UPDATES & OTHER TIDBITS

Authors
Sultan Arab
Nina Krauthamer
Galia Antebi

Tags
C.C.C.T.B.
European Commission
France
Information Disclosure
I.R.S.
Israel
Singapore
Swiss Banks
Tax Compliance
UBS

SWISS COURT ORDER: UBS CAN FIGHT FRENCH REQUEST TO DISCLOSE CLIENT INFORMATION

In an unusual decision made on October 26, 2016, the Swiss Federal Administrative Court allowed UBS Group AG to be added as a party to a French administrative request for aid from Switzerland, thus giving the bank the right to appeal requests for customer information. Under the administrative aid request procedure, the French tax authorities must make a request to the Swiss authorities for data from UBS. The Swiss authorities then determine the relevance of the data, and if it is found relevant, make the final demand for the data from UBS.

Following this unusual ruling, UBS may appeal the decision for each final client data request to the Swiss administrative court. This is a victory for the bank in its attempts to fend off efforts by the French tax authorities to obtain customer data. The court stated that the decision was justified due to the unusually high burden that would be imposed on the bank by the French authorities' request for customer information on over 10,000 clients, which would imply that the bank had systematically helped French residents evade taxes. The court added that the data collected could be used against UBS in criminal proceedings in France.

I.R.S. OFFSHORE TAX AVOIDANCE INVESTIGATIONS MOVE BEYOND SWITZERLAND

The criminal investigation arm of the I.R.S. ("I.R.S.-C.I.") continues to track down U.S. tax evaders, division chief Richard Weber said on October 27 at an anti-money laundering conference sponsored by the New York State Society of Certified Public Accountants.[1] He stated, "In fiscal year 2017, I.R.S.-C.I. will continue to rigorously pursue U.S. citizens seeking to evade income taxes by placing assets in other countries . . . we're actually looking at a bunch of other countries where money has been flowing from Switzerland." I.R.S.-C.I. has worked closely with the Department of Justice ("D.O.J.") since it announced its Swiss Bank Program in August 2013 to identify U.S. taxpayers engaging in tax evasion. The program put pressure on banks to turn over information on their U.S. clients. In exchange, those clients paid penalties but avoided prosecution.

Anecdotal evidence suggests that those other countries may include Israel, where

---

1 Allyson Versprille, "IRS Expands Offshore Tax Avoidance Efforts Past Switzerland," Bloomberg BNA, October 28, 2016.

several banks are currently under investigation by the D.O.J., and parts of Asia.[2]

In February, the D.O.J. filed an action in Federal court to compel UBS AG's branch in Miami to produce bank records of a Singapore account supposedly owned by a taxpayer living in China who was under IRS audit. In June, the D.O.J. announced that it was voluntarily dismissing its summons enforcement action against UBS as the bank had complied with an I.R.S. summons for the bank records.[3]

Weber also stated that I.R.S.-C.I. will make futher significant announcements within the next year.

LEADING EUROPEAN TAX STAKEHOLDERS CRITICIZE CHALLENGE SCOPE OF E.U. COMMON CORPORATE BASE PLANS

The European Commission's proposal for a Common Consolidated Corporate Tax Base ("C.C.C.T.B.") for multinationals to calculate taxable corporate profit, which was relaunched in 2016, is again under attack.

The C.C.C.T.B. is a single set of rules used to calculate a company's taxable profits in the E.U. With the C.C.C.T.B., cross-border companies will only have to comply with one single E.U. system for computing taxable income, rather than many different national rulebooks. Companies can file one tax return for all E.U. activities and offset losses in one Member State against profits in another. The consolidated taxable profits will be shared between the Member States in which the group is active, using an apportionment formula. Each Member State will then tax its share of the profits at its own national tax rate.[4]

The C.C.C.T.B. will be implemented in two steps. In the first step, the common base should be implemented with consolidation shortly thereafter. The C.C.C.T.B. will be mandatory for large multinationals to cover those with the greatest capacity to tax plan. The system will remain optional for those not captured by the mandatory scope, namely small- and medium-sized enterprises ("S.M.E.'s").

Some critics have stated that the C.C.C.T.B. should be expanded to include S.M.E.'s with total revenue of less than €750 million ($819 million) to make the system effective. Others are concerned that the proposal for consolidation of profits between member states will be left behind now that the C.C.C.T.B. is mandatory for large companies. Still others argue that the decision to put the consolidation part of the C.C.C.T.B. off until a second stage will not solve the problem of transfer pricing and corporate tax dodging. Under this view, the proposal is a mixed bag of a few fixes to the current tax system accompanied by the introduction of new loopholes.

---

2 "DoJ Is Following The Money Trail Disclosed By Swiss Bank's to Singapore and Israel," The Tax Times, October 10, 2016.

3 "After UBS Produces Singapore-Based Documents, Justice Department Dismisses Summons Case," U.S. Department of Justice, June 22, 2016.

4 Joe Kirwin, "Critics Challenge Scope of EU Common Corporate Base Plans," Bloomberg BNA Tax and Accounting Center, October 26, 2016.

According to the European Commission, the C.C.C.T.B. will give multinational companies the opportunity to use one set of tax rules throughout the E.U. This will help reduce transfer pricing disputes. This view is not widely held by tax practitioners.

One commentator stated that the C.C.C.T.B. will force companies to deal with more accounting rules. Nonetheless, others pointed out that potential cost savings in compliance could be substantial, perhaps as much as 50%.[5]

"With the C.C.C.T.B., cross-border companies will only have to comply with one single E.U. system for computing taxable income, rather than many different national rulebooks."

[5] "Common Consolidated Corporate Tax Base (CCCTB)," European Commission Taxation and Customs Union, November 18, 2016.