

Family office news: Undisclosed assets: It's harder to hide

25 FEBRUARY 2010

David A. Ringold

PARTNER | US

CATEGORY:

[ARTICLE](#)

Is the era of undeclared assets over?

Not exactly, according to Rich LeVine, counsel in our New Haven office who advises clients on cross-border taxation. But the landscape has changed dramatically. In August a suit by the US Justice Department against Swiss banking giant UBS was settled. As part of that agreement, UBS will hand over to the Internal Revenue Service information on 4,450 previously secret accounts owned by US citizens.

And September 23 marked the deadline for an amnesty the IRS declared in March to allow owners of secret accounts to come in from the cold and avoid criminal prosecution. To be eligible, account holders needed to file six years' worth of returns, pay all the tax owed plus interest, along with a hefty negligence penalty on the highest balances on all accounts – a harsh form of amnesty, but better than going to prison.

The Bank Secrecy Act of 1970 requires US citizens and residents to report any bank accounts and any amounts in those accounts over \$10,000. "Before 2003-2004, almost nobody complied with the act," says LeVine. "Very few forms were filed, and there were very few enforcements."

Perhaps the biggest change in enforcement came two years ago, when the Treasury Department handed responsibility for administering the act to the IRS. This led to a light uptick in enforcements, as the IRS pursued more cases and began imposing monetary penalties, rather than the jail sentences handed down in previous years.

During the same period, European governments also began putting pressure on the Swiss to reveal information on their citizens' accounts.

In June, former UBS banker Bradley Birkenfeld pleaded guilty to helping a wealthy client evade millions in taxes. In the process, he blew away the veil of secrecy surrounding the methods of Swiss banks, describing the methods for wooing clients and helping them hide their assets and avoid taxation.

In August, the IRS announced a change in the definitions of who has to file, with investors in commingled funds now required to report. However, the agency pushed the deadline to June 30, 2010 after it became obvious that entities such as pension funds and family charities would fall under the requirement – clearly not the intended targets.

Family offices need to take heed, LeVine warns – many are probably not in compliance at this point. The next few months will probably bring much confusion and uncertainty. While the era of security in holding undisclosed overseas assets is clearly over, the IRS will find it much easier to chase down owners who have their funds in the bigger banks with presences in the US. Already there are reports of smaller Swiss banks wooing wealthy clients on the understanding that they are more likely to escape scrutiny.

One clear piece of advice, says LeVine, comes in the form of estate planning: Don't die with undisclosed assets. While you may lose 40 percent of the value of your account by disclosing it, the alternative for your heirs is worse: no money at all and potential criminal liability.

Authors

David A. Ringold

PARTNER | NEW HAVEN

Private client and tax



+1 203 974 0348



david.ringold@withersworldwide.com