# Exhibit D

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TAX GAP

# In the country where tax evasion is no crime, Swiss private banks are unrepentant about siphoning off other governments' income

**Tax gap reporting team**
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Critics of Switzerland would say that the country and its banks are running an anti-social enterprise, in effect picking billions of dollars a year out of the pockets of others. It was the spectre of Switzerland that Britain's prime minister, Gordon Brown, sought to raise in parliament yesterday, as he attempted to assure critics that he was doing something positive against tax avoidance.

The Swiss openly assist not merely legal tax avoidance but also the deliberate concealment of wealth for the purpose of evading tax - something regarded as a crime all over the developed world. Swiss authorities have boycotted and even sabotaged efforts to stop this drain of taxable cash. The German finance minister last year called for Switzerland to be officially named and shamed as an unco-operative tax haven.

Swiss bankers themselves estimate that they hold at least 30% of the estimated $11.5 trillion of personal wealth hidden in the world's tax havens. Konrad Hummler, president of the Swiss private bankers' association, has said: "The large majority of foreign investors with money placed in Switzerland evade taxes."

And he remains unapologetic. He acknowledged to the Guardian that Swiss banks siphon off other governments' revenue.

"I admit it is undemocratic," he said. "But I have a feeling that the democratic system went way beyond their legitimate role against the taxpayer. What these states do may be legal, but it is not legitimate."

He singled out Germany, France and Italy as "illegitimate states", whose citizens had no protection from excessive taxes. "We are so allergic to the Germans... because the Germans have the feeling that citizens belong to the state. There is a very old, very deep worry of the Swiss people against the Germans - it goes back to history, especially

the second world war."

He described the Organisation for Economic Co-operation and Development [OECD], which has fought tax havens, as a "tax cartel". He said the Swiss would not willingly compromise banking secrecy or their view that tax evasion was no crime.

However, he added: "There is always a possibility that you can blackmail Switzerland, because we are dependent on good relations with Europe. It would be very unfriendly. Anyway, if we were forced to hand over information, the money would only go away, to another country."

The Swiss do very well out of their activity. Their banks routinely charge fees of 10%, while the regional cantons earn millions by levying a little tax on foreign individuals and companies who would otherwise have to pay a lot of tax in their own countries.

At the legitimate corporate end of the tax spectrum, about 6,000 global companies have now chosen to place activities in Switzerland, according to the official agency, Location Switzerland. There are so many mining companies, particularly from Russia and China, that the canton of Zug has become a trading centre for minerals.

Dun & Bradstreet in Zurich identifies more than 180 UK businesses with holding companies in Swiss cantons. Such entities generally will pay no tax at all on capital gains and very low tax on income. Some will also negotiate individual "tax rulings" in which the canton allows them to cut corners on their tax returns or makes favourable assumptions about their financing.

Local cantons also often offer tax breaks to wealthy foreign individuals and company executives, who are allowed to live there without paying any income tax if they pay the canton a fee, usually five times the rental value of their Swiss home. There are so many of them in villas along the eastern shore of Lake Zurich that it is known as the "Gold Coast".

Switzerland's lucrative tax haven industry is constructed from two laws out of step with other developed governments.

First, whereas most countries will merely sack bank employees who leak information, the Swiss charge them under article 47 of their criminal code and jail them. Second, whereas most countries regard tax evasion as a crime, Switzerland insists that it is no crime at all unless it involves active fraud, such as the forgery of paperwork.

The result is that other countries are constantly trying to breach the walls of the Swiss fortress. Indeed, Switzerland's bank secrecy law was introduced, in 1934, to stop bank staff helping the French tax authorities - and certainly not, as the Swiss sometimes claim, to help Jewish refugees hide their assets from the Nazis.

The Swiss use their law to clamp down on leaks. In January 1997 Christoph Meili, a 28-year-old security man at the biggest commercial bank in Switzerland - Union Banque Suisse (UBS) in Zurich - discovered that the bank was burning the records of Jewish clients who had died in the Holocaust. When he reported this to press and police, he was himself accused of breaching the law and ended up fleeing to the US, where he was granted political asylum.

Swiss authorities have been fighting a running battle with Rudolf Elmer, 53, a former senior employee of the Julius Baer bank who posted internal paperwork on internet

sites which, he claims, reveals tax evasion and money laundering by individuals. Elmer was held in prison for 30 days and told he will be charged for breaking the secrecy laws.

Last year a UBS employee was arrested in the US, pleaded guilty to organising tax fraud and agreed to tell all. Bradley Birkenfeld alleged UBS staff routinely broke laws forbidding foreign bankers to tout for business among wealthy Americans. They travelled to US golf, tennis and yachting events sponsored by UBS, lying on their visa forms about the purpose of their visit, armed with laptops with heavily encrypted files and deploying counter-surveillance techniques for which they were specially trained.

UBS had signed a "qualified intermediary" agreement, undertaking to report any US individual with an account. But Birkenfeld said the bank helped thousands of clients to dodge this by shifting their money into offshore companies. UBS advised clients to destroy evidence of their accounts and - for an extra fee of 500 francs - offered to store their banking correspondence for them in Zurich.

Birkenfeld said UBS had helped 19,000 US taxpayers to shelter $18bn, and encouraged them to buy jewellery or art that they could bring back into the US. He also said he had smuggled diamonds in a tube of toothpaste for a client. A US Senate committee concluded: "The top management of UBS in Switzerland was well aware of the bank's practice of maintaining undeclared accounts for US clients."

The Swiss have fought off every attempt to make them change . They belong to the OECD but refuse to sign any tax information exchange agreement of the kind that the OECD now supports. They trade with the European Union but they have refused to sign up to the EU savings directive, which asks for the account details of all European residents to be passed to their respective tax authorities. Following their refusal, other nations, particularly Austria and Luxemburg, have also boycotted the OECD and EU initiatives.

As a compromise with the EU, these "boycott nations" have agreed to collect tax on EU residents' accounts, deduct a fee for their hard work and pass on the balance to the correct tax authorities. However, since the directive applies only to individuals , there is anxiety in Brussels that, behind the scenes, banks have been repeating the manoeuvre that UBS used to defeat the Americans, simply converting individuals into offshore companies.

After last year's scandal, the Americans applied intense pressure to UBS to hand over the details of the 19,000 undeclared US accounts.

Rather than possibly lose its licence to do business in the US, the bank was willing to surrender - but the Swiss finance ministry intervened to ensure that if files were handed over, it would be on the fictional basis that it was evidence of fraud, thus preserving the officlal Swiss stance that they will not co-operate with other nations on mere tax evasion. Gordon Brown claimed yesterday that the Swiss might reform in the wake of the latest UBS scandal. But it hasn't happened yet.

### How Switzerland sells itself

"Location Switzerland" is the Swiss government agency that markets the advantages of "restructuring".

"Taxes: Why pay more?" is how its handbook for foreign companies puts it. The Swiss

corporate tax rate for foreign trading companies is about 7-8% compared with 28-30% in the UK.

Location Switzerland point to the commercial reasons for "restructuring" too - economies and efficiencies from centralised buying, ordering and selling.

But the reason to do it in Switzerland is to save tax, as the big accountancy firms who market the concept are quick to point out. They call it TESCM - "tax-efficient supply chain management". Ernst&Young were among the first, advertising that centralisation could "result in a 40% increase in earnings, but 40% of this [increase in earnings] would go to the tax man ... But when the two were integrated, net profit improvement soared ..."

One consultant, Bill Bronsky, explained in a trade paper in 2006: "This is the multimillion pound opportunity. Using the TESCM model companies have been able to move from effective tax rates of 35% to a rate of less than 15% after estructuring. There are well over 100 companies (many in the FTSE 100) that have significantly restructured their business operations to optimise their tax position."



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