

Alerts and Updates

U.S. INDICTS FOUR CREDIT SUISSE BANKERS IN INCREASING CRACKDOWN ON OFFSHORE ACCOUNTS: TIME FOR VOLUNTARY DISCLOSURE RUNNING OUT

February 25, 2011

On February 23, 2011, the U.S. Department of Justice [announced](#) the indictment of four Swiss bankers charged with helping U.S. taxpayers use secret accounts at a Swiss bank to evade U.S. taxes. In the indictment, the grand jury charged four bankers at an "International Bank" with conspiracy to defraud the Internal Revenue Service (IRS). Press reports indicate that the referenced "International Bank" is Credit Suisse and that the bank is cooperating with the government authorities in connection with their investigation of U.S. taxpayers' undisclosed foreign accounts.

The indictment comes on the heels of the IRS announcement of a second offshore voluntary disclosure program announced on February 9, 2011. That program, the "2011 Offshore Voluntary Disclosure Initiative" has been described by the IRS commissioner as "the last, best chance for people to get back into the system." For further information on the new 2011 IRS Offshore Voluntary Disclosure program, see our February 9, 2011, *Alert*, "[IRS Announces New Voluntary Disclosure Program](#)."

The International Bank's managers and bankers were charged with engaging in illegal cross-border banking that was designed to assist U.S. customers in evading their income taxes by opening and maintaining secret bank accounts at the International Bank and three other Swiss-based banks. Those three banks have been identified in the press as Bank Leumi, a large Israeli bank; and Bank Frey and Maerki Baumann, two small private Swiss banks.

The Indictment

The indictment charges that as of fall 2008, the International Bank maintained thousands of secret accounts for customers in the United States, with as much as \$3 billion in total assets under management in those accounts. The alleged conspiracy dates back to 1953 and is claimed to involve two generations of U.S. tax evaders, including U.S. customers who inherited secret accounts at the International Bank.

The grand jury alleged that the defendants and their co-conspirators solicited U.S. customers to open secret accounts because Swiss bank secrecy would permit them to conceal from the IRS the ownership of the account. The defendants and their co-conspirators are charged with:

- causing U.S. customers to travel outside the United States, including to Switzerland and the Bahamas, to conduct banking related to their secret accounts;
- opening secret accounts for U.S. customers in the names of nominee tax-haven entities;
- accepting IRS forms that falsely stated under penalty of perjury that the owners of the secret accounts were not subject to U.S. taxation;
- advising U.S. customers to structure withdrawals from their secret accounts in amounts less than \$10,000 in an attempt to conceal the secret accounts and the transactions from U.S. authorities; and
- advising U.S. customers to utilize offshore credit and debit cards linked to their secret accounts and providing the customers with such cards, including cards issued by American Express, VISA and Maestro.

Once the International Bank decided to close the secret accounts maintained by the U.S. customers, the defendants encouraged and assisted the customers to transfer their secret accounts to other banks in Switzerland and Hong Kong as a means of continuing to hide their assets from

the IRS. The defendants are also charged with discouraging their customers from disclosing their secret accounts to the IRS through the IRS Voluntary Disclosure Program.

The Other Banks

One of the private Swiss banks, referenced in the indictment as Private Swiss Bank #1, is identified as a family owned private bank that was founded in 2000 with headquarters in Zurich, Switzerland. This bank has been identified in the press as Bank Frey. On its website, this bank stated it had a "strict policy to never open any branch or other representation outside the reach of Swiss laws and jurisdictions. . . [because o]nly that way can we be certain to maintain our values —and assure that no foreign authority will ever 'bully' us into giving them up."

The Israeli bank referenced in the indictment (identified in the press as Bank Leumi) had offices in Geneva and Zurich, which provided cross-border banking services to U.S. customers.

The second Swiss bank is identified in the indictment as a family owned private bank with a head office in Zurich and private banking locations in Lugano and Locarno, all in Switzerland. This bank has been identified in the press as Maerki Baumann. It too provided cross-border banking services to U.S. customers.

The Defendants

The individual defendants are identified in the indictment as follows:

- Marco Parenti Adami is identified as a citizen of Italy residing in Switzerland who from 1994 to the present served as a private banker for the International Bank and who serviced a portfolio of high-net-worth North American clients and managed three other private bankers with similar clientele.
- Emanuel Agustoni is identified as a citizen and resident of Switzerland who was employed as a private banker in Zurich by the International Bank and later by one of the Swiss private banks.
- Michele Bergantino is identified as a citizen and resident of Switzerland who was employed by the International Bank as a private banker in Zurich from 1982 through 2000.
- Roger Schaerer is identified as a citizen of Switzerland and a resident of the United States who is employed by the International Bank as a director and senior representative in its office in New York.

The U.S. Taxpayers Involved

The indictment describes the overt acts in furtherance of the conspiracy by providing sketchy information about the conduct of the defendants relative to 17 unnamed U.S. persons involved in the conspiracy as unindicted co-conspirators. The 17 clients include U.S. persons who are residents of Palm Beach, Florida; Norwood, New Jersey; Beverly Hills, California; La Hoya, California; Elizabeth, New Jersey; New York, New York; Charlottesville, Virginia; Pittsburgh, Pennsylvania; Oakland, New Jersey; and Miami Beach, Florida.

In every instance involving the 17 U.S. persons, the indictment references conduct directed at concealing the existence of an account in furtherance of defrauding the IRS.

What Happens Now?

In the past two years, the United States has criminally charged at least 24 UBS clients, as well as four ex-UBS bankers and two advisers. A New Jersey businessman was charged last month with conspiring with five bankers at HSBC Holdings Plc to hide Indian bank accounts from the IRS, according to an indictment and press reports. These new indictments of Credit Suisse bankers are yet another in the U.S. government's attempts to identify and prosecute U.S. tax evaders and those who assist them.

For U.S. persons with accounts at Credit Suisse, Bank Leumi, Bank Frey, Maerki Baumann and the unidentified Hong Kong bank, time is running out for making a voluntary disclosure. It appears inevitable that the IRS will secure bank records of U.S. persons with accounts at these banks. Once those records are in the hands of the U.S. government, a subsequent voluntary disclosure would not be "timely," and the U.S. account holder would likely be at risk for criminal prosecution. This timeline is shorter than the August 31, 2011, deadline for participating in the current IRS voluntary disclosure initiative.

Any U.S. person giving consideration to the current voluntary disclosure program may want to give careful consideration to the program's penalty structure, which gives no consideration to important factors such as reasonable cause, lack of willfulness and the mitigation provisions applied to penalties under the *Internal Revenue Manual*. For a further description of what an account holder may want to do in these circumstances, see our November 24, 2009, Alert, "[Criteria for Disclosure of Swiss Accounts Announced: Now That the Offshore IRS Voluntary Disclosure Program Has Ended, What's a Taxpayer to Do?](#)"

For Further Information

If you would like more information about voluntary disclosure for offshore accounts, please contact [Thomas W. Ostrander](#), the author of this Alert; [Hope P. Krebs](#) or [Stanley A. Barg](#) in Philadelphia; [Jon Grouf](#) in New York; [Anthony D. Martin](#) in Boston; any [member](#) of the [International Practice Group](#); [Michael A. Gillen](#) of the [Tax Accounting Group](#) or the attorney in the firm with whom you are regularly in contact.

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