

# The Washington Post

## Deal Marks End of Era for Swiss Banking

IRS to Be Given Names Of Suspected Tax Cheats

By David S. Hilzenrath and Tomoeh Murakami Tse  
Washington Post Staff Writers  
Thursday, Aug 20, 2009

Time is running out for wealthy Americans with secret Swiss bank accounts, as they weigh whether they want to turn themselves in to the Internal Revenue Service or gamble that their names are not among the thousands set to be exposed in one of the U.S. government's most aggressive efforts to hunt down international tax cheats.

The Swiss government will turn over names of suspected U.S. tax dodgers who have held 4,450 secret accounts at banking giant UBS -- accounts that at one point together contained as much as \$18 billion, U.S. officials said Wednesday. Further, the Swiss government promised to assist the United States in similar investigations at other Swiss banks, the IRS said.

The announcement follows a long-running effort by the U.S. government to penetrate Swiss bank secrecy, focusing first on UBS. The United States had been seeking a federal court order demanding that UBS identify the holders of 52,000 accounts. The Swiss government had promised to block such a disclosure, leading to weeks of negotiations, a settlement and then Wednesday's announcement.

"We will be receiving an unprecedented amount of information," IRS Commissioner Douglas Shulman said. "This agreement represents a major step forward with the IRS's efforts to pierce the veil of bank secrecy and combat offshore tax evasion."

The U.S.-Swiss deal is a blow to rich Americans who have availed themselves of Switzerland's legendary banking secrecy. Some UBS customers have participated in a leniency program, which began in March and expires Sept. 23, that allows them to come forward to the IRS in exchange for reduced penalties.

But others are the gambling type.

"You really have to think about whether you want to stick your head out and do this, or make the calculated judgment that your name is not going to be disclosed," said Robert W. Ray, a partner at Pryor Cashman who focuses on white-collar criminal defense and compliance issues. He said some of his clients have taken advantage of the leniency program but others are waiting on the sidelines to see what they should do.

He said that one complicating factor is that it is not clear how the names are being chosen. "I think there might be some clients who would have otherwise taken comfort in the fact that 'Well, my account is, relatively speaking, small. So if we're talking about a select number of names being turned over by the Swiss government, I don't really have anything to worry about.' But if this, for example, is a random sampling . . . would you want to take that risk? I think it's a complicated question."

Ray added: "I think this was carefully constructed that way to put people precisely in that situation -- really run in fear. Because it's likely to lead more people than are actually capture-able to come forward and do what they should do."

Experts said that the government's deal with the Swiss is the first of many likely to come.

"It's like a dog that's tasted the blood of its first victim," said Ron Geffner, a former enforcement attorney at the Securities and Exchange Commission who now heads the financial services group at Sadis and Goldberg. "It's clear that the concept of a perpetually safe tax haven is a fantasy that no longer exists."

Sen. Carl M. Levin (D-Mich.), who held hearings on UBS last year, called the U.S.-Swiss deal "at most a modest advance" toward ending abuses of bank secrecy.

IRS officials offered no estimate of how much the agency might recoup in back taxes and penalties.

Shulman said the deal sends an "unmistakable message" to tax dodgers: "Wealthy Americans who have hidden their money offshore will find themselves in a jam."

The Swiss government has agreed to work with the United States on similar requests for disclosure involving other Swiss banks, Shulman said on a conference call with reporters.

"This agreement helps resolve one of UBS's most pressing issues," UBS Chairman Kaspar Villiger said in a statement. "I am confident that the agreement will allow the bank to continue moving forward to rebuild its reputation through solid performance and client service."

He added: "UBS welcomes the fact that the information-exchange objectives of the settlement can be achieved in a lawful manner under the existing treaty framework between Switzerland and the United States."

UBS will pay no penalties under the deal, the bank said.

Switzerland was fighting to preserve the reputation for privacy that has made its banking industry a global powerhouse and a pillar of the Swiss economy.

The deal includes potentially face-saving concessions for Switzerland, as it argues that its tradition of secrecy survived the battle. The United States agreed to narrow its request for names to those considered most likely to have engaged in tax evasion.

More important, the United States agreed to drop its lawsuit against UBS and pursue the information through a Swiss legal channel under a tax treaty between the two countries.

The U.S. government tried to use that channel last year but was unsuccessful. To settle the lawsuit, Switzerland agreed to handle the request more expeditiously this time, and apparently on different terms. In predicting that the new deal will expose identities of the holders of 4,450 accounts, Shulman's comments imply that the request is mainly a formality.

If the Swiss don't follow through as expected, the United States can resume its battle in the U.S. courts.

"I have every reason to trust the Swiss government and expect that we will get these accounts," Shulman said.

Swiss law already allowed the release of client information under certain egregious circumstances, such as fraud. But the threshold for disclosing the information has been a point of contention.

Asked how the agreement has changed Switzerland's bank-secrecy standards, an IRS official who briefed reporters on the condition of anonymity said, "Under this agreement, there has been a recognition of standards that are somewhat broader than [there] had been at the beginning of this process."

"But we don't want to get into the specifics of that," the official added, until additional details of the settlement are released in 90 days.

The Swiss Embassy in Washington issued a statement saying that the United States committed to "refrain from unilateral information-gathering measures that infringe Switzerland's sovereignty and rule of law."

In February, to avoid criminal prosecution, UBS agreed to pay the U.S. government \$780 million and admitted that it had schemed to defraud the United States by helping Americans hide money from the IRS. At that time, the Swiss government provided the names of 200 to 300 American depositors, and UBS said that Swiss law prohibited it from disclosing any more.

*Tse reported from New York.*