Opening Statement of Sen. Carl Levin
before
Senate Permanent Subcommittee on Investigations Hearing
on
"Offshore Tax Evasion: The Effort to Collect Unpaid Taxes
On Billions in Hidden Offshore Accounts"

February 26, 2014

The American public is angry about offshore tax abuse – efforts by well-off Americans to evade their U.S. tax obligations by hiding money offshore.

Today's hearing follows up on a hearing we held five years ago – in 2008 – when we presented evidence that well-known international banks, located in secrecy jurisdictions, were deliberately helping U.S. clients cheat on their taxes by opening offshore accounts never reported to the IRS, despite U.S. laws requiring their disclosure. The hearing focused in part on UBS, the largest bank in Switzerland, which at one time had 52,000 U.S. customers with Swiss accounts holding $18 billion in hidden assets, and which back then had a practice of sending Swiss bankers onto U.S. soil to service those secret accounts.

On the first day of our hearings, in a dramatic admission, UBS acknowledged what its Swiss bankers had been up to and committed the bank to stopping the abuses. Seven months later, UBS signed a Deferred Prosecution Agreement with the U.S. Justice Department, paid a $780 million fine, and promised to close all undeclared Swiss accounts for U.S. clients. As part of that agreement, UBS turned over about 250 secret Swiss accounts with U.S. client names. After a John Doe summons proceeding that took another year, UBS coughed up more accounts for a total of about 4,700.

UBS' actions sent a powerful signal that U.S. tax cheats using offshore accounts better pay up or face prosecution. Thousands of Americans with undeclared Swiss accounts, along with U.S. accountholders with accounts in other offshore secrecy jurisdictions, ended up joining a voluntary disclosure program established by the IRS. Altogether, 43,000 taxpayers have paid back taxes, interest and penalties totaling $6 billion to date, with more expected. Tax evaders acted to avoid being prosecuted.

UBS' breaking of Swiss secrecy also signaled a seismic shift in the offshore world. Suddenly Switzerland as well as other secrecy jurisdictions declared they would no longer use secrecy laws to facilitate tax evasion. A flurry of new tax information exchange agreements were signed around the world promising a new transparency. The G20 world leaders declared the "era of bank secrecy is over."
Well, it's five years later, and the sad truth is that the era of bank secrecy is not over. Bank secrecy has been discredited and condemned, but it isn't gone. Billions in unpaid taxes remain uncollected thanks to tax evaders' use of bank secrecy. And we have great concern that the battle to collect those unpaid taxes on hidden offshore assets seems stalled.

Our investigation chronicles the uneven and halting progress made in identifying U.S. taxpayers who cheated Uncle Sam by using hidden offshore accounts. A bipartisan report we are releasing today cites chapter and verse of the failure to collect the taxes owed and to hold accountable the U.S. persons who evaded their tax obligations and the tax haven banks who helped them. To lay bare the problems, our report uses a detailed case study involving Credit Suisse.

After the UBS scandal broke in 2008, this Subcommittee asked Credit Suisse as well as several other Swiss banks whether they had been engaged in the same type of conduct as UBS. Credit Suisse privately admitted to Subcommittee investigators that it had, but was cleaning up. After seven Credit Suisse bankers were indicted by the Justice Department in 2011, we checked in again, and found the bank had not yet closed thousands of undeclared Swiss accounts held by U.S. taxpayers. So we took a closer look.

What we found was that Credit Suisse had been holding back about how bad the problem was at the bank.

At its peak, in Switzerland, Credit Suisse had over 22,000 U.S. customers with accounts containing more than 12 billion Swiss francs, which translates into $10 to $12 billion U.S. dollars. Nearly 1,500 accounts were opened in the name of offshore shell companies to hide U.S. ownership. Another nearly 2,000 were opened at Clariden Leu, Credit Suisse's own little private bank. Almost 10,000 were serviced by a special Credit Suisse branch at the Zurich airport which enabled clients to fly in to do their banking without leaving airport grounds.

Although Credit Suisse policy was to concentrate its U.S. client accounts in Switzerland at a Swiss desk called SALN, which had about 15 bankers trained in U.S. regulatory and tax requirements, that policy was largely ignored. In 2008, over 1,800 bankers spread throughout the bank in Switzerland handled one or more U.S. accounts. One U.S. client told the Subcommittee about visiting the bank's main offices in Zurich. The client was ushered into a remotely controlled elevator with no floor buttons, and escorted to a bare room with white walls, all dramatizing the bank's focus on secrecy. The client opened an account after being told the bank did not require completion of the W-9; without that form, the account was not reported to U.S. authorities. In later visits, the client was offered cash withdrawals and credit cards to draw from the Swiss account while in the United States, and the client always signed a form ordering that the Credit Suisse account statements be immediately shredded. It was a classic case of bank secrecy and bank facilitation of U.S. tax evasion.

But the Swiss bankers didn't stay in Switzerland. Like UBS, Credit Suisse bankers travelled across the United States. Ten SALN bankers alone took more than 170 U.S. trips from 2001 to 2008, to look for new clients and service existing accounts. Credit Suisse arranged for them to host tables at the annual Swiss Ball in New York and to host golf tournaments in Florida to prospect for wealthy clients. Some also met with as many as 30 to 40 existing U.S. clients in a single trip to attend to their banking needs.

We learned of one Swiss banker who met with a U.S. client over breakfast at a U.S. luxury hotel, and slipped the client bank account statements in between the pages of a Sports Illustrated magazine. Although none of the Swiss bankers were registered with the U.S. Securities and Exchange Commission, many provided broker-dealer and investment advisory services for U.S. clients, resulting in the $196 million fine that Credit Suisse paid last week. Some Swiss bankers also advised U.S. clients on how to structure cash transactions to avoid filing reports of cash

transactions over $10,000 as required by U.S. law. Other Swiss bankers helped U.S. clients set up offshore shell corporations to hold their accounts and hide the ownership trail. Some bankers lied on visa applications when they entered the United States, saying the purpose of their visit was tourism when in fact it was business.

The bottom line is that Credit Suisse was in it as deep as UBS, aiding and abetting U.S. tax evasion both in Switzerland and on U.S. soil.

Once UBS's misconduct was exposed, Credit Suisse initiated a series of so-called Exit Projects to close its U.S. client accounts in Switzerland. Those projects took five years, until 2013, to complete. In the end, the bank verified accounts for about 3,500 out of the 22,000 U.S. clients as compliant with U.S. tax law, meaning they were disclosed to the IRS. The bank closed accounts for the other 18,900 U.S. customers. It is clear that the vast majority – up to 95 percent – were undeclared, meaning hidden from Uncle Sam.

So where are we now? Unlike UBS, U.S. enforcement action against Credit Suisse has stalled, even though the bank got a target letter three years ago in 2011. While seven of its bankers were indicted by U.S. prosecutors in 2011, none has stood trial and none has been the subject of a U.S. extradition request. Less than a handful of U.S. taxpayers with Credit Suisse accounts have been indicted.

That's not much accountability for the bank, its bankers, or U.S. clients. Taxes owed on billions of dollars in hidden offshore assets remain uncollected. To collect those unpaid taxes and hold U.S. tax evaders accountable, the critical first step is to get their names. The prospect of the United States getting names is what produced the UBS effect – the rush of U.S. offshore accountholders making so-called voluntary account disclosures to the IRS and paying what they owe to avoid embarrassment and worse. But getting names is where this whole story goes bust.

As you can see on this chart, of the 22,000 U.S. clients with Swiss accounts at Credit Suisse, the total number of accounts with U.S. names disclosed by the Swiss to the United States over five years hits a grand total of 238. That's 238 out of 22,000, about one percent. Other Swiss banks with thousands of U.S. clients in Switzerland have, as far as we know, disclosed no names at all.

The reason for this near total failure to date is continued Swiss insistence on bank secrecy, and the United States' letting them get away with it. When the U.S. Department of Justice (DOJ) issued grand jury subpoenas to Credit Suisse to get U.S. client names and account information in Switzerland, the Swiss government inserted itself into the criminal investigation to stand between the bank and DOJ. It told Credit Suisse that it could not deliver documents directly to the United States, but had to funnel them through Swiss officials first. Despite grand jury subpoenas outstanding against Credit Suisse, DOJ did not attempt to enforce them in a U.S. court. Nor did DOJ turn to the IRS to issue a John Doe summons to the bank, even though a John Doe summons caused to UBS turn over 4,500 accounts, the largest single production from Switzerland.

Rather than use those proven U.S. tools that could be enforced in U.S. courts, DOJ reversed course from its UBS approach. For five years, DOJ has voluntarily limited its requests for Swiss documents, including names of tax evaders, to requests made under the U.S.-Swiss tax treaty, despite that treaty's highly restrictive, maddeningly slow, and unproductive process. In 2011, DOJ submitted a treaty request for U.S. client names and account information from Credit

Suisse, and told the Swiss government that DOJ saw the request as a "test case" of Switzerland's willingness to produce critical documents. At the end of a torturous process that took two requests, two court decisions, and nearly two years, in the summer of 2013, DOJ was rewarded with the 238 accounts that included U.S. client names. To me, getting 238 in five years out of a universe of 22,000, less than one percent, is more than an embarrassment. It abdicates the home-court advantage of using U.S. courts. Remember: the law accepted almost everywhere, including the United States, is that if a bank chooses to do business in a foreign country, it must accept and operate under the laws of that country.

By restricting itself to the treaty process, DOJ essentially handed over control of U.S. information requests to Swiss regulators and Swiss courts that rule on how they will be handled and have regularly elevated bank secrecy over bank disclosures.

But the Swiss roadblocks didn't end there. In 2009, right after the UBS battle, Switzerland agreed to amend the U.S.-Swiss tax treaty to replace its highly restrictive "tax fraud" standard with the somewhat less restrictive "relevance" standard. But the Swiss also insisted that the less restrictive disclosure standard be used only for information requests regarding Swiss accounts in existence after the amendments were signed on September 23, 2009. U.S. negotiators went along, and produced a new treaty standard that may be useful prospectively, but can't be used for potentially tens of thousands of Swiss accounts employed for U.S. tax evasion before 2009. The end result is that the tax evaders and the Swiss banks who helped them may get away with wrongdoing.

In 2012, the Swiss passed legislation erecting still another roadblock to U.S. efforts to acquire U.S. client names. The legislation says that to get the names of a Swiss bank's U.S. clients, a U.S. treaty request must establish that the holder of the client information – in other words, the bank – "significantly contributed" to the pattern of misconduct by those unnamed accountholders. In other words, DOJ will have to prove a bank is guilty of facilitating misconduct by a group of unnamed accountholders before it can even get the account information needed to prove the misconduct. Even if DOJ wanted to meet that new standard, it would have to do so in a country that prizes bank secrecy and whose banks have made a fortune from it. It's still a rigged game.

During the same time period, Switzerland pressed DOJ to create a program to enable most of its banks – other than the 14 large banks under active DOJ investigation -- to obtain non-prosecution agreements or non-target letters in exchange for providing limited information and monetary fines, but still without producing any U.S. client names. In response, in 2013, DOJ announced an unprecedented program to give prosecutorial amnesty to hundreds of Swiss banks, without requiring those banks to disclose a single U.S. client name. Giving up on getting U.S. client names contradicts U.S. policy of demanding full cooperation from parties excused from prosecution, and sets a bad precedent for how DOJ will handle other tax haven banks.

The DOJ program allows the banks to give U.S. prosecutors bits and pieces of information, hints and clues that might help the United States in its hunt for tax evaders, instead of a straightforward list of U.S. clients with Swiss accounts. Accounts that existed before August 1, 2008, aren't even covered. The United States is then told to piece the clues together and go on a treasure hunt, trying to identify accounts using very limited information, while Swiss banks get immediate immunity from prosecution.

To make the situation even more difficult, in January a Swiss court turned down a U.S. treaty request for client names, ruling that the fact that a Swiss account was undisclosed – hidden from U.S. authorities – wasn't enough on its own to justify piercing Swiss secrecy laws. Again, the Swiss found preserving bank secrecy more important than supporting U.S. efforts to prosecute tax evasion.

Here's another rigged game. The U.S.-Swiss extradition treaty is supposed to enable each country to obtain the transfer of a criminal defendant from the other country. But that treaty has an exception giving the Swiss the discretion to deny an extradition request for a person accused of a tax offense. DOJ has indicted 38 Swiss banking and other professionals for aiding and abetting U.S. tax evasion. The indictment of the seven Credit Suisse bankers is already three years old. But 34 of those 38 defendants have yet to stand trial. Instead, most are openly residing in Switzerland. One Swiss banker who left Switzerland to vacation in Italy was recently arrested and is here and set to stand trial in October, but he's the exception. It is bad enough that the Swiss can deny extradition for persons aiding and abetting U.S. tax evasion; it is inexplicable that the United States hasn't even made extradition requests.

After DOJ overcame Swiss secrecy obstacles to obtain 4,700 accounts with U.S. client names from UBS, many predicted Swiss secrecy would no longer impede U.S. prosecutions. In 2008 testimony before this Subcommittee, Justice officials pledged to act energetically. Associate Attorney General Kevin O'Connor testified, despite the challenges posed by bank secrecy, "we will not be deterred. We will pursue other formal and informal methods of obtaining the foreign evidence we seek. This includes the use of John Doe summonses as well as Grand Jury subpoenas."

That did not happen as promised, but it's not too late to fulfill that pledge. DOJ can still use U.S. tools, including grand jury subpoenas, John Doe summons, and U.S. indictments, to get U.S. client names from the 14 targeted banks, which includes some of the largest. It can still make extradition requests for indicted Swiss bankers and test Switzerland's professed willingness to cooperate with U.S. tax enforcement. DOJ can still hold accountable the U.S. tax evaders and the tax haven banks that helped them, if it's got the will. Among the questions we will be asking today is why DOJ has slowed its investigations of the 14 banks through its failure to use U.S. legal tools; why it accepted Swiss bank secrecy principles in the DOJ non-prosecution program; why it obtained only 238 accounts with U.S. client names in five years out of the tens of thousands of Credit Suisse accounts; and how it plans to collect the unpaid taxes still owed on billions of dollars of Credit Suisse accounts.

Allowing Americans to evade their tax obligations through hidden offshore accounts deprives the government of needed revenue. More than that, it deprives honest American taxpayers of something vital to the legitimacy of our tax system: fairness. Laws need to be enforced to ensure that taxpayers aren't able to go offshore to cheat Uncle Sam and instead pay what they owe, and the tax haven banks that aided them are held accountable for their actions.

I would like to thank my Ranking Republican John McCain and his fine staff for their strong support and involvement in this investigation, carrying on the bipartisan work that began, in this instance, with Senator Coburn and his fine staff.

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