Bloomberg

Secret Swiss Accounts Said No Longer Safe for Tax Dodging

By David Voreacos - Sep 8, 2013

Taxpayers who still believe they can hide secret Swiss bank accounts from the Internal Revenue Service are "beyond foolish," the top U.S. tax prosecutor said as a five-year crackdown expands to new offshore havens.

The enforcement drive has forced a "remarkable" change in the ability of the U.S. to find secret accounts in Switzerland, the world's largest offshore financial center with about $2.2 trillion of assets, said Kathryn Keneally, assistant attorney general in the Justice Department's tax division.

"If someone had an account in Switzerland, it is beyond foolish to think that that account is going to remain secret," said Keneally, 55. "In the last five years, we've seen a remarkable change in our ability to get information concerning Swiss bank accounts. It's extraordinary. Switzerland is no longer a good place to hide assets for tax reasons."

Keneally, in her first interview since taking the job in April 2012, said a new U.S. amnesty program for Swiss banks to disclose how they aided tax evasion puts taxpayers and offshore enablers at risk of prosecution. Since 2009, the U.S. has prosecuted 68 U.S. taxpayers, three Swiss banks, and 30 bankers, lawyers, and advisers. Another 38,000 Americans moved $5.5 billion to the U.S. and avoided prosecution by saying who helped them offshore.

"Swiss bank secrecy never should have been viewed as a mechanism to commit criminal acts," Keneally said. "I don't believe it is the intention of Switzerland for its bank secrecy laws to be used in that manner. We are making good progress toward eliminating that use of Switzerland's laws."

Fourteen Firms

Fourteen firms, including Credit Suisse Group AG (CSGN), the second-largest Swiss bank; HSBC Holdings Plc (HSBA), the largest European bank; and Julius Baer Group Ltd. (BAER), Switzerland's third-largest wealth manager, are under criminal investigation. On Aug. 29, the U.S. announced a program for other Swiss banks to avoid charges.

They must pay penalties, disclose their cross-border activities, give detailed account information for U.S. clients, describe other banks that got their secret accounts, and cooperate in requests for information under a U.S.-Swiss tax treaty. Banks that don't come forward by the Dec. 31 deadline could face criminal charges, Keneally said.

"We are ready, willing, able and probably eager to investigate and prosecute those banks," she said.

With U.S. taxpayers fleeing Swiss banks, she said, the Justice Department is building cases involving other tax havens. They have taken action in cases involving the Caribbean, India, Israel, Liechtenstein and Luxembourg, she said.

"We have investigations and activities that will be coming in other parts of the world that I can't comment on right now," she said.

$100 Billion

A U.S. Senate report estimated in 2008 that secret offshore accounts used to evade U.S. taxes costs the Treasury at least $100 billion annually.

Several tax attorneys agreed with Keneally's assessment that Swiss bank secrecy no longer shields Americans.

"When the U.S. government seeks information from Swiss banks, it's fair to assume that Swiss bank secrecy has been largely compromised," said Bryan Skarlatos, of Kostelanetz & Fink LLP in New York. "U.S. taxpayers cannot take any comfort that their information will be protected by bank secrecy."

Tax attorney Ed Robbins said the purpose of secret Swiss accounts was to hide assets from creditors, business partners, spouses or the government.

"The American taxpayer cannot count on having that secrecy anywhere in Switzerland," said Robbins, of Hochman, Salkin, Rettig, Toscher & Perez in Beverly Hills, California.

'Hemorrhaging' Records

"It's been penetrated at all levels," Robbins said. "The Swiss are hemorrhaging bank records on American taxpayers. The Swiss bank voluntary disclosure program is just another way of disclosing information on American taxpayers."

The program, he said, "is a very clever idea. I think Keneally's going to get some customers on it."

UBS AG (UBSN), Switzerland's largest bank, avoided prosecution by paying $780 million in 2009, admitting it aided U.S. tax evasion and handing over data on 4,500 accounts. Wegelin & Co., the oldest Swiss private bank, pleaded guilty in January and paid $74 million.

The Justice Department and IRS are pursuing taxpayers and bankers who set up secret accounts after the UBS deferred-prosecution deal was announced in February 2009. The new program outlines escalating penalties after that time for banks that seek to avoid prosecution.

Bank Penalties

Those banks must pay 20 percent of the value of accounts not disclosed to the IRS on Aug. 1, 2008; 30 percent for such accounts opened between then and February 2009; and 50 percent for accounts opened after February 2009. Total penalties by banks to avoid prosecution could exceed $1 billion, she said.

"The banks that come forward will be giving us information about where the money went," she said. "We are already learning information. Any bank that has this issue that does not come forward is extremely ill-advised."

She defended the 50 percent maximum penalty for banks that come forward by Dec. 31, even though the U.S. said Wegelin had $1.5 billion in undeclared assets and paid $74 million to resolve its criminal case.

"Wegelin was indicted, Wegelin pled guilty, and Wegelin suffered severe business consequences as a result of all of that," she said. "These banks are getting a non-prosecution agreement. That is something of great value, I believe."

Wegelin Sale

Wegelin was founded in 1741 in St. Gallen and had $25 billion in assets in December 2010. It announced Jan. 27 that it had agreed to sell its non-U.S. business to Switzerland's Raiffeisen Group and said it was winding down its U.S. accounts.

The Swiss government, which negotiated with the U.S. for two years, has said that it would encourage banks to enter the program. Banks will turn over individual account data to the U.S., which can request the identities of the owners through a request under a 1996 tax treaty. The U.S. Senate hasn't ratified a 2009 agreement that would make the handover of data easier.

Data that banks will turn over under the new program, "along with all the information that we're getting from many sources in connection with our investigations will get us what we need to go after U.S. account holders who hid their assets in Switzerland and in other parts of the world," she said.

"That said, the 2009 protocol would give us a very effective and useful law enforcement tool," she said.

Credit Suisse

Keneally wouldn't discuss the pace of the 14 criminal investigations, including that of Credit Suisse. In July 2011, the bank said it was a target of a criminal probe over former cross-border private-banking services for U.S. customers.

Six days later, seven current and former Credit Suisse bankers were indicted on a charge of conspiring to help U.S. clients evade taxes through secret accounts. That case is led by prosecutors in Alexandria, Virginia.

Like other U.S. attorney's offices around the U.S., they are probing banks or individuals in the offshore crackdown with help from the Justice Department's tax division.

Several indictments in offshore tax cases have relied on taxpayers who gave information about their bankers through the IRS voluntary disclosure program. The agency built a database tying together common details about banks, bankers, advisers, and how they set up secret offshore accounts.

'Voluntary Disclosure'

"The first gift of the voluntary disclosure program is that we have over 38,000 people who were not in compliance who are now in compliance," Keneally said. "Apart from that, this program has been able to bring in just a wealth of information so that we can see patterns, we can identify banks, we can identify potential witnesses."

Prosecutors also are relying on whistle-blowers and cooperators, although Keneally wouldn't discuss them.

A native New Yorker who returns from Washington to Manhattan on weekends, Keneally oversees 360 lawyers, including 90 prosecutors. The rest do civil enforcement or appellate work.

They also work on cases involving refund frauds through stolen identities, tax evasion, tax defiance, employment tax fraud, tax preparers, and abusive tax shelters.

Keneally was President Barack Obama's second choice to fill the post after lawmakers blocked another nominee. A tax lawyer, she was a partner at Fulbright & Jaworski LLP and had never worked in government.

Widow Guilty

One taxpayer who tried to enter the voluntary disclosure program and failed was Mary Estelle Curran, a 79-year-old widow who pleaded guilty to tax evasion. Curran, a former UBS client, had more than $43 million in Swiss accounts, making her the largest individual case in the offshore crackdown.

She paid a $21.6 million penalty as well as back taxes, and she faced as long as 37 months in prison when she was sentenced in April by U.S. District Judge Kenneth Ryskamp in West Palm Beach, Florida. Her lawyer said she was "unsophisticated" about financial matters.

"This is really a tragic situation," Ryskamp said. "It seems to me the government should have used a little more discretion."

Ryskamp sentenced her to a year of probation and then revoked it, meaning she got less than a minute of probation. He urged Curran to seek a presidential pardon.

“If the government doesn’t join in that, it’s just spiteful,” the judge said.

Keneally declined to comment on the Curran case.

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