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Current Developments in Tax Enforcement for Financial Institutions



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Historical Perspective

- Tax Evasion relatively low priority historically:
 - Not a Specified Unlawful Activity (“SUA”)
 - Not even a “box” on the Suspicious Activity Report
 - Difficult to detect and distinguish from other money laundering SUAs/illegal activities
 - Unavailability generally of tax returns
 - *Tax returns could be accurate when filed*
 - Complexity/expense of evaluation

Rapid Change

- Government needs (U.S. and other) for tax revenues in economic downturn
- Future tax compliance threat posed by global economy combined with ease of establishing offshore accounts via internet
- Claim of \$100 billion lost tax revenues/year
- Resulting congressional action
- Offshore account developments exploited by U.S. Government
 - (Liechtenstein/UBS)
- Changing attitudes in other governments toward tax evasion
- “John Doe” Summons activities (UBS and others)
- Qualified Intermediary (“QI”) program enhancements
 - (Second half of presentation to cover in depth)

Legislative Action

- Senate Permanent Subcommittee on Investigations
- Stop Tax Havens Abuse Bill (S. 506/HR 1265)
 - Creates numerous presumptions in favor of U.S. taxation and tax authorities when offshore jurisdictions/entities involved
 - Authorizes special measures
 - Requires AML programs for hedge funds/formation agents
 - Requires reporting to IRS of certain offshore accounts
 - Closes offshore trust and tax dividend loopholes
 - Increases penalties for tax shelter promoters
- Tax Money Laundering Proposal
 - Included in Fraud Enforcement and Recovery Act (S 386)

Ramifications for Financial Institutions

- Need to enhance focus on potential tax evasion
- Include in risk assessment
- Review monitoring systems
- Increase potential tax evasion profile in training programs
- Attend to QI program audit if applicable

Monitoring Activities

- Focus on Tax Neutrals
 - Charities/trusts/foundations
 - Circular transactions
 - Offshore/international transactions
 - *E.g., “Spinka” cases*
 - *Especially watch for efforts to repatriate offshore accounts (from trusts, foundations, etc.)*
 - Charities – Enhanced due diligence (terrorist financing)
 - Customers and accounts that blur lines between personal/business/charitable activities

Other Steps

- Enlist Tax Department
 - W-8BENs/W-9s
 - Focus/train on customer hesitation
- Increased due diligence on offshore tax neutrals
- Focus on money laundering/tax evasion convergence
 - (most financial crimes include tax evasion component)
- Consider broader use of 314(b) requests
- SAR issues – repeat SARs
- Enlist Professionals (at customer expense)
- Training -- Heighten focus on tax evasion

IRS Voluntary Disclosure Program

- Multi-decade program recently modified for offshore accounts
 - 6-month “special” on offshore accounts (until 9/23/09)
 - Must be voluntary and timely
 - *No illegal income involved*
 - *No existing IRS audit or investigation*
 - Includes taxpayer name appearing on list from bank
 - Screened by IRS Special Agents (possible interview)
 - Must file up to six years amended returns and FBARs
 - Pay taxes, interest and possible under-reporter penalty
 - Penalty of 20% of high balance in account for last six years
 - *In lieu of all other potentially applicable penalties*
 - (Rare 5% alternative penalty for “inherited” accounts)

IRS Disclosure Program (Cont'd)

- New FAQs by IRS (May 2009)
- Raised numerous issues
 - “Noisy” v. “quiet” voluntary disclosure
 - *Higher penalty threatened for “quiet”*
 - *No guaranteed criminal amnesty for “quiet”*
 - Raised issue of real estate/art
 - Participation by those who cannot pay allowed

Foreign Bank Account Reports (“FBARs”)

- Previous session on this topic
- One new change announced June 5
 - Definition of “US person” clarified for 2008 filing
 - (due June 30, 2009)
 - *Citizen or resident of the US, domestic corporations, domestic estates/trusts, domestic partnerships*
 - *Appears to abandon “in and doing business in the United States” addition to 2008 form*