

Switzerland Narrows Advance Notice to Account Holders of Treaty Requests Americans with Unreported Accounts Impacted

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Switzerland will now more liberally permit disclosure of bank account information to the U.S. government without advance notice to the account owner. Under prior law, if U.S. authorities requested that a Swiss bank identify an American with an account, the account holder almost always received official notice before a name was disclosed. Effective August 1, 2014, however, the Swiss government now has more leeway to delay notice to the account holder until after a name is turned over. This means that *Americans can no longer count on being warned beforehand that information about a Swiss account might be provided to the IRS or the U.S. Justice Department ("DOJ"). By the time notice is given, it may well be too late for the account holder to make a voluntary disclosure.*

Under the new rules, the Swiss Federal Tax Authority may defer notification to a bank account holder until "after the information has been transmitted" if the foreign requesting authority demonstrates that prior notification would defeat the purpose of the request and its investigation would be thwarted. The Swiss may well interpret the new rule to apply narrowly, but even under a limited interpretation, if the U.S. can establish, for example, that a case may be prejudiced or that there is other, confidential investigative activity under way, the Swiss may well honor a request to defer notice. Many requests to the Swiss government for bank account data could legitimately assert a variety of bases for non-disclosure under this new provision.

While the account holders may still appeal once notice is received (subject to a U.S. legal requirement to provide a copy of their appeal to the Attorney General of the United States), a successful appeal would result only in a Swiss court order that the transmittal of the information was unlawful. Such a finding would likely not deter the U.S. government from using the information to build a case against the affected individual and would still bar the account holder from participation in the voluntary disclosure programs.

The new legislation also imposes sanctions on any person or entity that is aware of the information requests, such as a bank, that then notifies any account holder or interested person about the request prior to the transmittal and deferred notification.

As a result of the DOJ's Swiss Bank Program, voluminous data concerning U.S. account holders is now being provided to the Justice Department, which anticipates filing a series of treaty requests to seek the names of Americans who held accounts in Switzerland at any time after August 1, 2008 (even if those accounts have been closed). Such persons are now at significant risk that their name will be provided to the DOJ and IRS without their receiving any advance notice. *Any American taxpayer who held an unreported account in Switzerland during this period should seriously consider the many options provided by the IRS for initiating a voluntary disclosure.* For further information, please contact a member of [Caplin & Drysdale's Tax Controversies Group](#).

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