

February 25, 2014

The Honorable Carl Levin
Chairman
The Honorable John McCain
Ranking Member
Homeland Security & Government Affairs
Permanent Subcommittee Investigations
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senators:

The National Whistleblower Center (NWC) thanks you for holding tomorrow's hearing, "Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts," to focus on the federal government's efforts to address this serious problem. Unfortunately, the federal government has too often forgotten that it was whistleblowers who first gave them the roadmap on how to pursue illegal offshore accounts.

The federal government's success on offshore tax evasion was all started by a single whistleblower – Bradley Birkenfeld. Unfortunately, the federal government has not done nearly enough to take advantage of the information provided by this whistleblower such as encouraging additional whistleblowers to come forward, rewarding whistleblowers who have come forward, protecting whistleblowers, and recognizing those capable Department of Justice (DOJ) and Internal Revenue Service (IRS) employees who have successfully worked with whistleblowers.

The failure of the federal government to fully utilize the information provided by whistleblowers, which encourages more whistleblowers and adequately rewards whistleblowers, has cost the American taxpayers billions of dollars. Sadly, the tragedy of failing to address offshore tax evasion goes beyond just dollars – undermining efforts to stop corruption, bribery, organized crime, and exploitation of women and children.

Making full use of whistleblowers is critical in all areas of tax evasion – but especially with respect to illegal offshore accounts due to significant limitations on the ability to obtain bank information from a bank secrecy jurisdiction. Owners of undeclared bank accounts enter voluntary disclosure programs out of a real fear that their identities will be exposed. Thus, a strong federal program, encouraging and rewarding whistleblowers, goes far in adding to a sleepless night for those with illegal offshore accounts. Finally, the whistleblower can serve as a vital Sherpa assisting the government in navigating and understanding the records it receives both from the whistleblower and from the banks. It is important to understand that many of the records provided by the banks are confusing and unclear.

While whistleblowers have given the federal government the roadmap on how to pursue illegal offshore accounts, too often the decision makers in DC have not been willing to pull over and ask for directions.

Based on our discussions with Swiss bank whistleblowers and our own lengthy work and experience in this area, the NWC would suggest the following questions be asked at tomorrow's hearing:

Department of Justice

- 1) Will the DOJ take steps to insure that no whistleblower is retaliated against for providing information to the U.S. government? In this regard: Will the DOJ require, as part of every agreement with the Swiss banks currently under indictment, that the banks agree to take no action or retribution against any whistleblower who provided information to the U.S.?
- 2) Martin Liechti was a senior UBS banker who was identified in 2007 by Mr. Birkenfeld as being a central figure – a kingpin – in UBS' offshore banking. Mr. Liechti was apprehended in the United states, but was only temporarily detained as a material witness. Despite his key role in the tax conspiracies he was not indicted and was ultimately released and returned to Switzerland. Why did the U.S. Government take this action?
- 3) The U.S. Government has now indicted and detained Mr. Liechti's manager (also identified by Mr. Birkenfeld in 2007) – Mr. Raoul Weil – an even bigger kingpin in offshore banking at UBS. Are we similarly going to see Mr. Weil released without serving any time in an American prison?
- 4) How credible can we take the DOJ's efforts in going after offshore banking when there appears to be a "catch and release" program with the Swiss banking kingpins most involved with this illegal activity?
- 5) In the settlement with UBS, the DOJ agreed to receive information on only 4,700 UBS illegal account names – even though the UBS admitted from documentation provided by Mr. Birkenfeld in 2007, to there being 19,000 illegal accounts. Will the DOJ demand in its settlements with the Swiss banks to get the full name and identification for every illegal account? If not, why not?
- 6) In the settlement with UBS, the DOJ agreed to settle for collecting only \$580 million in fines from UBS for tax fraud violations upon the UBS admitting that they generated \$1.6 billion in profits on the illegal offshore accounts for the time period in question (2000-07). Will the DOJ take steps to ensure that the fines paid by Swiss banks at a minimum recoup the entire amount of profits that the Swiss banks generated from illegal

offshore accounts?

- 7) What steps is the DOJ taking to ensure that every person who provided information to the U.S. government is aware of their rights as a whistleblower and will obtain the proper award as an IRS whistleblower?
- 8) What steps is the DOJ taking to ensure that the settlement with Credit Suisse reflects all the accounts owned by US natural persons, US-domiciled entities, and non-US domiciled entities with US beneficial owners? Is the DOJ limiting its inquiry to assets managed by the North American desk at Credit Suisse or, like the Securities and Exchange Commission (SEC), is it looking also at the billions of dollars owned by US persons that are managed by other desks at Credit Suisse?
- 9) The SEC has recently reported \$5.75 billion dollars in assets that are under management for securities by Credit Suisse. This is far higher than the \$4 billion figure reported in the press to be the total amount of US offshore assets under management by Credit Suisse. Given that the \$5.75 billion would only represent a subset of the total amount of US-owned dollars/assets managed by Credit Suisse, the total figure of US illegal offshore accounts managed by Credit Suisse must be significantly higher than the \$4 billion cited. What is the DOJ doing to ensure that the settlement will deal with all of the US dollars and assets in illegal offshore accounts at Credit Suisse and what do you estimate is the total dollar amount in these accounts?
- 10) What steps is the DOJ taking to ensure that Raoul Weil provides the United States with all of the information he has regarding the illegal offshore banking practices of UBS and other Swiss banks? Will the DOJ ensure that such full and complete cooperation is obtained from Mr. Weil in any plea agreement that may be reached?

Swiss Bankers

- 1) Will you, as bankers, agree to take no action or retribution against any whistleblower who provided information to the U.S. Additionally, will you take no action to seek to identify any whistleblower who provided information to the U.S.?
- 2) Are you fully cooperating with the U.S. government in determining whether or not any current or former clients who are U.S. taxpayers moved their accounts to other banks in addition to assisting in determining which banks those monies were transferred into? If not, why not?

- 3) A recent SEC document released on February 21st describes Credit Suisse managing an aggregate value of assets invested in securities-only of \$5.75 billion in 2008. However, when the Federal government initiated its investigation of Credit Suisse, an initial figure of \$4 billion was reported in the press to be the total amount of US offshore of US offshore assets under management by Credit Suisse in Switzerland. This is a significant discrepancy given that only a fraction of funds in an offshore account would also be engaged in security investing. What is your estimate of the highest level of total US offshore assets under management by Credit Suisse in Switzerland during the entire period of the investigation 2002 – 2013? Does this amount include US natural persons, US domiciled entities, and non-US domiciled entities with US beneficial owners?
- 4) Based on the SEC enforcement order, it is clear that for Swiss banks not all assets owned by US persons are managed by their North American/US desk. What portion of assets owned by US persons is managed by the North American desk at Credit Suisse and what portion were managed outside the North American desk?

The NWC believes these questions will help shed on the federal government's efforts in illegal offshore accounts. While we commend the fine work of many DOJ and IRS employees, there is much more that needs to be done. If we as a nation are going to have success in cleaning the Augean stables of illegal offshore banking, not just in Switzerland but around the world, we have to better recognize the importance of whistleblowers in providing vital information and using whistleblowers to help understand better the working of the banks.

Thank you for your time and efforts on this important issue.

Respectfully submitted,



Dean Zerbe
Special Counsel



Stephen M. Kohn
Executive Director