



# **Department of Justice**

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**STATEMENT OF**

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**BEFORE THE**

**UNITED STATES SENATE  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL  
AFFAIRS  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

**HEARING ENTITLED**

**"TAX HAVEN BANKS AND U.S. TAX COMPLIANCE"**

**PRESENTED**

**July 17, 2008**

Chairman Levin, Ranking Member Coleman, and Members of the Subcommittee, thank you for the opportunity to appear before you this morning to discuss the Department of Justice's (the Department) efforts to combat the use of tax haven banks by U.S. taxpayers and offshore entities to evade income taxes. Let me begin by commending the Chairman and the Subcommittee for your longstanding commitment to investigating and publicizing abuses of our federal tax system. Your work has brought attention to serious misconduct that threatens to undermine the fundamental integrity of our tax system. As a result, taxpayers have a greater understanding of their obligations and the consequences of noncompliance, and tax professionals are on notice that their efforts to design, market, and facilitate tax evasion schemes will not be tolerated.

Today I would like to focus my remarks on the Department's Tax Division's role in combating the continuing problem of offshore tax evasion. Since the adoption of the Sixteenth Amendment in 1913 the application of the individual income tax has been routinely debated, litigated, and amended. Over the years, Congress has made numerous changes to our tax laws to reflect advances in business, communication, and technology. One fundamental concept has, however, remained constant: U.S. taxpayers are subject to taxation on their worldwide income from whatever source that income is derived. The use of tax haven banks and offshore nominee accounts to evade tax is a direct assault on this basic principle and cannot be tolerated.

It is important to note that the overwhelming majority of Americans understand their tax obligations and pay their taxes in full and on time. It is also important to keep in

mind that offshore entities conduct a wide variety of legitimate commercial activities. Thus, the mere fact that a U.S. taxpayer holds assets offshore or in a foreign bank is not inappropriate, provided that the information relating to the assets and the income generated by the assets are properly reported for U.S tax purposes. Consequently, our attention is focused on U.S. taxpayers who utilize nominee or shell entities and offshore bank accounts to conceal assets and income. These offshore schemes are often used by high wealth individuals and potentially result in the loss of billions of dollars a year in U.S. taxes. In these cases the Department, along with our counterparts at the Internal Revenue Service (IRS), has used, and will continue to use all of the tools at our disposal to ensure that noncompliance is detected, and, where appropriate, prosecuted.

While taxpayers who engage in tax evasion are subject to civil and criminal liability for their conduct, we are equally concerned about the role played by tax professionals in designing and implementing these schemes. The title of the Subcommittee's 2006 Report, "Tax Haven Abuses: The Enablers, The Tools, and the Secrecy" succinctly captures the essential nature of the participation by professionals in these schemes. As the report notes:

A sophisticated offshore industry, composed of a cadre of international professionals including tax attorneys, accountants, bankers, brokers, corporate service providers, and trust administrators, aggressively promotes offshore jurisdictions to U.S. citizens as a means to avoid taxes and creditors in their home jurisdictions. These professionals, many of whom are located or do business in the United States, advise and assist U.S. citizens on the opening of offshore

accounts, establishing sham trusts, and shell corporations, hiding assets offshore, and making secret use of their offshore assets here at home.

*Tax Haven Abuses: The Enablers, The Tools and Secrecy*, STAFF OF SENATE PERMANENT SUBCOMM. ON INVESTIGATIONS, COMM. ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, 1 (Aug. 1, 2006).

It is discouraging to see that some professionals continue to violate their legal and ethical responsibilities by facilitating these illegal schemes. While some simply turn a blind eye to misconduct, others actively market their tax evasion programs on U.S. soil. Holding these professionals accountable for their misconduct is a high priority, and we are not reluctant to seek injunctive relief and criminal sanctions where appropriate.

The Department has successfully prosecuted a number of taxpayers as well as tax professionals and institutions who assist them in using offshore accounts and entities to evade U.S. taxation. Recent prosecutions include:

- David Alan Struckman, co-founder of the Institute of Global Prosperity, an organization that promoted offshore “wealth-building” seminars, was convicted of tax evasion and conspiracy to defraud the United States. The bogus wealth-building methods marketed to clients included placing assets in purported foreign “common law” trusts to evade detection by the IRS. Struckman concealed more than \$45 million earned from the sale of these products through the use of bogus trusts, nominee entities, and related offshore bank accounts in the Turks and

Caicos and Eastern Europe. Struckman is currently in prison awaiting sentencing.

The IRS and Tax Division continue to pursue enforcement activity against individuals who engaged in the scheme.

- Walter Anderson, a telecommunications entrepreneur, crafted an elaborate scheme using offshore trusts, shell entities and nominees in multiple tax haven jurisdictions, including the British Virgin Islands, Panama, and the Cayman Islands, for the purpose of evading more than \$200 million of his federal income taxes. For his malfeasance, Mr. Anderson is currently serving nine years in federal prison for tax fraud.
- Bruce Cohen, a financial planner, was sentenced to 37 months in prison for his role in conspiring to defraud the United States. Along with his associates, Cohen developed and marketed sham “Loss of Income” trust policies to assist taxpayers in their attempt to evade income tax. Offshore accounts and nominee entities in the Bahamas and Bermuda were part of the scheme. Mr. Cohen’s associates, Leif Rozen, a business owner, and Alan Hoehler, former in-house counsel, were also found guilty of conspiracy and federal tax charges and await sentencing.
- In addition to these cases the Tax Division and the IRS continue to actively pursue those who misuse offshore accounts and institutions for the purpose of evading U.S. taxation.

Our success in prosecuting these and other cases is a direct result of the close cooperation between the civil and criminal personnel of the Tax Division and the IRS. For example, lawyers in the Tax Division have worked with the IRS to investigate offshore tax evasion by bringing civil suits to obtain authority to serve John Doe summonses. A John Doe Summons enables the IRS, with court approval, to obtain information about possible fraud by taxpayers whose identities are unknown. These efforts yielded hundreds of thousands of documents and identified thousands of people that are now being investigated by the IRS for unreported and unpaid federal income taxes. The government's efforts in these cases not only helped gather necessary documents to identify taxpayers seeking to hide behind a veil of secrecy, but reassured law-abiding taxpayers that the tax laws are being enforced.

On the criminal side, the Tax Division serves as the nerve center for all federal tax prosecutions. Tax Division attorneys work closely with IRS Criminal Investigation Special Agents to develop and prosecute a wide array of tax crimes, including offshore evasion schemes. Tax Division attorneys also routinely provide tax expertise to United States Attorneys' offices across the country and work closely with Assistant United States Attorneys in prosecuting tax fraud complex cases.

Offshore tax evasion cases are, by their nature, international in scope. Investigations requiring international cooperation are time consuming and expensive and often raise complex legal issues such as national sovereignty and bank secrecy laws. Despite the challenges, United States law enforcement agencies and our foreign

counterparts are fully engaged in a variety of information sharing arrangements designed to aid in shutting down illegal and abusive activity.

Critical to every investigation of offshore activity is the ability to obtain evidence from a foreign country. Depending on the scope of the investigation and the type of conduct at issue, Department attorneys and prosecutors use a variety of measures in attempting to secure both documentary and testimonial evidence. In addition to traditional letters rogatory, information can be requested, for example, pursuant to tax treaties or tax information exchange agreements (TIEAs) in both civil and criminal cases; pursuant to Mutual Legal Assistance Treaties (MLATs) in criminal cases; or pursuant to the Hague Evidence Convention in civil cases. Unfortunately, we do not have such agreements – which can be faster and more effective than letters rogatory – with every country. Moreover, as noted, not all such agreements cover both civil and criminal matters; on occasion MLATs exclude tax crimes altogether, while other MLATs and tax treaties are limited to instances in which we can allege specific kinds of tax fraud. As a consequence, the Tax Division regularly works with the Criminal Division’s Office of International Affairs (OIA) to negotiate more favorable MLATs covering all tax crimes and with the Treasury Department in attempting to negotiate the broadest possible information exchange provisions in our TIEAs and tax treaties.

In the case of MLATs, prosecutors in the Tax Division and the United States Attorneys’ offices work closely with OIA, which has been delegated as the United States Central Authority for implementing mutual assistance. These requests seek specific types

of evidence, frequently bank records, and OIA makes the request on behalf of the prosecutors. OIA works with foreign authorities to obtain as much evidence as possible in a timely manner. In the case of tax treaties and TIEAs, requests are made through the Deputy Commissioner (International) of the Large & Mid-Size Business Division of the IRS, who has been delegated as the United States Competent Authority for the exchange of information. In general, the level of cooperation under these agreements has been positive, and the continued development of our information sharing relationships is a high priority for the Department.

Tax evasion is a chronic drain on the public fisc and is a pernicious obstacle to effective tax administration. If not vigorously investigated and addressed it threatens to undermine confidence in our system of voluntary compliance and self-assessment. Although successful offshore tax enforcement is costly and time consuming, it is essential to the mission of the Tax Division. We are dedicated to ensuring that law abiding taxpayers have confidence that the tax laws are being fairly and equally applied, and that those who attempt to engage in tax evasion know that we will detect their schemes and hold them accountable for their misconduct.

Thank you for inviting me to discuss the Department's efforts to combat offshore tax evasion. I would be happy to answer questions that you may have.