NOTE

INTERNATIONAL TAX COMPLIANCE AGREEMENTS AND SWISS BANK PRIVACY LAW: A MODEL PROTECTING A PRINCIPLED HISTORY

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“If you can’t trust a Swiss banker, what’s the world come to?”

–James Bond

I. INTRODUCTION

Sensationalized by literature and films depicting grand monetary schemes and intricate white collar crime, a person with a Swiss bank account, in pop culture, is seen as a member of the financial elite, prone to hiding his riches in an air-tight vault of collusion and bank secrecy. While it may be easy to dismiss these cinematic depictions of white collar crime—intertwined with thrilling portrayals of covert spy operations, conspiracy theories, and maniacal plots for self enrichment as Hollywood hyperbole—the grand monetary stakes depicted are representative of the realities of international tax evasion. Swiss bank privacy law has historically made Switzerland a prime haven for tax evaders who seek to hide taxable income from their countries of origin. However, recently,


1. THE WORLD IS NOT ENOUGH (Eon Productions 1999).
2. This theme has been common in several films. See Bourne Identity (Barrandov Studios 2002); see also THE WORLD IS NOT ENOUGH, supra note 1.
3. See, e.g., THE WORLD IS NOT ENOUGH, supra note 1.
4. See, e.g., Bourne Identity, supra note 2 (depicting an example of covert spy operations).
5. See, e.g., Suits: We’re Done (Universal Cable Productions television broadcast July 30, 2014) (depicting a villainous capital tycoon who forces attorney Lewis Litt to run his undeclared assets through his anonymous account in the Cayman Islands).
7. See Niels Jense, How to Kill the Scapegoat: Addressing Offshore Tax Evasion with A Special View to Switzerland, 63 VAND. L. REV. 1823, 1827 (2010).
Switzerland’s scandalous reputation as a monetary sanctuary for tax evaders\(^8\) has been amplified tenfold.

In 2008, Bradley Birkenfeld, a senior banker of Union Bank of Switzerland (UBS)\(^9\) from 2001 to 2006, signed a U.S. court statement recounting how he had helped Igor Olenicoff, a California real-estate billionaire, evade $200 million in taxes on $7.26 billion in assets through the establishment of ‘sham’ offshore trusts.\(^10\) Following further investigation of UBS’s tax compliance, or lack thereof, the U.S. struck a settlement deal with UBS for $780 million in fines, interest, and restitution.\(^11\) In exchange, the U.S. abstained from charging UBS with aiding thousands of wealthy Americans in evading U.S. taxes.\(^12\) This sensational scheme brought the issue of tax evasion, through foreign accounts and institutions, to the forefront of the discourse on international tax compliance.\(^13\)

Transgressions like those committed by UBS\(^14\) pose a serious problem for countries around the world because they deprive governments of tax revenue, distort the distribution of tax burdens between taxpayers who can exploit tax havens and those who cannot, and hinder international cooperation between tax administrations.\(^15\) In light of today’s globalized economy, in which technology has eased the global transfer, accessibility, and concealability of assets, these issues motivate countries to enact laws and enter into international tax compliance agreements (compliance agreements) that discourage tax evasion via foreign

\(^8\) For a general overview of international tax evasion, see generally Org. for Econ. Co-operation & Dev. [OECD], International Tax Avoidance and Evasion (1987).


\(^12\) Id.

\(^13\) See Jense, supra note 7, at 1824.

\(^14\) For more information on a more recent Swiss bank scandal involving Hong Kong and Shanghai Banking Corporation (HSBC), see David Leigh et. al, HSBC Files Show How Swiss Bank Helped Clients Dodge Taxes and Hide Millions, GUARDIAN (Feb. 8, 2015, 4:00 PM), http://www.theguardian.com/business/2015/feb/08/hsbcc-files-expose-swiss-bank-clients-dodge-taxes-hide-millions.

\(^15\) International Tax Avoidance and Evasion, supra note 8, at 20.
accounts. This is especially true for historical tax havens like Switzerland, which in recent years has held nearly thirty percent of global offshore private wealth. These compliance agreements generally require banks holding such accounts to report account information to the country that is the source of the income in question. Nondisclosure of such information typically results in a withholding tax on the income sourced from the origin country. These measures serve to deter further tax evasion, raise revenue by collecting withheld amounts, and aid prosecution efforts by the country of origin through account information disclosed by foreign banks.

While countries certainly have compelling interests in ensuring that all income sourced within their borders is appropriately reported and taxed as a matter of revenue and compliance (e.g. facilitation of domestic money flow, revenue, economic activity, and interstate goodwill), some of the mechanisms that countries employ in compliance agreements have caused particular tension with Swiss bank privacy law. Current compliance agreements with Switzerland employ a range of mechanisms that threaten to

16. See Niels Johannesen & Gabriel Zucman, The End of Bank Secrecy? An Evaluation of the G20 Tax Haven Crackdown, 6 AM. ECON. J. ECON. POL’y 65, 66 (2014) (describing how tax havens around the world have signed more than 300 treaties to improve international tax compliance since the G20 summit held in April 2009).

17. See Jense, supra note 7.


19. See Robert Jense, supra note 7, at 1835, 1847.


21. Withholding taxes are amounts retained by the payor at the source of income and are often imposed upon dividends, interest, royalties, rent, and other forms of payment. Compare Countries By Withholding Tax, BANKS.EU; http://thebanks.eu/compare-countries-by-withholding-tax (last visited Aug. 31, 2015).

22. See Jense, supra note 7, at 1835, 1847.


24. See Morse, supra note 23, at 553–34.

25. While Switzerland does enter these compliance agreements voluntarily, the shift toward entering more invasive agreements was a response to the Organization for Economic Cooperation and Development placing Switzerland on a “gray list” and threatening financial sanctions against it in 2009. Bessard, supra note 18. The heart of the present
erode the culture of privacy protection in which these laws are enshrined.\textsuperscript{26} One such mechanism requires that an individual may only open a new account with a Swiss bank conditional upon the individual’s consent to disclosure of account information.\textsuperscript{27} Consequently, even individuals who are completely compliant with their countries’ domestic tax laws still may not avail themselves of the Swiss bank privacy law that has historically upheld account-holder protection and anonymity. Other problematic mechanisms include disclosure requirements for account information circumventing the bank privacy laws that would otherwise protect information of preexisting accounts,\textsuperscript{28} failure to adequately preserve account-holder anonymity wherever possible,\textsuperscript{29} and inadequate mechanisms for reciprocity at the expense of goodwill.\textsuperscript{30} Beyond the affront to Swiss privacy protection, these problematic mechanisms also perpetuate the popular stigma that associates offshore account-holders with the criminal activity of the immoral and obscenely wealthy.\textsuperscript{31} In reality, there are many reasons for any individual to establish offshore accounts, even if that individual is not wealthy.\textsuperscript{32} Offshore banks, including Swiss banks, may offer greater security and privacy for an individual’s capital and assets.\textsuperscript{33} If such an individual opens a savings account for these assets, the offshore savings account may benefit from a higher interest rate.\textsuperscript{34} Establishing an offshore bank account may also give investors access to the global market, easier access to international funds, and greater investment opportunities.\textsuperscript{35} Offshore bank accounts are even attractive for those seeking early retirement abroad.\textsuperscript{36} The privacy interests of offshore account-holders are equally legitimate because privacy interests help to secure property rights.\textsuperscript{37} While many countries recognize the importance of privacy inter-

\begin{flushright}
26. Id.
28. See Jense, supra note 7, at 1829.
32. Id.
33. Id.
34. Id.
35. Id.
36. Id.
37. See Bessard, supra note 18.
\end{flushright}
ests, the sanctity of privacy is especially salient in the history of Swiss bank privacy laws.

This Note will examine the tax compliance agreements that Switzerland has entered with the European Union, the United Kingdom, and the United States to discern what tax compliance mechanisms best serve the goal of discouraging tax evasion while preserving the integrity and viability of Swiss bank privacy law. To resolve the inherent conflict between Swiss bank privacy law and compliance agreements designed to combat tax evasion by way of Swiss bank accounts, I propose a model that optimally balances the deterrence of tax evasion with priority for Swiss bank privacy law by incorporating mechanisms for account-holder disclosure consent options, anonymous withholding, and reciprocity in the compliance agreements.

Part II will provide a brief history of Swiss bank privacy law, present the general structures of the E.U., U.K., and U.S. tax compliance agreements with Switzerland, and evaluate the success of each agreement weighed against the extent of conflict with Swiss bank privacy law. Part III presents a proposed model for future compliance agreements with Switzerland that optimally balances deterring tax evasion with honoring the primacy of Swiss bank privacy law by incorporating mechanisms for account-holder disclosure consent options, anonymous withholding, and reciprocity in the compliance agreements.

II. BACKGROUND

This Section discusses a brief history of Swiss bank privacy law and provides an overview of general tensions between Swiss bank privacy law and compliance agreements. The Section then details


39. See Jense, supra note 7.

40. Note that, while compliance agreements affect far more than banks alone, this Note focuses only on these agreements so far as they affect Swiss banks as paying agents. See generally Morse, supra note 24 (discussing the effect of international tax compliance agreements on banks as well as pension plans, trusts, and other entities); U.K.-Swiss Tax Agreement: “Swiss Paying Agents”, RKG Consulting, http://www.rkgconsulting.com/personal-tax-planning/new-uk-swiss-tax-agreement/uk-swiss-tax-agreement-swiss-paying-agents/ (last visited Aug. 31, 2015). Paying agents are entities “which accept, hold, invest or transfer assets of third parties or merely make payments of income or gains for third parties or secure such payments in the normal course of their business.” Id. Thus, in its discussion of tax compliance and Swiss bank privacy law, this Note will only address how compliance agreements affect Swiss banks in their capacity as the general asset-holders of customers and accounts. For further explanation of the concept of paying agents, see id.
the background and structure of Swiss tax compliance agreements
with the European Union, United Kingdom, and United States. 
Discussion of these compliance agreements also includes a “balancing
test.” The balancing test assesses the extent to which the mech-
ernisms of each tax compliance agreement regarding account-
holder consent to disclosure, preservation of anonymity, and reci-
procity conflict with Swiss bank privacy law. The balancing test
then weighs this assessment against the agreement’s effectiveness
in raising revenue and discouraging tax evasion.

A. Brief History of Bank Privacy Law

Switzerland’s long history of bank privacy law has made it a well-
known tax haven for individuals seeking to evade taxes through
foreign accounts.41 Switzerland first made disclosure of account
information illegal when German Nazis began to criminalize and
execute citizens with undisclosed assets held in foreign accounts.42
Since codifying protection of account-holder information, bank
privacy law has become an integral part of Swiss financial culture
and has proven fundamental to the development of Swiss princi-
ples in customer protection.43 Absent consent from the account-
holder, the mandate of bank privacy protects against disclosure of
information pertaining to the relationship between a client and a
bank, the client’s relationship with other banks, information given
by the client about his financial affairs, and the bank’s own transac-
tions to the extent disclosure would harm the client.44 Such pro-
tection is not absolute under Swiss bank privacy law; the banks do
lift such protections in cases of money laundering, terrorism,
organized crime, corruption, and certain other fiscal offenses.45
Specifically, Switzerland allows the lifting of bank privacy protec-
tion in cases of tax fraud, which involves the submission of forged,
false, or inaccurate financial documents.46 The existence of this
provision notwithstanding, the widespread portrayal of Switzerland
as a sanctuary for tax evaders is certainly justifiable in the wake of

41. See Jense, supra note 7.

42. See Greg Brabec, Note, The Fight for Transparency: International Pressure to Make Swiss

43. See Jense, supra note 7, at 1859.

44. See Maurice Aubert, The Limits of Swiss Banking Secrecy Under Domestic and Interna-

45. See Erich I. Peter, Reasonable Limits of Transparency in Global Taxation: Lessons from

46. See id. at 601.
tax evasion scandals involving Swiss financial institutions like UBS.47

B. Tension Between Bank Privacy Law and International Tax Compliance Agreements

While compliance agreements are usually designed to avoid direct conflict with Swiss bank privacy law, some mechanisms employed by these agreements nevertheless circumvent Swiss bank privacy law, eroding the principles of account-holder protection deeply entrenched in Switzerland’s financial culture.48 This Note will examine three areas in evaluating the success of such mechanisms weighed against the extent of tension with Swiss bank privacy law. These three areas are mechanisms for account-holder disclosure consent options, anonymous withholding, and reciprocity.

The first point of examination is account-holder consent to disclosure of information and the extent to which a refusal to consent may be subsequently overridden or circumvented.49 For example, some compliance agreements may provide either voluntary disclosure of account information or an automatic thirty-five percent withholding tax as an account-holder’s only two options.50 Withheld taxes are amounts retained by the payor at the source of income and are often imposed upon dividends, interest, royalties, rent, and other forms of payment.51 Such disclosure consent provisions give rise to several questions—first, whether the agreement offers any real choice to account-holders or is simply a coercive measure to encourage relinquishment of privacy rights depends upon the range and type of options. When a compliance agreement offers few or restrictive account-holder consent options, this narrow range indicates a strong tension with Swiss bank privacy law.52 For example, compliance agreements that offer voluntary disclosure and anonymous self-assessment options to account-holders intrude less upon Swiss bank privacy rights because the options give the account-holder a real choice between disclosing account

47. Jense, supra note 7, at 1827.

48. See id. at 1850.

49. See generally § 15.04 TAX ADMINISTRATION AND COMPLIANCE, 2013 WL 3924265.

50. See id.

51. For a general overview of withholding tax, see Compare Countries By Withholding Tax, supra note 21.

information and preserving anonymity.53 On the other hand, compliance agreements that condition the opening of new accounts upon waiver of bank privacy rights are far more coercive.54 Second, the extent to which income-source countries can acquire information even when account-holders decline consent and incur the withholding tax further determines the compliance agreement’s friction with Swiss bank privacy law.55

The second point of examination is the extent to which mechanisms provide account-holder anonymity in the process of carrying out tax compliance agreements as opposed to circumventing bank privacy law.56 For example, if an account-holder refuses to give his Swiss bank consent to disclosure of account information, the mechanisms in place to preserve account-holder anonymity during withholding and appeals processes serve as indicators of whether the compliance agreement circumvents or preserves the integrity of Swiss bank privacy law.57

The third point of examination is assessing the extent to which compliance agreements incorporate genuine measures for reciprocity of information-sharing, as one-sided compromises of domestic principles of privacy protection may diminish goodwill.58 Goodwill is necessary to facilitate general cooperation and the viability of future collaborations or interactions between countries.59 When both countries have “skin in the game,” reciprocity fosters trust and a more solid base for negotiating solutions for mutually-beneficial goals in the future.60

C. Swiss Tax Compliance Agreements with E.U., U.K., and U.S.

This Section will detail the background and structure of Swiss tax compliance agreements with the European Union, United Kingdom, and United States. This Section will also examine the three areas of focus (account-holder consent to disclosure, preservation of account-holder anonymity, and reciprocity) with respect to each compliance agreement before applying the balancing test, which

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54. See U.S-Swiss Tax Agreement, supra note 20, art. 3.
55. See id.
56. See Nelson, supra note 29, at 419.
57. See id.
58. Jense, supra note 7, at 1852.
59. See id. at 1847.
60. See id.
will weigh the success of each agreement in addressing tax evasion with the extent of circumvention of Swiss bank privacy law.

1. E.U.-Swiss Tax Agreement

a) Background and Structure

The European Union Savings Taxation Agreement with Switzerland (E.U.-Swiss Tax Agreement) was signed on December 29, 2004\(^{61}\) and came into force on July 1, 2005\(^{62}\). The E.U.-Swiss Tax Agreement\(^{63}\) gives holders of Swiss accounts who are residents of an E.U. Member State two options regarding the sharing of their information. First, the account-holder may do nothing, after which Switzerland will apply a hefty thirty-five percent withholding tax on E.U.-source income.\(^{64}\) Withholding tax is a process that is carried out anonymously, which preserves bank privacy.\(^{65}\) Second, the account-holder may avoid the withholding tax by opting for voluntary disclosure, which expressly authorizes the Swiss bank to disclose account information\(^{66}\) to Swiss tax authorities for automatic exchange of information with the authorities of the E.U. Member State that is the source of the income.\(^{67}\) The minimum information to be reported in cases of voluntary disclosure consists of the identity and residence of the beneficial owner,\(^{68}\) the name and address of the paying agent,\(^{69}\) the account number of the benefi-
cial owner, or where there is none, identification of the debt-claim giving rise to the interest, and the amount of the interest payment. 70 While the E.U.-Swiss Tax Agreement broadly provides for negotiations between Switzerland and Member States on specific reciprocity measures, the agreement also provides for revenue sharing, through which Switzerland keeps twenty-five percent of the revenue generated by withholding and transfers the remaining seventy-five percent of the revenue to the Member State of residence of the account-holder. 71

b) Balancing Test

(i) Extent of Conflict with Swiss Bank Privacy Law

With respect to account-holder consent to disclosure, the E.U.-Swiss Tax Agreement makes two options available to account-holders in Swiss banks—(1) voluntary consent to disclosure of account information, or (2) thirty-five percent withholding. 72 By making the disclosure of account information conditional upon account-holder consent, the E.U.-Swiss Tax Agreement avoids direct conflict with Swiss bank privacy law. 73 However, positioning the thirty-five percent withholding tax as the only alternative to voluntary consent poses a problem because there are presumably tax compliant individuals who are residents of Member States that would still have a personal interest in maintaining anonymity. 74 For some account-holders, the choice between either voluntary consent to disclosure or thirty-five percent withholding renders the interest in demonstrating tax compliance mutually exclusive from the account-holder interest in privacy because thirty-five percent withholding is a prohibitively high tax. 75

With respect to account-holder anonymity, the E.U.-Swiss Tax Agreement’s use of anonymous withholding (when the account-holder does not voluntarily consent to disclosure of account information) is less erosive of Swiss bank privacy law. Though the thirty-five percent withholding tax imposed on the account-holder is a penalty (and may render account-holder interests in tax compliance irreconcilable with account-holder interests in privacy), the

70. E.U.-Swiss Tax Agreement, supra note 20.  
71. See id.  
73. Jense, supra note 7, at 1850.  
74. See id. at 1851.  
75. See id.
account-holder may nevertheless prevent account information from being transmitted to the relevant authority.\textsuperscript{76}

With respect to reciprocity, the E.U.-Swiss Tax Agreement’s provision for negotiation of reciprocity mechanisms between Member States and Switzerland counteracts erosion of Swiss bank privacy law by facilitating goodwill, since both Switzerland and the Member State in question benefit from cooperation and tax compliance.\textsuperscript{77} Furthermore, the revenue-sharing mechanism, in which Switzerland keeps twenty-five percent of the revenue generated by withholding and transfers the remaining seventy-five percent to the Member State of origin, incentivizes Switzerland to identify relevant assets through due diligence, but not to pressure account-holders to consent to disclosure because Switzerland receives a good portion of the withheld amounts.\textsuperscript{78}

(ii) Effectiveness of Discouraging Tax Evasion

The efficiency rate represents the ratio of the amount of revenue generated through the agreement over the amount of undeclared assets falling under the agreement’s provisions.\textsuperscript{79} A high efficiency rate means the agreement works effectively by generating an amount of revenue closer to the amount of undeclared assets.\textsuperscript{80} In other words, a high efficiency rate indicates that the agreement detects a large percentage of the outstanding undeclared assets and generates revenue by imposing withholding tax on that large percentage.\textsuperscript{81} Similarly, a low efficiency rate means the agreement is ineffective because it generates an amount of revenue much smaller than the amount of undeclared assets.\textsuperscript{82} This indicates that the agreement detects a small percentage of the outstanding undeclared assets, resulting in the agreement raising less revenue.\textsuperscript{83} The E.U.-Swiss Tax Agreement’s estimated efficiency rate\textsuperscript{84} is 3.2–10 percent in collecting revenue on undeclared assets.\textsuperscript{85} This means that approximately 90–96.8 percent of undeclared assets held in Swiss bank accounts were not affected by the tax com-

\begin{itemize}
\item \textsuperscript{76} Nelson, \textit{supra} note 29, at 395.
\item \textsuperscript{77} See Jense, \textit{supra} note 7, at 1852.
\item \textsuperscript{78} See Morse, \textit{supra} note 23, at 548–49.
\item \textsuperscript{79} See THE U.K.-SWISS TAX AGREEMENT: DOOMED TO FAIL, \textit{supra} note 53, at 14–15.
\item \textsuperscript{80} See id. (explaining how efficiency rate is calculated).
\item \textsuperscript{81} See id.
\item \textsuperscript{82} See id.
\item \textsuperscript{83} See id.
\item \textsuperscript{84} Note that this estimated efficiency rate was calculated by analyzing the revenue raised for the U.K. through the E.U.-Swiss Agreement in 2010. \textit{Id.} at 14.
\item \textsuperscript{85} \textit{Id.} at 15.
\end{itemize}
pliance agreement. This low efficiency rate indicates that the agreement is a poor deterrent for tax evasion carried out via the establishment of foreign accounts.

In sum, the balancing test demonstrates that while the E.U.-Swiss Tax Agreement does not extensively erode Swiss bank privacy law through its mechanisms concerning account-holder consent to disclosure, account-holder anonymity, and reciprocity, the agreement’s effectiveness in discouraging tax evasion and generating revenue is quite poor. As a result, the E.U.-Swiss Tax Agreement does not strike an optimal balance between deterring international tax evasion and preserving Swiss bank privacy law.

2. U.K.-Swiss Tax Agreement

a) Background and Structure

The Taxation Cooperation Agreement between the United Kingdom and the Swiss Confederation (U.K.-Swiss Tax Agreement) came into force on January 1, 2013. The U.K.-Swiss Tax Agreement affords U.K. residents with Swiss accounts three options. First, the account-holder may choose to instruct the Swiss bank to make a one-off payment of thirty-four percent. This one-off payment or withholding occurs for every taxable year in which the account-holder chooses to take no action. Second, the account-holder may disclose any omitted taxable base to the Swiss bank by making a self-assessment of the omitted taxable base in the form prescribed. “Omitted taxable base” refers to all non-U.K. income and gains which have been remitted to the United Kingdom, and all amounts that arose from taxable sources within the United Kingdom and upon which the account-holder has not paid U.K. tax. The account-holder would then instruct the Swiss bank to

86. Id.
87. See id. at 16 (stating that the tax under the EU Savings Directly was widely evaded).
88. See id.
89. See id. at 5 (“the original Directive is full of loopholes and has only collected a small fraction of the originally envisaged sums”).
91. U.K.-Swiss Tax Agreement, supra note 20, art. 9.
92. See id.
93. Id.
94. Id. art. 5.
make a one-off payment of thirty-four percent on the omitted taxable base.95

Third, if the account-holder does not elect either of the first two options after being approached by the bank, the account-holder may elect a voluntary disclosure option.96 The voluntary disclosure option allows the account-holder to authorize the Swiss bank to disclose details about his or her Swiss assets to the Swiss authorities,97 who will in turn transmit the details to HM Revenue & Customs (HMRC) for the United Kingdom.98 This account information includes the account-holder’s full name, date of birth, address, U.K. tax reference number, customer number, yearly account balance, and statement of assets.99 Tax on any income determined to have been improperly saved in such an account, however, will be withheld anonymously, without transmitting information as to the identity of the account-holder.100 The U.K.-Swiss Tax Agreement also allows for reciprocal mechanisms through equivalent measures.101

b) Balancing Test

(i) Extent of Conflict with Swiss Bank Privacy Law

With respect to account-holder consent to disclosure, much like the E.U.-Swiss Tax Agreement, the U.K.-Swiss Tax Agreement allows the account-holder to voluntarily disclose account information or make a one-off payment of thirty-four percent.102 However, unlike the E.U.-Swiss Tax Agreement, the U.K.-Swiss Tax Agreement does not render tax compliance mutually exclusive from account-holder interests in privacy by solely offering these two options.103 Rather, the additional self-assessment option provides a middle-ground between voluntary disclosure and anonymous withholding that does not intrude upon account-holder privacy. While this additional self-assessment option creates much less of a conflict with Swiss bank privacy law, it does admittedly create more room

95. Id. art. 9.
96. Id. art. 10.
97. Id.
100. Id.
101. Id. art. 35.
102. Id. art. 9.
103. Id.
for inaccurate account-holder reporting of omitted taxable base and further tax evasion.\textsuperscript{104}

The U.K.-Swiss Tax Agreement’s use of anonymous withholding when the account-holder does not voluntarily consent to disclosure of account information\textsuperscript{105} is less erosive of Swiss bank privacy law with respect to account-holder anonymity.\textsuperscript{106} Though the thirty-four percent withholding tax imposed on the account-holder is a penalty with respect to both the one-off payment and self-assessment option,\textsuperscript{107} the account-holder may nevertheless prevent account information from being transmitted to the relevant authority.\textsuperscript{108}

As with the E.U.-Swiss Tax Agreement, the U.K.-Swiss Tax Agreement’s allowance for reciprocity of information sharing through equivalent measures\textsuperscript{109} counteracts erosion of Swiss bank privacy law by facilitating goodwill, fostering future cooperation between the United Kingdom and Switzerland with regard to tax compliance.\textsuperscript{110}

(ii) Effectiveness of Discouraging Tax Evasion

With respect to its effectiveness in raising revenue\textsuperscript{111} and deterring tax evasion, the U.K.-Swiss Tax Agreement is estimated to have resulted in negative revenue\textsuperscript{112} by incurring more administrative costs than the revenue received from one-off payments from omitted taxable bases.\textsuperscript{113} Thus, while the U.K.-Swiss Tax Agreement is far less erosive of Swiss bank privacy law with its mechanisms for account-holder consent to disclosure,\textsuperscript{114} preservation of account-holder anonymity, and reciprocity, the U.K.-Swiss Tax Agreement is also less efficient than the E.U.-Swiss Tax Agreement.\textsuperscript{115} Conse-

\textsuperscript{104} The U.K.-Swiss Tax Agreement: Doomed to Fail, supra note 53.
\textsuperscript{105} HM Revenue and Customs, supra note 98.
\textsuperscript{106} The U.K.-Swiss Tax Agreement: Doomed to Fail, supra note 53, at 4–6 (criticizing the U.K.-Swiss Tax Agreement for being too deferential to Swiss bank privacy).
\textsuperscript{107} See HM Revenue and Customs, supra note 98.
\textsuperscript{108} U.K.-Swiss Tax Agreement, supra note 20, art. 9.
\textsuperscript{109} Id. art. 35.
\textsuperscript{110} See Jense, supra note 7, at 1852.
\textsuperscript{111} Efficiency rate data comparable to that provided for the EU-Swiss Tax Agreement is not available.
\textsuperscript{112} The U.K.-Swiss Tax Agreement: Doomed to Fail, supra note 53, at 3.
\textsuperscript{113} The poor efficiency may also be due to loopholes present in the U.K.-Swiss Tax Agreement. For an overview of these loopholes, see id. at 7–28.
\textsuperscript{114} See id. (stating that the U.K.-Swiss Tax Agreement counters steps toward transparency by preserving Swiss bank privacy).
\textsuperscript{115} Data for the efficiency rate of the U.K.-Swiss Tax Agreement comparable to the data conveyed when discussing the E.U.-Swiss Agreement is not presently available.
A Model Protecting a Principled History

sequently, the U.K.-Swiss Tax Agreement does not strike an optimal balance between deterring international tax evasion and preserving Swiss bank privacy law.


a) Background and Structure

The U.S.-Swiss agreement to implement the U.S. Foreign Account Tax Compliance Act (FATCA) came into force June 2, 2014. Under FATCA, foreign financial institutions—like banks—who register with the Internal Revenue Service (IRS), must report the information of any account with U.S. source income, or be subject to thirty percent withholding tax. Swiss banks subject to FATCA must request that its U.S. account-holders waive their rights under the Swiss privacy laws. Additionally, accounts held with Swiss banks may only be opened contingent upon waiver of privacy rights under Swiss law. Even after a preexisting account-holder refuses to waive his privacy rights, the account-holder’s information may still be disseminated through an aggregate reporting process, through which the U.S. may effectively override the account-holder’s privacy rights under Swiss bank privacy law. Furthermore, FATCA does not employ any real mechanisms for reciprocity, creating a lopsided tax compliance treaty and undercutting the ability to foster goodwill.

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118. See U.S.-Swiss Tax Agreement, supra note 20, art. 3.

119. See id.

120. See id.


122. See U.S.-Swiss Tax Agreement, supra note 20, art. 13.

b) Balancing Test

(i) Extent of Conflict with Swiss Bank Privacy Law

Of the three compliance agreements assessed through this Note’s balancing test, FATCA most directly conflicts with Switzerland’s strong history of bank privacy laws. To avoid direct conflict with Swiss bank privacy law with respect to account-holder consent to disclosure, FATCA requires Swiss banks to request account-holders to waive their privacy rights through voluntary disclosure. If the account-holder consents, the Swiss bank must disclose the account information to the IRS. The account information transmitted includes account-holder’s name, address, U.S. taxpayer identification number (TIN), bank account number, and account balance. While Swiss banks are not required to close preexisting accounts that do not give consent to disclosure of account information, Swiss banks may only open new accounts contingent upon the prospective account-holder giving consent to disclosure. This contingency profoundly conflicts with Swiss bank privacy law because U.S. citizens are categorically unable to hold new accounts in Switzerland and avail themselves of Swiss privacy protection. The inability to open a new account and receive the protection of Swiss bank privacy law is troubling for tax-compliant U.S. citizens with dual citizenship, U.S. citizens living abroad, and U.S. citizens in other legitimate circumstances who wish to preserve their privacy for reasons other than criminal tax evasion.

FATCA clearly has little regard for account-holder anonymity, as its tax compliance measures primarily depend upon the cooperation of Swiss banks in disclosing account-holder information, including names, dates of birth, and TINs. Unlike the Swiss tax compliance agreements with the European Union and the United Kingdom, FATCA does not offer an anonymous withholding option for account-holders that do not consent to disclosure of account information.
account information.\textsuperscript{133} Rather, even if the account-holder refuses to consent, the Swiss bank must still submit aggregate information on the number of non-consenting accounts and the amounts therein to the IRS.\textsuperscript{134} The IRS may then submit a group request soliciting account information for specific accounts from the aggregate report.\textsuperscript{135} The Swiss Federal Tax Authority (FTA) puts the non-consenting account-holder on notice through anonymous publication in the Federal Gazette\textsuperscript{136} and on its website.\textsuperscript{137} Within thirty days of publication, the account-holder may appeal\textsuperscript{138} the disclosure of account information to the Swiss Federal Administrative Court.\textsuperscript{139}

If the appeal is unsuccessful, the Swiss bank must transmit the account information to the IRS in the same format as if consent had been given by the non-consenting account-holder.\textsuperscript{140} FATCA’s lack of any mechanism for preserving anonymity conflicts with Swiss bank privacy law because the current procedures place the burden of preserving privacy rights upon the account-holder rather than placing the burden of overcoming privacy rights upon the U.S. authority. The latter burden would certainly incur higher administrative costs on the part of the IRS. However, increased administrative ease to the account-holders would burden Swiss bank privacy law less than FATCA’s current administrative structure. FATCA subjects the matter of circumventing bank privacy law not to the consent of account-holders, but ultimately—and improperly—to the request and discretion of the IRS.

The agreement employs no real mechanisms for reciprocity.\textsuperscript{141} Rather, the agreement includes illusory language allowing for future discussions about implementing reciprocal disclosure requirements, under which U.S. banks would disclose account

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\textsuperscript{133} See id.

\textsuperscript{134} U.S.-Swiss Tax Agreement, supra note 20, art. 5.

\textsuperscript{135} Id.

\textsuperscript{136} The Federal Gazette is a government publication that publishes official documents which provide contextual information for historical research as well as official bulletins. Administrative Assistance According to the FATCA, Swiss Fed. Tax Admin., http://www.estv.admin.ch/intsteuerrecht/themen/01458/01648/index.html?lang=en (last updated Jan. 28, 2015).

\textsuperscript{137} U.S.-Swiss Tax Agreement, supra note 20, art. 5.

\textsuperscript{138} The specific elements that the FTA and Swiss Federal Administrative Court examine, consider, or find persuasive on appeal have not yet been established, as the agreement has just recently come into force. Swiss FATCA Agreement Now in Force!, supra note 116.

\textsuperscript{139} U.S.-Swiss Tax Agreement, supra note 20, art. 5.

\textsuperscript{140} Id.

\textsuperscript{141} See id. art. 13.
information to the Swiss government: “the United States is willing to negotiate such an agreement on a reciprocal basis on the same terms and conditions as similar agreements concluded with other Partner Jurisdictions . . . .”142 Because the United States only expresses a willingness to negotiate reciprocal mechanisms in the future, the lack of real obligation to execute such reciprocal mechanisms results in the lack of mechanisms for reciprocity altogether.143 The lack of actual measures for reciprocity erodes incentives for goodwill, as Switzerland is the only country in the agreement compromising its domestic privacy laws.144 This, in turn, may deteriorate any incentives for cooperation in future interactions between Switzerland and the United States.145

(ii) Effectiveness of Discouraging Tax Evasion

FATCA’s effectiveness in discouraging tax evasion and raising revenue is unknown because the agreement has only recently come into force.146 There is therefore no data from which to derive a definitive efficiency rate.147 However, there has been an increase in U.S. citizens living abroad and renouncing their U.S. citizenship to avoid subjection to FATCA.148 FATCA is predicted to generate about $8.7 billion over the next ten years, but implementation costs could equal or even exceed this amount.149 Thus, it is unlikely that the U.S.-Swiss Tax Agreement will strike an optimal balance between deterring international tax evasion and preserving Swiss bank privacy law.

142. Id.
144. Jense, supra note 7, at 1852.
145. Id.
146. Swiss FATCA Agreement Now in Force!, supra note 116.
III. Analysis

Illustrated by the Swiss tax compliance agreements with the European Union and United Kingdom, too much deference to Swiss bank privacy law seems correlated with poor efficiency in raising revenue and deterring tax evasion. However, as indicated by FATCA, too much circumvention of Swiss bank privacy law may deteriorate the principles entrenched in Swiss financial culture, resulting in overly-aggressive procedures and erosion of goodwill. Furthermore, high administrative costs inherent in demanding disclosure requirements may cancel out any revenue raised. Thus, the proposed model for Swiss international tax agreements incorporates mechanisms for consent to disclosure, preservation of anonymity, and reciprocity that would both generate revenue for the income-source country and maintain the integrity of Swiss bank privacy law.

More specifically, the proposed model offers three disclosure options to account-holders, each of which preserves anonymity in cases of one-off payments, withholding, and other administrative procedures. These three options provide the account-holder with real choices as to disclosure of account-holder information and preservation of anonymity, while simultaneously generating revenue for the income-source country through various reasonable withholding rates. Additional mechanisms for income-source countries to challenge under-reported omitted taxable bases allow income-source countries to pursue the most egregious abusers and raise additional revenue through penalty withholding rates. These mechanisms also keep administrative costs manageable by utilizing Swiss infrastructure for various challenges and appeals. To promote cooperation by both parties to the compliance agreement, the proposed model incentivizes Switzerland and income-source countries through real mechanisms for reciprocity such as reciprocal information exchange and revenue-sharing. The details of this proposed model are discussed at length below.

Subpart A of this Section will first set out the details of the proposed model. Subpart B will explain and assess the projected effectiveness and merit of the mechanisms incorporated in the proposed model.

150. See Emma Thomasson, Special Report: The Battle for the Swiss Soul, THOMSON REUTERS (Apr. 18, 2013), http://www.reuters.com/article/2013/04/18/us-swiss-banks-specialreport-idUSBRE93H07620130418 (“It must not be that the big powers chip away at the legal order of the small ones[...]”).
151. See Jense, supra note 7, at 1842, 1849.
A. Detailed Proposed Model for International Tax Compliance Agreements with Switzerland

The proposed model for compliance agreements with Switzerland focuses on account-holder consent to disclosure, preservation of anonymity, and reciprocity. The first goal of this model is to allow account-holders to preserve anonymity wherever possible through consent options and other procedures, discarding the assumption that any desire to preserve anonymity must indicate criminal activity. The second goal of this model is to generate revenue for the country that is the source of the income in question wherever possible through varying withholding tax and one-off payment rates. The final goal of this model is to facilitate goodwill by establishing real, functional mechanisms for reciprocity.

With respect to account-holder consent, the proposed agreement would offer account-holders three options. The first option is an anonymous one-off payment at a rate of thirty-five percent. The account-holder need not take any action to trigger this option, and pursuant to it no account information is transferred. The second option is voluntary disclosure, in which the account-holder consents to the disclosure of account information. The Swiss bank would then transfer such information to the income-source country. The third option is self-assessment, in which the account-holder may self-assess what they believe to be any omitted taxable base and instruct the bank to make an anonymous one-off payment at a reduced rate of 25–30 percent on the omitted taxable base. Tax compliant account-holders may self-assess an amount of zero in the applicable currency.

The proposed model also provides a mechanism for the income-source country to challenge an account-holder’s self-assessment. In cases where the relevant income-source country authority believes that an account-holder’s self-assessment under-reports the omitted taxable base, the country may challenge that amount by initiating a series of procedures. Upon challenge, the Swiss bank would again offer the account-holder the options of voluntary disclosure or anonymous one-off payment at the thirty-five percent rate. If the account-holder does not elect either option, the income-source country would then be required to submit a detailed report to the Swiss bank substantiating the basis for challenge. Submission of the detailed report would initiate an internal audit of the account by the relevant Swiss bank. In the instance where the Swiss bank feels the income-source country has no valid basis in the detailed report, the Swiss bank may voice its concerns
to the FTA, which in turn may initiate proceedings before the Swiss Federal Administrative Court. During these proceedings the income-source country would be required to demonstrate its valid basis for challenging the account-holder’s self-assessment.

The basis for such a challenge may consist of discrepancies derived from comparing the account-holder’s self assessment with aggregate account reports much like those provided under FATCA. If the Swiss authority deems the purported basis for challenge unfounded, the account-holder’s self-assessment would stand, followed by an anonymous one-off payment at the reduced rate. The Swiss authority may find a challenge unfounded when, for example, the income-source country has challenged all or a significant portion of self-assessments from a particular bank absent any evidence of patterns of bank misconduct. Alternatively, if the Swiss authority deems the purported basis for challenge valid, the Swiss bank would continue with internal audit of the account.

If, after internal audit, the Swiss bank determines that the self-assessment was accurate, then procedure would continue with an anonymous one-off payment, made at the reduced rate. However, if the Swiss bank determines that the self-assessment was inaccurate in disclosing the omitted taxable base, that income would be subject to a significantly higher anonymous one-off payment rate as a penalty. To account for cases of oversight or negligence by the account-holder, the higher anonymous one-off payment rate would not be fixed. Rather, the penalty rate would be adjustable based on different levels of egregiousness or criminal intent amounting to tax fraud—involving the submission of false, forged, or inaccurate financial documents.

The level of egregiousness would be determined by the FTA and may depend on such factors as the degree of discrepancy and proportional harm done to the income-source country, any history of related misconduct, and the degree of cooperation in the

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152. U.S.-Swiss Tax Agreement, supra note 20, art. 3.
153. The exact increased anonymous one-off payment rate for inaccurate self-assessment would be subject to treaty negotiations between Switzerland and the income-source country in question.
154. This factor draws inspiration from the U.S. Attorneys’ Manual for Corporate Criminal Prosecution § 9-28.300(A)(1), which indicates the nature and seriousness of the offense as a factor to be considered in determining the appropriate prosecutorial course of action for corporate misconduct. See U.S. Dep’t of Justice, United States Attorneys’ Manual, § 9-28.300(A)(1).
155. This factor draws inspiration from the U.S. Attorneys’ Manual for Corporate Criminal Prosecution § 9-28.300(A)(3), which indicates history of similar misconduct as a factor to be considered in determining the appropriate prosecutorial course of action for
investigation of possible bank misconduct or unethical account-holder advising practices. The account-holder may, again, appeal the FTA’s decision to the Swiss Federal Administrative Court. If the FTA’s decision as to the level of egregiousness stands, the proposed model would also give the income-source country the ability to request disclosure of that account information for criminal prosecution purposes. In the course of determining the level of egregiousness, the FTA would determine whether the level of criminal activity warrants disclosure of the account information to the income-source country and submit its recommendation to the Swiss Federal Administrative Court in the case of any challenge.


156. This factor draws inspiration from the U.S. Attorneys’ Manual for Corporate Criminal Prosecution § 9-28.300(A)(4), which indicates the willingness to cooperate in the investigation of agents involved in the misconduct as a factor to be considered in determining the appropriate prosecutorial course of action for corporate misconduct. See U.S. Dep’t of Justice, United States Attorneys’ Manual § 9-28.300(A)(4).
B. Evaluating the Mechanisms of the Proposed Model

The proposed model possesses several valuable strengths. First, the proposed model provides the account-holder with realistic choices to disclose account-holder information and preserve anonymity while generating revenue for the income-source country through various withholding rates. Furthermore, the proposed model provides mechanisms for income-source countries to challenge under-reported omitted taxable bases, allowing income-source countries to pursue the most egregious abusers and raise additional revenue through penalty withholding rates. The proposed model also has the effect of keeping administrative costs manageable by utilizing Swiss infrastructure. Finally, the proposed model incentivizes goodwill through the incorporation of reciprocal information exchange and revenue-sharing. However, the proposed mechanisms previously detailed require some additional unpacking to illustrate the reasoning and projected effectiveness that bolster the model’s strengths.

Unlike FATCA, the proposed model does not require that Swiss banks open new accounts contingent upon the prospective account-holder’s consent to disclosure of account information.¹⁵⁷ Not including such a requirement cures the problem in which citizens of a certain country are categorically unable to hold accounts in Switzerland and avail themselves of Swiss privacy protection, even without the intent to engage in criminal tax evasion. Rather, Swiss banks would offer account-holders the three options of anonymous one-off payment, voluntary disclosure, or self-assessment.

The proposed model’s first mechanism offering account-holders an anonymous one-off payment option, much like the E.U. and U.K. compliance agreements,¹⁵⁸ has the effect of creating revenue while preserving account-holder anonymity and, thus, the integrity of Swiss bank privacy law. The anonymous withholding or one-off payment would be at a rate of thirty-four percent, a standard baseline set by the compliance agreements previously discussed.¹⁵⁹ Presumably, account-holders who, at a minimum, do not want to deal with any administrative hassle and may not be tax compliant, would primarily use the anonymous one-off-payment option. Furthermore, refund mechanisms¹⁶⁰ would be utilized for accidental non-

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¹⁵⁷. See Jense, supra note 7, at 1850–51.
¹⁵⁸. See supra note 20 and accompanying text.
¹⁵⁹. See id.
¹⁶⁰. For example, the IRS provides for FATCA special rules through which account-holders will be able to seek refund through either a reimbursement procedure or a set-off
responses, as missed notifications and miscommunications are foreseeable. 161

Like all three previously discussed tax compliance agreements, 162 the proposed model’s next mechanism, which offers account-holders a voluntary disclosure option, effectively provides the income-source country with the account information and revenue that it primarily seeks. Presumably, account-holders who are tax-compliant and do not have personal concerns about preserving anonymity would primarily use the voluntary disclosure option. However, non-tax compliant account-holders are free to utilize the voluntary disclosure option as well, in which case the Swiss bank would transfer the account information to the income-source country and subsequently apply the withholding tax to generate revenue for the income-source country.

The proposed model’s mechanism offering account-holders a self-assessment option, unlike the U.K.-Swiss Tax Agreement, 163 modifies this option with added incentives for more aggressive, FATCA-like targeting of non-tax compliant account-holders. 164 Allowing account-holders to self-assess, in good faith, the amount they believe constitutes an omitted taxable base in their accounts, and applying a reduced anonymous one-off payment rate of 25–30 percent, would encourage anonymous self-reporting. Through this anonymous self-reporting, income-source countries would still generate considerable revenue, avoid administrative costs in identifying non-tax compliance, and preserve account-holder anonymity.

The procedural mechanism for the income-source country to challenge an account-holder’s self-assessment, where the income-source country has reason to believe that the omitted taxable base is underrepresented, provides an additional avenue for income-source countries to target the most egregious tax offenders. The self-assessment challenge and its subsequent procedures would preserve a State’s ability to perform criminal prosecutions, discourage inaccurate self-assessments, and potentially raise even more revenue. Also, the administrative costs of the self-assessment challenge procedures would hinder an income-source country from simply


161. Particular refund procedures would depend upon the tax refund procedures of the particular income-source country in question.
162. See id.
163. U.K.-Swiss Tax Agreement, supra note 20, art. 9.
164. See U.S.-Swiss Tax Agreement, supra note 20, art. 5.
challenging every self-assessment in an attempt to maximize penalty rates. Most importantly, this mechanism is consistent with Swiss bank privacy law because of the historical exception in which Swiss banks lift identity protection in cases of tax fraud.165

Offering the account-holder the options of voluntary disclosure or anonymous one-off payment at the thirty-five percent rate before initiating these challenge procedures gives the account-holder an additional opportunity to self-report, saving further administrative costs for the income-source country. Where the account-holder does not elect either option, the income-source country’s submission of a detailed report to the Swiss bank substantiating the basis for challenge ensures that the income-country does not simply challenge every self-assessment without any burden. Additionally, in the wake of enormous scandals like the UBS scheme,166 Swiss banks would likely be incentivized to cooperate and operate in good faith when conducting the internal audits triggered by self-assessment challenge. To preserve a Swiss bank’s ability to protect clients in certain circumstances, the proposed model allows the Swiss bank to voice any concern that an income-source country’s detailed report has no valid basis to the FTA. Much like FATCA,167 the proposed model lowers certain administrative costs by using existing Swiss infrastructure as opposed to creating entirely new channels. At the same time, requiring income-source countries to demonstrate a valid basis for challenging an account-holder’s self-assessment cures FATCA’s problem of placing the burden of preserving privacy rights on the account-holder.

The justification is self-evident for continuing procedure with an anonymous one-off payment at the reduced rate when an internal audit indicates a valid self-assessment. However, where an internal audit reveals an inaccurate self-assessment of omitted taxable base, the significantly higher penalty rate for anonymous one-off payment rate generally discourages inaccurate self-assessment.168 The penalty rate also raises revenue regardless of whether the inaccuracy is intentional or due to mistake. This penalty rate is adjustable according to how egregious the inaccuracy was and whether the account-holder intended to mislead their income-source country. This allows the compliance agreement to exercise

165. Morse, supra note 23, at 534.  
166. See supra notes 10, 11.  
167. U.S.-Swiss Tax Agreement, supra note 20, art. 5.  
168. The exact increased anonymous one-off payment rate for inaccurate self-assessment would be subject to treaty negotiations between Switzerland and the income-source country in question.
some leniency in cases of honest mistake as well as to identify more egregious offenders. In the case of substantial offenders, the income-source country’s ability to request disclosure of account information for criminal prosecution purposes preserves income-source country interests in criminal justice and deterrence of tax evasion. Leaving the determination of criminal intent to the FTA and/or the Swiss Federal Administrative Court also allows Switzerland to protect its interests in maintaining its historical policy of bank privacy for cases falling short of tax fraud, such as submission of false, forged, or inaccurate financial documents.

While the challenge procedures are arguably drawn out and complex, the extensive nature of the challenge procedures is necessary to keep income-source countries in check through administrative costs. Forcing income-source countries to be more selective and precise in their self-assessment challenges negates the propensity for overly-aggressive challenge practices aimed at further eroding Swiss privacy law. The challenge procedure, instead, rewards the precision of income-source countries by providing for adjustable penalty rates, through which the income-source country may recoup administrative costs and raise additional revenue.

Regarding reciprocity, much like the E.U.-Swiss Tax Agreement,\textsuperscript{169} the proposed model would provide for revenue sharing in which Switzerland would retain a minority percentage of withheld amounts and one-off payments. This financial benefit would incentivize Switzerland to exercise due diligence in locating non-tax compliant account-holders while simultaneously keeping income-source countries’ administrative costs more manageable. Finally, the proposed model would require a commitment to reciprocal mechanisms for account information disclosure to facilitate goodwill and foster future cooperation between Switzerland and other countries. Thus, while more complex than the three existing compliance agreements discussed, the proposed model achieves a more optimal balance between efficiency in generating revenue while deterring tax evasion and preserving the integrity of Swiss bank privacy law.

Overall, the voluntary disclosure, anonymous one-off payment, and self-assessment options would create a system in which tax compliant account-holders maintain anonymity without extensive burden. Non-tax compliant account-holders would also have the opportunity to self report while simultaneously creating revenue

\textsuperscript{169} E.U.-Swiss Tax Agreement, \textit{supra} note 20.
for the income-source country. To deter egregious abuse, non-tax compliant account-holders who attempt to defraud through inaccurate self-assessment are penalized. Furthermore, Switzerland would presumably be incentivized to operate in good faith due to goodwill generated through the revenue sharing and the required commitment to reciprocal disclosure mechanisms for account information.

IV. CONCLUSION

Tax evasion scandals like that of UBS\textsuperscript{170} truly amplified international focus upon deterring and penalizing international tax havens, especially with respect to Switzerland. While the negative perception of Switzerland as a tax haven is justifiable, the root of this policy is not nefarious, but rather the country’s real and legitimate commitment to bank privacy law.\textsuperscript{171} Though the purpose of these privacy laws is not to encourage tax evasion and criminal activity,\textsuperscript{172} the abuses of Swiss bank privacy law called for compliance agreements to resolve the matter. In discussing the E.U., U.K., and U.S. tax compliance agreements with Switzerland, it is clear that generating revenue, deterring tax evasion, and preserving the integrity of Swiss bank privacy law is daunting. Because each existing agreement is either inefficient at raising revenue and tax compliance goals or detrimental to Swiss bank privacy law, the proposed model blends and modifies the three agreements to strike an optimal balance.

While the proposed model appears more complex than the E.U., U.K., and U.S. tax compliance agreements with Switzerland, the complexity serves to resolve a complicated issue by incorporating the strengths and curing the weaknesses of the previously discussed compliance agreements. Through the incorporation of three account-holder consent options, varying withholding rates, governmental challenge procedures, and account-holder appeal procedures, the proposed model achieves a more optimal balance between efficiency in generating revenue while deterring tax evasion and preserving the integrity of Swiss bank privacy law.

Ultimately, improved models regulating international tax compliance agreements will facilitate money flow among the parties, boosting global economic activity and cultivating goodwill to facilitate even further global economic growth. Furthermore, improved

\textsuperscript{170} See supra notes 10, 11.
\textsuperscript{171} See Jense, supra note 7, at 1827.
\textsuperscript{172} See Aubert, supra note 44, at 297.
models will deter criminal tax evasion in the ever-globalizing economy, in which the global transfer, accessibility, and concealability of assets require but a few strokes on a keyboard.