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THE WALL STREET JOURNAL

WSJ.com

TAX REPORT | APRIL 8, 2009

Will Offshore-Account Holders Surrender?

By TOM HERMAN



The U.S. Justice Department and the Internal Revenue Service are intensifying efforts to nab more Americans concealing assets and taxable income in secret offshore bank accounts. But interviews with more than a dozen lawyers representing clients with accounts in Switzerland, Liechtenstein and other well-known tax havens indicate that many wealthy people may be reluctant to cooperate.

In a major new initiative, the IRS late last month unveiled new incentives for people to turn themselves in voluntarily over the next six months, pay what they owe and answer questions they may be asked about who helped them set up the secret accounts. Officials are offering milder penalties than could otherwise be imposed -- and a reduced likelihood of criminal prosecution.

The IRS is also threatening to crack down hard on those who hide and later get caught. "Combating offshore tax evasion has been and will continue to be one of the IRS's top priorities," IRS Commissioner Doug Shulman said last week. "Anyone in this situation needs to immediately come in through our voluntary disclosure process before it's too late. It's better to come clean now instead of waiting and facing a heavier price later."

Since then, lawyers say they have been flooded by frantic calls from wealthy clients wondering whether to turn themselves in -- and, if so, how. "One woman was very scared. She was in tears," says Bryan Skarlatos, a lawyer at Kostelanetz & Fink in New York and chairman of the American Bar Association tax section's committee on civil and criminal tax penalties. On the ride back to New York from a tax conference in Galloway, N.J., last Friday, Mr. Skarlatos received four calls from worried clients. Some people have "many millions of dollars" stashed abroad, he says, and "are having a hard time deciding" what to do about the IRS program, which he describes as "the classic carrot-and-stick approach."

The stick came into sharper focus late last week. The government filed a criminal complaint against Steven Michael Rubinstein of Boca Raton, Fla., accusing him of having filed a false return and trying to conceal assets and taxable income in a Swiss bank account at UBS AG. Earlier this

year, UBS admitted helping Americans hide accounts from U.S. authorities and agreed to hand over names and account information of certain of its U.S. customers.

This is "the first of the prosecutions resulting from that disclosure, but it will not be the last," said R. Alexander Acosta, U.S. Attorney for the Southern District of Florida. Robert Panoff, a Florida lawyer who said he represents Mr. Rubinstein, declined to comment on the case.

Government officials hope their double-barreled approach will encourage a new wave of wrongdoers to come in from the cold, confess and pay billions of dollars in back taxes, interest and penalties without a fight. They're also hoping these volunteers will provide valuable new leads to help them uncover and prosecute other wrongdoers and financial institutions.

The Rubinstein prosecution is likely to serve as "the wake-up call" for many clients, says Caroline D. Ciruolo, a tax lawyer at Rosenberg Martin Greenberg in Baltimore. That prosecution "unfortunately may have a bigger impact on a client's decision to come forward" than the IRS offer, she says.

The government's renewed crackdown comes at a time when the Treasury and Congress are especially eager to find additional sources of revenue to help bolster the economy. While offshore tax evasion isn't a new issue, officials expect their efforts this time to be more fruitful than in the past, especially because Switzerland and other tax havens have pledged greater cooperation in combating evasion.

While lawyers say some clients are planning to come in voluntarily to the IRS, others are waiting for a clearer indication of who is eligible and how the IRS defines "voluntary." Some lawyers say that even if clients are deemed eligible for the program, those clients will be reluctant to come in because the penalties under the IRS offer can be more severe than they might appear at first glance. And some people are trying to decide whether they can continue to hide in the weeds and escape IRS attention.

The IRS "cannot guarantee that those who come forward under the voluntary disclosure practice will not be prosecuted criminally," IRS spokesman Bruce Friedland said. "But the IRS can state that it is highly unlikely that someone who made a true voluntary disclosure would be prosecuted." He added that IRS officials "are unable to recall an instance where someone who made a true voluntary disclosure was prosecuted."

Doing nothing isn't smart. People concealing taxable income abroad should consider making voluntary disclosures now, says Miriam Fisher, a Washington lawyer at the firm Morgan Lewis & Bockius, because "this will be the best financial deal they'll ever get." If people don't come in and later get caught, "it's likely to get a lot worse," she says. Once the program is over, "there will be no mercy shown by the government."

Some people who want to come clean are considering a different approach: Quietly file amended tax returns for past years, report and pay everything owed, and file foreign bank account reports to the Treasury Department. They hope the U.S. won't hurl criminal charges against those who paid everything owed and made all required disclosures without having been first contacted formally by the IRS.

But that's risky. "Amended returns with previously unreported income are receiving increased scrutiny," the IRS's Mr. Friedland says. "Those who take this approach risk the full range of civil penalties."

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