

WEEKEND INVESTOR

Swiss Banks Pressure U.S. Clients

Swiss banks are asking account holders to prove they are in compliance with U.S. tax laws.

By LAURA SAUNDERS

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Swiss banks are pressuring current and former U.S. account holders to disclose undeclared assets to the Internal Revenue Service, experts say.

In some cases, the banks are freezing accounts unless clients can prove they have declared the account to the IRS—or that they are trying to enter the agency's limited-amnesty program for U.S. taxpayers with secret accounts, says Bryan Skarlatos, a partner at law firm Kostelanetz & Fink in New York. The firm has handled more than 1,000 offshore account disclosures to the IRS.

In addition, many Swiss banks are sending letters to current or former U.S. clients warning that information about their accounts will be soon turned over to the IRS, says Edward Robbins, a tax lawyer at Hochman, Salkin, Rettig, Toscher & Perez in Los Angeles. These banks "can be rewarded for scaring noncompliant taxpayers into the IRS's program," he adds.

Taxpayers who don't step forward to the IRS before the agency obtains information about them usually face higher penalties and are at risk for criminal prosecution. Many Swiss banks will be turning over details of accounts in existence as far back as August 2008.

"Some people believed that if they closed or moved an account, they wouldn't be found, but that's not the case," says William Sharp of Sharp Partners, a law firm with offices in the U.S. and Zurich that has represented many U.S. customers of large Swiss banks. "Now IRS detection of an account is simply a matter of when."



Swiss bank PostFinance is cooperating with U.S. tax authorities. *Getty Images*

Like other advisers, Mr. Sharp recommends that noncompliant U.S. taxpayers who have or had Swiss accounts move to declare them immediately.

The pressure is the latest result of an intense campaign by U.S. officials against offshore tax evasion that took shape after Swiss banking giant UBS admitted in 2009 that it helped U.S. taxpayers hide money abroad. UBS paid \$780 million to the U.S. and turned over the names of more than 4,000 U.S. taxpayers with accounts to settle U.S. charges, effectively ending decades of Swiss bank secrecy.

In August, U.S. and Swiss officials announced a comprehensive program allowing many small and medium-size Swiss banks to settle with the U.S. It doesn't apply to about a dozen larger banks still under active investigation by the Justice Department.

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As of mid-December, more than half of Switzerland's government-backed local banks said they will participate in the program, including ones in Bern, Geneva and Lucerne. Other banks that have said they will cooperate include Valiant Bank, Migros Bank, Bank Coop and PostFinance, which is backed by the Swiss postal system.

A large portion of Switzerland's roughly 300 banks are expected to take part in the U.S. program, but not all are expected to publicly disclose their participation, experts say.

Banks that do participate should be able to settle outstanding legal issues with the U.S. However, many will have to turn over account information on U.S. taxpayers and pay stiff penalties up to 50% of the balance of the accounts to obtain legal closure.

Mr. Sharp says Swiss banks hope to reduce their own penalties by pressuring their clients to confess.

"If the client's disclosure came after the bank sent a warning," he says, "then the bank may be able to avoid a penalty on those assets." But if the customer confessed of his own volition, "then the IRS can double-dip and assess penalties on both," he adds.

In a related development on offshore accounts, the Second U.S. Circuit Court of Appeals in New York on Dec. 19 rejected a taxpayer's assertion of the Fifth Amendment in response to a grand-jury subpoena of offshore bank-account records.

A three-judge panel affirmed a long-standing doctrine that tax information and other required records aren't protected by the constitutional right against self-incrimination. In particular, the court upheld a sanction of \$1,000 a day until the records are produced.

Mr. Skarlatos, whose firm argued the case, says that several other federal appeals courts have ruled the same way on this issue in recent years, although experts were waiting for the outcome of this case by New York's high-profile court.

An appeal to the U.S. Supreme Court is unlikely, he says, as the court has twice declined to consider the issue.

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