

The Wayback Machine - <https://web.archive.org/web/20201105094458/https://www.lexisnexis.com/LegalNews...>

The UBS Birkenfeld Whistleblower Case

by Sheryl Phipps *

Birkenfeld Case

On September 11, 2012, the Internal Revenue Service (IRS) paid former Union Bank of Switzerland (UBS) banker Brad Birkenfeld \$104 million in awards for assisting them in collecting more than \$5 billion in unpaid taxes. Birkenfeld received the award pursuant to whistleblower statute IRC Section 7623(b).

...

Brad Birkenfeld... was sent by UBS to lure U.S. investors from various wealth havens to invest their money into U.S. bank accounts. While networking in haven Newport Beach, Birkenfeld met Igor Olenicoff, a billionaire real estate developer and a member of Forbes 400 list of America's most wealthy.] Olenicoff became one of his clients and he subsequently moved \$200 million to UBS, thus "saving" Olenicoff \$7.3 million in U.S. taxes.

...

Birkenfeld resigned... from UBS in October 2005, when "he learned that UBS' secret dealings with U.S. customers and the agreement the bank had reached with the IRS." Perhaps the additional fact that UBS refused to pay him a bonus for the work he had done assisted Birkenfeld in making the ultimate decision to report UBS' tax practices of hiding billions of dollars from the IRS. It is estimated that UBS had \$20 billion in deposits from U.S. citizens aka UBS' clients! [Stuart Pfeifer, *Banking* Times, Oct 26, 2009, at Business (online), available at <http://articles.latimes.com/2009/oct/26/business/fi-swiss2>

... Birkenfeld received the award for "providing comprehensive information that was 'exceptional in both breadth and depth' and served as the "basis for pursuing 'unprecedented actions against UBS AG, with collateral impact on other enforcement activities." Birkenfeld \$104 Million Whistleblower Award," [taxanalysts®](#) Tax Notes Today, Sept. 12, 2012.]...

...

Planning and Initiating Exclusion of IRC Section 7623(b)

Although the government is happy with the effectiveness of the whistleblower program in busting UBS, and surely

Birkenfeld's attorneys) are happy with the result of the final agreement, the question remains how Birkenfeld, who spent years in prison for his part in the UBS scheme, was able to overcome the provision in IRC Section 7623(b)(3) that requires an award by someone who "planned and initiated the actions that led to the underpayment of tax." ...

Apparently, the IRS conveniently considered Birkenfeld a "low-level" employee at UBS and that higher managers who "planned and initiated" the scheme...

Questions remain as to whether this action will benefit or burden accounting firms with their employees and clients, and whether it will encourage or hinder openness and compliance within investment and banking firms...

* Sheryl Phipps received her law degree and LL.M. in Taxation from Golden Gate University School of Law in San Francisco and is currently a tax practitioner in Oakland, California

...

Information referenced herein is provided for educational purposes only. For legal advice applicable to the facts of your situation, you should obtain the services of a qualified attorney licensed to practice law in your state.

LEXIS users can view the complete commentary [HERE](#). Additional fees may apply. (Approx. \$100 per hour)

RELATED LINKS: For further background on the Whistleblower Protection Program and the Birkenfeld case, see

- ["Cheaters Never Prosper... Or Do They?" - 2012-04 Lexis® Federal Tax Journal Quarterly § 3.01 and § 3.02](#)

Discover the features and benefits of [LexisNexis® Tax Center](#)

For quality Tax & Accounting research resources, visit the [LexisNexis® Store](#)