

With Conclusion of Swiss Bank Program, U.S. Department of Justice Sends Warning to Foreign Banks Around the Globe

As 2016 unfolds, the U.S. Justice Department and the Internal Revenue Service continue their unrelenting crackdown on offshore tax evasion, with particular focus on foreign banks and their officers, employees, and agents that may have assisted U.S. customers in evading their tax obligations. Acting Assistant Attorney General Caroline D. Ciruolo of the Justice Department's Tax Division recently confirmed that the fight against offshore tax evasion is far from over:

"We remain committed to holding financial institutions, professionals and individual taxpayers accountable for their respective roles in concealing foreign accounts and assets, and evading U.S. tax obligations." ... "Individuals and entities engaged in offshore tax evasion are well advised to come forward now, because the window to get to us before we get to you is rapidly closing."

In January 2016, the Tax Division announced the final resolution in its "Swiss Bank Program," which resulted in 80 Swiss banks avoiding criminal prosecution by paying more than \$1.36 billion in penalties as well as being required to cooperate in criminal or civil proceedings against individuals and other entities. The Justice Department has separately reached criminal resolutions with numerous other foreign banks, including UBS, Credit Suisse, and Bank Leumi. Most recently, the Tax Division announced that it had entered into a deferred prosecution agreement with Switzerland's Bank Julius Baer, and that two of that bank's employees had pleaded guilty to helping U.S. clients hide assets and evade their U.S. tax obligations.

Utilizing myriad investigation tools and the wealth of leads developed in these cases, U.S. law enforcement officials are now actively investigating financial institutions in other countries that may be havens for secret offshore accounts or undisclosed assets, including Israel, India, Singapore, Hong Kong, Panama, Belize, and others. Combining these leads with

"[F]inancial institutions and individuals who have facilitated the concealment of offshore accounts and the evasion of U.S. tax obligations would be well advised to anticipate an investigation and consider voluntarily disclosing any criminal activity to the department before they become the subject of an investigation."

— DOJ ACTING ASSISTANT ATTORNEY GENERAL
CAROLINE D. CIRUOLO

information generated through other mechanisms, such as the now-effective Foreign Account Tax Compliance Act (FATCA), "John Doe" summonses, treaty requests, and data generated from taxpayers participating in the Offshore Voluntary Disclosure Program and other disclosure programs, the U.S. government now has an unprecedented, and never before seen, window into the world of offshore tax evasion.

Foreign financial institutions that serve U.S. customers are well advised to heed the lessons of the Swiss Bank Program and other Justice Department enforcement actions commenced to date. Those proceedings demonstrate that foreign financial institutions with potential U.S. criminal liability can greatly mitigate their exposure by taking immediate actions, such as:

- undertaking the necessary investigatory measures to determine potential exposure;
- implementing compliance measures to avoid further violations of U.S. tax law; and
- assessing options to address exposure with the Justice Department.

Indeed, in announcing the recent Bank Julius Baer resolution, the Justice Department stated publicly that “[t]he deferred prosecution agreement filed today makes it clear that there is a heavy price to pay for this conduct, and that there is a significant benefit in fully cooperating with the department.” In the current regulatory environment, inaction is simply not an option.

Blank Rome Offshore Compliance Team

Blank Rome’s Offshore Tax Compliance team has significant experience in advising foreign financial institutions and individuals as to their obligations under U.S. tax law and resolving potential areas of exposure. Our team, which includes

several former federal prosecutors and Justice Department trial attorneys, frequently represents clients in criminal and civil enforcement proceedings brought by the Department of Justice and the IRS. Our team has substantial experience conducting internal investigations around the globe, and our attorneys are recognized as leaders in this field. Members of our team have authored leading industry publications, such as *Tax Fraud and Evasion* and *The Foreign Account Tax*

“Those who underestimate the ability of the United States to pursue offshore tax evasion do so at their own peril.”

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Compliance Act Answer Book 2015, and provide up-to-date reporting on the latest criminal tax investigations and prosecutions through Blank Rome’s “Tax Controversy Watch” blog (www.taxcontroversywatch.com). Blank Rome’s extensive knowledge of the legal landscape in the criminal tax area, and of the public officials responsible for shaping it, enables us to provide valuable insight and reliable advice on all aspects of our clients’ responses to these enforcement initiatives. ■

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