Dow Jones Newswires

GETTING PERSONAL: UBS Case Shows Murky Tax Advice Realm
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A Dow Jones Newswires Column
1223 words
14 May 2008
12:24
Dow Jones News Service
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NEW YORK (Dow Jones)-- Taxes are an odd affair at the private banks of elite Wall Street firms. Bankers spend their days talking to rich clients about **tax**-proofing their fortunes, but many must not give **tax** advice.

A **tax** probe at **UBS** AG (**UBS**) highlights the conundrum. U.S. prosecutors are looking into whether the firm's private bank was involved in **tax** evasion schemes through the European principality of Liechtenstein, which is beyond the reach of U.S. **tax** officials.

Many bankers at top institutions say rules put in place by their firms prevent them from giving **tax** advice to clients.

Indeed, some major banks - including **Citigroup** Inc. (C) - prohibit their bankers from offering **tax** advice even if they are also certified public accountants or lawyers.

These scenarios beg the question: How do they discuss trusts and other **tax**-saving strategies without crossing the line into advice?

"It's an area that most private banks and trust companies are so sensitive to that they go to great lengths to make sure people dealing with clients are very careful what they say," said Daniel M. FitzPatrick, managing director and chief executive officer of Citi Trust, a unit of **Citigroup** that works with Citi Private Bank and Smith Barney clients in the U.S. "We want to make it clear that we're not practicing law or accounting."

In fact, there is no law preventing a banker from giving **tax** advice, according to Bryan C. Skarlatos, a partner at Kostelanetz & Fink, LLP, a New York law firm that specializes in **tax** controversy and **tax** penalties. Skarlatos also teaches on the topics at New York University School of Law.

Restrictions at some banks are probably simply aimed at keeping out of trouble with clients and the Internal Revenue Service. Bad **tax** advice can trigger civil and criminal penalties under both the Internal Revenue Code and a U.S. Treasury regulation known as Circular 230, which lays out the rules for **tax** practitioners including CPAs, **tax** attorneys, enrolled agents and others.

"Bankers are trying to limit their liability," said Skarlatos.

Some banks have gotten into trouble under the **tax** code for selling certain **tax** strategies, Skarlatos added. Currently, the Treasury is pursuing cases against banks under section 6700 of the code, he said. However, a financial advisor who "sells you a type of Roth IRA that doesn't really work" could be penalized under section 6694, 6700 or 6701, he added.

Jeffrey N. Pennell, a law professor at Emory University, called **tax** advice by estate planners "a huge gray area." He noted the ubiquitous disclaimers at the bottom of estate planner emails that say "'This is not **tax** advice, you can't rely on what we've said.'"

"The hard question is: what is the practice of law, or what is **tax** advice?," said Pennell. "Because most folks aren't sure, they try to dodge the question by saying they're not giving **tax** advice, whatever that means."

M. Holly Isdale, managing director and head of wealth advisory services at Lehman Brothers Inc., is a lawyer admitted to practice in multiple jurisdictions, but she doesn't practice law and makes that clear to clients.

"We're very careful not to provide **tax** advice, and to encourage clients to retain appropriate counsel and rely on their advice when making any decisions with respect to strategies or plans they may execute," said Isdale.

Citigroup doesn't allow its bankers to give **tax** advice even if they are CPAs or lawyers "as a matter of our internal risk procedures," said spokesman Alex Samuelson.

Many banks keep **tax** experts on hand however, as part the wealth advisory team. Citi Trust, for example, has access to people including Anthony Cetta, also a professor at Fordham University in New York. They may also maintain lists of certified public accountants and other **tax** experts to recommend to clients.

UBS Private Bank in the U.S. isn't allowed to provide **tax** advice but does employ people with **tax** experience "who work in conjunction with a client's **tax** professionals since **tax** is part of a client's overall financial planning picture," company spokesman Kris Kagel said in an email.

UBS is also allowed to provide **tax** advice through its own trust company, which is regulated by the Office of the Controller of Currency, part of the U.S. Treasury Department. The trust company is able to do **tax** work including filing of **tax** returns.

So where does an estate planner draw the line?

At Citi Trust, planners may go so far as to suggest that if a client opens, say, a grantor retained annuity trust, it will offer certain **tax** benefits, according to spokesman Alex Samuelson. However, they may not go so far as to say a client should use a GRAT, he added.

Indeed, a planner must stop short of saying 'This would be a great trust for you,' according to a number of bankers. Instead, the next step might be to advise the client to get **tax** advice on the trust from a CPA or attorney. (If the client decides to go ahead with the trust, however, the private bank can be an administrator.)

"It's a bit of a subtle thing: if it's a question of an individual making a decision [on taxes], that individual needs to be advised by an external person who works for him or her directly," said FitzPatrick.

A wealth advisor who talks to a client about a GRAT could potentially run afoul of Circular 230 through the slightest slip up, said Skarlatos. For example, he said, an advisor who answers a client question about how to report the GRAT on his **tax** return could trigger penalties for himself in some cases.

Kathryn Keneally, a partner at the law firm Fulbright and Jaworski LLP in New York, said bankers and estate planners tend to be very diligent about saying 'We're not going to give **tax** advice, consult your own **tax** advisor.'

She likened an advisor discussing **tax** planning to an advertisement that talks about a certain drug, but cautions the viewer that he or she should consult a doctor and must get a prescription to use it.

In the current **UBS** case, the Department of Justice and the Securities and Exchange Commission are examining the firm's conduct in relation to cross-border services provided by Swiss-based **UBS** client advisors to U.S. clients during the years 2000 to 2007, Kagel, the company spokesman.

The investigation is looking at the firm's Wealth Management International Business, which has some clients who live in the U.S. and have offshore accounts.

DOJ is examining whether certain U.S. clients sought, with the help of **UBS** client advisors, to evade their U.S. **tax** obligations by avoiding restrictions on their securities investments imposed by an agreement **UBS** entered into with the U.S. Internal Revenue Service in 2001.

(**Arden Dale** is a Getting Personal columnist who writes about personal finance; she covers topics including **tax** and estate planning, retirement, investment strategies and financial needs of small businesses.)

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