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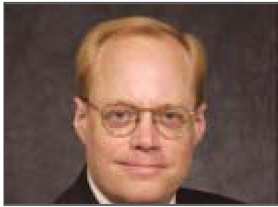

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After FATCA, Swiss Government Tackles Money Laundering Too

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UBS and other Swiss banks have faced investigations and prosecution and it's not over yet. Wegelin was convicted and is closing. See Swiss Bank's Tax Evasion Sentence Is Really Death. The Swiss government has had its work cut out for it to placate investors and repair relations with the U.S. government that it must feel are critical. Switzerland agreed to play ball with FATCA, the once controversial U.S. law that obligates foreign banks to report on American account holders. See U.S. and Switzerland Sign New FATCA Agreement.

Now Switzerland is taking another step toward full transparency in financial and banking rules by launching two consultation drafts. The first is aimed at combating money laundering and terrorist financing. The second is designed to enhance due diligence in taxation. The latter is relevant to global taxation and should help to prevent untaxed assets from being accepted by financial intermediaries in Switzerland. No questions asked? Hardly.

With these bills, Switzerland's Federal Council is underscoring the importance of preserving the integrity of Switzerland as a financial center. Both consultations run until June 15, 2013. To improve the battle against

money laundering, the Federal Council presented revised recommendations of the Financial Action Task Force (FATF). Switzerland's anti-money laundering regulations are already largely compatible with the new FATF standards. However, new changes would:

- Introduce a disclosure obligation for holders of bearer and registered shares of unlisted companies.
- Require identity and risk-based due diligence for politically exposed persons in Switzerland and international organizations.
- Introduce a predicate offence (tax fraud) to money laundering.
- Restrict cash payments for real estate and movables to CHF 100,000. Payments over that amount would have to be processed via a financial intermediary subject to the Anti-Money Laundering Act (AMLA).
- Increase the effectiveness of the reporting system and simplify procedures for financial intermediaries.

The enhanced due diligence requirements for financial intermediaries call for a risk-based assessment designed to prevent the acceptance of untaxed assets. Alarm bells are supposed to go off if a client expresses a wish for greater discretion or for holding investments in unjustifiably complex structures. However, financial intermediaries are allowed to take into account double taxation agreements between the client's country of domicile and Switzerland.

The Federal Council stopped short of requiring a certification, but noted that a credibly designed self-declaration can be a strong indicator of tax-compliant behavior. If a risk-based assessment reveals suspicions of a lack of tax compliance, financial intermediaries are to refuse to accept assets.

As for existing clients, if change in behavior prompts justified suspicions that the client's assets are not tax-compliant, the financial intermediary is to ask the client for proof of tax compliance. If the client is unable to supply proof within a reasonable time under the circumstances, the business relationship is supposed to be terminated.

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009 with 2012 Supplement, Tax Institute), he can be reached 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.