



# UNITED STATES ATTORNEY'S OFFICE

## *Southern District of New York*

U.S. ATTORNEY PREET BHARARA

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### **MANHATTAN U.S. ATTORNEY ANNOUNCES AGREEMENT WITH BDO USA LLP TO PAY \$50 MILLION TO RESOLVE FEDERAL TAX FRAUD INVESTIGATIONS**

*Accounting Firm Admits Criminal Wrongdoing in Connection with Fraudulent Tax Shelter Scheme that Generated at Least \$6.5 Billion in Phony Tax Losses*

Preet Bharara, the United States Attorney for the Southern District of New York, Douglas H. Shulman, the Commissioner of the Internal Revenue Service ("IRS"), and John A. DiCicco, the Principal Deputy Assistant Attorney General for the Tax Division of the Department of Justice, announced today that BDO USA, LLP (formerly BDO Seidman LLP, hereafter "BDO") admitted to criminal wrongdoing and agreed to pay \$50 million to the United States in connection with its participation in a tax shelter fraud scheme that generated at least \$6.5 billion in phony tax losses for wealthy clients. As part of the resolution, the U.S. Attorney's Office filed a criminal Information charging BDO with one count of engaging in a tax fraud conspiracy from approximately 1997 to 2003. BDO waived the federal Indictment, agreed to the filing of the Information and has accepted responsibility for its criminal conduct and that of its employees. The U.S. Attorney's Office has entered into a deferred prosecution agreement ("DPA") with the firm, which provides that criminal prosecution will be deferred if the company meets specified conditions.

Manhattan U.S. Attorney Preet Bharara said: "Today's agreement is the latest successful result in a multi-year effort to unravel this massive fraud and hold to account those individuals and entities responsible for depriving the IRS of billions of dollars in revenue. Tax cheats – be they individuals who file false returns or businesses that help them carry out their deception – will not be tolerated."

IRS Commissioner Douglas Shulman said: "Today's enforcement action is another reminder that taxpayers can't hide behind complicated schemes or corporate tax shelters. The IRS is strongly committed to stopping illegal tax shelters."

Deputy Assistant Attorney General for DOJ's Tax Division John A. DiCicco said: "Today's agreement is part of our continuing efforts to reassure law-abiding taxpayers that those

who assist in tax evasion will pay a heavy price for doing so. The Justice Department will continue to pursue individuals and businesses who enrich themselves at the public's expense by selling and promoting abusive tax shelters."

As part of the resolution, BDO provided a detailed Statement of Facts admitting its wrongful conduct, agreed to pay \$50 million to the United States, and agreed to certain permanent restrictions and controls on its tax practice. The DPA also requires BDO's continuing cooperation with the Government's investigation, and requires the firm to implement and maintain an effective compliance and ethics program. BDO has cooperated with the Government since early 2006.

As BDO has admitted and as alleged in the Information:

Between 1997 and 2003, BDO participated in a fraud that generated at least \$6.5 billion in phony tax losses for its clients, which resulted in the evasion and attempted evasion of approximately \$1.3 billion in taxes. Specifically, through a group within the firm known as the "Tax Solutions Group," BDO and its co-conspirators developed, marketed, sold and implemented illegal tax shelter products targeted to wealthy clients with expected income or gains exceeding \$5 million. The Information focuses on two shelters – "Short Sale" and "SOS" – which BDO and its conspirators concealed from the IRS by: (a) falsely characterizing them as "investments," (b) using false and fraudulent correspondence, legal opinion letters, consulting agreements, and other documents to mask the products and associated fees, (c) filing false tax returns on behalf of the clients, and (d) providing false information and documents to the IRS during the course of BDO's promoter penalty examination and client audits.

BDO's former Chairman and Chief Executive Officer, Denis Field, was indicted in June 2009 for participating in and leading the fraud. He is awaiting retrial on a date to be scheduled by the Court, and is presumed innocent unless and until proven guilty. Five other BDO partners or principals, all members of the Tax Solution Group, pled guilty to tax crimes and are awaiting sentencing.

The DPA provides that the U.S. Attorney's Office will defer criminal prosecution of BDO until December 2012 if the specified conditions are met. If in December 2012 BDO has met its obligations under the DPA, then the Government will move to dismiss the Information without prejudice. Should BDO violate the agreement, it may be prosecuted for the charged conspiracy, or the Government may extend the period of deferral. The \$50 million in penalties to be paid by BDO is based on the company's representations concerning their financial condition and documentation of those representations. It includes: \$15,568,273 to be forfeited to the United States; and \$34,431,727 to settle the IRS's civil promoter penalty examination of BDO. The agreement provides for these sums to be paid pursuant to an agreed-upon schedule.

Mr. Bharara thanked the IRS for their outstanding work in the investigation of this matter. He also thanked the Department of Justice's Tax Division for its assistance.

This investigation is being overseen by the Office's Complex Frauds Unit. Assistant U.S. attorneys Stanley J. Okula, Jr. and Jason Hernandez – together with Tax Division Assistant Chief Nanette Davis – are in charge of the prosecution.

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