

DOJ Targets Approximately 20,000 Investors as Co-Conspirators in Criminal Tax Fraud Investigation of UBS

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The United States Department of Justice has opened a new front on its war against allegedly fraudulent tax shelters. On November 12, 2008, the United States indicted a senior executive at UBS AG for tax evasion. The indictment accuses the executive, Raoul Weil, of participating in a criminal tax evasion scheme involving other UBS executives, employees, and private bankers, as well as approximately 20,000 American clients. According to the indictment, Weil and other UBS executives, employees, and private bankers set up offshore accounts to hide approximately \$20 billion in client assets and the income derived from those assets from the IRS. Weil allegedly characterized this branch of UBS's business as "toxic waste" because they [UBS] knew that it was not being conducted in a manner that complied with United States law...."

The indictment is particularly noteworthy because it expressly alleges that some of the approximately 20,000 American clients who benefited from the scheme are "co-conspirators" and thus targets of investigation. The DOJ is pressuring UBS to provide the names of every American client who benefited from the scheme and has announced its intention to file criminal charges against some taxpayers. For instance, the United States Attorney who oversaw the indictment of Mr. Weil stated: "We will follow the evidence wherever it leads, whether it leads to individuals or institutions." Although it is unlikely that the DOJ will file criminal charges against all 20,000 alleged co-conspiring UBS clients, we expect to see significant criminal enforcement activity against individual taxpayers.

The DOJ's strategy in the UBS investigation marks a shift from prior, high profile tax shelter investigations, such as the KPMG tax fraud case currently being tried in the Southern District of New York. Recently, Fenwick & West successfully represented a client who invested in a KPMG-sponsored tax transaction at issue in the KPMG trial. The KPMG tax fraud case is being tried by the same prosecutor who is leading the investigation of the alleged UBS scheme. However, in the KPMG tax fraud investigation, the DOJ focused primarily on the purveyors of the tax shelters and not the investors in those shelters. Now, the DOJ has targeted for criminal prosecution the investors in the alleged UBS scheme – the individual taxpayers – by expressly naming them as co-conspirators with the other UBS executives, employees, and private bankers.

Any investor in the alleged UBS tax shelter scheme can expect either a call from an IRS criminal investigation agent, a grand jury subpoena, or both. At this stage, it would be wise for all investors in any UBS tax shelter to speak with counsel before talking with any IRS agent or responding to a grand jury subpoena on this issue.

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