



Robert W. Wood

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100 Swiss Banks Get Ultimatum: Hand Over Americans Or Face U.S. Prosecution

Since 2009, the U.S. has had unprecedented success with ferreting out offshore accounts. It started in 2008 with key court victories against UBS. In 2009, UBS paid \$780 million to the IRS and upended Swiss banking forever by handing over Americans. Many other banks followed suit, and the costs keep rising. Recently, [Credit Suisse plead guilty and paid a \\$2.6 billion fine.](#)

Now, from its position of dominance, the Justice Department has made it clear what it wants from the hundred Swiss banks that hurriedly grabbed the DOJ's settlement deal before January 1, 2014. The U.S. [seeks 'total cooperation'](#), and that truly means total. Any American names, details, and more. The Justice Department intends to get it all.

The consequences of the Swiss not complying? You guessed it: prosecution. There were 14 Swiss banks under criminal investigation that were therefore ineligible for the deal. Such Swiss banks remain under the dark cloud of a U.S. investigation, including Julius Baer, and Pictet & Cie. Approximately 100 banks took the Justice Department settlement deal before the December 31, 2013 deadline.



But the terms of the non-prosecution agreement were not available until now, 10 months after these 100 banks signed on. There seemed to be little choice about taking the deal, given what was happening to any Swiss bank that even tried to resist. The U.S. settlement deal broke Swiss banks into several categories, with more serious penalties for the worst offenders.

A key group is the category two banks. They have reason to believe they may have committed tax offences, and they can escape prosecution by detailing their wrongdoing with U.S. clients and paying fines. The draft non-prosecution agreement does not involve guilty pleas or criminal penalties.

However, all banks must report to U.S. authorities any information or knowledge of activity relating to U.S. tax. They must reveal all cross-border activities and close the accounts of Americans evading taxes. The 3 tiers of penalties are vastly better than a full-blown U.S. investigation with potential tax evasion charges. Participating banks are required to provide details on American accounts.

They must also inform on the banks that transferred money into secret accounts or that accepted money when secret accounts were closed. See [Signed Joint Statement and Program](#). Banks that held accounts as of August 1, 2008, must pay a fine equal to 20% of the top dollar value of all non-disclosed accounts. That goes up to 30% for secret accounts opened after August 1, 2008, but before March 2009.

The highest tier of penalties is 50% for accounts opened after that. The 3-tier penalty punishes more recent violators most harshly. Of course, American account holders also remain in the cross-hairs. The U.S. settlement program for banks should not be confused with the IRS programs for Americans seeking to avoid prosecution.

Clearly, U.S. account holders who have not already resolved their issues with the IRS should not waste any time determining [which IRS offshore amnesty program is right for them](#). After all, disclosure is now virtually inevitable, and the banks will presumably bend over backwards to comply. If a banks fails to follow any of the terms of the agreement, it would be void. That means the bank could risk U.S. prosecution.

There is little reason to believe that the U.S. authorities are not deadly serious about this. For depositors and banks alike, disclosure and penalties are vastly better than the alternative. And depositors should beware, since [closing foreign accounts is not an alternative](#) to coming clean with the IRS. For Americans who fail to step forward, the IRS and Department of Justice warn of their vast resources.

Meanwhile, the tax evasion trial of a key Swiss banker and [former UBS high-flying](#) executive, Raoul Weil, is commencing in Florida. It comes after a five year wait. Aptly, if he is convicted of helping Americans evade taxes, he could spend five years in jail. After all, if the last five years of IRS and DOJ success has shown anything, it is that the U.S. is all powerful and wants to make examples of high-flying individuals and institutions.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.