Department of Justice

STATEMENT OF

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BEFORE THE

SUBCOMMITTEE ON REGULATORY REFORM,
COMMERCIAL AND ANTITRUST LAW
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING CONCERNING

OVERSIGHT OF THE TAX DIVISION

PRESENTED

SEPTEMBER 19, 2014

Statement of Deputy Assistant Attorney General David A. Hubbert
Civil Tax Matters, Tax Division
U.S. Department of Justice
Before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
U.S. House of Representatives
September 19, 2014

Chairman Bachus, Ranking Member Johnson, and Members of the Subcommittee, thank you for inviting me here to testify about the work of the Tax Division.

The Tax Division's mission is to enforce the nation's tax laws fully, fairly, and consistently in federal and state courts throughout the country in order to promote voluntary compliance with the tax laws, maintain public confidence in the integrity of the tax system, and promote the sound development of the law. In each and every case, Tax Division attorneys strive to collect the proper amount of tax due and owing -- no more and no less. Tax Division prosecutors authorize and prosecute cases after determining that there is a reasonable probability of conviction based on the existence of sufficient admissible evidence to prove all of the elements of the offense charged. In recent years the Division has approximately 6,000 civil cases in process, handles hundreds of civil and criminal appeals, and authorizes between 1,300 and 1,800 criminal tax investigations and prosecutions. To carry out its mission, the Tax Division currently has approximately 325 attorneys, who are assigned either to one of sixteen sections and offices located in Washington, D.C., or to the Southwestern Civil Trial Section located in Dallas, Texas. Attorneys are supported by approximately 135 administrative support employees.

The President's Budget for the 2015 fiscal year provides $109.2 million in funding for the Tax Division. This funding level will allow the Division to continue its enforcement efforts through its prosecutions, collections, and injunction actions -- all areas that are critical to the full and fair enforcement of the tax laws enacted by Congress. Given that on average every dollar invested in a Division attorney results in a savings of at least $14 to the Federal Treasury, the full funding of the Tax Division is a wise investment in the economic stability of the nation.

Civil Litigation

Civil Trial The Tax Division is responsible for litigating all matters arising under the internal revenue laws in all state and federal trial courts, except the United States Tax Court. Tax Division civil litigators enforce the Internal Revenue Service's (IRS) requests for information in ongoing examinations, and collect and defend tax assessments when the examinations are completed. At any given time, Tax Division civil trial attorneys are responsible for nearly 6,000 cases in various stages of resolution. Tax cases filed *against* the United States comprise nearly 70% of the Division's caseload, both in the number of cases to be litigated and the number of attorney work-hours devoted to them each year. Each year, the Division's civil trial attorneys save the Treasury hundreds of millions of dollars through their representation of the government in defense of refund claims brought by taxpayers. As of September 30, 2013, the Division was defending tax refund cases worth approximately $9.5 billion to the Federal Treasury.

The Tax Division contributes significantly to closing the tax gap (the difference between the amount of taxes owed and actually collected) through its affirmative civil litigation to collect tax debts. The goal of this litigation is twofold: first, to enforce the tax laws and collect taxes that would otherwise go unpaid; and second, to assure honest taxpayers that those who choose not to pay their fair share will be pursued and penalized. Collection suits have a direct and positive effect on the Treasury. The Division consistently collects more each year than its entire budget. For example, over the past five fiscal years, the Division has collected in excess of $1.4 billion in unpaid tax debts. Given that the IRS only refers to the Tax Division tax debts that the IRS has been unable to collect administratively, the Division's efforts are a tremendous return on investment in collecting the most difficult debts.

The portfolio of Tax Division attorneys includes a wide array of procedural and substantive tax matters which can affect just an individual taxpayer or business, a large number of similarly-situated individual taxpayers or even an entire industry. Transactions at issue can range from the proper reporting of income and deductions on a Form 1040 to the consequences of an investment in a complex corporate tax shelter. When a matter is referred by the IRS for defense or litigation, the Division independently analyzes the facts and applicable law to ensure that the tax system is being enforced uniformly and fairly across the country. As a result, the Division's civil trial attorneys are successful in more than 95% of the cases that they litigate to a decision each year.

Civil Appellate Tax Division civil appellate attorneys are responsible for briefing and arguing civil federal tax cases before the United States courts of appeal. At any given time, civil appellate attorneys are responsible for approximately 650 cases. About half of the cases involve appeals from decisions of the United States Tax Court, with the balance arising from decisions of the United States district courts and the United States Court of Federal Claims. Civil appellate attorneys also assist the Solicitor General of the United States in drafting pleadings and briefs filed in civil federal tax cases considered by the United States Supreme Court. These include amicus curiae briefs in suits that present issues affecting the interests of the United States, or in which the Court invites the United States to provide its views on tax-related questions. When the government receives an adverse decision, the Appellate Section closely evaluates the legal and policy implications of the decision and provides a recommendation to the Solicitor General, taking care to ensure that resources are spent wisely only on the most meritorious government appeals.

Criminal Investigation and Prosecution

Criminal Trial In addition to our extensive civil practice, the Tax Division authorizes all prosecutions arising under the federal tax laws except for excise taxes and criminal disclosure violations. In most cases, Tax Division prosecutors either conduct or supervise these prosecutions, often in partnership with prosecutors from the United States Attorneys' Offices. The Division's twin criminal goals are to prosecute criminal tax violations and to promote uniform nationwide criminal tax enforcement. In many cases, the Tax Division receives requests from the IRS to prosecute violations after the IRS has completed an administrative investigation. In other cases, the IRS asks the Tax Division to authorize grand jury investigations to determine whether prosecutable tax crimes have occurred. Tax Division prosecutors review, analyze, and evaluate referrals to ensure that uniform standards of prosecution are applied to taxpayers across the country. In the past few years, the Division has authorized between 1,300 and 1,800 criminal tax investigations and prosecutions each year. After tax charges are authorized, cases are handled by a United States Attorney's Office, by a Tax Division prosecutor, or by a team of prosecutors from both. Tax Division prosecutors also conduct training for IRS criminal investigators and Assistant United States Attorneys, and provide advice to other federal law enforcement personnel, such as the DEA and the FBI.

The crimes investigated and prosecuted by the Tax Division include attempts to evade tax, willful failure to file returns, and submission of false returns, as well as other conduct designed to violate federal tax laws. The crimes may be committed by individuals, business entities, or tax preparers and professionals. These cases often encompass tax crimes where the source of the individual or business income is earned through legitimate means – as examples, a restaurateur who skims cash receipts; a self-employed individual who hides taxable income or inflates deductions; or a corporation that maintains two sets of books, one reporting its true gross receipts and the other - used for tax purposes - showing lower amounts. Prosecutions in these cases often receive substantial attention in the local and national media, and convictions remind law-abiding citizens who pay their taxes that those who cheat will be punished.

It is not uncommon for tax crimes to be committed during the course of other criminal conduct, such as securities fraud, bank fraud, identity theft, bankruptcy fraud, heath care fraud, organized crime, public corruption, mortgage fraud, and narcotics trafficking. Tax Division prosecutors work closely with the United States Attorneys' Offices on these issues. In addition, Tax Division prosecutors investigate and prosecute domestic tax crimes involving international conduct, such as the illegal use of offshore trusts and foreign bank accounts used to conceal taxable income and evade taxes. As tax crimes have become more complex and international in scope, so has the workload of Tax Division prosecutors. In addition to the traditional cases involving unreported legal source income, over the last several years a greater proportion of our cases involve high net worth taxpayers and tax professionals who sell and implement dubious tax schemes. During FY13, Division prosecutors obtained 125 indictments and 114 convictions (not including the additional criminal tax prosecutions handled exclusively by United States Attorneys' Offices). The conviction rate for cases brought by Tax Division prosecutors generally exceeds 95%.

Criminal Appeals The Tax Division Criminal Appeals and Tax Enforcement Policy Section (CATEPS) handles appeals in criminal tax cases prosecuted by Tax Division prosecutors, as well as some appeals from criminal tax cases handled by United States Attorneys' Offices. The Division also supervises appeals in matters prosecuted by the United States Attorneys' Offices. The appellate-level review provided by CATEPS attorneys plays a vital role in promoting the fair, correct, and uniform enforcement of federal tax law. CATEPS is also charged with developing criminal tax enforcement policy, and the section provides technical guidance on issues including the sentencing guidelines and restitution in tax cases. The section's international team serves as a resource to Division attorneys and IRS agents on international discovery matters arising in civil and criminal cases. CATEPS also plays a role in providing information and technical expertise on matters involving international tax information agreements and treaties.

It is apparent from this brief overview that Tax Division attorneys are involved in every facet of federal tax enforcement. While we continue to maintain a sizeable caseload of what may be considered "traditional" tax enforcement matters, we are also mindful of the need to identify and respond to ongoing, growing, and new trends in civil and criminal noncompliance. I would like to take a moment to highlight six areas of noncompliance that are among our highest enforcement priorities -- stolen identity refund fraud, abusive tax shelters, abusive promotions, offshore tax evasion, the Swiss Bank Program, and tax defiers.

Stolen Identity Refund Fraud

Investigating, stopping, and prosecuting individuals who engage in tax refund fraud have always been top priorities for the Tax Division. Using a variety of civil and criminal enforcement tools, the Division, along with our partners at the IRS and in the United States Attorneys' Offices, has successfully shut down hundreds of unscrupulous preparers and individuals who viewed the Federal Treasury as a personal bank account. Their schemes have included filing returns containing inflated, false deductions or false W-2 income statements, or preparing returns and failing to remit the refund to the taxpayer. In the past few years an even more aggressive scheme has cropped up across the country at an alarming rate -- stolen identity refund fraud ("SIRF").

The plan is frighteningly simple – steal social security numbers, file tax returns showing a false refund claim, and then have the refunds electronically deposited or sent to an address where the wrongdoer then can get access to the refunds. In many cases, the taxpayer whose social security number has been compromised will later face difficulties when he or she files a tax return after the IRS has received a false return using that taxpayer's social security number. In other cases, the false returns are filed using social security numbers of deceased taxpayers or others from whom no federal tax return may be due for filing. These schemes are usually implemented in early January, so that the thieves can file before the proper taxpayer is expected to file, with the goal of taking advantage of the IRS's efforts to pay out refunds quickly. In many cases, the most vulnerable in our society are the victims of this form of identity theft. Names and social security numbers have been stolen at medical firms, prisons, and hospitals by dishonest employees who are often paid for the information. Postal workers have been compromised, robbed, and in one instance, murdered to gain access to the refund.

The low physical risk and high potential for financial gain has made stolen identity refund fraud the new crime of choice for drug dealers and gangs. While the crime may seem deceptively simple, the scope and organization of these criminals is vast and growing. In certain cases, the proceeds of the crimes have been used to purchase illegal narcotics for resale, or funneled offshore.

For taxpayers who are direct SIRF victims, the economic and personal consequences can be severe and often long-term. While the IRS will make good on the refund that is due to the taxpayer, the personal burden and delay can be considerable. Further, when a stolen identity is used to commit tax refund fraud, all taxpayers are victims, and all Americans are impacted by the loss to the Federal Treasury.

In recognition of the severity of the problem, the Department and the IRS have devoted significant resources to the successful prosecution of a number of individuals who have engaged in stolen identity refund fraud. Depending on the facts of a particular case, we can bring a variety of charges, including aggravated identity theft and theft of government property, in addition to tax charges such as false claims for refund, false returns, and tax conspiracy.

In the last several years, the Department has successfully prosecuted and received significant sentences in cases in which a stolen identity was used to commit tax refund fraud. Recent examples include:

- In July 2013, a Tampa, Florida area woman, who referred to herself as the "Queen of Tax Fraud," was sentenced to 21 years in prison for stealing identities and then filing tax returns claiming false refunds. The investigation uncovered thousands of names and social security numbers on various records, including medical billing records. The court ordered a forfeiture of over $2.2 million of traceable assets and luxury items. The IRS estimates the false refunds claimed were in excess of $11 million.

- In October 2013, in Alabama, a U.S. postal employee was sentenced to 111 months in prison for his role in a stolen identity refund scheme. As a mail carrier, Harrison used mailing addresses on his postal route to send debit cards loaded with false refunds. Other defendants obtained the stolen identities used on the returns from the Alabama Department of Corrections. The defendants filed hundreds of fraudulent tax returns that claimed over $1 million in false refunds.

- In April 2014, a tax return preparer in Queens, New York, was sentenced to 101 months in prison for filing false tax returns with stolen identities and also filing false tax returns for his clients. The preparer abused his special access to taxpayer information to file false returns without his clients' knowledge or consent. His schemes claimed approximately $4.5 million in false refunds.

- In May 2014, a superseding indictment was returned against nine defendants for their roles in a $20 million dollar stolen identity refund conspiracy. According to the allegations in the indictment, between 2011 and 2013, the defendants ran a large-scale identity theft ring in which they filed over 7,000 tax returns claiming false refunds. As part the scheme, one of the defendants stole identities from the hospital at Fort Benning, Georgia where she worked and had access to the identification data of military personnel, including soldiers who were deployed to Iraq and Afghanistan. Other defendants stole identities from an Alabama state agency and from the Alabama Department of Corrections.

- In June 2014, a Miami, Florida man, was sentenced to 10 years in prison for stealing identities and then filing false returns that requested over $13 million in false refunds by fraudulently claiming gambling income and withholding from the Florida Lottery Commission. His co-conspirator opened approximately eighteen bank accounts to deposit these fraudulent refunds.

As these examples illustrate, SIRF crimes are different from the crimes typically faced by the Tax Division. Charges brought in SIRF cases rarely concern the types of issues that must be addressed in virtually all other criminal tax matters, such as whether the return is in fact incorrect under the tax laws or whether the taxpayer acted willfully. Also, notably, SIRF prosecutions are often reactive to exigent circumstances: in many cases, the crime is discovered by local law enforcement officers who come upon a large cache of Treasury checks or debit cards loaded with fraudulent tax refunds.

Recognizing these fast-moving law enforcement needs, the Tax Division issued Directive 144, which went into effect on October 1, 2012. Directive 144 delegates to local United States Attorneys' Offices the authority to initiate tax-related grand jury investigations in SIRF matters, to charge those involved in SIRF crimes by complaint, and to obtain seizure warrants for forfeiture of criminally-derived proceeds arising from SIRF crimes, without prior authorization from the Tax Division. The Tax Division retains authority in connection with forfeitures if any legitimate taxpayer refunds are involved.

Directive 144 was the result of collaborative efforts among the Tax Division, the IRS, and the United States Attorneys' Offices to strengthen the law enforcement response to SIRF crimes. We continue to leverage our experience in prosecuting SIRF cases through our close relationships with prosecutors in the U.S. Attorneys' Offices throughout the country. The Tax Division is working closely with many United States Attorneys' Offices and the IRS to ensure effective information sharing and investigative cooperation as permitted by law. This approach is yielding significant results. In the first 21 months since implementation of Directive 144 (and the expedited review procedures), the Tax Division has authorized more than 825 SIRF investigations involving more than 1,300 subjects. As a result, the Tax Division and the U.S. Attorneys' Offices have brought more than 600 prosecutions involving more than 1,175 individuals.

The prosecution of SIRF crimes is a national priority, and, together with our law enforcement partners, we will continue to look for the most effective ways to bring this conduct to an end and to punish these wrongdoers. Indeed, enforcement efforts are important, but the goal must be to stop fraudulent refunds at the door. We would prefer to prosecute attempted stolen identity refund fraud rather than completed refund fraud, and we would prefer even more to deter these crimes from occurring. In the meantime, the Tax Division is committed to working with its federal, state and local law enforcement partners to shut this problem down. When we prosecute these cases, we send a clear message to those who engage in this conduct that they will be held accountable for their actions.

Abusive Tax Shelters

The proliferation of abusive tax shelters is a significant problem confronting our tax system. Abusive tax shelters for large corporations and high-income individuals cost the government billions of dollars annually, according to Treasury Department estimates.

Tax shelter litigation is among the most sophisticated and important litigation handled by the Tax Division. Tax shelters are designed to generate large purported tax benefits using multiple entities and complex financial transactions that lack a real business purpose or any real economic substance. Shelter cases often involve well-disguised transactions and tax-indifferent parties located in other countries, making case development and document discovery difficult and expensive. Successfully defending in federal trial and appellate courts the IRS's disallowance of sham tax benefits is critical to the government's efforts to combat abusive tax shelters. Because tax shelters typically involve enormous sums of money and often attract significant media attention, a coordinated and effective effort is essential to prevent substantial losses to the Treasury and deter future use of such tax shelters by other taxpayers.

The Tax Division plays a critical role in the government's efforts to combat abusive tax shelters. For example:

- The Dow Chemical Company had engaged in a transaction in which it claimed approximately $1 billion in tax deductions that were generated by a partnership known as Chemtech. *Chemtech Royalty Assoc. LLP v. United States* (M.D. La. 2013). Dow sought to obtain deductions for making royalty payments to itself, and depreciation deductions for a chemical plant that it had already depreciated. In February 2013, the district court determined that Dow's transactions lacked economic substance and that the Chemtech partnership should be disregarded because it had no purpose other than to create tax benefits. The court also imposed penalties. The district court's opinion was affirmed by the Fifth Circuit on September 10 2014, and remanded to the district court for determination of the applicability of the 40% penalty.

- In August 2013, the Division successfully defended a favorable district court decision in *WFC Holdings Corp. v. United States* (8th Cir. 2013), a case involving a contingent-liability tax shelter. The Eighth Circuit found that the literal language of the Internal Revenue Code supported WFC's tax treatment of the transaction, but nonetheless disallowed WFC's asserted tax loss and resulting $82 million tax refund because the transaction lacked economic substance.

  The Tax Division recently prevailed in a case involving BB&T Corporation's claim for more than $660 million in tax benefits based on a tax-shelter transaction known as Structured Trust Advantaged Repackaged Securities (STARS), which was designed and promoted to subvert the foreign tax credit rules and generate illicit tax benefits to be shared among the transaction's participants. *Salem Financial, Inc. v. United States* (Fed. Cl. 2013). The court ruled that BB&T was not entitled to the claimed tax benefits and also imposed $112 million in penalties.

- In December 2013, in a case involving a COBRA shelter, the Supreme Court reversed an adverse Fifth Circuit decision and held that the 40% gross valuation misstatement penalty is applicable when a taxpayer engages in an abusive tax shelter transaction that is disregarded in its entirety for lack of economic substance. *United States v. Woods* (Sup. Ct. 2013). The decision also addressed a thorny partnership jurisdictional issue and held that the district court had jurisdiction to determine the applicability of the 40% penalty in a partnership-level proceeding, distinguishing between the "applicability" determination and the ultimate imposition of the penalty on partners. The *Woods* decision has favorably impacted several other tax shelter cases pending in various appellate courts.

- The Tax Division also recently prevailed in two cases involving "sale-in/lease-out" and "lease-in/lease-out" (SILO/LILO) tax shelters (abusive leasing schemes that are designed to transfer, for a fee, tax benefits from one entity that cannot use them, such as a foreign corporation or U.S. municipality, to a U.S. taxpayer): *UnionBanCal Corp. & Subsidiaries v. United States* (Fed. Cl.) and *Consolidated Edison Co. v. United States* (Fed. Cir. 2013). In October 2013, the Court of Federal Claims issued a favorable opinion in UnionBanCal concerning a LILO transaction involving a public arena in Anaheim, California. The taxpayer had sought a refund of approximately $91 million. In Consolidated Edison, the Federal Circuit unanimously reversed the lone trial court decision that had upheld the purported tax benefits of the LILO shelter.

These are significant victories and the Tax Division will continue to defend vigorously the IRS's disallowance of the sham benefits claimed by taxpayers who seek to elevate form over substance and undermine the tax system to avoid paying their fair share.

Abusive Promotions

The Department is actively in combatting those who promote the use of fraudulent tax shelters and other schemes to evade taxes and hide assets. Some schemes use domestic or foreign trusts to evade taxes. Promoters of these schemes often use the internet to aggressively market these trusts to the public, and rely upon strained, if not demonstrably false, interpretations of the tax laws. Employing what they often call "asset protection trusts" (ostensibly designed to guard an individual's assets from legitimate creditors, including the IRS), these promoters are in fact assisting taxpayers to fraudulently assign income and conceal ownership of income-producing assets in order to evade paying their taxes. The Tax Division and U.S. Attorneys' Offices are vigorously employing a range of criminal and civil tools, including injunctive relief, to address these abusive activities.

- In October 2013, Paul Daugerdas was convicted by a jury of a multibillion-dollar criminal tax fraud scheme. Daugerdas, a lawyer, certified public accountant, and the former head of the tax practice at the Jenkens & Gilchrist law firm, designed, marketed, and implemented fraudulent tax shelters used by wealthy individuals to evade over $1.6 billion in taxes owed to the IRS. The twenty-year scheme generated over $7 billion of fraudulent tax losses and personally netted Daugerdas approximately $95 million in fees. In June 2014 he was sentenced to serve 15 years in prison, ordered to forfeit nearly $165 million in proceeds of the offenses, and to pay over $371 million in restitution to the IRS. Numerous other individuals connected to this scheme were also convicted and sentenced to prison. For instance, Donna Guerin, a former attorney at Jenkens & Gilchrist, pleaded guilty for her role in the scheme and was sentenced in March 2013 to eight years in prison.

- Since 2000, Tax Division attorneys have obtained injunctions against more than 500 tax-fraud promoters and return preparers. This number represents a dramatic increase over the 1990s, when the total number of promoters and preparers enjoined barely reached 25 for the entire decade. The schemes the Division has enjoined during the past several years had cost the Federal Treasury more than $2 billion and placed an enormous administrative burden on the IRS. If permitted to continue unchecked, these schemes would undermine public confidence in the integrity of our tax system, and require both the IRS and the Tax Division to devote tremendous resources to detecting, correcting, and collecting the resulting unpaid taxes.

As part of our injunction program, we have developed close working relationships with IRS agents and attorneys to ensure that misconduct is detected early, investigated fully, and referred quickly so that it can be stopped before it spreads further.

Offshore Tax Evasion

The Tax Division plays a lead role in investigating and prosecuting those who use foreign tax havens to evade taxes and reporting requirements. The increased technical sophistication of financial instruments and the use of the internet have made it all too easy to move money around the world instantly, without regard to national borders. According to a 2008 report issued by the Permanent Subcommittee on Investigations, Committee on Homeland Security and Government Affairs, United States Senate, the use of undeclared offshore accounts to evade U.S. taxes at that time cost the Treasury at least $100 billion annually. Using tax havens facilitates evasion of U.S. taxes and related financial crimes, and fosters the perception that if people have enough money and access to unscrupulous professionals, they can get away with hiding money offshore. Thanks to the considerable and highly publicized efforts of the Tax Division and the IRS, reality has caught up with those who choose to engage in this illegal behavior.

Combatting the use of foreign bank accounts to evade U.S. taxes has been a long-standing enforcement priority for the Tax Division. Since 2009, when the Tax Division reached a ground-breaking deferred prosecution agreement with UBS, it has publicly charged 78 account holders and 39 bankers and advisors with violations arising from offshore banking activities. Sixty-three account holders have pled guilty, seven were convicted at trial. Seven bankers and financial advisors have pled guilty; many remain fugitives. Earlier this year one banker, Raoul Weil, formerly the third-highest banking official at UBS, waived extradition following his arrest in Italy and is now awaiting trial. While the Division's enforcement focused initially on cross-border activities in Switzerland, it has expanded to include wrongdoing by U.S. account holders, financial institutions, and other facilitators globally, including publicly disclosed enforcement concerning banking activities in India, Israel, Liechtenstein, Luxembourg, Barbados, and other Caribbean countries.

These high-profile enforcement actions created pressure on non-compliant taxpayers to correct their tax returns to report previously undisclosed accounts. According to the IRS, since the inception of the investigation against UBS, over 40,000 taxpayers have reported previously secret accounts through the IRS's offshore voluntary disclosure programs, and have paid over $6 billion in back taxes, interest, and penalties. These enforcement efforts not only remedy past wrongdoing, but also bring into the system tax revenue from taxpayers who become compliant going forward.

The Tax Division is committed to holding foreign banks accountable for their role in facilitating attempts to evade U.S. tax and reporting obligations. Since announcing the UBS deferred prosecution agreement in February 2009, the Division has continued to investigate this activity, and, as described below, has taken public action against three other banks, two in Switzerland and one in Liechtenstein.

- In May 2014, Credit Suisse AG pleaded guilty to conspiracy to aid and assist U.S. taxpayers in filing false income tax returns and other documents with the IRS. The guilty plea by the Swiss corporation was the result of a years-long investigation by U.S. law enforcement authorities that also produced indictments of eight Credit Suisse executives since 2011; two of those individuals have pleaded guilty so far. The plea agreement, along with agreements made with other federal and state agencies, provides that Credit Suisse will pay a total of $2.6 billion - $1.8 billion to the Department of Justice for the U.S. Treasury (as restitution for lost tax revenue), $100 million to the Federal Reserve, and $715 million to the New York State Department of Financial Services. Earlier this year, Credit Suisse paid approximately $196 million in disgorgement, interest and penalties to the Securities and Exchange Commission (SEC) for violating the federal securities laws by providing cross-border brokerage and investment advisory services to U.S. clients without first registering with the SEC.

- In February 2012, the Department indicted Wegelin Bank, the oldest private bank in Switzerland, for conspiracy to defraud the United States for actions arising from its efforts on behalf of U.S. account holders. Wegelin Bank pleaded guilty to felony tax charges (and was the first foreign bank to do so) in January 2013, and was ordered to pay approximately $58 million to the United States and to forfeit funds in the amount of $16.2 million previously seized by the government from a correspondent account in the United States, for a total recovery to the United States of approximately $74 million.

- In July 2013, the Department announced that Liechtensteinische Landesbank AG, a bank based in Vaduz, Liechtenstein ("LLB-Vaduz"), agreed to pay more than $23 million to the United States and entered into a non-prosecution agreement. As noted in the agreement, before the government began the investigation, LLB-Vaduz voluntarily implemented a series of remedial measures to stop servicing U.S. account holders with undeclared accounts. The bank also assisted in changing the law in Liechtenstein retroactively, which enabled the Division to obtain account files of non-compliant U.S. account holders without having to identify each account holder whose information was requested.

In addition to these public actions, the Tax Division has on-going criminal investigations concerning the cross-border activities of banks and U.S. account holders, as well as bankers and other professionals who facilitated U.S. tax evasion and reporting violations. In August 2013, the Division publicly stated that fourteen other banks have been authorized for investigation concerning the use of Swiss bank accounts. This is in addition to on-going investigations concerning cross-border activities by banks outside Switzerland. While we are not in a position to provide information regarding these non-public matters, the absence of public disclosure should not be construed as a sign of inactivity in this critical law enforcement area.

The Department is also successfully using a variety of law enforcement tools to gather information that we believe will lead to admissible evidence in future enforcement efforts. For example, in the last few years the Department obtained orders for John Doe Summonses to be issued for information about U.S. taxpayers using accounts based in Switzerland, India, Bahamas, Barbados, Cayman Islands, Guernesey, Hong Kong, Malta, and the United Kingdom. The Tax Division continues to work with the IRS and United States Attorneys to gather information about taxpayers who seek to avoid or evade our tax loss.

Swiss Bank Program

The investigation and prosecution of offshore tax evasion requires the IRS and the Tax Division to obtain foreign evidence, most often through a tax information exchange agreement or a mutual legal assistance or other treaty. A fundamental issue with respect to obtaining information about accounts located in Switzerland has been the degree to which Swiss law permits disclosure under the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed on October 2, 1996. Swiss banks have often contended, in response to our investigations, that Swiss law prohibited meaningful cooperation (most notably, the disclosure of U.S. account holder identities). As part of our efforts to obtain information from these banks, the Department and the IRS engaged in a series of discussions with representatives of the Swiss government. Our central focus in these discussions was on obtaining information from the banks that would serve our law enforcement goals of encouraging voluntary disclosure by U.S. account holders, prosecuting account holders who fail to come forward, and learning where else in Switzerland and the world U.S. taxpayers attempted to use secret accounts to engage in tax evasion. We also sought to maintain the integrity of pending U.S. law enforcement matters and the ability to prosecute those persons who assisted U.S. taxpayers in evading the law.

On August 29, 2013, the Department announced the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Program"), which is designed to encourage Swiss banks to cooperate in our ongoing investigations. The Program allows Swiss banks not currently under investigation to come forward to provide cooperation and information in return for the possibility of a non-prosecution agreement or deferred prosecution agreement. Two significant points about the Program should be noted at the outset. First, the Program expressly excludes the fourteen banks, referred to in the Program as "Category 1 banks," that were authorized for investigation in connection with their Swiss banking activity related to U.S. account holders before the Program was announced. Second, the Program expressly excludes all individuals. No Swiss banker or professional advisor is offered any sort of protection or immunity, and no U.S. account holder is covered by the Program.

There are three categories of banks that are eligible to participate in the Program. "Category 2" banks are Swiss banks that were not under investigation as of the date the Program was announced but believe that they have committed tax-related offenses, or offenses relating to the filing of Foreign Bank Account Reports ("FBARs") in connection with U.S. related accounts. The information required to be provided by the cooperating banks is extensive, and includes full disclosure of their activities, the names of culpable employees and third party advisors, and the number of U.S. accounts. For those accounts that banks closed after the Tax Division's investigation of UBS became public in mid-2008, the Program requires disclosure, on an account-by-account basis, of the number of U.S. persons related to the account, and the nature of that relationship, monthly balances, and monthly transfers into and out of the account. With this information, the Department will be able to pursue any banks in Switzerland that have not come forward. Equally important for our offshore enforcement efforts, we will have solid information with which to target banks in other countries that continue to hold themselves out as potential tax havens. Banks participating in the Program must also cooperate in treaty requests for account records, which Switzerland has committed to process on an expedited basis.

The Category 2 banks will also be required to pay a penalty equal to 20% of the value of all non-disclosed U.S. accounts that were held by the bank on August 1, 2008 (when our UBS investigations were known), increasing to 30% for accounts opened between August 1, 2008 and February 28, 2009 (the month-end following announcement of the UBS Deferred Prosecution Agreement), and 50% for accounts that were opened after February 28, 2009. The penalty structure is based on the maximum aggregate values of the undisclosed accounts, and is calibrated to reflect both the magnitude of a bank's involvement in the misconduct as well as the willingness of the bank to continue to service undeclared accounts after our law enforcement activities became known. The Tax Division may require a deferred prosecution agreement, instead of a non-prosecution agreement, in cases of extraordinary culpability.

Category 2 banks were required to take the initial step of expressing their intent to participate in the Program no later than December 31, 2013. Most significantly, the Program requires that the Tax Division be satisfied that each bank seeking relief provides full cooperation under the terms set out in the Program and payment of the required penalty. Even with these caveats, it is clear that a significant number of banks that were previously not on our radar screen, have come forward to accept responsibility for their actions and to offer their cooperation in our law enforcement efforts. Every Swiss bank that comes forward to cooperate under the Program represents an opportunity to obtain valuable law enforcement information from a source that is new to the Division's investigations.

The Program also provides for participation by two additional categories of banks. As defined in the Program, "Category 3" banks are Swiss banks that did not commit any violations of U.S. law but want a determination of their present status regarding their activities. These banks may seek a non-target letter from the Tax Division after providing a report by an independent examiner who conducted an internal investigation and additional information as required by the Program. "Category 3" banks must also verify the percent of U.S. related accounts held in the bank, and the existence of an effective compliance program. "Category 4" banks are Swiss banks that meet certain criteria for "a deemed Compliant Financial Institution" based on definitions in the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of Foreign Account Tax Compliance Act ("FATCA") signed on February 14, 2013. These banks may also request a non-target letter after verification of their information and status. Category 3 and 4 banks were allowed to begin requesting participation beginning on July 1, 2014.

We anticipate that the Program will further our law enforcement goals in several important ways. To the extent that each Swiss bank was aware that other Swiss banks might provide information under the Program concerning interbank transactions, we expected the Program to motivate culpable banks to come forward. We believe that this prediction is borne out by the response to the Program. We also believe the Program is motivating culpable U.S. account holders to make voluntary disclosures of their accounts. First, the Swiss banks that participate in the Program will provide detailed information that is calculated to lead to the discovery of U.S. account holders. Second, participating Swiss banks can reduce their penalties by showing that their U.S. account holders participated in an announced IRS Voluntary Disclosure Program or Initiative following notification by the bank of such a program or initiative; there have already been several public reports of communications to U.S. account holders by Swiss banks as a result of this provision. Finally, the Program requires cooperating Swiss banks to provide information that may lead our investigations to banks outside Switzerland, which sends a firm message to U.S. taxpayers with undisclosed accounts anywhere in the world that they should be concerned that their banks may be the next to come under investigation, adding to the pressure to disclose now.

As described above, the Tax Division has used a variety of criminal and civil law enforcement tools to successfully investigate and prosecute offshore tax evasion. However, one additional tool would enhance our information gathering efforts. The protocol signed on September 23, 2009 (the "Protocol") amending the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income is awaiting the advice and consent of the Senate. If an account remained in a Swiss bank after the September 23, 2009 effective date of the Protocol, then once the Protocol is ratified by the Senate, the Division will benefit from the less restrictive standard of the Protocol. It will enhance our ability to gather full, detailed information about the account from Swiss entities and better enable the Division to pursue the funds and the account holder. Thus while the Program will get us more information to make effective treaty requests, a ratified protocol will enable us to obtain the maximum benefit from the information we are gathering. We are hopeful that the Senate will provide its advice and consent of the protocol as soon as possible.

Tax Defier Initiative

Tax defiers, also known as illegal tax protesters, have long been a focus of the Tax Division's investigative and prosecution efforts. For decades, tax defiers have advanced frivolous arguments and developed numerous schemes to evade their income taxes, assist others in evading their taxes, and frustrate the IRS, under the guise of constitutional and other meritless objections to the tax laws. Frivolous arguments used by tax defiers include, for example, spurious claims that an individual is a "sovereign citizen" not subject to the laws of the United States, that the federal income tax is unconstitutional, and that wages are not income. Schemes utilized include the use of fictitious financial instruments in purported payment of tax bills and other debts, as well as the filing of false liens and IRS reporting forms, such as Forms 1099, designed to harass and retaliate against government employees and judges. In the most extreme circumstances, tax defiers have resorted to threats and violence to advance their anti-government agenda.

Tax defiers are identified by the schemes in which they participate and the tactics they utilize. It is important to note that those who merely express dissatisfaction with the tax laws should not be, and are not, prosecuted. The Department cherishes the right to free speech, but recognizes that it does not extend to acts that violate or incite the imminent and likely violation of the tax laws.

Because a segment of the tax defier community may and has resorted to violence to advance their cause, it is essential that law enforcement be prepared to respond rapidly to threats against agents, prosecutors, and judges. The Tax Division has implemented a comprehensive strategy using both civil and criminal enforcement tools to address the serious and corrosive effect of tax defier and sovereign citizen activity. Led by a National Director, the Tax Division's Tax Defier Initiative facilitates coordination among nationwide law enforcement efforts. Increased coordination allows new and recycled tax defier and related schemes and arguments to be identified quickly, and a coordinated strategy to be developed.

Through the Tax Defier Initiative, the Division has leveraged our expertise to develop a government-wide approach to monitoring and combating these crimes. As a result, our National Director for the Tax Defier Initiative, working with representatives of IRS Criminal Investigations, Treasury Inspector General for Tax Administration, the FBI Domestic Terrorism Operations Unit, and the Department's National Security Division, developed and implemented a national training program for prosecutors and investigators. The close working relationships fostered by our Initiative have enabled us to identify and respond more quickly and efficiently to trends in the tax defier community.

Several recent cases demonstrate the scope and seriousness of tax defier misconduct:

- In July 2013, James Timothy Turner, the self-proclaimed "President" of the sovereign citizen group Republic for the United States of America (RuSA), was sentenced to 18 years in prison. Turner was convicted by a jury of conspiracy to defraud the United States, attempting to pay taxes with fictitious financial instruments, attempting to obstruct and impede the IRS, failing to file a 2009 federal income tax return, and falsely testifying under oath in a bankruptcy proceeding. Turner conducted seminars throughout the country, at which he taught attendees how to file retaliatory liens against government officials and to defraud the IRS by preparing and submitting fictitious "bonds" to the United States in purported payment of federal taxes.

- In March 2014, Michael D. Williams was sentenced to 71 months of imprisonment for tax evasion, structuring, bank fraud, presenting fictitious obligations, and attempting to interfere with the administration of the internal revenue laws. Williams was a member of a sovereign citizen group called Pembina Nation Little Shell Band of North America.

- In February 2014, Benjamin Green was sentenced to 51 months in prison for filing false tax forms with the IRS and corruptly endeavoring to obstruct the administration of the internal revenue laws. Green asserted the fraudulent "Original Issue Discount" scheme in support of his 2008 false tax return that claimed a $616,434 refund based on falsely reporting $920,063 in taxable interest income and $929,702 in withholding taxes. When the IRS tried to collect the erroneously issued refund, Green sent frivolous correspondence to the IRS, hid real property in the name of a nominee entity, and falsely complained that the IRS had commenced unauthorized collection and enforcement actions against him.

Every prosecution and conviction sends a strong message that any attempt to promote or participate in a fraudulent tax scheme will not be tolerated. Those who engage in tax defier activity risk criminal prosecution resulting in conviction, substantial penalties and time in prison, as well as the collection of taxes, interest and penalties. Prosecution of tax defiers also reassures the vast majority of taxpayers that their voluntary compliance with the tax laws is justified and that everyone will be held accountable under the law.

Thank you again, Mr. Chairman for the opportunity to appear this morning to discuss the important work of the Tax Division. I am happy to answer any questions that you or the other Members of the Subcommittee may have.