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WikiLeaks Announcement Points to Importance of Whistleblowers in Tax Enforcement

by Marie Sapirie

Summary by **taxanalysts**

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Following the turnover of account data to WikiLeaks by a former Swiss banker during a January 17 press conference in London, lawyers reiterated the warning that taxpayers with unreported offshore accounts need to come forward promptly. "They have to get in before the IRS gets that information. Once it gets posted, it may be too late for those folks," said Bryan C. Skarlatos, a partner at Kostelanetz & Fink LLP.

Charles P. Rettig, a partner at Hochman, Salkin, Rettig, Toscher & Perez PC, agreed that "waiting is not a viable option for taxpayers with previously undisclosed interests in foreign financial accounts."

The data reportedly contain information on more than 2,000 offshore banking clients from at least three banks, including Bank Julius Baer & Co. Ltd., the former employer of Rudolf Elmer, who turned over the data to WikiLeaks. WikiLeaks founder Julian Assange said that "it could be weeks" before the information is released publicly, because the organization plans to review the data before publishing it.

Scott D. Michel, a partner at Caplin & Drysdale, said that noncompliant taxpayers are at heightened risk as a result of the recent IRS efforts on international enforcement, legislation such as the Foreign Account Tax Compliance Act, and the increasing number of whistleblowers. "Add all of it up and there is really nothing to be said for bank secrecy," he said.

"What this [WikiLeaks announcement] shows is that there are many sources from which the U.S. government and IRS can get information about noncompliant taxpayers," said Skarlatos. Whistleblowers such as Elmer are a source of information that may grow much larger once the IRS begins to award whistleblowers cash under section 7623(b), which was enacted as part of the Tax Relief and Health Care Act of 2006. "Whistleblowers are a big part of tax enforcement, especially when the IRS does not have the money it wants or needs for enforcement," said Skarlatos. (For prior coverage of new whistleblower regulations, see *Doc 2011-883* or *2011 TNT 11-3*.)

Bruce Zagaris, a partner at Berliner, Corcoran & Rowe LLP, said that "the U.S. government sometimes puts pressure on countries to override bank secrecy, but taxpayers also have to deal with the reality that whistleblowers -- people who work in financial institutions -- are making this information public." Zagaris said he anticipates that similar disclosures will be made in the future, in part because governments are encouraging whistleblowing by offering rewards. He noted that the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) follows the trend of larger whistleblower awards.

While the recent focus on offshore tax evasion has captured headlines around the world, the press conference put a new twist on the story for noncompliant taxpayers. "What's extraordinary about this is that the disclosure is going

to be a public event," said Michel. "Up until now, there have been private bankers who have provided information to the IRS, and information has come through the voluntary disclosure program, but all of that has been conducted in a confidential environment."

In contrast to the confidential tax investigations and audits that have thus far defined the U.S. international enforcement efforts, the public posting planned by WikiLeaks could include financial information for taxpayers who have not been engaged in tax evasion. "People on this list could have their financial information become public, but their tax returns are perfectly fine," said Michel. He added, however, that it is possible that the source or sources who supplied the information were looking for clues that suggested the accounts were used to evade tax.

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