

Offshore account leak of 'epic proportions'

By Robert W. Wood

Talking of the Swiss banking scandals of 2008 and 2009 can seem almost quaint. Most lawyers and business people know at least one person who was impacted by the systemic peeling back of secrecy that began with UBS and that spread like wildfire to other Swiss banks and other countries. The unexpected and revolutionary transparency impacted tax havens and non-tax havens alike.

It also brought on a near hysteria in certain ethnic communities. For some professionals, that provided a surprise uptick in work. Tax lawyers and accountants scrambled to help worried clients file FBAR disclosure forms and amended tax returns.

Some did so quietly and some did so as part of one of the Internal Revenue Service voluntary disclosure programs. There have been three IRS disclosure programs in recent years. As one program closes and another opens, the penalties have progressively increased, but many details remain the same.

Perhaps most importantly, these programs offer immunity from prosecution. The current IRS voluntary disclosure program continues with no announced termination date. Thus, it is not too late for noncompliant taxpayers to come forward, though they should do so carefully.

The American attitude about such matters is different from that prevailing in the rest of the world. Outside the U.S., many find the IRS viewpoint on foreign accounts unfathomable. Yet that is changing as some other governments, buoyed by the IRS example, have also chosen to crack down both on tax cheats and on financial disclosure.

In this milieu, the leak of millions of internal records from the sedate offshore haven of the British Virgin Islands and Britain's offshore financial industry is an astounding development. See David Leigh, "Leaks Reveal Secrets of the Rich Who Hide Cash Offshore," *The Guardian* (Apr. 3, 2013). The names were unearthed in a project by the Washington-based International Consortium of Investigative Journalists, in collaboration with the U.K.'s *The Guardian* and other international media. They jointly published their research results.

It is not hyperbole to call this leak one of epic proportions. To appreciate just how much data was unleashed, consider the firestorm in 2010 when WikiLeaks came into possession of two gigabytes of leaked U.S. military and diplomatic files. By comparison to the BVI financial records, that was tiny.

More than one hundred times larger, this BVI leak involves over 200 gigabytes of information. It covers more than a decade of financial records. It also is not limited to BVI entities but in many cases involves a more far-flung treasure trove of account and entity details.

In short, it will expose many to taxes, embarrassment and even prosecution. It is likely to enhance the already rapid pace of transparency. It will impact many in the U.S and across the world as holders of once-anonymous wealth are thrust into the open.

In the coming months, more details from the treasure trove of documents will be revealed. The mainstream press, TV shows, tabloids and the inevitable tax collectors will all play a role. Although it will be weeks before investigators root through all the documents and information, many names from around the world will stick out, including politicians, bankers, business people, investors and celebrities.

It may simply be human nature to want a little stashed away that others do not know about. You might put money overseas to deal with local family needs, keeping it discreet from your spouse, ex-spouse, kids, business partner or creditors. Of course, there is the possibility of escaping taxes, too.

You might have added to an account that a parent started for you or that was left over from a business or real estate deal, or a foreign trip. You might do it for a rainy day. Indeed, there is an almost limitless set of reasons for starting or continuing an account or structure.

But regardless of the reason, location or back story, global transparency is coming if it isn't already upon us. And with the intersection of technology, Twitter, WikiLeaks and all the other sources that have roiled our world, it isn't just telling Uncle Sam or other governments about your foreign assets and income. Soon the whole world will know.

There is nothing illegal about setting up companies in BVI or other offshore havens. But not disclosing the existence and details of accounts and entities and (for U.S. citizens and residents) not paying tax on the income can be another matter. The BVI has long been a safe jurisdiction boasting more than a million such offshore entities. It is orderly, fast and inexpensive.

Of course, owners' identities remained secret, until now. But that is increasingly true everywhere. And that brings us to California's citizens, lawyers and business people.

Some Californians will be directly impacted by this leak because their names and business entities will be revealed. Some lawyers will have helped establish or advise BVI entities. Such entities have been terribly common in legitimate hedge and private equity funds, real estate deals, etc.

But for vast numbers of other Californians, the issues will be more indirect. The questions they will invariably be asking are whether this leak does not portend others, and what is the risk that other accounts and entities will be revealed? From Hong Kong to Dubai to Taipei, from Mumbai to Vienna to the Turks & Caicos, the days of secrecy and safety from taxing authorities is ending.

For some this is painful and for everyone it is eye-opening. Thousands of California businesses and residents are still struggling with whether to do something about accounts and entities, and once deciding, picking among the available choices. Some confront Hobson's choices. Closing up accounts usually solves little and can be considered an act of evasion.

Disclosing and paying tax prospectively seems better than nothing, but is often seen as inviting exposure for the past. Covering the past up via a staged (but inaccurate) characterization of amounts as gifts or inheritances can be tempting but can make the situation far worse than it was. Stepping forward to file FBARs and amended returns quietly can provide limited solace.

However, the IRS has said it discourages such quiet disclosures and may prosecute. Handing the IRS evidence can therefore be dangerous. Thus, participation in one of the IRS programs can often be the best of the available options.

Still, families with siblings, aunts and uncles who are not participating may face enormous pressure not to risk exposing family assets beyond their own. For those who feel joined at the hip, the decisions about what to do and how to do it can have enormous financial as well as family consequences. Global financial transparency is coming, and like any sea change, it will require adjustments from many.



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