

## **Butzel Long E-news**

**September 11, 2009**

---

### **Offshore Accounts and Tax Amnesty Deadline Approaching**

---

The governments of Switzerland and the United States reached an agreement for the financial institution, UBS to release information to the IRS including the identity of over 4500 United States taxpayers with offshore accounts with UBS. The criteria for selecting these particular accounts has not been released but, based upon the agreement, the criteria was designed to target tax fraud, tax evasion and the like. This is an unprecedented move on Switzerland's part to lift the veil of its strong bank secrecy laws. It is believed this is only the beginning, that more names will be disclosed, and the IRS may seek and receive information from other institutions as well.

For anyone with offshore accounts, unreported foreign income, offshore signatory authority or unfamiliarity with compliance procedures related to foreign income, the recent success of the Department of Justice and the IRS in this regard should serve as an awakening toward additional compliance.

We, in the Butzel Long Income Tax Group, have been following such developments closely.

In May, 2009, the IRS opened up a little publicized Voluntary Disclosure and Tax Amnesty Program to address a variety of issues including: the failure to report foreign source income, failure to file FBAR disclosures (Report of Foreign Bank and Financial Accounts - IRS Form TD F 90-22.1) and failure to file other returns such as Form 5471 (Controlled Foreign Corporations) and Form 3520 ( Foreign Trust Holdings). The Tax Amnesty Program is scheduled to end by September 23, 2009. Even taxpayers that have reported offshore income still are required to file FBARs and can face penalties of up to the greater of 50% of the foreign account value or \$100,000 for willful violations and up to \$10,000 for nonwillful violations of this reporting requirement. Anyone who has signatory authority or a financial interest in a foreign account with a value in excess of \$10,000 at any time during the calendar year is subject to the FBAR filing requirement. If a person's name is disclosed by the Swiss Government or if they are under examination or audit already, the taxpayer becomes ineligible for the amnesty. The time to take advantage of the Amnesty Program is before disclosure.

Taxpayers who have failed to report income could face civil and criminal penalties including those for tax evasion, filing a false return, failure to file an FBAR and filing a false FBAR. A person convicted of tax evasion is subject to a prison term of up to five years and a fine of up to \$250,000. Filing a false return subjects a person to a prison term of up to three years and a fine of up to \$250,000. A person who fails to file a tax return is subject to a prison term of up to one year and a

fine of up to \$100,000. Failing to file an FBAR subjects a person to a prison term of up to ten years and criminal penalties of up to \$500,000. Thus, these are significant potential penalties.

The IRS has provided a hypothetical to compare the difference in outcome between the usage of the Amnesty Program with the non-usage of the program. We have included the hypothetical below.

The Butzel Long Income Tax Group has the capability of assisting our clients and new clients in obtaining tax amnesty under this program. Please direct inquiries related to offshore income and tax amnesty to Sean Cook and Jeff Moss in Michigan or to John Raymond and Leslie Hogan in Florida. Those in our New York office should contact Sean or Jeff. The time to address these latent issues is now before the expiration of the amnesty program in less than 30 days.

Our professional fees to assist a client with coming forward under the tax amnesty program will necessarily vary with the circumstance and could be significant. The fees could be several tens of thousands of dollars depending upon the circumstances. We cannot accurately quote fees in advance on these types of matters as there is uncertainty involved but a significant retainer will be required. Potential clients need to realize that criminal culpability is involved with some of these matters and this program is being managed by the Criminal Investigation division of the IRS. Please also be aware that our privilege as attorneys may be greater than that of the accounting firms when discussing options.

This is the IRS FAQ 12 which discusses the potential penalties and interest which can arise. The differences are staggering:

**Q12. How does the penalty framework work? Can you give us an example?**

A12. Assume the taxpayer has the following amounts in a foreign account over a period of six years. Although the amount on deposit may have been in the account for many years, it is assumed for purposes of the example that it is not unreported income in 2003.

<b>Year</b>	<b>Amount In Deposit</b>	<b>Interest Income</b>	<b>Account Balance</b>
<b>2003</b>	\$1,000,000	\$50,000	\$1,050,000
<b>2004</b>		\$50,000	\$1,100,000
<b>2005</b>		\$50,000	\$1,150,000
<b>2006</b>		\$50,000	\$1,200,000
<b>2007</b>		\$50,000	\$1,250,000
<b>2008</b>		\$50,000	\$1,300,000

(NOTE: This example does not provide for compounded interest, and assumes the taxpayer is in the 35-percent tax bracket, files a return but does not include the foreign account or the interest income on the return, and the maximum applicable penalties are imposed.)

**If the taxpayer comes forward and has their voluntary disclosure accepted by the IRS, they face this potential scenario:**

They would pay \$386,000 plus interest. This includes:

- Tax of \$105,000 (six years at \$17,500) plus interest,
- An accuracy-related penalty of \$21,000 (i.e., \$105,000 x 20%), and
- An additional penalty, in lieu of the FBAR and other potential penalties that may apply, of \$260,000 (i.e., \$1,300,000 x 20%).

**If the taxpayer didn't come forward and the IRS discovered their offshore activities, they face up to \$2,306,000 in tax, accuracy-related penalty, and FBAR penalty. The taxpayer would also be liable for interest and possibly additional penalties, and an examination could lead to criminal prosecution.**

The civil liabilities potentially include:

- The tax and accuracy-related penalty, plus interest, as described above,
- FBAR penalties totaling up to \$2,175,000 for willful failures to file complete and correct FBARs (2003- \$100,000, 2004 - \$100,000, 2005 - \$100,000, 2006 - \$600,000, 2007 - \$625,000 and 2008 - \$650,000),
- The potential of having the fraud penalty (75 percent) apply, and
- The potential of substantial additional information return penalties if the foreign account or assets is held through a foreign entity such as a trust or corporation and required information returns were not filed.

Note that if the foreign activity started more than six years ago, the Service may also have the right to examine additional years if the amnesty program is not used.

This communication is not a written tax opinion under IRS Circular 230 and cannot be relied upon for the purposes of penalty protection under the tax laws of the United States.

If you would like more information about the foregoing, please contact the author of this E-News bulletin as indicated below, your Butzel Long attorney, or any member of Butzel Long's Income Tax Practice Group.

**Jeffrey D. Moss**  
[moss@butzel.com](mailto:moss@butzel.com)  
248 258 2503

The above news is only intended to highlight some of the important issues. This e-mail has been prepared by Butzel Long for information only and is not legal advice. This information is not intended

# BUTZEL LONG

ATTORNEYS AND COUNSELORS

---

to create, and receipt of it does not constitute, a client-lawyer relationship. Readers should not act upon this information without seeking professional counsel. This electronic newsletter and the information it contains may be considered attorney advertising in some states. If you feel you have received this information in error, or no longer wish to receive this service, please follow the instructions at the bottom of this message.

For previous e-news or to learn more about our law firm and its services, please visit our website at: [www.butzel.com](http://www.butzel.com)

**Butzel Long Offices:**

Ann Arbor  
Bloomfield Hills  
Boca Raton  
Detroit  
Lansing  
New York  
Palm Beach  
Washington D.C.

**Alliance Offices:**

Beijing  
Shanghai  
Mexico City  
Monterrey

**Member:**

Lex Mundi