

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, January 27, 2016

Justice Department Announces Final Swiss Bank Program Category 2 Resolution with HSZH Verwaltungs AG

Department's Swiss Bank Program Imposed More Than \$1.3 Billion in Penalties on 80 Banks, Which Continue to Cooperate with the Department

The Department of Justice announced today that it reached its final non-prosecution agreement under Category 2 of the Swiss Bank Program, with HSZH Verwaltungs AG (HSZH). The department has executed agreements with 80 banks since March 30, 2015, when it announced the first Swiss Bank Program non-prosecution agreement with BSI SA. The department has imposed a total of more than \$1.36 billion in Swiss Bank penalties, including more than \$49 million in penalties from HSZH. Every bank in the program, including HSZH, is required to cooperate in any related criminal or civil proceedings, and that cooperation continues through 2016 and beyond.

“The Department of Justice is committed to aggressively pursuing tax evasion, and the Swiss Bank Program has been a central component of that effort,” said Attorney General Loretta E. Lynch. “Through this initiative, we have uncovered those who help facilitate evasion schemes and those who hide funds in secret offshore accounts. We have improved our ability to return tax dollars to the United States. And we have pursued investigations into banks and individuals. I would like to thank the Swiss government for their cooperation in this effort, and I look forward to continuing our work together to root out fraud and corruption wherever it is found.”

“The department’s Swiss Bank Program has been a successful, innovative effort to get the financial institutions that facilitated fraud on the American tax system to come forward with information about their wrongdoing – and to ensure that they are held responsible for it,” said Acting Associate Attorney General Stuart F. Delery. “As we have seen over the last year, Swiss banks are paying an appropriate penalty for their misconduct, and the information and continuing cooperation we have required the banks to provide in order to participate in the program is allowing us to systematically attack offshore tax avoidance schemes.”

“The completion of the agreements under Category 2 of the Swiss Bank Program represents a substantial milestone in the department’s ongoing efforts to combat offshore tax evasion, and we remain committed to holding financial institutions, professionals and individual taxpayers accountable for their respective roles in concealing foreign accounts and assets, and evading U.S. tax obligations,” said Acting Assistant Attorney General Caroline D. Ciruolo of the Justice Department’s Tax Division. “Using the flood of information flowing from various sources, the department is investigating this criminal conduct, referring appropriate matters to the Internal Revenue Service for civil enforcement and pursuing leads in jurisdictions well beyond Switzerland. Individuals and entities engaged in offshore tax evasion are well advised to come forward now, because the

window to get to us before we get to you is rapidly closing.”

The Swiss Bank Program, which was announced on Aug. 29, 2013, provides a path for Swiss banks to resolve potential criminal liabilities in the United States. Swiss banks eligible to enter the program were required to advise the department by Dec. 31, 2013, that they had reason to believe that they had committed tax-related criminal offenses in connection with undeclared U.S.-related accounts. Banks already under criminal investigation related to their Swiss-banking activities and all individuals were expressly excluded from the program.

Under the program, banks are required to:

- 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 accountholders who fail to come into compliance with U.S. reporting obligations; and
- Pay appropriate penalties.

Swiss banks meeting all of the above requirements are eligible for a non-prosecution agreement.

HSZH, the final bank to reach a non-prosecution agreement under Category 2 of the Swiss Bank Program, was previously known as Hyposwiss Privatbank AG. HSZH was founded in 1889 in Solothurn, Switzerland. In 1988, Schweizerische Bankgesellschaft AG, which was later merged into UBS AG, acquired the bank and renamed it Hyposwiss Privatbank AG. Hyposwiss Privatbank AG increasingly focused on private banking activities, servicing both domestic and international clients, and at all times, HSZH solely operated on Swiss territory. In 2002, the bank was acquired from UBS by St. Galler Kantonalbank (SGKB), the state-owned cantonal bank of St. Gallen. In 2014, HSZH unwound its residual banking operations under the supervision of FINMA, the Swiss banking regulator. On Jan. 6, 2014, and in connection with the wind-down, the bank changed its name to HSZH Verwaltungs AG. HSZH returned its banking license, and FINMA released HSZH from its supervision on Nov. 27, 2014.

Until 2013, HSZH conducted a U.S. cross-border banking business that aided and assisted certain of its U.S. clients in opening and maintaining undeclared accounts in Switzerland and concealing the assets and income they held in these accounts from the U.S. government. Through its managers, employees and/or others, HSZH knew or had reason to know that some U.S. taxpayers who opened and maintained accounts at HSZH were not complying with their U.S. income tax and reporting obligations.

HSZH and other banks operating in Switzerland have closely monitored the criminal investigations of UBS and other Swiss banks. In 2008, UBS publicly announced that it was the target of a criminal investigation by the Internal Revenue Service (IRS) and the department and that it would be exiting and no longer accepting certain U.S. clients. In February 2009, the department and UBS filed a deferred prosecution agreement, in which UBS admitted that its cross-border banking business used Swiss privacy law to aid and assist U.S. clients in opening and maintaining undeclared assets and income from the IRS. Since UBS, several other Swiss banks have

publicly announced that they were or are the targets of similar criminal investigations and that they would be exiting and not accepting certain U.S. clients.

The senior management of HSZH viewed the exit of U.S. clients by the targeted Swiss banks as a business opportunity to be seized immediately rather than a warning to be heeded. In addition to 83 accounts opened through two pipelines of U.S. clients transferred from UBS, HSZH opened at least 275 accounts for U.S. clients after August 2008. Internal bank notes indicate that in September and October 2008, certain external asset managers with whom HSZH entered into agreements were expected to have “many former UBS clients” and would introduce U.S. clients to HSZH.

The first pipeline of undeclared U.S. clients transferred from UBS was solicited by the CEO of HSZH (CEO #1) from a UBS private banker who was a former colleague of CEO #1. On Aug. 15, 2008, the general counsel of HSZH sent CEO #1 an email containing his views on a new internal bank IRS Form W-9 policy for CEO #1’s review and discussion before sending to SGKB: “In my opinion this policy should be a clarification of the already existing practice in connection with U.S. persons. The actual situation in the US (UBS, Birkenfeld, etc.) has nothing to do with [HSZH] [redacted] or SGKB. . . . Why should we freely throw away a good business opportunity?” Between Sept. 19, 2008, and Jan. 26, 2009, HSZH knowingly opened six undeclared accounts for U.S. clients with an aggregate total of approximately \$9.2 million in peak assets under management; all six undeclared U.S. clients had previously been with UBS.

The second pipeline of undeclared U.S. clients predominantly from UBS were all introduced and managed by an external asset management firm in Zurich whose head of private banking was formerly in charge of UBS’s North America International business (EAM #1). In June 2008, the head of HSZH’s EAM Desk provided EAM #1 with HSZH marketing materials, and the Executive Board of HSZH unanimously approved a new business relationship with EAM #1 on Sept. 24, 2008. On Aug. 18, 2009, HSZH opened the last EAM #1 pipeline account. On Aug. 20, 2009, the head of private banking for EAM #1 was indicted by the U.S. Attorney’s Office of the Southern District of Florida.

Meetings between HSZH private bankers and U.S. clients took place in multiple locations within the United States, including in Florida, New York, Pennsylvania, Virginia and Washington, D.C. Some U.S. clients asked for cash on a regular basis, so at times, the HSZH private banker for such clients would personally deliver cash to the clients in the United States in amounts below \$10,000 to avoid the reporting requirements.

HSZH private bankers also met with U.S. clients outside of the United States to provide banking services and investment advice related to their accounts, which included undeclared accounts. For example, one U.S. client resided in the United States and had assets of more than \$90 million in an account at HSZH held by a Liechtenstein foundation. An HSZH private banker regularly met with this U.S. client in a Swiss hotel, at HSZH or in London. When meeting in London, the HSZH private banker usually delivered cash amounts of 10,000 to 50,000 Swiss francs or U.S. dollars to the U.S. client, who had a preference to receive used U.S. dollar banknotes. The funds were wired to the custodian bank for HSZH in London, where the HSZH private banker would withdraw the cash and personally deliver it to the U.S. client in a London hotel.

HSZH processed significant cash and precious metals withdrawals for U.S.-related accounts at or around the time the clients’ accounts were closed, even though HSZH knew, or had reason to know, that some of the accounts contained undeclared assets. For example, a U.S. couple that owned more than \$24 million in assets in an account nominally held by a Liechtenstein foundation, and known by HSZH to be undeclared, regularly withdrew cash amounts between \$10,000 and \$30,000 – they requested used bank notes – and repeatedly withdrew gold bars. Five instances in 2010 involved 15 kilograms of gold bars. When this U.S. couple closed their HSZH account in 2012, they withdrew large cash amounts totaling more than 19 million Swiss francs, as

well as 55 kilograms in gold bars during five visits to HSZH.

HSZH serviced approximately 103 U.S. clients who structured their accounts so that they appeared as if they were held by a non-U.S. legal structure, such as an offshore corporation or trust, which aided and abetted the clients' ability to conceal their accounts from the IRS. While HSZH did not provide direct structuring services to U.S. clients, HSZH private bankers and members of HSZH's management suggested the use of structures in some instances for U.S. clients and provided referrals to third-party service providers. In addition, at least two HSZH private bankers served as board members for structures with U.S. beneficial owners maintained at HSZH. Despite the decision in 2009 by HSZH to stop this practice due to the risk of conflicts of interest, one HSZH private banker remained a member of an offshore foundation's board until 2011. External trust companies created and administered offshore structures incorporated or based in offshore locations such as the British Virgin Islands, Liechtenstein and Panama.

HSZH assisted at least two U.S. taxpayers in further concealing their undeclared funds from the IRS by transferring those funds from UBS in August 2010 through an HSZH account held by a Swiss attorney to an HSZH account held by a sham entity domiciled in Panama that was beneficially owned by the two U.S. taxpayers. In connection with this transfer, HSZH received a revised Form A from the Swiss attorney listing the two U.S. taxpayers as beneficial owners for one transaction only along with instructions from the Swiss attorney to HSZH that his clients' funds should be transferred from UBS to HSZH through his account, due to the "understandable interests of his clients, that the target account would not be visible." HSZH's anti-money laundering documentation dated one day after this August 2010 transfer states: "Since this [sic] are U.S. clients, the transfer was made over the account holder's account due to understandable reasons. Sender and recipient are identical."

During the period since Aug. 1, 2008, HSZH held a total of 605 U.S.-related accounts, both declared and undeclared, with an aggregate peak of approximately \$1.12 billion in assets under management. HSZH will pay a penalty of \$49.757 million.

In accordance with the terms of the Swiss Bank Program, HSZH mitigated its penalty by encouraging U.S. accountholders to come into compliance with their U.S. tax and disclosure obligations. While U.S. accountholders at HSZH who have not yet declared their accounts to the IRS may still be eligible to participate in the IRS Offshore Voluntary Disclosure Program, the price of such disclosure has increased.

Most U.S. taxpayers who enter the IRS Offshore Voluntary Disclosure Program to resolve undeclared offshore accounts will pay a penalty equal to 27.5 percent of the high value of the accounts. On Aug. 4, 2014, the IRS increased the penalty to 50 percent if, at the time the taxpayer initiated their disclosure, either a foreign financial institution at which the taxpayer had an account or a facilitator who helped the taxpayer establish or maintain an offshore arrangement had been publicly identified as being under investigation, the recipient of a John Doe summons or cooperating with a government investigation, including the execution of a deferred prosecution agreement or non-prosecution agreement. With today's announcement of this non-prosecution agreement, noncompliant U.S. accountholders at HSZH must now pay that 50 percent penalty to the IRS if they wish to enter the IRS Offshore Voluntary Disclosure Program.

"Today's resolution with HSZH Verwaltungs AG brings to a close this phase of DOJ's Swiss Bank Program," said acting Deputy Commissioner International David Horton of the IRS Large Business & International Division. "The comprehensive success of this program sends a powerful message to those who might think they can evade their tax obligations by going offshore. A whole sector of financial institutions, 80 banks in all, has been held accountable for aiding the use of secret accounts and circumventing U.S. law. In addition to the more than \$1.3 billion in penalties from these resolutions, more than 54,000 taxpayers have come forward to the IRS to

pay more than \$8 billion in taxes, interest and penalties.”

“The bank agreement with HSZH announced today may bring an end to one phase of the Swiss Bank Program, but more importantly it brings us closer to our overall goal of compliance and accountability for financial institutions and U.S. taxpayers,” said Chief Richard Weber of IRS-Criminal Investigation. “The data received from each agreement on the accounts, schemes and linkages is extremely valuable in combating international tax evasion. I could not be more proud of the effort of our special agents who worked tirelessly to make this program a success in coordination with the Department of Justice.”

Acting Assistant Attorney General Ciralo thanked the IRS and in particular, IRS-Criminal Investigation and the IRS Large Business & International Division for their substantial assistance. Acting Assistant Attorney General Ciralo also thanked Kimberle E. Dodd, who served as counsel on this matter, as well as Senior Counsel for International Tax Matters and Coordinator of the Swiss Bank Program Thomas J. Sawyer and Senior Litigation Counsel Nanette L. Davis of the Tax Division.

Additional information about the Tax Division and its enforcement efforts may be found on the division’s [website](#).

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Tax Division

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Updated February 8, 2016