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Tax Consequences of Theft of Customer Data

September 10, 2010

Theft of customer data is not limited to identity theft, at least the kind where the thief uses stolen identities to defraud merchants, banks and destroy credit of consumers. An important example of what can happen when customer data is stolen is the UBS case. The history of the UBS case begins with stolen customer account data. Data in the possession of a disgruntled employee was delivered to US authorities in and a civil reward claim filed. The consequences of that data delivery are the criminal plea (actually a deferred prosecution agreement) a huge fine ($750 M USD) paid by UBS, and enormous tax consequences to UBS customers who did not disclose their foreign UBS accounts. This is they did not timely file Form TD 90-22.1 (FBAR). The obligation to file and FBAR is under the Bank Secrecy Act and is independent of obligations to timely and accurately file tax returns under the Internal Revenue Code. To date more than 14,500 Voluntary Disclosures have been filed under the Off-shore Voluntary Disclosure Program. Records of an additional 4,450 bank customers who did not take advantage of the “Amnesty” offer will be turned over as well. These 4,450 will likely face stiffer penalties and some will be prosecuted.

The turn-over of records will be in spite of what was presumed to be impenetrable Swiss bank secrecy laws. Why, because the Information Exchange Agreement between the U.S. and Switzerland was amended to allow a generic request for records of all US person accounts, instead of individual requests. The prior process required the US Government to identify the suspected taxpayer/depositor by name, and set for the grounds for suspected tax fraud. Tax evasion was not enough under Swiss law for a request for information to be granted. Most of the OECD countries have similar Information Exchange Agreements.

The HIRE Act which includes new Internal Revenue Code sections 6048 and 6038D and the Foreign Asset Tax Compliance Act (FATCA) are in part a response to the UBS actions. All three of these tax law changes will work to compel more disclosure of foreign accounts, disturb foreign asset protection plans and likely result in greater compliance costs for all concerned. Some foreign banks may rid themselves of some US account holders to avoid compliance costs and the penalties under FATCA.

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These are just some of the consequences of one act of employee data theft. Quite a sequence of events!

The rule going forward is that planning for foreign held assets must be done with full disclosure for tax purposes, clearly in mind. The result of indifference to disclosure is exposure to civil penalties and possible criminal prosecution.

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