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Financial Institutions

Swiss Bank Agrees to Pay U.S. \$211 Million To Avoid Prosecution for Aiding Tax Evasion



By Alison Bennett

March 30 — BSI SA agreed to pay \$211 million to the U.S. for helping Americans dodge taxes, becoming the first bank in Switzerland to reach a deal to avoid prosecution by disclosing how it helped taxpayers—a deal that Justice Department officials said is the first of many it expects to reach this year.

The agreement, announced March 30 by the DOJ, is part of a U.S. disclosure program in which Swiss banks escape charges if they pay penalties and detail how they helped U.S. account holders. Dozens of banks are participating (148 DTR G-4, 8/1/14).

Under the terms of an initiative begun in August 2013, institutions that come forward must provide data on every American account and close those not in compliance with tax laws.

Justice Department officials said at a March 30 briefing that the agreement is a milestone in the department's continuing attack on offshore tax evasion and praised the Swiss government for its assistance.

Acting Assistant Attorney General Caroline D. Ciraolo said the Lugano-based BSI, one of the 10 largest banks in Switzerland, has turned over some names of account holders and has provided detailed information to the U.S. on thousands of U.S.-related accounts.

"To the extent that they were not authorized to turn over names, they have shared detailed information on an account-by-account basis," she said in answer to questions. "We are pursuing the evidence where it leads us."

More Agreements

She said the DOJ expects to announce agreements with more banks in the near future, stressing "I would stay tuned."

The official said the DOJ hopes to wrap up pacts with all the "Category 2" banks in the program by the end of the year. Category 2 banks are those with reason to believe they may have committed tax-related offenses or monetary transaction offenses in connection with undeclared U.S. accounts.

Ciraolo said she couldn't comment on the number of Category 2 banks still in the program, acknowledging that some have withdrawn. Among their reasons for doing so, she said, may be that "a bank conducted an internal investigation and determined that its conduct does not meet the standard for a Category 2 bank."

She stressed, "To the extent that a department determines that a bank engaged in criminal conduct and they have withdrawn from the program, we will be pursuing those leads."

The DOJ official declined to comment on the status of criminal investigations of Category 1 banks, but cautioned the government is "following all leads and evidence where it takes us and will reach resolution on a case-by-case basis."

Sham Entities

Acting Associate Attorney General Stuart F. Delery said at the briefing that in addition to the \$211 million penalty, BSI agreed to "a robust statement of facts" describing sham entities, bogus financial insurance products and other methods of concealing funds the bank provided its clients. He said BSI has also agreed to provide information and cooperate in any related criminal or civil proceedings, as well as put controls in place to stop misconduct involving undeclared U.S. accounts.

According to the Justice Department, BSI helped its U.S. clients create sham corporations and trusts that masked the true identity of its U.S. account holders, while other U.S. clients opened "numbered" Swiss bank accounts that helped them conceal their identity even from employees of the bank.

BSI also helped U.S. clients repatriate cash into the U.S. undetected, the DOJ said. The bank admitted that its account

BNA Snapshot

Development: BSI becomes first Swiss bank to reach non-prosecution agreement with U.S. for helping U.S. clients evade taxes.

Takeaway: Justice officials say pact is milestone in government's attack on offshore evasion.

Next Action: Officials say they plan to wrap up agreements with all "Category 2" banks in program by end of 2015.

managers and their U.S. clients would use coded language in e-mails to gain access to funds. Clients would ask their private bankers, "Can you download some tunes for us?" or note that their "gas tank is running empty" when they wanted more cash to be loaded onto their cards, the DOJ said.

Impact for Individuals

Ciraolo said March 30 that from the outset of the nonprosecution program, the Justice Department has urged banks to help them identify U.S. account holders and those who facilitate tax evasion, and said BSI has provided substantial assistance in this area.

Ciraolo said individuals aren't culpable just because they are identified by a bank as part of a non-prosecution agreement. That said, individuals and entities under indictment, under investigation, or with concerns about potential criminal liability should "contact and fully cooperate" with the Justice Department as soon as possible, she said.

"Those who have not yet disclosed their offshore accounts may still be eligible for a voluntary disclosure, but time is running out and with the announcement of each agreement reached under the program, the costs of such a disclosure are increasing," Ciraolo said.

Scott Michel, a member of Caplin & Drysdale, told Bloomberg BNA that the BSI agreement has consequences for taxpayers who want to go into the Internal Revenue Service's Offshore Voluntary Disclosure Program, an initiative that allows them to pay a set penalty to avoid criminal prosecution.

OVDP Consequences

"One of the big takeaways here is that for an American with an unreported account at BSI, if they had gone into OVDP last Friday, their OVDP offshore penalty would have been 27.5 percent of their highest balance," Michel said March 30. "But as of this Monday morning, the penalty is now 50 percent."

Michel said names being turned over under the BSI agreement are "probably those of individuals who have signed waivers of bank secrecy," since banks in the program are still bound by Swiss law.

He noted under the program, even without names, Swiss banks have to provide substantial information on accounts that have closed since August 2008.

"This is because the DOJ and IRS are looking for 'leavers,' i.e., account holders who saw that they were at greater risk of disclosure in their Swiss bank and decided to move their money elsewhere," Michel said. "Banks are provided transactional data on such accounts, including information about where the money went when the account was closed."

He said banks are also providing information to the DOJ to help demonstrate that a given account was in compliance or properly disclosed, in order to receive penalty mitigation.

Ciraolo stressed the government's efforts to combat offshore and domestic tax evasion "are critical to the continued integrity of our national tax system, and serve to send a strong message to those individuals who make good-faith efforts to comply with their tax obligations that we will hold accountable those who do not."

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For More Information

Text of the agreement with a statement of facts is in TaxCore.

Contact us at <http://www.bna.com/contact/index.html> or call 1-800-372-1033

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