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 Birkenfeld $104 million in awards for assisting them in collecting more than $5 billion in unpaid taxes. Birkenfeld received the funds 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 UBS accounts. While networking in haven Newport Beach, Birkenfeld met Igor Olenicoff, a billionaire real estate developer. [Olenicoff was a member of Forbes 400 list of America's most wealthy.] Olenicoff became one of his clients and he subsequently move $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 agreement the bank had reached with the IRS." Perhaps the additional fact that UBS refused to pay him a bonus he had done assisted Birkenfeld in making the ultimate decision to report UBS' tax practices of hiding billions of company's money. It is estimated that UBS had $20 billion in deposits from U.S. citizens aka UBS' clients! [Stuart Pfeifer, Banker 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 the "basis for pursuing 'unprecedented actions against UBS AG, with collateral impact on other enforcement activ

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 surel
Birkenfeld's attorneys) are happy with the result of the final agreement, the question remains how Birkenfeld, who spent two years in prison for his part in the UBS scheme, was able to overcome the provision in IRC Section 7623(b)(3) that disallows 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 that "planned and initiated" the scheme...

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

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