

FALCIANI: “THE MAN WHO MAKES THE RICH TREMBLE”

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Tags

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There is no denying that HSBC Holdings plc (“HSBC”) has significantly benefited from the Swiss bank secrecy laws. A February 8, 2015 report by the International Consortium of Investigative Journalists (the “I.C.I.J.”) revealed the private banking information for a Swiss subsidiary of HSBC as of 2007. The list of clients with secret accounts includes royal families, ambassadors, terror suspects, drug cartels, arms dealers, tax evaders, and fugitive diamond merchants.

The I.C.I.J. announced that it received information on 100,000 accounts through its collaboration with the French newspaper *Le Monde*, which obtained it from a source in the French government. The information was initially provided by a former HSBC employee, a computer technician named Hervé Falciani. French newspapers have dubbed him “the Man Who Makes the Rich Tremble.”

Eight years ago Mr. Falciani provided five disks of confidential information to French Financial Minister Christine Lagade. Ms. Lagade has since provided the information to various governments worldwide. This information confirmed that the bank secrecy laws were used to avoid taxes, and on this basis, many countries have initiated tax investigations.

HSBC has admitted to its shortcoming in the course of ongoing compliance efforts and has promised to combat money laundering and tax evasion. One explanation given by HSBC was that its Swiss subsidiary had not been fully integrated into the group after it was acquired in 1999, and therefore, the levels of compliance were subsequently and sustainably “significantly lower.”

As a result of changes implemented after 2007, HSBC’s Swiss private bank has reduced its client base by almost 70%. Group Chief Executive Stuart Gulliver has spent billions of dollars on compliance and internal control, but his efforts may be too little too late in light of the Falciani leak.

The Swiss government has accused Mr. Falciani of trying to sell account information and is now seeking extradition on charges of industrial espionage and violating bank secrecy laws. In his defense, Mr. Falciani has accused the Swiss government of trying to protect its banks by prosecuting him.

The controversy comes amidst efforts by the Swiss government to change existing laws on bank secrecy. Mario Tuor, communications director for the Swiss State Secretariat for International Financial Matters, told Bloomberg BNA on February 9 that “Switzerland hopes to continue to be one of the most important financial places in the world, but with an internationally accepted framework – and part of this is dismantling the bank secrecy laws.” The Swiss plan is to adopt the O.E.C.D. regulations in Switzerland and then campaign for uniform corporate taxation, whereby companies operating internationally will be taxed in the country where value is created. Its goal is to introduce new law by 2017, in order to start participating in automatic exchange of tax information with other countries from 2018 on.