

Swiss Firm's Tax Pact Signal to U.S. Clients Hiding Money Abroad

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- * Government getting names, financial records
- * Nonprosecution agreement symbolizes increased cooperation by financial entities

By Alison Bennett

(BNA) -- A nonprosecution agreement between the IRS and a Swiss investment management company sends a strong message to taxpayers hiding money abroad: Don't think you're safe.

Under the agreement announced Aug. 15, Prime Partners S.A. ducked criminal charges for helping U.S. clients set up and maintain secret accounts--largely by turning over a treasure trove of information on 175 U.S.-held accounts and paying a \$5 million penalty.

Tax attorneys told Bloomberg BNA Aug. 16 the case shows the Department of Justice and the Internal Revenue Service are still vigorously hunting U.S. money abroad despite the fact that a program involving Swiss banks is technically closed.

Following the Money

The government's focus has now turned to non-bank financial companies such as investment and asset managers. The DOJ and IRS are "following the money," and taxpayers with secret accounts should be very concerned, practitioners said.

"The storm hasn't passed," Josh O. Ungerman, a partner with Meadows, Collier, Reed, Cousins, Crouch & Ungerman LLP, said. "A lot of people still believe the IRS can't get their identities or their financial records. That is not the case. The government is going to be aggressively pursuing them."

Cooperation a Big Issue

Alan Granwell, a partner with Sharp Partners PA, said it is highly significant that in announcing the NPA, the government cited "extraordinary cooperation" by Prime Partners in turning over information as one big reason the DOJ was willing to back down on criminal charges.

"This institution decided to voluntarily come in," Granwell said. "The agreement is a signal that if you voluntarily come in and cooperate, things will go a lot better for you."

As more financial companies do just that, a lot more data on individuals is becoming available to the U.S., Granwell said.

Countries Working With U.S

If the U.S. can't automatically get the names in the first stages of its pursuit, "there is a vast amount of detailed information" that is going to the government, he told Bloomberg BNA. "People shouldn't feel safe."

Bryan Skarlatos, a partner with Kostelanetz & Fink LLP, said another reason taxpayers should be worried is that the U.S. is working with other governments to track down hidden U.S. money, and most of them are cooperating to the extent that they can.

For example, he said, even though Switzerland has what appear to be strict bank secrecy laws, those rules

are "open to interpretation" and the country is more open to treaty requests for the names of U.S. clients. "People should not take comfort that this is over," he said.

Offshore Disclosure Program

Skarlatos said one potential avenue for individual taxpayers is to go into the IRS's offshore voluntary disclosure program, which carries a penalty of 27.5 percent for income disclosed to the agency.

However, that penalty goes up to 50 percent if the financial institution where the money is hidden has been "listed" by the IRS as problematic.

Though the OVDP started nine years ago, Skarlatos said it remains very active and that he recommended it to four clients in the past week.

How should taxpayers view the Prime Partners case?

Skarlatos said it demonstrates that the U.S. government is moving toward greater transparency across the board. "Time is not on your side," he said.

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