

May 21, 2014 Credit Suisse Plea a Sign of Things to Come?  
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With Credit Suisse's guilty plea May 19 to criminal charges that it facilitated tax evasion, the bank became the largest in 20 years to plead guilty in the United States, and the \$2.6 billion fine imposed set a record as the largest ever monetary penalty in a criminal tax case, leaving practitioners to wonder what the plea means for banks worldwide.

In a May 20 release, Credit Suisse CEO Brady Dougan said, "We deeply regret the past misconduct that led to this settlement. The U.S. cross-border matter represented the most significant and longstanding regulatory and litigation issue for Credit Suisse. Having this matter fully resolved is an important step forward for us."

What the next steps might be for other banks is less clear, and practitioners who spoke with Tax Analysts agreed that while the plea sends a clear signal to banks worldwide that governments are taking aggressive action against tax evasion, it is unlikely that another settlement of this magnitude is coming soon.

### **The Guilty Plea**

Credit Suisse's guilty plea is significant, said Bruce Zagaris of Berliner, Corcoran & Rowe LLP. The Justice Department usually exercises caution when deciding whether to push a company to enter a guilty plea, out of concern that it might force the business to close, as happened with Arthur Andersen in 2002. However, Attorney General Eric Holder said May 5 in a video address that no bank is too big to not have to plead guilty, Zagaris noted. (Prior coverage [▶](#).)

It's rare for the United States to bring criminal charges against an institution rather than the people who committed the crimes while working there, agreed Larry A. Campagna of Chamberlain, Hrdlicka, White, Williams & Aughtry. Campagna said government policy has been not to charge the business itself if the company cooperates with the investigation and seeks to remedy the wrong committed. The use of criminal charges in this case is a measure of how egregious the bank's behavior must have been and how much management participated in or endorsed the behavior, he said.

Based on public announcements, there are about a dozen other Swiss banks under investigation, Campagna said. He said they should test their facts against the Credit Suisse case to determine what risks they face. (Prior coverage [▶](#).)

Zagaris said Credit Suisse was fortunate that it only had to plead guilty to violating section 7206 and not 18 U.S.C. sections 1956 and 1957, which cover money laundering. Had the bank pleaded to the latter, 12 U.S.C. section 93(d) would have required the Office of the Comptroller of the Currency to hold a hearing on whether to revoke the bank's license, he said.

Credit Suisse does not seem to have lost any banking privileges because of the plea, a positive result not only for Credit Suisse but also for other Swiss banks that may face similar charges,

Zagaris said. A problem with other criminal settlements with large banks, such as with HSBC in 2012, was the inability of the DOJ and bank regulators to agree on the potential collateral consequences of a settlement, he said.

### **The \$2.6 Billion Fine**

In his statement, Dougan said the bank has seen no material impact on its business resulting from the heightened public attention on this issue in the past several weeks.

But Zagaris said the huge fines will likely have a significant impact on Credit Suisse's share value. Although the bank had set aside \$1.1 billion in anticipation of a fine, that amount proved to be nowhere near enough, he said. He added that the plea will surely sully the bank's reputation.

"If I were a Swiss bank, I would be worried," Zagaris continued. Beyond just this agreement, the DOJ has set up a disclosure program with increasing penalties for those institutions engaged in continued misconduct.

However, Credit Suisse is unlike most other Swiss banks in that it has significant operations in the United States and engaged in criminal behavior for decades, Zagaris said, adding that most other Swiss banks probably will not be in the same situation and that future fines may not be quite as high for them.

### **No Disclosure of Account Holders**

Unlike UBS, which reached a similar plea deal in 2009, Credit Suisse is not required to turn over account holder names to the United States. Sen. Carl Levin, D-Mich., chair of the Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations, criticized the Credit Suisse deal in that regard, saying, "It is a mystery to me why the U.S. government didn't require as part of the agreement that the bank cough up some of the names of the U.S. clients with secret Swiss bank accounts."

Zagaris said Swiss law would make it a crime to do so. While the Swiss government was able to pass emergency legislation to allow UBS to provide names as part of its deferred prosecution agreement, there was a strong reaction in Switzerland against that action, and the Swiss government likely believed it wouldn't be able to enact similar legislation again, he said.

Campagna said the publicity from this case may spur more individuals to join the IRS offshore voluntary disclosure program. With about 7 million Americans living outside the United States and only 700,000 foreign bank account reports filed each year, there is likely a lot of noncompliance that has yet to be remedied, Campagna said. The more publicity and education there is about this issue, the better, he said.

During the May 19 Justice Department press conference announcing the Credit Suisse plea, IRS Commissioner John Koskinen said he expects the IRS to continue to receive account information from many sources and warned undisclosed account holders to take advantage of the voluntary disclosure program.

### **What Next?**

Campagna said there are plenty of other banks that ought to be worried, not just those in Switzerland. Institutions in other jurisdictions better take notice that the Justice Department may soon shine a spotlight on them, he said.

Zagaris said U.S. officials and governments around the world are facing increasing pressure to crack down on banks and financial intermediaries that facilitate tax evasion. For example, he said, at a February 12 hearing of the Permanent Subcommittee on Investigations on Credit Suisse, lawmakers questioned the DOJ's work in curbing tax evasion and pressured officials to do more. (Prior coverage )

Also, the Financial Action Task Force begins its fourth round of mutual evaluations soon, in which countries will be evaluated on the effectiveness of their money laundering laws, which must now cover serious tax crimes, Zagaris said. There is growing pressure on governments to take action when they see misconduct regarding tax matters, which will lead to the increasing criminalization of the behavior, he said.

Zagaris added that it would not be surprising if U.S. banks and financial intermediaries come under scrutiny in the future, whether by the U.S. government or other countries. Because of their size and their tendency to be proactive in giving advice to clients, U.S. institutions have a broad reach, he said.

It will be interesting to see how the Swiss banking industry competes after it no longer can sell secrecy as its main product, Campagna said, adding that most of the accounts he has reviewed at Swiss banks had poor returns on investment, particularly after netting out the banking fees. Once the banking industry worldwide becomes more transparent under the Foreign Account Tax Compliance Act, capital flow to investment companies will likely be based on their returns and service, not on paying a premium to facilitate tax evasion and secrecy, Campagna said.