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73 Of 100 Swiss Banks In Bed With The IRS Are Eyeing The Sofa

Over 100 Swiss banks rushed before New Years' Day 2014 to sign up for the U.S. Justice Department deal that would mean no prosecution. No conviction or closure, no disgrace, just some penalties and life goes on. But ten months later, over 70 of these banks are pushing back against the harsh deal, which includes a tough non-prosecution agreement.

Since 2009, the U.S. has had unprecedented success with ferreting out offshore accounts. UBS paid $780 million to the IRS and recently, Credit Suisse plead guilty and paid a $2.6 billion fine. From its position of dominance, the Justice Department seeks 'total cooperation'. American names, details, and more. The consequences of the Swiss not complying?

Prosecution. The fact that 14 Swiss banks under investigation were ineligible for the deal, including Julius Baer, and Pictet & Cie, may have helped entice 100 others. But the terms of the non-prosecution agreement were not available until now, 10 months after 100 banks signed on.The U.S. settlement deal broke Swiss banks into several categories, with more serious penalties for the worst offenders.

A key group is category two banks. They have reason to believe they may have committed tax offences, and they can escape prosecution by detailing their wrongdoing with U.S. clients and paying fines. They must reveal all cross-border activities and close the accounts of Americans evading taxes. The 3 tiers of penalties are vastly better than a full-blown U.S. investigation with potential tax evasion charges. Participating banks are required to provide details on American accounts.

They must inform on banks that transferred money into secret accounts or that accepted money when such accounts were closed. See Signed Joint Statement and Program. Banks that held accounts on August 1, 2008, must pay a fine: 20% of the top value of all non-disclosed accounts. That goes up to 30% for secret accounts opened after August 1, 2008, but before March 2009. The highest tier of penalties is 50% for accounts opened after that.

The 3-tier penalty punishes more recent violators most harshly. American account holders also remain in the cross-hairs. The U.S. settlement program for banks should not be confused with the IRS programs for Americans seeking to avoid prosecution. U.S. account holders who have not already resolved their issues with the IRS should not waste any time determining which IRS offshore amnesty program is right for them.

After all, disclosure is now virtually inevitable, and the banks will presumably bend over backwards to comply. If a banks fails to follow any of the terms of the agreement, it would be void. That means the bank could risk U.S. prosecution. There is little reason to believe that the U.S. authorities are not deadly serious about this. For depositors and banks alike, disclosure and penalties are vastly better than the alternative. And depositors should beware, since closing foreign accounts is not an alternative to coming clean with the IRS. For Americans who fail to step forward, the IRS and Department of Justice warn of their vast resources.

73 of the 100 or so Swiss banks in the program want changes in the nonprosecution agreement. Will they get them? The Swiss government doesn't seem to be helping, but the banks are lawyered up and doing their best. They may get a modicum of relief, but the landscape of global transparency and disclosure isn't likely to materially change.

Contact me at Wood@WoodLLP.com. *This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*