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U.S. vs. Swiss Banks: This is For Real, Not a Soccer Game

September 10, 2011

For those who were wondering what the U.S. Department of Justice and the [IRS](#) were going to do once September 9 passed and the time to enter the offshore voluntary disclosure (OVDI) period ran, the answer is [here](#).

As reported in the Chicago Tribune, the U.S. is preparing legal and administrative actions against 10 Swiss banks to obtain account records on U.S. resident account holders. That means if your name is on the account directly or indirectly you will be in the cross-hairs and the ultimate target. For those U.S. permanent residents such as Green Card holders and U.S. citizens regardless of where they live, this news should be of concern if they did not enter the voluntary disclosure program expecting to avoid detection. So what does the ultimate disclosure mean? Well for one thing, the U.S. [IRS](#) and DOJ are more likely to take hardline positions on penalties for non-filers of FBAR's and information returns, like the Report of Foreign Gifts/Inheritance and the returns for controlled foreign corporations. While reasonable cause is grounds for penalty abatement in each of these cases, the government may take the position that there was a time to come forward and raise that defense, but by not coming forward, absent extenuating circumstance, the defense will be rejected. What does that mean?

In the case of an unfiled FBAR if the government now asserts the failure to file is "willful" the civil penalty is the greater of \$100,000 or 50% of the aggregate account balance per year. The potential for criminal prosecution still exists which is in addition to the civil issues.

So what can be done? Well, there is still a voluntary disclosure program which could be used to mitigate the "willfulness" issue. The benefits of the OVDI may not apply, that is the limited penalties, but the process should be considered. Another option is to file late filed FBAR's with a reasonable cause explanation that details why the taxpayer did not enter the OVDI program including if appropriate, references to [IRS](#) Frequently Asked Questions. The time to act is now, however, before account information is turned over and notices are sent by the [IRS](#) of examinations or worse a criminal action is initiated.

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