reality.

On February 18, 2008, UBS, the largest bank in Switzerland and one of the largest in the world, entered into a deferred prosecution agreement (DPA) with the DOJ and agreed to pay a fine of \$780 million. In its settlement agreement with the government, UBS admitted to conspiring with unnamed U.S. taxpayers to help them avoid paying income tax. As part of its settlement, UBS agreed to turn over information concerning approximately 300 U.S. account holders.

The day after the DPA was announced, the DOJ moved to enforce compliance with a previously filed John Doe summons for information regarding 52,000 U.S. accounts held by UBS. Under the terms of the DPA, UBS can assert any and all legal defenses to the summons, but a failure by the bank to comply with a final, adverse order would be deemed a breach of the agreement.

The G-20 has exerted tremendous pressure on offshore financial centers to soften their rules on bank secrecy. Faced with the prospect of being blacklisted by the G-20, Andorra, Austria, Guernsey, Hong Kong, the Isle of Man,

Jersey, Lichtenstein, Luxembourg, Macao, Monaco, Singapore, and Switzerland have indicated a willingness to renegotiate their bilateral tax agreements and cooperate on cases of tax evasion as well as fraud. Once those agreements are renegotiated, U.S. account holders at UBS and other overseas banks should expect that their account information — at least regarding future activities — may eventually be shared with the IRS.

Not coincidentally, at the same time the G-20 was pressuring tax havens to loosen their bank secrecy laws, the IRS announced a new, voluntary disclosure program that began on March 23 and is scheduled to last six months. This program is intended to reach many U.S. taxpayers who are not under civil or criminal investigation and whose funds are from legal sources but who have not properly disclosed foreign bank accounts or who have failed to pay tax on income in those accounts. If those taxpayers identify themselves to the U.S. government, they will pay reduced (but likely still significant) penalties (and interest), both for any failure to disclose accounts and any failure to pay tax. Taxpayers who come forward voluntarily and who meet the requirements of the disclosure program are far less likely to be prosecuted than those who do not.

Those two developments mean that most U.S. citizens with formerly undeclared overseas bank accounts now have little choice but to come forward within the next six months and take advantage of the IRS program. The alternative — doing nothing and simply hoping that the account information will never be discovered by the U.S. government — is not a realistic option. Penalties for noncompliant taxpayers who are later identified by the DOJ or the IRS may exceed the value of their undisclosed accounts. Thus, the six-month window of opportunity provided by the voluntary disclosure program should be seized before it closes in September.

Also, foreign banks should be aware that the IRS and the DOJ may interview program participants to learn if they were aided and abetted by bank employees. Thus, any foreign bank that does significant business with U.S. account holders should review the adequacy of its compliance programs, as well as take all steps necessary to ensure that its past conduct creates no legal jeopardy for the bank or its employees.

A new era of more transparency in the banking world is coming and those who fail to recognize and adapt to this fundamental change may be in for some most unwelcome surprises.