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Every American With Money Abroad--Anywhere Abroad--Is Impacted By Massive Bank Deal

Some said it would never happen. They were wrong. The U.S. and Swiss reached a deal that punishes Swiss banks and paves the way for even more transparency. See [DOJ: United States and Switzerland Issue Joint Statement Regarding Tax Evasion Investigations](#). And it takes little

imagination to know this will impact even obscure and far-flung countries too. After all, just remember the past and

Switzerland's long tradition of bank confidentiality. Tax evasion is not even considered a crime.

In 2009, UBS paid \$780 million to the IRS and upended Swiss banking forever by handing over Americans. Many other banks followed suit, some quietly, some not. See [As U.S. Settlement For 300 Swiss Banks Dawns, Prosecution Risks Remain](#). IRS amnesty programs in 2009, 2011 and today have offered a predictable and formulaic form of relief. Generally, Americans with undisclosed accounts have had no choice. That is even more true today.

Disclosure and penalties are vastly better than the alternative. And discovery by the IRS grows ever more likely. Merely closing a foreign bank account does



not solve disclosure problems. See [Is Closing Foreign Bank Accounts An Alternative To Disclosure?](#) For those who don't step forward, the IRS and Department of Justice (DOJ) warn that they have even more resources at their disposal.

And clearly they do. The watershed deal to punish Swiss banks truly closes the door on bank secrecy and a bygone era of tax evasion. See [Signed Joint Statement and Program](#). Banks are required to provide details on accounts in which Americans have an interest. They must inform on the banks that transferred money into secret accounts or that accepted money when secret accounts were closed. They must reveal all cross-border activities and close the accounts of Americans evading taxes.

The new deal enables Swiss bank not under criminal investigation by the U.S. to get right. It doesn't apply to 14 Swiss banks (and Swiss branches) that are already under criminal investigation. See [Swiss Agree on Penalties for Banks That Aided Tax Cheats](#). But it does cover everyone else.

There is a carrot: they will be eligible for nonprosecution agreements that don't involve guilty pleas or criminal penalties. See [Swiss Disclosure Deal—'No Secrets Now'](#). But there is also a stick. Some Swiss banks—presumably some of the 14—may still face indictment.

Of course, the account holders remain in the crosshairs, and while little is being said now, that seems the biggest news of all. See [Offshore Tax-Avoidance and IRS Compliance Efforts](#). Increasingly, account holders have nowhere to hide, nor even do their professional advisers, including lawyers. With the number of advisers and whistleblowers, the IRS voluntary disclosure program today looks even more compelling. See [UBS' Bradley Birkenfeld Gets \\$104 Million, Blows Doors Off IRS Whistleblower Program](#).

The fines for banks are set in tiers based on time. Banks that held accounts as of August 1, 2008, must pay a fine equal to 20% of the top dollar value of all nondisclosed 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.

Recall that the Wegelin prosecution was spurred by it being a go-to bank for UBS account holders once UBS was caught out. UBS averted indictment with a costly \$780 million deferred prosecution agreement with U.S. officials. The 3-tier penalty of the new deal also punishes the more recent violators the

harshest. DOJ has not tallied the total haul the U.S. expects, but it is a big payday for the U.S.

As painful as this may be for Switzerland and Swiss banks, the new deal averts an even deeper crisis there. But for Americans holding undisclosed funds in Switzerland or anywhere else, with FATCA and now the capitulation of what amounts to all of Switzerland, it seems clear that disclosure—everywhere and of everything—is inevitable.

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.