



# Department of Justice

FOR IMMEDIATE RELEASE  
THURSDAY AUGUST 29, 2013  
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## **UNITED STATES AND SWITZERLAND ISSUE JOINT STATEMENT REGARDING TAX EVASION INVESTIGATIONS**

### ***Switzerland Encourages Its Banks to Cooperate With New Program Which Will Require Significant Financial Penalties and Information Sharing From Banks That Aided Secret Account Holders***

WASHINGTON – The Department of Justice today announced a program that will encourage Swiss banks to cooperate in the department’s ongoing investigations of the use of foreign bank accounts to commit tax evasion. The department also released a joint statement with the Swiss Federal Department of Finance, stating that Switzerland will encourage its banks to participate in the program.

“This program will significantly enhance the Justice Department’s ongoing efforts to aggressively pursue those who attempt to evade the law by hiding their assets outside of the United States,” said Attorney General Eric Holder. “In addition to strengthening our partnership with the Swiss government, the program’s requirement that Swiss banks provide detailed account information will improve our ability to bring tax dollars back to the U.S. treasury from across the globe.”

“This program will provide us with additional information to prosecute those who used secret offshore bank accounts and those here and abroad who established and facilitated the use of such accounts,” said Deputy Attorney General James M. Cole. “Now is the time for all U.S. taxpayers who hid behind Swiss bank secrecy laws or have undeclared offshore accounts in other foreign countries to come forward and resolve their outstanding tax issues with the United States.”

Under the program, which is available only to banks that are not currently under criminal investigation by the department for their offshore activities, participating Swiss banks will be required to:

- Agree to pay substantial penalties
- Make a complete disclosure of their cross-border activities
- Provide detailed information on an account-by-account basis for accounts in which U.S. taxpayers have a direct or indirect interest
- Cooperate in treaty requests for account information

- Provide detailed information as to other banks that transferred funds into secret accounts or that accepted funds when secret accounts were closed
- Agree to close accounts of account holders who fail to come into compliance with U.S. reporting obligations

Banks meeting all of the above requirements will be eligible for non-prosecution agreements. Banks currently under criminal investigation related to their Swiss banking activities, and all individuals, are expressly excluded from the program.

The program holds banks to a higher degree of responsibility for opening secret accounts after it became publicly known that the department was actively investigating offshore tax evasion in Switzerland. Under the penalty provisions of the program, banks seeking a non-prosecution agreement must agree to a penalty in an amount equal to 20 percent of the maximum aggregate dollar value of all non-disclosed U.S. accounts that were held by the bank on Aug. 1, 2008. The penalty amount will increase to 30 percent for secret accounts that were opened after that date but before the end of February 2009 and to 50 percent for secret accounts opened later than that.

The program will significantly assist the department's efforts to investigate and prosecute U.S. taxpayers who, when faced with the risk of detection, chose to move funds away from banks under investigation to banks that they believed might be better havens for tax secrecy. A key component of the program requires cooperating banks to provide information that will enable the United States to follow the money to other Swiss banks and to banks located in other countries.

The program also provides a path to resolution for Swiss banks that were not engaged in wrongful acts with U.S. taxpayers but nonetheless want a resolution of their status. Most banks in this category will be asked to provide an internal investigation report prepared by an independent examiner, as well as any additional information requested by the department. A smaller group of banks will be allowed to show that they met certain criteria for deemed-compliance under the Foreign Account Tax Compliance Act (FATCA). Banks in these two groups will be eligible to receive non-target letters.

The program is intended to enable every Swiss bank that is not already under criminal investigation to find a path to resolution. It also creates significant risks for individuals and banks that continue to fail to cooperate, including for those Swiss banks that facilitated U.S. tax evasion but fail to cooperate now, for all U.S. taxpayers who think that they can continue to hide income and assets in offshore banks, and for those advisors and others who facilitated these crimes.

Since 2009, the department has charged more than 30 banking professionals and 68 U.S. account holders with violations arising from their offshore banking activities. Fifty-four U.S. taxpayers and four bankers and financial advisors have pled guilty, and five taxpayers have been

convicted at trial. One Swiss bank entered into a deferred prosecution agreement, and a second Swiss bank was indicted and pleaded guilty. Currently, the department is actively investigating the Swiss-based activities of 14 financial institutions. The department's enforcement activities are global and have also included public actions concerning activities in India, Luxembourg, Israel and the Caribbean.

The program does not address current or future investigations and pending cases concerning bank employees, financial advisors and other individuals. The department will address each of these cases only with the individual's counsel, in a manner that gives consideration to the particular facts and circumstances of each case. In those cases in which indictments are pending, any resolution will also require addressing outstanding issues with the court. Counsel for banks currently under investigation, individuals who have been indicted, or bank employees who are concerned about whether they have potential criminal liability should contact the department's Tax Division or the prosecutors handling their case if they wish to seek resolution.

The department notes that the joint statement with the Swiss Federal Department of Finance provides that if personal data are provided, they should only be used for purposes of law enforcement, which may include regulatory action, in the United States or as otherwise permitted by U.S. law. Additionally, the department has assured its Swiss counterparts that it understands that simply because the names of individuals are included in the information that it receives from a bank does not necessarily mean that any particular individual is or is not culpable of wrongdoing. The support that Switzerland has shown for this program may also help those banks already under investigation take some of the steps necessary to reach a resolution.

"Banks that come forward under the program that we have announced today have the opportunity to reach a resolution with the United States," said Assistant Attorney General for the Tax Division Kathryn Keneally. "The program will give us yet more information to pursue U.S. taxpayers who are continuing to hide their assets in offshore accounts, and creates significant risks for those Swiss banks that fail to come forward. We recognize and express our appreciation for Switzerland's support of the program."

"The program the Department of Justice announced today is another positive step forward in the U.S. government's continuing efforts to combat offshore tax evasion," said Danny Werfel, Acting Commissioner of the Internal Revenue Service. "On behalf of the IRS, I extend my appreciation to both the Justice Department and the Swiss government for developing a way forward that provides the United States with information that will be critical to the enforcement of our tax laws and will bring closure for Swiss banks that meet the requirements of the program."

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