

SWISS COURT RULING MAY PREVENT UBS FROM TURNING OVER NAMES OF SWISS BANK ACCOUNT HOLDERS TO THE IRS

A recent ruling by a Swiss Federal Administrative Court has jeopardized the August 2009 settlement (the "Settlement") between the United States and the Swiss bank UBS concerning the turnover to U.S. tax authorities of information regarding UBS accounts maintained by U.S. taxpayers. The ruling may force the U.S. to revive the lawsuit originally filed against UBS claiming that it aided taxpayers in hiding more than 15 billion dollars in assets from the IRS.

The Settlement requires UBS to disclose the names of account holders that have engaged in certain acts of tax fraud, which are defined to include situations where U.S. taxpayers: (i) hid their ownership of the account through corporations, trusts and other similar entities; or (ii) maintained an account of over one Million Swiss Francs without filing the necessary W-9 tax form.

The case before the Administrative Court involved a UBS account holder who sought to prevent her account information from being released to the IRS as part of the Settlement. The client failed to file a W-9 tax form in connection with her UBS account. The Administrative Court ruled that, according to Swiss law, the failure to file a W-9, regardless of the size of the account, was tax evasion as opposed to tax fraud, and thus, the account holder's information could not be released to the IRS pursuant to the Settlement.

The ruling raises doubts as to whether UBS will be able, under Swiss law, to turn over the 4,450 names required by the Settlement if these types of account holders cannot be disclosed. The Swiss government said that it will decide by January 27, 2010, as to how it can ensure compliance with the Settlement in light of this recent court decision. The only option now to allow UBS to disclose these types of account holders would be for the Swiss government to reform its laws regarding tax fraud and bank account secrecy. The Swiss Tax Department has said that, notwithstanding the Administrative Court's decision, the majority of names to be turned over pursuant to the Settlement were suspected of fraud and not simple tax evasion.

Regardless of the outcome, the United States' effort over the past year to hunt down tax evaders, including filing suit against UBS and entering into the Settlement, has already been wildly successful. Besides the 250 names initially turned over by UBS, the threat of prosecution was enough to compel Fourteen Thousand Seven Hundred (14,700) US taxpayers to voluntarily disclose their offshore bank accounts to the IRS over the past several months. The recent ruling will have no effect on the taxpayers who have already taken advantage of the IRS amnesty program and disclosed their accounts.

Our Firm is intimately involved in monitoring these events and will continue to provide you with pertinent updates as more information becomes available. If you have any questions about the matters covered in this Client Alert, or wish to schedule a private consultation, please call Terrence A. Oved, Esq. of Oved & Oved LLP by telephone at 212.226.2376 or contact by email at terry@ovedlaw.com.

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