Bloomberg

Swiss Banks Seek Tax Amnesty as Third Accept U.S. Offer

By David Voreacos - Jan 26, 2014

One-third of Swiss banks offered amnesty by the U.S. for helping Americans evade taxes have applied for the program, a federal prosecutor stated at a Jan. 25 conference, according to three lawyers.

The U.S. government gave more than 300 Swiss banks until Dec. 31 to seek non-prosecution agreements if they have "reason to believe" they violated tax laws. Some 106 sought to join the initiative, which requires participants to disclose how they helped Americans hide assets, hand over data on undeclared accounts and pay penalties.

The program is the largest assault in a five-year U.S. Department of Justice crackdown on offshore tax evasion. Kathryn Keneally, an assistant attorney general in the its tax division, cautioned at the American Bar Association conference in Phoenix that the final figure may change, the lawyers said. She didn't name any banks seeking to take part in the U.S. effort, which isn't open to 14 institutions already under criminal scrutiny, including Credit Suisse Group AG (CSGN) and HSBC Holdings Plc. (HSBA)

Bryan Skarlatos, of Kostelanetz & Fink LLP in New York, who attended the conference, said the number of banks that signed letters of intent was more than expected.

"It's a result of the banks' desire to have some certainty regarding their status with DOJ," Skarlatos said. "I believe that DOJ is pleased with the response to the program so far."

Keneally declined to comment on the amnesty program.

$2.2 Trillion

"She said that every new bank in the program is a new source of information, especially on where the money went, either to other Swiss banks or banks around the world," said Josh Ungerman of Meadows Collier Reed Cousins Crouch & Ungerman LLP in Dallas. "She said there are a lot of avenues to get information, and some are visible and some are not so visible."

Banks in Switzerland, the largest cross-border financial center with $2.2 trillion of assets, closely examined accounts before seeking to join the disclosure program.

"The takeaway is the U.S. has been successful in getting Swiss banks to really start cooperating and enter into non-prosecution agreements," said Martin Press, a tax attorney in Fort Lauderdale, Florida, who heard Keneally speak.

The Swiss government encouraged banks to join the program, announced Aug. 29. The Swiss Bankers Association criticized the program's cost, pointing to questions such as who qualifies as a U.S. client and what assets are considered untaxed. The answers could determine how much a bank pays in penalties.

Cantonal Banks

To gain non-prosecution deals, banks must pay 20 percent of the value of accounts not disclosed to the Internal Revenue Service on Aug. 1, 2008, 30 percent for such accounts opened between then and February 2009 and 50 percent for accounts opened afterward.

Of four categories, those under criminal investigation are known as Category 1 banks, while those seeking non-prosecution agreements are Category 2 banks. Later this year, banks can tell the government if they don't have undeclared U.S. accounts and won't pay fines, or if they have predominantly local clients.

At least 33 announced through late December that they will join some form of the program, including 19 cantonal banks, or regional lenders typically owned by regional governments.

They include Union Bancaire Privee, the Geneva-based bank founded by Edgar de Picciotto in 1969; Edmond de Rothschild Group, the Geneva-based wealth manager owned by Baron Benjamin de Rothschild; EFG International AG (EFGN), controlled by Greek billionaire Spiro Latsis and his family; and Bern-based Valiant Holding AG. (VATN)

Tax Cheats

The program has provoked Swiss debate on whether the U.S. went too far in trying to pierce banking secrecy that protected American tax cheats for decades. The crackdown escalated after 2009, when the U.S. charged UBS AG (UBSN), the biggest Swiss bank, with helping Americans hide $20 billion in assets.

UBS avoided prosecution by admitting it fostered tax evasion and paying $780 million. It handed over 4,700 accounts. The U.S. prosecuted 100 taxpayers, bankers, lawyers and advisers for offshore tax crimes. At least 38,000 taxpayers avoided prosecution by paying back taxes and penalties and disclosing which offshore banks and advisers helped them hide assets.

Banks seeking non-prosecution agreements must disclose the total number of U.S. accounts since 2008, their highest dollar value, and the employees who managed them. The banks also must use independent examiners to certify findings.

Category 3 banks seek Justice Department letters saying they're not a target of a criminal probe. In return, an independent examiner must confirm the bank broke no laws. Banks must apply from July 1 to Oct. 31. Banks seeking Category 4 are those with almost all Swiss clients.

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