SINGAPORE'S BANKING SECRETS - NOT SO SECRET ANYMORE

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Singapore Government Enforcement Alert

Since 2008, the U.S. Government has largely focused its enforcement actions against Swiss banks that may have assisted U.S. taxpayers in evading federal taxes. In August 2013, the Department of Justice ("DOJ") introduced the Swiss Bank Program, which provided a pathway for resolving potential criminal liability by allowing eligible Swiss banks to obtain non-prosecution agreements if, among other things, the bank paid a fine, disclosed the relevant account information to the DOJ and the U.S. Internal Revenue Service ("IRS"), and agreed to cooperate in any future related criminal or civil proceedings. As a result, by the time the DOJ announced that it reached its final non-prosecution agreement under the program, it had entered into non-prosecution agreements with a total of 80 Swiss banks, including UBS and Credit Suisse Group, collecting a total of $1.3 billion in penalties.

But this focus on extra-territorial tax evasion has not been confined to Switzerland. In February 2016, the U.S. Government began an action in a Florida federal court resulting from an IRS investigation into "non-compliant" American taxpayer Ching-Ye Hsiaw (*United States of America v. UBS AG*, case number 1:16-mc-20653). That case represented the first time the U.S. Government focused on an account held in Singapore, albeit the pursuit of that account was through an IRS Administrative Summons to a U.S. branch of UBS. Citing its obligations under Singapore's bank secrecy laws, UBS initially refused to provide Hsiaw's account information, whilst the U.S. Government argued that its interest in combatting tax evasion outweighed the interest of the Singaporean Government in preserving the privacy of banking customers.

Banking secrecy in Singapore is governed by section 47 of the Banking Act (Chapter 19), which prohibits banks incorporated in Singapore or foreign banks with branches in Singapore from disclosing any 'customer information' to any other person except as expressly provided by the Third Schedule of the Act. Customer information is broadly defined to include the personal details of the account holder, and, for example, the type of account and whether it reflects a deposit, a loan, or an investment account. Under the exceptions to disclosure found in the Third Schedule, a request for information from a police officer or public officer or a court for the purposes of investigation or prosecution is permissible.

Whether the U.S. Government's position would have succeeded remains to be seen in any potential future action. On 31 May and 10 June, UBS, with Mr. Hsiaw's consent, handed over its records resulting in the petition being dismissed. In a statement, the Monetary Authority of Singapore made clear that "Singapore laws and regulations do not prohibit sharing of information for investigations into [a] possible tax offence," suggesting that the IRS nevertheless would have obtained the account information had Mr. Hsiaw continued to withhold his consent.

The timing and background to the summons, coming swiftly on the heels of the closing of the Swiss Bank Program, sends a clear message to Foreign Financial Institutions and other perceived "bank haven" jurisdictions that the DOJ intends to pursue aggressively offshore tax evasion. This point was reinforced by Caroline Ciraolo,

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Acting Assistant Attorney General of the DOJ's Tax Division, who stated that "offshore tax enforcement remains a top priority" and that the DOJ will be "looking well beyond Switzerland, into jurisdictions around the world … [including], but are not limited to, the British Virgin Islands, the Cayman Islands, Guernsey, Hong Kong, Israel, Liechtenstein, Luxembourg, Panama and Singapore."[1]

NOTES:

[1] Interview with New York Law Journal on 23 March 2016

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