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Israel's Largest Bank, Bank Hapoalim, Admits to Conspiring with U.S. Taxpayers to Hide Assets and Income in Offshore Accounts

Bank Hapoalim (Switzerland) Pleads Guilty and Bank Hapoalim B.M. Enters into Deferred Prosecution Agreement for Criminal Misconduct; Agree to Pay Nearly \$875 Million

Jeffrey A. Rosen, the Deputy Attorney General of the United States, Richard E. Zuckerman, the Principal Deputy Assistant Attorney General of the Justice Department's Tax Division, Geoffrey S. Berman, the United States Attorney for the Southern District of New York, and Don Fort, the Chief of the Internal Revenue Service, Criminal Investigation (IRS-CI), announced today the guilty plea of Bank Hapoalim (Switzerland) Ltd. and filing of criminal charges against Bank Hapoalim B.M. for conspiring with U.S. taxpayers and others to hide more than \$7.6 billion in more than 5,500 secret Swiss and Israeli bank accounts and the income generated in these accounts from the Internal Revenue Service (the IRS). BHS's Chief Executive Officer appeared on behalf of the bank to enter the guilty plea before U.S. District Judge Mary Kay Vyskocil.

As part of today's resolutions, along with resolutions entered into with state and federal partners, Bank Hapoalim B.M. (BHBM), Israel's largest bank, and Bank Hapoalim (Switzerland) Ltd. (BHS), its Swiss subsidiary, agreed to pay approximately \$874.27 million to the U.S. Treasury, the Federal Reserve, and the New York State Department of Financial Services. Today's resolution is the second-largest recovery by the Department of Justice in connection with its investigations since 2008 into facilitation of offshore U.S. tax evasion by foreign banks.

"Today's resolutions and payment of \$874 million make clear that tax evasion cannot be taken lightly," said Deputy Attorney General Jeffrey A. Rosen. "A fair tax system requires even-handed compliance, and honest conduct by all participants in the system."

"The Department of Justice continues to aggressively prosecute banks and other financial institutions that help U.S. taxpayers conceal their income and assets in offshore bank accounts," said Principal Deputy Assistant Attorney General Richard E. Zuckerman. "Today, Bank Hapoalim is being held accountable for its conduct – it has admitted to its crimes and will surrender all fees it earned, repay the United States for lost tax revenue, and pay a substantial fine."

"Israel's largest bank, Bank Hapoalim, and its Swiss subsidiary have admitted not only failing to prevent but actively assisting U.S. customers to set up secret accounts, to shelter assets and income, and to evade taxes," said U.S. Attorney Geoffrey S. Berman of the Southern District of New York. "The combined payment approaching \$1 billion reflects the magnitude of the tax evasion by the Bank's U.S. customers, the size of the fees the Bank collected to provide this illegal service, and the gravity of the illegal conduct."

“There is no excuse for a foreign financial institution to unlawfully assist wealthy Americans in flouting their responsibilities to pay their taxes,” said IRS Criminal Investigation Chief Don Fort. “With today’s guilty plea, Bank Hapoalim is taking responsibility for their role in deliberately breaking the law and undermining the integrity of this nation’s tax system. Offshore tax evasion is a top priority for IRS Criminal Investigation and we are wholeheartedly committed to bringing offenders to justice. Today’s resolution serves as proof that financial institutions engaging in tax fraud face dire criminal and financial consequences for their behavior.”

“The vast majority of New Yorkers follow the rules and pay their taxes, thereby contributing their fair share towards critical state and federal government operations and public services,” said Superintendent Linda A. Lacewell of New York State Department of Financial Services. “There are some, however, who went to great lengths to avoid paying their share, and Bank Hapoalim offered a whole array of services to U.S. citizens, including New Yorkers, that knowingly facilitated their tax evasion. DFS will not tolerate such behavior from banks that operate in the State of New York. DFS thanks our federal partners at the U.S. Department of Justice, U.S. Department of the Treasury, and the Federal Reserve Board for their assistance and coordination during this investigation.”

Today’s resolutions include agreements with BHBM and BHS (collectively, the “Bank”) under which the Bank agreed to accept responsibility for its conduct by stipulating to the accuracy of extensive Statements of Facts. BHBM further agreed to refrain from all future criminal conduct, implement remedial measures, and cooperate fully with further investigations into hidden bank accounts. Assuming BHBM’s continued compliance with its agreement, the Government has agreed to defer prosecution of BHBM for a period of three years, after which time the Government will seek to dismiss the charge against BHBM.

According to documents filed today in Manhattan federal court:

BHBM is Israel’s largest bank and operates primarily as a retail bank with approximately 250 branches throughout Israel and more than 2.5 million accounts. In addition to retail banking services, BHBM offered private banking services for onshore and offshore customers through its retail branches and its Global Private Banking Center. BHBM also wholly owned Poalim Trust Services Ltd., which provided trust formation and management services. Outside Israel, BHBM owned BHS, a Swiss subsidiary that provided private banking. BHS is headquartered in Zurich and at times during the prosecution period had branches in Geneva, Luxembourg, and Singapore. BHBM also had branches in New York, Miami, the Cayman Islands, the United Kingdom, and Jersey.

From at least in or about 2002, and continuing until at least in or about 2014, the Bank conspired with employees, U.S. customers, and others to: (1) defraud the United States with respect to taxes; (2) file false federal tax returns; and (3) commit tax evasion. Employees of BHBM and BHS assisted U.S. customers in concealing their ownership and control of assets and funds held at the Bank, which enabled those U.S. customers to evade their U.S. tax obligations, by engaging in the following conduct:

- Assisting U.S. customers with opening and maintaining accounts in the names of pseudonyms, code names, trust accounts, and offshore nominee entities;
- Opening customer accounts for known U.S. customers using non-U.S. forms of identification;
- Enabling U.S. taxpayers to evade U.S. reporting requirements on securities’ earnings in violation of the Bank’s agreements with the IRS;
- Providing “hold mail” services for a fee, avoiding any correspondence regarding the undeclared account being sent to the U.S.;
- Offering back-to-back loans for U.S. taxpayers to enable them to access funds in the United States that were held in offshore accounts at the Bank in Switzerland and Israel; and
- Processing wire transfers or issuing checks in amounts of less than \$10,000 that were drawn on the accounts of U.S. taxpayers or entities in order to avoid triggering scrutiny.

At least four senior executives of the Bank, including two former members of BHS's board of directors, were directly involved in aiding and abetting tax evasion of U.S. taxpayers.

Under today's resolutions, the Bank is required to cooperate fully with ongoing investigations and affirmatively disclose any information it may later uncover regarding U.S.-related accounts. The Bank is also required to disclose information consistent with the Department of Justice's Swiss Bank Program relating to accounts closed between Jan. 1, 2009, and Dec. 31, 2019. The agreements provide no protection from criminal or civil prosecution for any individuals.

BHBM will pay a total of \$214.38 million, which has three parts. First, BHBM has agreed to pay \$77,877,099 in restitution to the IRS, which represents the unpaid taxes resulting from BHBM's participation in the conspiracy. Second, BHBM has agreed to forfeit \$35,696,929 to the United States, which represents gross fees (not profits) that the bank earned on its undeclared accounts between 2002 and 2014. Finally, BHBM has agreed to pay a penalty of \$100,811,585.

BHS will pay a total of \$402.53 million, which also has three parts. First, BHS has agreed to pay \$138,908,073 in restitution to the IRS, which represents the unpaid taxes resulting from BHS's participation in the conspiracy. Second, BHS has agreed to forfeit \$124,628,449 in gross fees to the United States. Finally, BHS has agreed to pay a fine of \$138,998,399. These payments were approved by Judge Vyskocil today in connection with BHS's plea and sentencing.

Both the penalty and fine amounts take into consideration that the Bank, after initially providing deficient cooperation through an inadequate internal investigation and the provision of incomplete and inaccurate information and data to the Government, thereafter conducted a thorough internal investigation, provided client-identifying information, and cooperated in ongoing investigations and prosecutions. The Bank further implemented remedial measures to protect against the use of its services for tax evasion in the future.

The Board of Governors of the Federal Reserve System is also announcing today that it has reached a resolution with BHBM, by which BHBM has agreed to a consent order, certain remedial steps to ensure its compliance with U.S. law in its ongoing operations, and a civil monetary penalty of \$37.35 million. Additionally, the New York State Department of Financial Services is announcing a similar resolution by which BHBM has agreed to a cease and desist order and a monetary penalty of \$220 million.

This agreement marks the third time an Israeli bank has admitted to similar criminal conduct. The Bank Leumi Group (in December 2014) and Mizrahi-Tefahot Bank Ltd. (in March 2019) entered into DPAs with the Department of Justice admitting that they conspired with U.S. taxpayers to prepare and present false tax returns to the IRS by hiding income and assets in offshore bank accounts in Israel and elsewhere around the world.

Deputy Attorney General Rosen, Principal Deputy Assistant Attorney General Zuckerman, U.S. Attorney Berman, and Chief Fort commended special agents of IRS-Criminal Investigation, who investigated this case, and Assistant Chief Todd A. Ellinwood and Senior Litigation Counsel Nanette Davis of the Tax Division, and Assistant U.S. Attorneys Sagar K. Ravi and Timothy V. Capozzi of the United States Attorney's Office for the Southern District of New York, who prosecuted this case. Principal Deputy Assistant Attorney General Zuckerman also thanked Assistant Chief Kathleen Barry and former Trial Attorney Timothy Russo of the Tax Division for their substantial assistance.

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