Department of Justice

STATEMENT OF

CAROLINE CIRAOLO

ACTING ASSISTANT ATTORNEY GENERAL
TAX DIVISION
U.S. DEPARTMENT OF JUSTICE

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COMMERCIAL AND ANTITRUST LAW
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OVERSIGHT OF THE TAX DIVISION

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Statement of Caroline Ciraolo
Acting Assistant Attorney General
Tax Division
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Chairman Marino, Ranking Member Johnson, and Members of the Subcommittee, thank you for inviting me here to testify about the work of the Tax Division.

The Tax Division's mission is to enforce the nation's tax laws fully, fairly, and consistently in federal and state courts throughout the country in order to promote voluntary compliance with the tax laws, maintain public confidence in the integrity of the tax system, and promote the sound development of the law. The Division functions, broadly, as four groups. The Division's 7 civil trial sections have, on average, about 6,000 cases pending in various stages, with anywhere from 2,500-4,000 being actively worked, and claims in those suits exceeding $9 billion. In any given year, the Tax Division's civil appellate attorneys handle about 650 civil appeals, about half of which are from decisions of the U.S. Tax Court. To help achieve uniformity in nationwide standards for criminal tax prosecutions, the Tax Division's criminal prosecutors are broken into 3 sections and authorize almost all grand jury investigations and prosecutions involving violations of the internal revenue laws. The Division authorizes between 1,300 and 1,800 criminal tax investigations annually. Alone or in conjunction with Assistant United States Attorneys, Tax Division attorneys prosecute these crimes after determining that there is a reasonable probability of conviction based on the existence of sufficient admissible evidence to prove all of the elements of the offense charged. And all criminal tax appeals are handled by our Criminal Appeals and Tax Enforcement Policy Section.

To carry out its mission, the Tax Division currently has approximately 340 attorneys, who are assigned either to one of sixteen sections and offices located in Washington, D.C., or to the Southwestern Civil Trial Section located in Dallas, Texas. Attorneys are supported by approximately 120 administrative support employees.

The President's Budget for the 2016 fiscal year ("FY") requests $113.1 million in funding for the Tax Division. This funding level will allow the Division to continue its enforcement efforts through its prosecutions, collections, and injunction actions -- all areas that are critical to the full and fair enforcement of the tax laws enacted by Congress.

Civil Litigation

Civil Trial. The Tax Division is responsible for litigating all matters arising under the internal revenue laws in all state and federal trial courts, except the United States Tax Court. Tax Division civil litigators enforce the Internal Revenue Service's ("IRS") requests for information in ongoing examinations, and collect and defend tax assessments when the examinations are completed. Tax cases filed *against* the United States comprise nearly 70% of the Division's caseload, both in the number of cases to be litigated and the number of attorney work-hours devoted to them each year. Each year, the Division's civil trial attorneys save the Treasury hundreds of millions of dollars through their representation of the government in defense of refund claims brought by taxpayers. As of September 30, 2014, the Division was defending tax refund cases worth approximately $9 billion to the Federal Treasury.

The Tax Division contributes significantly to closing the tax gap (the difference between the amount of taxes owed and the amount that is not paid on time) through its pursuit of those taxpayers that fail to truthfully and accurately comply with their federal tax obligations. The goal of the Tax Division's civil tax litigation is twofold: first, to enforce the tax laws and collect taxes that would otherwise go unpaid; and second, to assure honest taxpayers that those who choose not to pay their fair share will be pursued and penalized. Collection suits have a direct and positive effect on the Treasury. The Division consistently collects more each year than its entire budget. Over the past five fiscal years, the Division has collected in excess of $ 1.3 billion in unpaid tax debts. Given that the IRS only refers to the Tax Division tax debts that the IRS has been unable to collect administratively, the Division's efforts are a tremendous return on investment in collecting the most difficult debts.

The portfolio of Tax Division attorneys includes a wide array of procedural and substantive tax matters which can affect an individual taxpayer or business, a large number of similarly-situated individual taxpayers, or an entire industry. Transactions at issue can range from the proper reporting of income and deductions on a Form 1040 to the consequences of an investment in a complex corporate tax shelter. When a matter is referred by the IRS for defense or litigation, the Division independently analyzes the facts and applicable law to ensure that the tax system is being enforced uniformly and fairly across the country. As a result, the Division's civil trial attorneys are successful in more than 95% of the cases that they litigate to a decision each year.

Civil Appellate. Tax Division civil appellate attorneys are responsible for briefing and arguing civil federal tax cases before the United States courts of appeal. At any given time, civil appellate attorneys are responsible for approximately 650 cases. About half of the cases involve appeals from decisions of the United States Tax Court, with the balance arising from decisions of the United States district courts and the United States Court of Federal Claims. Civil appellate

attorneys also assist the Solicitor General of the United States in drafting pleadings and briefs filed in civil federal tax cases considered by the United States Supreme Court. These include amicus curiae briefs in suits that present issues affecting the interests of the United States, or in which the Court invites the United States to provide its views on tax-related questions. When the government receives an adverse decision from a trial court, the Appellate Section closely evaluates the legal and policy implications of the decision and provides a recommendation to the Solicitor General, taking care to ensure that resources are spent wisely only on the most meritorious government appeals.

Criminal Investigation and Prosecution

Criminal Trial. In addition to our extensive civil practice, the Tax Division authorizes nearly all prosecutions arising under the federal tax laws except for excise taxes and criminal disclosure violations. In most cases, Tax Division prosecutors either conduct or supervise these prosecutions, often in partnership with prosecutors from the United States Attorneys' Offices. The Division's criminal goals are to prosecute criminal tax violations and to promote uniform nationwide criminal tax enforcement. In many cases, the Tax Division receives requests from the IRS to prosecute violations after the IRS has completed an administrative investigation. In other cases, the IRS asks the Tax Division to authorize grand jury investigations to determine whether prosecutable tax crimes have occurred. Tax Division prosecutors review, analyze, and evaluate referrals to ensure that uniform standards of prosecution are applied to taxpayers across the country. In the past few years, the Division has authorized between 1,300 and 1,800 criminal tax investigations and prosecutions each year. After tax charges are authorized, cases are handled by a United States Attorney's Office, by a Tax Division prosecutor, or by a team of prosecutors from both. Tax Division prosecutors also conduct training for IRS criminal investigators and Assistant United States Attorneys, and provide advice to other federal law enforcement personnel, such as the Drug Enforcement Administration ("DEA") and the Federal Bureau of Investigation ("FBI").

The crimes investigated and prosecuted by the Tax Division include attempts to evade tax, willful failure to file returns, and submission of false returns, as well as other conduct designed to violate federal tax laws. The crimes may be committed by individuals, business entities, or tax preparers and professionals. These cases often encompass tax crimes where the source of the individual or business income is earned through legitimate means – as examples, a restaurateur who skims cash receipts; a self-employed individual who hides taxable income or inflates deductions; or a corporation that maintains two sets of books, one reporting its true gross receipts and the other - used for tax purposes - showing lower amounts. Prosecutions in these cases often receive substantial attention in the local and national media, and convictions remind law-abiding citizens who pay their taxes that those who cheat will be punished.

It is not uncommon for tax crimes to be committed during the course of other criminal conduct, such as securities fraud, bank fraud, identity theft, bankruptcy fraud, heath care fraud, organized crime, public corruption, mortgage fraud, and narcotics trafficking. Tax Division prosecutors work closely with the United States Attorneys' Offices on these issues. In addition, Tax Division prosecutors investigate and prosecute domestic tax crimes involving international conduct, such as the illegal use of offshore trusts and foreign bank accounts used to conceal taxable income and evade taxes. As tax crimes have become more complex and international in scope, so has the workload of Tax Division prosecutors. In addition to the traditional cases involving unreported legal source income, over the last several years a greater proportion of our cases involve high net worth taxpayers and tax professionals who sell and implement dubious tax schemes. During FY14 Division prosecutors obtained 121 indictments and 134 convictions (not including the additional criminal tax prosecutions handled exclusively by United States Attorneys' Offices). The conviction rate for cases brought by Tax Division prosecutors generally exceeds 95%.

Criminal Appeals. The Tax Division Criminal Appeals and Tax Enforcement Policy Section (CATEPS) handles appeals in criminal tax cases prosecuted by Tax Division prosecutors, as well as some appeals from criminal tax cases handled by United States Attorneys' Offices. The Division also supervises appeals in matters prosecuted by the United States Attorneys' Offices. The appellate-level review provided by CATEPS attorneys plays a vital role in promoting the fair, correct, and uniform enforcement of federal tax law. CATEPS is also charged with developing criminal tax enforcement policy, and the section provides technical guidance on issues including the sentencing guidelines and restitution in tax cases. The section's international team serves as a resource to Division attorneys and IRS agents on international discovery matters arising in civil and criminal cases. CATEPS also plays a role in providing information and technical expertise on matters involving international tax information agreements and treaties.

It is apparent from this brief overview that Tax Division attorneys are involved in every facet of federal tax enforcement. While we continue to maintain a sizeable caseload of what may be considered "traditional" tax enforcement matters, we are also mindful of the need to identify and respond to ongoing, growing, and new trends in civil and criminal noncompliance. I would like to take a moment to highlight six areas of noncompliance that are among our highest enforcement priorities -- stolen identity refund fraud, abusive tax shelters, abusive promotions, offshore tax evasion, the Swiss Bank Program, and tax defiers.

Stolen Identity Refund Fraud

Investigating, stopping, and prosecuting individuals who engage in tax refund fraud have always been top priorities for the Tax Division. Using a variety of civil and criminal enforcement tools, the Division, along with our partners at the IRS and in the United States Attorneys' Offices, has successfully shut down hundreds of unscrupulous preparers and individuals who viewed the Federal Treasury as a personal bank account. Their schemes have included filing returns containing inflated, false deductions or false W-2 income statements, or preparing returns and failing to remit the refund to the taxpayer. In the past few years an even more aggressive scheme has cropped up across the country at an alarming rate -- stolen identity refund fraud ("SIRF").

SIRF schemes follow the same pattern: theft of social security numbers and other personal identifying information, filing tax returns showing a false refund claim, and then having the refunds electronically deposited or sent to an address where the offender can access the refund checks. In many cases, the taxpayer whose social security number has been compromised will later face difficulties when he or she files a tax return. In other cases, the false returns are filed using social security numbers of deceased taxpayers or others from whom no federal tax return may be due for filing. These schemes are usually implemented in early January, before the proper taxpayer is expected to file his or her return, with the goal of taking advantage of the IRS's efforts to pay out refunds quickly. In many cases, the most vulnerable in our society are the victims. Names and social security numbers have been stolen from medical firms, schools, prisons, and hospitals by dishonest employees who are often paid for the information. Postal workers have been robbed, and in one instance, murdered to gain access to refund checks.

The high potential for financial gain and low physical risk have made stolen identity refund fraud the new crime of choice for drug dealers and gangs. The scope and organization of these criminals is vast and growing, and in certain cases, the criminal proceeds of the crime have been used to purchase illegal narcotics for resale.

For taxpayers whose identities are stolen, the economic and personal consequences can be severe and often long-term. While the IRS has invested substantial efforts and resources to address identity theft concerns, those victimized face months, if not years, of overwhelming paperwork, credit problems, and inconvenience. And when a stolen identity is used to commit tax refund fraud, all taxpayers are victims, and all Americans are impacted by the loss to the Federal Treasury. In recognition of the severity of the problem, the Department and the IRS have devoted significant resources to the successful prosecution of individuals engaged in stolen identity refund fraud. Individuals engaged in this criminal conduct face a variety of charges, including aggravated identity theft, theft of government property, false claims for refund, false returns, and tax conspiracy.

In the last several years, the Department has successfully prosecuted and received significant sentences in cases in which a stolen identity was used to commit tax refund fraud. For example:

- In May 2014, a superseding indictment was returned against nine defendants for their roles in a $20 million dollar stolen identity refund conspiracy. All nine defendants have pleaded guilty and await sentencing. According to the allegations in the indictment, between 2011 and 2013, the defendants ran a large-scale identity theft ring in which they filed over 7,000 tax returns claiming false refunds. As part the scheme, one of the defendants stole identities from the hospital at Fort Benning, Georgia where she worked and had access to the identification data of military personnel, including soldiers who were deployed to Iraq and Afghanistan. Other defendants stole identities from an Alabama state agency and from the Alabama Department of Corrections.

- In June 2014, a Miami, Florida man was sentenced to 120 months in prison for stealing identities and then filing false returns that requested over $13 million in false refunds by fraudulently claiming gambling income and withholding from the Florida Lottery Commission. His co-conspirator opened approximately eighteen bank accounts to deposit these fraudulent refunds.

- In December 2014, a Tennessee woman was sentenced to 102 months in prison. She and her co-conspirators unlawfully obtained personal identifying information of victims, including high school students, and used the information to file false tax returns claiming millions of dollars of refunds. Two co-conspirators have been sentenced to 45 and 48 months in prison, respectively, and three others have pled guilty and await sentencing.

- In January 2015, a Maryland woman and former bank employee, was sentenced to 87 months in prison for her role in a massive and sophisticated identity theft and tax fraud network involving more than 130 individuals. She is among approximately a dozen people who have pleaded guilty in the U.S. District Court for the District of Columbia to charges in one of the largest prosecutions to date involving the use of stolen identifying information. The overall case involves the filing of at least 12,000 fraudulent federal income tax returns that sought refunds of at least $40 million.

- In April 2015, two Michigan women were sentenced to serve 24 months and 18 months respectively after pleading guilty to wire fraud and aiding and abetting identity theft. The women participated in a scheme in which stolen names and social security numbers of recently deceased individuals were used to prepare and file more than 700 fraudulent federal returns. In 2014 a co-defendant was sentenced to serve 30 months in prison and ordered to pay $410,949 in restitution to the United States.

- In April 2015, four Oregon residents were sentenced for their role in a multi-year scheme to defraud the United States of more than $1 million in tax refunds. The scheme involved the filing of over 200 false federal income tax returns that included fraudulent claims for refund between $3,000 and $9,000 per return. The defendants were sentenced to terms of imprisonment ranging from 12 months and a day to 60 months, and all four were ordered to pay restitution to the United States.

As these examples illustrate, SIRF crimes are different from the crimes typically addressed by the Tax Division. While the typical criminal tax case may involve willfully filed false returns, evading the assessment of tax due and owing or the use of sophisticated financial schemes which invariably require lengthy in-depth investigations, SIRF crimes generally involve garden variety theft and fraud. Moreover, SIRF prosecutions are often reactive to exigent circumstances; in many cases, the crime is discovered by local law enforcement officers who come upon a large cache of Treasury checks or debit cards loaded with fraudulent tax refunds.

Recognizing these fast-moving law enforcement needs, on October 1, 2012, the Tax Division issued Directive 144, which delegates to local United States Attorneys' Offices the authority to initiate tax-related grand jury investigations in SIRF matters, to charge those involved in SIRF crimes by complaint, and to obtain seizure warrants for forfeiture of criminally-derived proceeds arising from SIRF crimes, without prior authorization from the Tax Division. The Tax Division retains authority in connection with forfeitures if any legitimate taxpayer refunds are involved.

Directive 144 was the result of collaborative efforts among the Tax Division, the IRS, and the United States Attorneys' Offices to strengthen the law enforcement response to SIRF crimes. The Tax Division continues to work closely with the IRS and United States Attorneys' Offices across the country to ensure effective information sharing and investigative cooperation as permitted by law. And this approach is yielding significant results. Beginning with the implementation of Directive 144 (and the expedited review procedures) and ending March 31, 2014, the Tax Division authorized more than 1,000 SIRF investigations involving more than 1,750 subjects. During the same period the Tax Division and the U.S. Attorneys' Offices have authorized more than 775 prosecutions involving more than 1,500 individuals.

The prosecution of SIRF crimes is a national priority, and, together with our law enforcement partners, we will continue to look for the most effective ways to bring this conduct to an end and to punish these wrongdoers. While the goal is to stop fraudulent refunds at the door, the Tax Division will continue to prosecute these cases and, in doing so, send a clear message to those who engage in this conduct that they will be held accountable for their actions.

Abusive Tax Shelters

The proliferation of abusive tax shelters is a significant problem confronting our tax system. Abusive tax shelters for large corporations and high-income individuals cost the government billions of dollars annually, according to Treasury Department estimates.

Tax shelter litigation is among the most sophisticated and important litigation handled by the Tax Division. Tax shelters are designed to generate large purported tax benefits using multiple entities and complex financial transactions that lack a real business purpose or any real economic substance. Shelter cases often involve well-disguised transactions and tax-indifferent parties located in other countries, making case development and document discovery difficult and expensive. Successfully defending in federal trial and appellate courts the IRS's disallowance of sham tax benefits is critical to the government's efforts to combat abusive tax shelters. Because tax shelters typically involve enormous sums of money and often attract significant media attention, a coordinated and effective effort is essential to prevent substantial losses to the Treasury and deter future use of such tax shelters by other taxpayers.

The Tax Division plays a critical role in the government's efforts to combat abusive tax shelters. For example:

- The Dow Chemical Company engaged in a transaction in which it claimed approximately $1 billion in tax deductions that were generated by a partnership known as Chemtech. *Chemtech Royalty Assoc. LLP v. United States* (M.D. La. 2013). Dow sought to obtain deductions for making royalty payments to itself, and depreciation deductions for a previously depreciated chemical plant. In February 2013, the district court determined that Dow's transactions lacked economic substance and that the Chemtech partnership should be disregarded because it had no purpose other than to create tax benefits. The court also imposed penalties. The district court's opinion was affirmed by the Fifth Circuit in September 2014, and remanded to the district court for determination of the applicability of the 40% penalty.

- In August 2013, the Division successfully defended a favorable district court decision in *WFC Holdings Corp. v. United States* (8th Cir. 2013), a case involving a contingent-liability tax shelter. The Eighth Circuit found that the literal language of the Internal Revenue Code supported WFC's tax treatment of the transaction, but nonetheless disallowed WFC's asserted tax loss and resulting $82 million tax refund because the transaction lacked economic substance.

- The Tax Division recently prevailed in a case involving BB&T Corporation's claim for more than $660 million in tax benefits based on a tax-shelter transaction known as

Structured Trust Advantaged Repackaged Securities (STARS), which was designed and promoted to subvert the foreign tax credit rules and generate illicit tax benefits to be shared among the transaction's participants. *Salem Financial, Inc. v. United States* (Fed. Cl. 2013). The court ruled that BB&T was not entitled to the claimed tax benefits and imposed $112 million in penalties.

- In December 2013, in a case involving a COBRA shelter, the Supreme Court reversed an adverse Fifth Circuit decision and held that the 40% gross valuation misstatement penalty is applicable when a taxpayer engages in an abusive tax shelter transaction that is disregarded in its entirety for lack of economic substance. *United States v. Woods* (Sup. Ct. 2013). The decision also addressed a thorny partnership jurisdictional issue and held that the district court had jurisdiction to determine the applicability of the 40% penalty in a partnership-level proceeding, distinguishing between the "applicability" determination and the ultimate imposition of the penalty on partners. The *Woods* decision has favorably impacted several other tax shelter cases pending in various appellate courts.

- The Tax Division also recently prevailed in two cases involving "sale-in/lease-out" and "lease-in/lease-out" (SILO/LILO) tax shelters (abusive leasing schemes that are designed to transfer, for a fee, tax benefits from one entity that cannot use them, such as a foreign corporation or U.S. municipality, to a U.S. taxpayer). In October 2013, in *UnionBanCal Corp. & Subsidiaries v. United States* (Fed. Cl. 2013), the Court of Federal Claims issued a favorable opinion concerning a LILO transaction involving a public arena in Anaheim, California. UnionBanCal had sought a refund of approximately $91 million. In *Consolidated Edison Co. v. United States* (Fed. Cir. 2013), the Federal Circuit unanimously reversed the lone trial court decision that had upheld the purported tax benefits of the LILO shelter.

These are significant victories and the Tax Division will continue to vigorously defend the IRS's disallowance of the sham benefits claimed by taxpayers who seek to elevate form over substance and undermine the tax system to avoid paying their fair share.

Abusive Promotions

The Department also is actively in combatting those who promote the use of fraudulent schemes and promotions, including the use of domestic or foreign trusts, to evade taxes and hide assets. Promoters of these schemes often use the internet to aggressively market these trusts to the public, and rely upon strained, if not demonstrably false, interpretations of the tax laws. Employing what they often call "asset protection trusts" (ostensibly designed to guard an individual's assets from legitimate creditors, including the IRS), these promoters are in fact assisting taxpayers to fraudulently assign income and conceal ownership of income-producing assets in order to evade paying their taxes. The Tax Division and U.S. Attorneys' Offices are

vigorously employing a range of criminal and civil tools, including injunctive relief, to target promoters and address these abusive activities.

- In October 2013, Paul Daugerdas was convicted by a jury of a multibillion-dollar criminal tax fraud scheme. Daugerdas, a lawyer, certified public accountant, and the former head of the tax practice at the Jenkens & Gilchrist law firm, designed, marketed, and implemented fraudulent tax shelters used by wealthy individuals to evade over $1.6 billion in taxes owed to the IRS. The twenty-year scheme generated over $7 billion of fraudulent tax losses and personally netted Daugerdas approximately $95 million in fees. In June 2014 he was sentenced to serve 15 years in prison, ordered to forfeit nearly $165 million in proceeds of the offenses, and to pay over $371 million in restitution to the IRS. Numerous other individuals connected to this scheme were also convicted and sentenced to prison. For instance, Donna Guerin, a former attorney at Jenkens & Gilchrist, pleaded guilty for her role in the scheme and was sentenced in March 2013 to eight years in prison.

- Since 2000, Tax Division attorneys have obtained injunctions against more than 500 tax-fraud promoters and return preparers. For example, in September 2014, the government filed eight civil injunction lawsuits across Florida against the owner and founder of Loan Buy Sell ("LBS") Tax Services and 10 of his franchisees. LBS operated at least 239 tax return preparation stores throughout the southeastern United States, and prepared more than 55,000 federal income tax returns. In the filed complaints the government alleges that LBS prepared tax returns that made fraudulent claims for, among other things, the American Opportunity Tax Credit, the Fuel Tax Credit, and the Earned Income Tax Credit. In February 2015, a court barred two of the defendants from preparing tax returns for others and from owning or operating a tax return preparation business. Litigation continues against the remaining defendants. Until the Division successfully stopped these schemes, they had cost the Federal Treasury more than $2 billion during the past several years and placed an enormous administrative burden on the IRS. If permitted to continue unchecked, these schemes would undermine public confidence in the integrity of our tax system, and require both the IRS and the Tax Division to devote tremendous resources to investigating the fraudulent schemes, seeking corrective action, and collecting the resulting unpaid taxes.

Through our injunction program, the Tax Division works closely with IRS agents and attorneys to ensure that misconduct is detected early, investigated fully, and referred quickly so that it can be stopped before it spreads further.

Offshore Tax Evasion

The Tax Division plays a lead role in investigating and prosecuting those who use foreign tax havens to evade taxes and reporting requirements. The increased technical sophistication of financial instruments and the use of the internet have made it all too easy to move money around the world instantly, without regard to national borders. Using tax havens facilitates evasion of U.S. taxes and related financial crimes, and fosters the perception that if people have enough money and access to unscrupulous professionals, they can get away with hiding money offshore.

Combatting the use of foreign bank accounts to evade U.S. taxes has been a long-standing enforcement priority for the Tax Division. Since 2009, when the Tax Division reached a ground-breaking deferred prosecution agreement with UBS, it has publicly charged more than 100 account holders, of which approximately 90 have pleaded guilty, 12 were convicted following trial, and five are fugitives. The Department's enforcement efforts have reached far beyond Switzerland, as evidenced by public actions involving banking activities in India, Israel, Liechtenstein, Luxembourg, and the Caribbean.

These high-profile enforcement actions created pressure on non-compliant taxpayers to correct their tax returns and report previously undisclosed accounts. According to the IRS, since the inception of the investigation against UBS, over 50,000 disclosures have been made of previously secret accounts through the IRS's offshore voluntary disclosure programs, and taxpayers have paid over $7 billion in back taxes, interest, and penalties. These enforcement efforts not only remedy past wrongdoing, but also bring into the system tax revenue from taxpayers who become compliant going forward.

The Tax Division also is committed to holding accountable foreign banks and individuals who facilitate the evasion of U.S. tax and reporting obligations. The Department has prosecuted more than a dozen facilitators, resulting in 12 guilty pleas and two convictions following trial. An additional 23 facilitators have been indicted and remain fugitives. And since announcing the UBS deferred prosecution agreement in February 2009, the Division has taken public action against four other banks, two in Switzerland, one in Liechtenstein, and one in Israel.

- In December 2014, Bank Leumi, a major Israeli international bank, admitted that it conspired to aid and assist U.S. taxpayers in the preparation and filing of false returns with the IRS by hiding income and assets in offshore accounts at Bank Leumi Group locations in Israel, Switzerland, Luxembourg, and the United States. The deferred prosecution agreement between Bank Leumi and the Department of Justice required the bank to pay $270 million to the United States, provide the names of more than 1,500 of its U.S. account holders, and cooperate with related ongoing investigations.

- In May 2014, Credit Suisse AG pleaded guilty to conspiracy to aid and assist U.S. taxpayers in filing false income tax returns and other documents with the IRS. The guilty plea by the Swiss corporation was the result of a years-long investigation by U.S. law enforcement authorities that also produced indictments of eight Credit Suisse executives since 2011; two of those individuals have pleaded guilty so far. The plea agreement, along with agreements made with other federal and state agencies, required that Credit Suisse pay a total of $2.6 billion.

- In July 2013, the Department announced that Liechtensteinische Landesbank AG, a bank based in Vaduz, Liechtenstein ("LLB-Vaduz"), agreed to pay more than $23 million to the United States and entered into a non-prosecution agreement. As noted in the agreement, before the government began the investigation, LLB-Vaduz voluntarily implemented a series of remedial measures to stop servicing U.S. account holders with undeclared accounts. The bank also assisted in changing the law in Liechtenstein retroactively, which enabled the Division to obtain account files of non-compliant U.S. account holders without having to identify each account holder whose information was requested.

- In January 2013, Wegelin Bank, the oldest private bank in Switzerland, pleaded guilty to conspiracy to defraud the United States for actions arising from its efforts on behalf of U.S. account holders. Wegelin was ordered to pay approximately $58 million to the United States and to forfeit funds in the amount of $16.2 million previously seized by the government from a correspondent account in the United States, for a total recovery to the United States of approximately $74 million.

The absence of public disclosure should not be construed as a sign of inactivity in this critical law enforcement area. The Tax Division has on-going criminal investigations in Switzerland and elsewhere concerning the cross-border activities of foreign financial institutions, domestic and foreign individuals who facilitated U.S. tax evasion and reporting violations, and U.S. accountholders who failed to report income on foreign assets and failed to disclose foreign accounts.

The Department is also successfully using a variety of law enforcement tools to gather information that we believe will lead to admissible evidence in future enforcement efforts. For example, in the last few years the Department obtained orders for John Doe Summonses to be issued for information about U.S. taxpayers held in the United States through correspondent accounts for banks based in Switzerland, India, the Bahamas, Barbados, the Cayman Islands, Guernsey, Hong Kong, Malta, and the United Kingdom. The Tax Division continues to work with the IRS and United States Attorneys to gather information about taxpayers who seek to avoid or evade taxes.

Swiss Bank Program

The investigation and prosecution of offshore tax evasion requires the IRS and the Tax Division to obtain foreign evidence, most often through a tax information exchange agreement or a mutual legal assistance or other treaty. A fundamental issue with respect to obtaining information about accounts located in Switzerland has been the degree to which Swiss law permits disclosure under the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income, signed on October 2, 1996. Swiss banks have often contended, in response to our investigations, that Swiss law prohibited meaningful cooperation (most notably, the disclosure of U.S. account holder identities). As part of our efforts to obtain information from these banks, the Department and the IRS engaged in a series of discussions with representatives of the Swiss government. Our central focus in these discussions was on obtaining information from the banks that would serve our law enforcement goals of encouraging voluntary disclosure by U.S. account holders, prosecuting account holders who fail to come forward, and learning where else in Switzerland and the world U.S. taxpayers attempted to use secret accounts to engage in tax evasion. We also sought to maintain the integrity of pending U.S. law enforcement matters and the ability to prosecute those persons who assisted U.S. taxpayers in evading the law.

On August 29, 2013, the Department announced the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Program"), which is designed to encourage Swiss banks to cooperate in our ongoing investigations. The Program invited Swiss banks to come forward to provide cooperation and information in return for the possibility of a non-prosecution agreement or deferred prosecution agreement. Two significant points about the Program should be noted at the outset. First, the Program expressly excludes any bank authorized for investigation in connection with their Swiss banking activity related to U.S. account holders before the Program was announced. Second, the Program expressly excludes all individuals. No banker, professional advisor, or accountholder is offered any sort of protection or immunity under the Program.

Under the Program, banks that were under investigation at the time the Program was announced and therefore, ineligible, are referred to as "Category 1" banks. "Category 2" banks include eligible Swiss banks that self-identified as having committed tax-related offenses, or offenses relating to the filing of Reports of Foreign Bank and Financial Accounts ("FBARs"), in connection with U.S. related accounts. The information required to be provided by the cooperating banks is extensive, and includes full disclosure of their activities, the names of culpable employees and third party advisors, and the number of U.S. accounts. For those accounts that Category 2 banks closed after the Tax Division's investigation of UBS became public in mid-2008, the Program requires disclosure, on an account-by-account basis, of the number of U.S. persons related to the account, and the nature of that relationship, monthly

balances, and monthly transfers into and out of the account. Category 2 banks must also cooperate in treaty requests for account records, which Switzerland has committed to process on an expedited basis.

The Category 2 banks are required to pay a penalty that is based on the maximum aggregate values of the undisclosed accounts, and that is calibrated to reflect both the magnitude of a bank's involvement in the misconduct as well as the willingness of the bank to continue to service undeclared accounts after our law enforcement activities became known. The penalty can be reduced to the extent that a Category 2 bank encouraged a U.S. accountholder to come forward and participate in an offshore disclosure program established by the IRS.

Category 2 banks were required to take the initial step of expressing their intent to participate in the Program no later than December 31, 2013. Prior to the execution of a non-prosecution agreement, each Category 2 bank must provide the required information and full cooperation under the terms set out in the Program. Upon execution of the non-prosecution agreement, each Category 2 bank must provide additional information regarding closed accounts, continued cooperation regarding its accountholders and related individuals, and payment of the required penalty. A significant number of banks not previously known to the Tax Division have come forward to accept responsibility for their actions and to offer their cooperation in our law enforcement efforts. Every Swiss bank that comes forward to cooperate under the Program represents an opportunity to obtain valuable law enforcement information from a source that is new to the Division's investigations.

On March 30, 2015, the Department announced that BSI SA, one of the 10 largest private banks in Switzerland, was the first bank to reach a resolution and sign a non-prosecution agreement under the Program. BSI admitted to helping its U.S. clients evade their U.S. tax obligations by, among other things, creating sham corporations and trusts that masked the true identity of its U.S. account holders. Pursuant to the terms of the Program, BSI provided all required information, agreed to cooperate in any related criminal or civil proceedings, demonstrated its implementation of controls to stop misconduct involving undeclared U.S. accounts, and paid a $211 million penalty. On May 8, 2015, Vadian Bank became the second bank to enter into a non-prosecution agreement under the terms of the Program. The Department is moving forward as expeditiously as possible, and hopes to reach agreements with the remaining Category 2 banks before the end of 2015.

The Program also provides for participation by two additional categories of banks. As defined in the Program, "Category 3" banks are Swiss banks that contend that they did not commit any violations of U.S. law but want a determination of their present status regarding their activities. These banks may seek a non-target letter from the Tax Division after providing a report by an independent examiner who conducted an internal investigation and additional

information as required by the Program. "Category 3" banks must also verify the percent of U.S. related accounts held in the bank, and the existence of an effective compliance program. "Category 4" banks are Swiss banks that meet certain criteria for "a deemed Compliant Financial Institution" based on definitions in the Agreement between the United States of America and Switzerland for Cooperation to Facilitate the Implementation of Foreign Account Tax Compliance Act ("FATCA") signed on February 14, 2013. These banks may also request a non-target letter after verification of their information and status. Category 3 and 4 banks were allowed to begin requesting participation beginning on July 1, 2014.

The Program is furthering our law enforcement goals in several important ways. At the outset, Swiss banks, aware that other Swiss banks might provide information under the Program concerning interbank transactions, came forward to participate. The Program also motivated culpable U.S. account holders, fearful that the Swiss banks would disclose their account information, to make voluntary disclosures to the IRS of their unreported income and undisclosed accounts. In addition, in an attempt to reduce the penalty imposed under the Program, Swiss banks made a concerted effort to encourage U.S. accountholders to participate in an announced IRS Voluntary Disclosure Program or Initiative. Finally, the Program requires cooperating Swiss banks to provide information regarding the movement of funds outside Switzerland. This sends a clear message to U.S. taxpayers that no haven is safe from the Department's offshore enforcement efforts.

While the Tax Division uses a variety of criminal and civil law enforcement tools to successfully investigate and prosecute offshore tax evasion, our efforts would be greatly enhanced by the ratification of the protocol signed on September 23, 2009 (the "Protocol"), amending the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income. The Protocol has been waiting for the advice and consent of the Senate for more than five years. Once the Protocol is ratified, an account that remained in a Swiss bank after September 23, 2009 will be subject to a less restrictive standard of disclosure. The Protocol will enhance our ability to gather full, detailed information about the account from Swiss entities and better enable the Division to pursue the funds and the account holder. We are hopeful that the Senate will act on the Protocol as soon as possible.

Tax Defier Initiative

Tax defiers, also known as illegal tax protesters, have long been a focus of the Tax Division's investigative and prosecution efforts. For decades, tax defiers have advanced frivolous arguments and developed numerous schemes to evade their income taxes, assist others in evading their taxes, and frustrate the IRS, under the guise of constitutional and other meritless objections to the tax laws. Frivolous arguments used by tax defiers include, for example,

spurious claims that an individual is a "sovereign citizen" not subject to the laws of the United States, that the federal income tax is unconstitutional, and that wages are not income. Schemes utilized include the use of fictitious financial instruments in purported payment of tax bills and other debts, as well as the filing of false liens and IRS reporting forms, such as Forms 1099, designed to harass and retaliate against government employees and judges. In the most extreme circumstances, tax defiers have resorted to threats and violence to advance their anti-government agenda.

Tax defiers are identified by the schemes in which they participate and the tactics they utilize. It is important to note that those who merely express dissatisfaction with the tax laws should not be, and are not, prosecuted. The Department cherishes the right to free speech, but recognizes that it does not extend to acts that violate or incite the imminent and likely violation of the tax laws.

Because a segment of the tax defier community may resort, and has resorted, to violence to advance their cause, it is essential that law enforcement be prepared to respond rapidly to threats against agents, prosecutors, and judges. The Tax Division has implemented a comprehensive strategy using both civil and criminal enforcement tools to address the serious and corrosive effect of tax defier and sovereign citizen activity. Led by a National Director, the Tax Division's Tax Defier Initiative facilitates coordination among nationwide law enforcement efforts. Increased coordination allows new and recycled tax defier and related schemes and arguments to be identified quickly, and a coordinated strategy to be developed.

Through the Tax Defier Initiative, the Division leveraged our expertise to develop a government-wide approach to monitoring and combating these crimes. As a result, our National Director for the Tax Defier Initiative, working with representatives of IRS Criminal Investigations, Treasury Inspector General for Tax Administration, the FBI Domestic Terrorism Operations Unit, and the Department's National Security Division, developed and implemented a national training program for prosecutors and investigators. The close working relationships fostered by our Initiative have enabled us to identify and respond more quickly and efficiently to trends in the tax defier community.

Recent cases demonstrate the scope and seriousness of tax defier misconduct:

- A New Jersey pilot and former chiropractor was sentenced to serve 54 months in prison, ordered to pay a fine and $48,199 in restitution after being convicted of filing false returns and attempting to obstruct the internal revenue laws. For example, the man demanded that a third-party financial institution not comply with an IRS levy, and attempted to pay credit card bills and other debts with fake financial instruments that claimed to draw on a U.S. Treasury account that did not exist.

- A Nebraska man was sentenced to serve 10 years in prison for conspiring to retaliate against several federal officials by filing liens claiming false interests in the officials' property for millions of dollars. Each of the targeted federal officials was involved in the criminal tax prosecution of a co-defendant or other associates of the defendants. A co-defendant was later sentenced to a term of 3 years in prison for his role in the conspiracy.

- A Utah certified public accountant was sentenced to serve 78 months and ordered to pay restitution to the IRS after being convicted of 18 counts of filing false claims for refund and one count of presenting a fictitious instrument. In addition to filing false personal returns, the man filed false returns for 16 clients, claiming federal tax refunds of $8.4 million.

- An Illinois man was sentenced to 46 months in prison after pleading guilty to obstructing justice and filing retaliatory liens against federal judges. In one instance the man sent letters to two federal judges in which he threatened to arrest them if they did not release his wife from prison. Additional retaliatory liens were filed against the United States Attorney, the Clerk of the Court, the assigned Assistant United States Attorney and the IRS Special Agent working the case.

Every prosecution and conviction sends a strong message that any attempt to promote or participate in a fraudulent tax scheme will not be tolerated. Those who engage in tax defier activity risk criminal prosecution resulting in conviction, substantial penalties and time in prison, as well as the collection of taxes, interest and penalties. Prosecution of tax defiers also reassures the vast majority of taxpayers that their voluntary compliance with the tax laws is justified and that everyone will be held accountable under the law.

Thank you again, Mr. Chairman for the opportunity to appear this morning to discuss the important work of the Tax Division. I am happy to answer any questions that you or the other Members of the Subcommittee may have.