



STATEMENT ISSUED BY DEAN ZERBE

Today is a great day for whistleblowers. Today is a great day for the vast majority of Americans who work their jobs and pay their taxes. Today is a great day for tax fairness. Today is a terrible day for big-time tax cheats. Why? Because today is the day we are pleased to announce that Brad Birkenfeld – the most important tax whistleblower in the history of the country – received a major award under the IRS Whistleblower program. This award by the IRS is being made thanks to the information provided by Brad that led to over \$5 billion dollars and counting in tax payments being made by big banks and wealthy individuals who tried to evade paying their fair share of taxes. These \$5 billion dollars in payments were all made thanks to Brad's willingness to stand up on behalf of honest taxpayers.

The award today shows us that the IRS is willing to work with whistleblowers and award whistleblowers. While it has not been a walk in the park – especially with a new program and confronting issues for the first time -- the IRS has been fair and straight with Brad. However whistleblowers need to recognize that there is a narrow path of working with the IRS the right way and a lot of ways of to do it the wrong way.

I cannot improve upon the IRS' own words in making this award decision: that Brad's information was unprecedented, that Brad provided information that was exceptional and comprehensive in both breadth and depth and that Brad's information served as the basis for unprecedented actions against the Swiss Bank UBS and collateral impact on other enforcement activities.

As important, with today's decision by the IRS to provide an award to Brad – the IRS Whistleblower program is finally on track with the IRS recognizing the value and worth of whistleblowers and the need to award and encourage more whistleblowers to come forward. The entire whistleblower community has been waiting to see whether the IRS would actually provide real awards. The answer is an emphatic yes.

With \$5 billion dollars collected so far – the award to Brad is less than 2 cents on the dollar for every dollar collected by the Treasury. This probably represents the greatest return on investment in the history of the federal government. If we can get a few more Brad Birkenfeld's to come forward we can start to put a real dent in the deficit. Today's award will certainly encourage more whistleblowers to come forward and help the IRS go after illegal offshore accounts and other big-time tax cheats in the future.

While we are in the political season, it is useful to pause for a moment and recognize that the success of the IRS whistleblower program and today's award truly represents a bipartisan success of which both parties can be proud.

The IRS whistleblower law was put forward and written into the statutes thanks foremost to the drive and direction of Senator Grassley. However, the IRS whistleblower law stands on the shoulders of the earlier False Claims Act that Senator Grassley and Congressman Berman put into law in 1986. Senator Grassley in moving the IRS whistleblower law benefitted enormously from the good support of Chairman Baucus who has been a champion of going after the tax gap. Clearly the most effective enforcement tool the government has to go after the tax gap has proven to be the IRS whistleblower program. The oversight of Senators Levin and Collins on illegal offshore banking was vital in ensuring that this issue got the proper attention from the IRS.

The IRS whistleblower office was established under President Bush by IRS Commissioner Mark Everson. Today's action by President Obama's administration and Commissioner Shulman builds on that earlier work and takes the IRS whistleblower program to the next level. Both parties can take a bow for this success and the billions of dollars being brought in from illegal offshore accounts.

I would like to thank Commissioner Shulman for his championing of the IRS efforts on offshore accounts -- and with today's award acknowledging that it all started thanks to a whistleblower. I'd especially like to thank Deputy IRS Commissioner Steve Miller who has been tireless in prodding, pushing and pulling the IRS to move forward on the whistleblower program.

Words fail me to thank sufficiently the dedicated staff of the IRS Whistleblower office, ably led by Steve Whitlock and his capable Deputy Bob Gardner. I especially want to thank Dawn Applebaum who has held hands during a long and arduous process. Ms. Applebaum's hard work, patience and dedication -- as well as her constant graciousness -- is a reminder that our nation benefits enormously from career employees at the IRS who are engaged, knowledgeable and committed to ensuring our tax laws are followed.

I also want to credit the IRS employees who used the information provided by Brad to go after the Swiss banks and the illegal offshore accounts -- David Reeves and John McDougal. I want to recognize, and I hope the IRS will recognize their valuable work -- and also that they were willing to work with a whistleblower and the information provided by a whistleblower. The simple reality is in this modern world, the IRS has to look to whistleblowers to assist them in their work if they are going to be fully successful. Encouraging and awarding IRS employees for working with whistleblowers is an important step in ensuring the future success of the whistleblower program and, more importantly, the work of the IRS of enforcing our nation's tax laws.

I want to thank Gary Bornholdt -- who unfortunately passed away -- who was of great help to me during his time on the Joint Committee on Taxation -- when I was grinding away at the

Senate Finance Committee creating the modern IRS whistleblower law at the direction of Senator Grassley. Gary was a wonderful fellow and he is dearly missed.

Finally, let me thank my cocounsels Steve Kohn and David Colapinto – it has been tremendous to work with them with their years of experience with whistleblowers. It is only by all of pulling the oars together that has made today possible. And of course, to thank Brad for his courage of coming forward voluntarily in the first place and making this all possible – an unprecedented three amnesties with thousands of individuals who failed to pay their taxes coming in, an agreement with nearly a dozen Swiss banks now providing information about tax evasion to the U.S. government – and \$5 billion brought in -- all thanks to Brad.

Let me close and say that today's award strikes an enormous blow for tax fairness. The IRS whistleblower award program is targeted specifically to encourage individuals to come forward and speak out about tax cheating by the big corporations, the big banks and the wealthiest individuals in this country. It is not your regular worker – who gets his biweekly paycheck with all of his taxes already withheld -- that is engaging in sophisticated tax shelters and illegal offshore accounts. As Brad has shown, encouraging knowledgeable insiders to stick their necks out is often the only way we can ever find out about tax cheating by the fat cats. People have had illegal offshore accounts for fifty years or more and have slept comfortably at night. Now, thanks to Brad, they are awake and on the run.

Finally, a robust IRS whistleblower program will do much to help the vast majority of honest taxpayers – especially small and medium business owners. As a recent IG report showed – a high percentage of IRS audits of small and medium businesses is resulting in no-change – meaning the IRS didn't find anything wrong. However, that small business owner is still stuck with the time and cost of an IRS audit. A successful IRS whistleblower program will mean that the IRS can dedicate limited IRS resources on going after the big-time tax cheats and leave the honest business owners and working families alone. Today is a great day for the American taxpayer.

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STATEMENT BY STEPHEN M. KOHN

Hello, my name is Stephen M. Kohn. I am one of Mr. Birkenfeld's attorneys. Thank you for coming

Today the IRS sent 104 million messages to whistleblowers around the world –there is an effective way to report tax fraud, and that the IRS is now paying awards.

The IRS also sent 104 million messages to banks around the world – stop-enabling tax cheats or you will get caught.

Finally, the IRS sent a message to every American who has an illegal offshore account: Turn yourself in now under the IRS' Amnesty program, before your banker does!

The \$104 million dollar reward paid to Mr. Birkenfeld is the largest whistleblower reward issued to a single individual. It is the largest recovery ever under the Tax Whistleblower law.

It recognizes Mr. Birkenfeld's incredible contributions to America:

- * Disclosures that have already resulted in the recovery of over \$5 Billion Dollars in fines, penalties and back taxes.
- * Disclosures that forced his former employer, UBS bank to pay a \$780 Million Dollar fine.
- * Disclosures that caused Switzerland and the U.S. to change their tax treaty, permitting UBS to disclose the names of over 4700 U.S. citizens who held secret illegal accounts.

The IRS Whistleblower Office said it best when it described Mr. Birkenfeld's contributions.

These are direct quotes from the IRS Award Report:

“Birkenfeld provided information on taxpayer behavior that the IRS had been unable to detect, provided exceptional cooperation

“The comprehensive information provided by the whistleblower was exceptional in both its breadth and depth.

While the IRS was aware of tax compliance issues related to secret bank accounts in Switzerland and elsewhere, the information provided by the whistleblower formed the basis for unprecedented actions against UBS.”

Today we thank Mr. Birkenfeld for blazing the trail so others can also report large-scale fraud schemes, hopefully with less pain.

Over these past three years we have worked together to ensure that Mr. Birkenfeld's

--- voice would be heard,

--- that his contributions be fully recognized

--- and that the IRS whistleblower law would work for him, and thereafter work for other whistleblowers.

To ensure that the IRS tax law protects courageous employees who are willing to step forward and report illegal conduct, the National Whistleblowers Center is embarking on an international campaign to educate employees about the U.S. whistleblower rewards programs and how they can safely and effectively come forward and serve the public interest.

Together, we can change illegal offshore banking practices that have created a safe haven for those seeking to avoid their fair share of taxes or hide illegally gained wealth.

Finally, I want to thank the thousands of U.S. citizens who took the time to write and email their Congressman, the President and the IRS, demanding justice for Bradley Birkenfeld.

Your voices were heard. Justice was done.

EXTENDED REMARKS

The IRS' reward determination is a *major victory* for all honest U.S. taxpayers. It will have a dramatic impact on the ability of the United States government to hold all banks accountable for money laundering and for establishing illegal offshore bank accounts for U.S. taxpayers.

To recap the main points regarding Mr. Birkenfeld's whistleblowing:

- * Mr. Birkenfeld's disclosures directly resulted in a fine paid to the U.S. by UBS bank in the amount of \$780,000,000.00.

- * Mr. Birkenfeld's disclosures directly resulted in the IRS establishing three "amnesty" programs, for which over 35,000 taxpayers confessed to their illegal accounts, resulting in collections of over \$5 billion dollars and counting.

* Mr. Birkenfeld's disclosures forced the Swiss government to change its tax treaty with the United States, resulting in UBS turning over the names of over 4900 U.S. taxpayers who held illegal offshore accounts. These "taxpayers" are now being investigated and prosecuted.

* Mr. Birkenfeld's disclosures triggered thousands of Americans who held illegal accounts to step forward and admit to their crimes.

* Information derived from Birkenfeld's disclosure laid the foundation for the indictment of numerous other Swiss banks and ongoing investigations that will recover billions of dollars in additional revenue for the U.S. as well as multiple foreign governments.

Mr. Birkenfeld first became a whistleblower in 2005 when he quit his job at UBS and informed management that their "U.S. Cross-Border Business" was illegal. The bank engaged in an intentional cover-up. At his own expense, and at great personal risk, Mr. Birkenfeld travelled to the United States on multiple occasions and voluntarily provided his information regarding UBS to the U.S. Department of Justice, the Internal Revenue Service (IRS), the United States Senate and the U.S. Securities and Exchange Commission.

The IRS reward will help undo the tremendous damage caused by the ill-conceived decision of the U.S. Department of Justice to ignore the whistleblower laws and prosecute Mr. Birkenfeld. Mr. Birkenfeld was the only UBS banker to blow the whistle and the only UBS banker to be prosecuted. By doing so the DOJ sent the *wrong message* to international bankers. They caused a chilling effect on the willingness of employees in the international banking industry with direct knowledge of illegal offshore banking practices to step forward to report these crimes.

The National Whistleblower Center carefully investigated the basis upon which the DOJ justified its prosecution. The DOJ did not tell the truth about Mr. Birkenfeld. At his sentencing hearing, the DOJ justified its decision to indict Mr. Birkenfeld based on its position that Mr. Birkenfeld had failed to inform the government about the illegal activities of his largest client, billionaire Igor Olenicoff.

But this charge against Mr. Birkenfeld was false and defamatory. The NWC carefully reviewed court records concerning the Olenicoff case, internal emails regarding Mr. Birkenfeld's disclosures, and a confidential transcript of sworn testimony Mr. Birkenfeld provided to the U.S. Senate in 2007 about the illegal activities of Mr. Olenicoff. These materials absolutely verify that Mr. Birkenfeld did in fact blow the whistle on Mr. Olenicoff, and that the charges made by the DOJ were false. The NWC finds it very troubling that the prosecutor who leveled these charges in court against Mr. Birkenfeld has left his government job and taken a position with a major law firm that defends tax cheats. The DOJ also granted immunity to the top-ranking official at UBS who was responsible for the UBS tax frauds and permitted this official, Martin Liechti, to leave the

United States and obtain safe-haven in Switzerland where, to this day, he has escaped justice. Mr. Liechti invoked the 5th amendment in testimony before the U.S. Senate.

It is now clear that there is a safe pathway for tax whistleblowers to come forward to blow the whistle on tax and securities law violations. As attorneys for Mr. Birkenfeld, we had an opportunity to work with the IRS whistleblower program. As exemplified by the reward in this case, the IRS is following the law and is willing to use the reward provisions to encourage the reporting of major tax frauds.

It is important to remember that the IRS whistleblower law was designed to encourage the reporting of not just any tax fraud, but only that resulting in at least \$2 million in unpaid taxes. The SEC has a similar \$1 million threshold in its whistleblower program. Both of these laws are designed to encourage insiders to come forward to assist the government detect major frauds that cost our nation and ordinary honest citizens and taxpayers dearly.

To ensure that the IRS tax law works effectively, the National Whistleblowers Center is embarking on an international campaign to educate employees in the financial services sectors about the U.S. whistleblower rewards programs, and how they can safely and effectively come forward and serve the public interest. We will continue to advocate within the IRS program for effective regulations and will continue to provide assistance other courageous employees willing to risk their jobs to protect the public.

It was an honor to work with my colleague and co-counsel, Dean Zerbe; my law partners, Michael Kohn and David Colapinto; Mr. Birkenfeld's brother Douglas; and the incredible and dedicated staff at my law firm, the National Whistleblowers Center, and the National Whistleblower Legal Defense and Education Fund, including Mary Jane Wilmoth, Estelle Kohn, Lindsey Williams, Richard Renner, Erik Snyder, Timothy Cheng, and Owen Dunn, along with the numerous law clerks and interns with whom we work. Most importantly, I want to thank Bradley Birkenfeld, for his courage and his deep faith in the American people.

Thank you

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STATEMENT ISSUED BY DOUGLAS BIRKENFELD

I am saddened that my brother could not be here today. But if he could be here, I believe that he would say words like these:

This is the day I thought would never come. This is a monumental day not only for me, but for every whistleblower worldwide. It is truly gratifying to be recognized for my historic efforts as the very first Swiss private banker to reveal to the outside world the inside secrets behind the illegal practices of UBS and countless other Swiss private banks. I single-handedly transformed centuries of illicit Swiss private banking practices, but I paid a huge price for being the only person to have the courage to come forward. My efforts have exposed the trillion dollar world of secret offshore banking that has enabled and encouraged intelligence agencies, corrupt politicians, drug cartels, arms dealers, tax cheats and terrorist groups to operate their illegal activities and to thrive undetected. US citizens can take great comfort that their government is finally pursuing the tax cheats that I exposed. I am most grateful for this monetary award from the IRS Whistleblower Office and for the recognition of my historic efforts and unprecedented sacrifices.

As a direct result of the vast documented information I provided and my ongoing assistance with US government authorities, thousands of illegal account holders have paid fines, penalties and interest in excess of \$5 billion which, absent my efforts, would remain undetected as of today. Additionally, due directly to my actions, new tax treaties, enforcement laws, bank settlements and three amnesty programs have been instituted that will generate billions of dollars more in recovered assets for the American taxpayers.

American taxpayers are not the only ones disadvantaged as a result of these illegal schemes. This corruption and secrecy diverts money from well intentioned government and institutional programs funding humanitarian projects across developing countries. Siphoning monies from these projects and hiding them in clandestine offshore accounts deprives millions of poor, sick and under-privileged people of the intended benefits of these projects.

While I commend the IRS for being responsive to my urgent concerns and the invaluable information I voluntarily provided, this is just the beginning as there is much more waste, fraud and corruption to expose. With this award and recognition, I have renewed faith in the efforts of the IRS and the Whistleblower Office. I realize that none of my former colleagues at UBS, no one in Switzerland and certainly no one in the international banking community ever thought I would be publicly praised as a true American "hero" and rightfully rewarded under the law for all of my efforts to blow the whistle on illegal offshore banking. I knew that blowing the whistle would end my career in Switzerland, but I did not expect that I would be risking my very freedom in my home country. Today, the IRS has spoken loud and clear that the whistleblower program not only works, but it is highly successful in achieving unprecedented results for the American people. I would strongly encourage other whistleblowers to come forward and do the right thing. I will dedicate time and resources to helping other whistleblowers worldwide in this very important civic duty. **I encourage those in the banking industry who want to come forward to contact me through the National Whistleblower Center.**

My success is also due to the outstanding and relentless efforts of my attorneys: Dean Zerbe, Steve Kohn and David Colapinto. Without their expert counsel, diligent research and professional skills this day would never have happened. Special thanks also to the staff at the National Whistleblower Center whose hard work and support has made this all possible.

I sincerely want to thank my family and friends who have stood by me during this difficult period. I am blessed for their unwavering love and support.

I would also like to thank the thousands of supporters both domestically and internationally who have aggressively appealed to the Obama Administration to rectify this gross injustice leveled against me by the Department of Justice. Future financial whistleblowers deserve infinitely better treatment than I received. They deserve to be praised and protected NOT prosecuted.

Finally, I wish to deliver a very special word of appreciation to Senator Charles Grassley who is the quintessential advocate for ALL whistleblowers. Every American should take a moment to praise Senator Grassley who not only authored the 2006 whistleblower law, but was instrumental in ensuring oversight and compliance with its proper implementation. We all have Senator Grassley to thank for his dedicated commitment to public service.

In closing, on a personal note, I am truly grateful for this award and recognition of my historic efforts. While these funds will help me go

forward with my life, I also recognize there are many people in this country who are much less fortunate. My desire is to identify several humanitarian ways to give back in a meaningful and productive fashion. One way in particular, would be to help the countless patients of the Shriners Hospital for Children in Boston, Massachusetts where I was a burn patient over 35 years ago. There is so much more to be done.

Thank you for your continued support and keep up the fight!

About the National Whistleblowers Center

Mission

The National Whistleblowers Center (NWC) is a non-profit, non-partisan organization dedicated to protecting employees' lawful disclosure of waste, fraud, and abuse.

Program Areas

Since 1988, the National Whistleblowers Center (NWC) has supported whistleblowers in the courts and before Congress and achieved victories in the following program areas:

- Changing Corporate Culture
- Environmental Protection
- Federal Employee Protections
- National Security
- Public Health & Safety

Reporting Fraud

Whistleblowers can visit www.whistleblowers.org to learn about their rights and report fraud confidentially.

For press inquiries, contact Lindsey M. Williams at lmw@whistleblowers.org or (570) 362-3179

For more information about Bradley Birkenfeld, visit www.whistleblowers.org/birkenfeld



Year in Review: The 2009 Person of the Year

Document originally published in Tax Notes on January 4, 2010.

Sudden changes are seldom witnessed in the tax world. History teaches that for every brilliant tax reform proposal, there is a well-organized lobby seeking to preserve the status quo. Consider offshore tax evasion. For decades policymakers have decried the ability of Americans to illegally shelter assets offshore while failing to declare the related income on their tax returns. Yet the IRS often seems unable to do anything about this activity, and Congress has been perpetually unwilling to get serious on the issue.

As regular readers know, this publication has more than once likened tax havens to the proverbial whorehouse on the edge of town. Nobody wants to publicly defend their existence, yet they continue to be tolerated by the people who make the rules. The dirty little secret is that cross-border tax evasion has been a thriving business for generations. All that changed in 2009. Unless you've been living under a rock, you've noticed that the practice of tax law is significantly different today than it was just 12 months ago.

During 2009 it was revealed that respected foreign banks are all too eager to serve as conduits for tax evasion for nonresident clientele, and that they generally regard the know-your-customer rules as some kind of joke that can be safely ignored. It was further revealed that foreign banks view the IRS's qualified intermediary regime not as an enforcement tool, but as a convenient road map for perpetrating systematic abuse. Consider these snippets from a survey of Tax Notes headlines over the past year:

- In February, Swiss banking giant UBS AG — the world's largest manager of private wealth — entered into a deferred prosecution agreement with U.S. authorities in which it admitted helping American clients evade taxes. UBS paid a criminal fine of \$780 million. In an apparent breach of centuries-old Swiss bank secrecy, UBS provided U.S. authorities with the names of 250 American account holders as part of the settlement. (Swiss bank regulators insist the UBS disclosure did not violate the country's bank secrecy rules because those accounts were initiated under false pretense and therefore weren't entitled to protection.)

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- At a G-20 gathering in London, leaders such as French President Nicolas Sarkozy and U.K. Prime Minister Gordon Brown declared the era of cross-border tax evasion to be on its deathbed, a theme continued at the subsequent G-20 summit in Pittsburgh.
- Fueled by outrage over the UBS scandal, the OECD renewed its counter-tax-haven campaign issuing various blacklists and gray lists, resulting in the signing of dozens of new bilateral tax information exchange agreements.
- By summer UBS was in court again, facing a John Doe summons in which U.S. authorities sought the names of roughly 19,000 U.S. citizens with undisclosed Swiss bank accounts. The resulting diplomatic spat rose to the highest levels of government, requiring personal meetings between the U.S. secretary of state and the Swiss foreign minister.
- August delivered another apparent breach of Swiss bank secrecy. After an intense diplomatic dialogue, UBS conveyed information on about 4,450 U.S. account holders to the Swiss Federal Tax Administration. In September, Switzerland and the United States signed a protocol amending their tax treaty to facilitate the exchange of taxpayer information obtained from UBS.
- Following announcement of the Swiss-U.S. treaty protocol, other Swiss banks joined UBS in winding down their private banking operations in the United States.
- Prompted by the UBS scandal, the IRS expanded its voluntary disclosure program offering repentant taxpayers the opportunity to come clean in exchange for reduced penalties and no jail time. By the time the program ended in October, it had drawn in more than 14,700 participants.
- Numerous criminal prosecutions of Americans with undisclosed bank accounts are working their way through the courts. Several former UBS account holders have already been found guilty and sentenced to serve prison time.
- The movement spread globally, as tax administrators in other countries launched similar probes of offshore banks. As the year drew to a close, tens of thousands of tax dodgers across the world were sweating bullets about what to do with their offshore bank accounts and undisclosed income.

Pardon our French, but what the hell happened?



The short answer is that UBS was outed by an insider with firsthand knowledge of what goes on in the wealth protection units of the world's major banks. The UBS scandal, and its aftermath, is largely because of the efforts of one man: Bradley Birkenfeld.

Simply put, Birkenfeld must be considered among the biggest whistle-blowers of all time. He is the Benedict Arnold of the private banking industry and single-handedly made 2009 the year in which the world finally got serious about cracking down on tax evasion. His story is both personally compelling and significant in terms of the sudden changes it has brought to our tax system.

Although Birkenfeld is responsible for the snaring of countless tax cheats, he's no ordinary hero. His hands were hardly clean in the UBS affair. Like a Shakespearean protagonist, he seems as flawed as he is noble. What's undeniable, though, is that the consequences of his actions have affected millions of taxpayers, the global financial sector, and tax administrations around the world. For all of these reasons, Bradley Birkenfeld is Tax Notes' Person of the Year for 2009.

Path to Glory

Birkenfeld, 44, is the son of a Boston neurosurgeon. He and his brothers grew up as privileged "South Shore boys" regularly vacationing on Cape Cod. After first attending another college, he transferred to Norwich University, a private military college outside Montpelier, Vt., earning an economics degree in 1988. He landed a job at the asset management division of State Street Bank and Trust in Boston, where he worked for six years before leaving in 1994. Unemployed, he soon relocated to Vevey, Switzerland, where he enrolled in the newly established American Graduate School of Business. After graduation, he worked for Credit Suisse and Barclays Bank in Geneva. In 2001 he moved to UBS in Geneva, working as one of about 50 private bankers.

Birkenfeld's specialty at UBS was soliciting and catering to affluent U.S. clients. His job, in short, was to convince rich Americans to stash their personal fortunes with UBS in Switzerland, often routing funds through networks of correspondent accounts and shell companies in London, Liechtenstein, and Panama. He would later acknowledge that the sole purpose of the shell companies was to cloak the beneficial ownership interests of well-heeled U.S. investors.

Private banking was a lucrative business for Birkenfeld, who did rather well for himself. He owned several homes, including a house in Geneva's fashionable Cours de Rive and a ski chalet in Zermatt that overlooks the Matterhorn.



Birkenfeld's job at UBS involved a certain amount of drama. Like other private bankers, he received sophisticated training on how to avoid detection by U.S. criminal and customs authorities when on assignment for clients. On passing through international airports, these private bankers submitted false customs forms saying they were traveling for pleasure rather than business. The deceit did not stop at the customs desk.

We know now that these private bankers carried encrypted laptops and used codes to memorialize account activity. References to foods and colors were used as code for countries and currencies. Cash transfers were regularly disguised as bogus loan proceeds. Clients were advised to destroy their own records of offshore bank activity. Personal assets were converted into works of art or jewelry to be more easily moved from country to country without leaving a paper trail. Birkenfeld once famously smuggled a client's diamonds across international boundaries, concealed in tubes of toothpaste, so they could eventually land safely in an underground Swiss bank vault.

One of Birkenfeld's high-profile clients was Igor Olenicoff, the California real estate mogul once listed by Forbes magazine as one of the country's richest men. Olenicoff, a billionaire, was a model citizen in many respects with a long history of charitable giving to worthy causes. He also played in the offshore sector.

Olenicoff had used offshore accounts since the early 1980s and, by the time Birkenfeld moved to UBS, had amassed millions of dollars in the Bahamas with Barclays Bank. Birkenfeld spent years cultivating a relationship with Olenicoff, along the way enjoying cruises on his 147-foot yacht and flying on his private jet. Birkenfeld eventually convinced Olenicoff to abandon Barclays Bank for UBS and transfer most of his offshore wealth from the Bahamas to Geneva. Birkenfeld later estimated he helped Olenicoff shelter \$200 million in Swiss bank accounts managed by UBS.

At the time, snatching Olenicoff's business away from Barclays must have seemed like a feather in Birkenfeld's cap. It would later prove to be his undoing. The IRS was already on to Olenicoff.

From Rich to Snitch

In October 2005 Birkenfeld resigned from UBS. The specific reasons for his departure remain private. On leaving UBS, he provided senior management with written complaints that documented the private banking group's illegal practices. A subsequent internal review by UBS in 2006, predictably, found no wrongdoing.



Frustrated by the results, Birkenfeld traveled to the United States in 2007 and voluntarily registered as an IRS whistle-blower with the intention of exposing UBS's complicity with illegal tax evaders. For over a year Birkenfeld provided a treasure trove of inside information to U.S. authorities. He held frequent meetings with officials from the IRS, the Justice Department, and the SEC. The information he provided was the foundation for the UBS debacle and everything that followed. Significantly, Birkenfeld did not obtain immunity from prosecution in exchange for his disclosures.

On numerous occasions the U.S. government has acknowledged Birkenfeld's role as the source who made the UBS probe possible. A DOJ court pleading described his assistance as "timely, significant, useful, truthful, complete, and reliable." Kevin Downing, the prosecutor in charge of the UBS case, said that "without Mr. Birkenfeld walking through the doors of the Justice Department in the summer of 2007, I doubt this massive fraud scheme would have been discovered by the United States government." In short, there would have been no UBS scandal without him.

One area that Birkenfeld was apparently less than candid about was his personal actions. Those actions caused federal prosecutors to seek a warrant for his arrest. In May 2008 Birkenfeld returned to the United States from Switzerland to attend his 25-year high school reunion. He was arrested on exiting the plane at Boston's Logan Airport. He pleaded guilty to a single count of conspiracy to commit tax fraud — the Olenicoff case — which carried a maximum sentence of 60 months in jail. At his sentencing hearing in August 2009, U.S. prosecutors sought a reduced term of 30 months. Federal Judge William J. Zloch was unimpressed and gave Birkenfeld 40 months.

As this edition of Tax Notes goes to press, Birkenfeld is free on a \$2 million bond, secured by family members' homes. He is subject to a home detention curfew and wears an ankle bracelet allowing officials to monitor his daily movements. He has lived under these conditions for almost a year and a half — none of which counts against his jail sentence, scheduled to commence January 8. (For related coverage, see p. 58.)

Ironically, Birkenfeld's cohorts at UBS have fared much better. His former boss, Martin Leichti, UBS's head of private banking for the Western Hemisphere, was temporarily detained by U.S. officials in 2008. Leichti invoked his Fifth Amendment protection against self-incrimination at a Senate hearing and was later released back to Switzerland, where he remains a free man.

Olenicoff was eventually confronted by the IRS and pleaded guilty to filing a false tax return. He admitted to concealing investment income from offshore accounts in the Bahamas,



Liechtenstein, Switzerland, and the United Kingdom, paying \$52 million in back taxes, interest, and penalties. A federal judge sentenced him to two years' probation and 120 hours of local community service.

Olenicoff has filed a civil lawsuit seeking \$500 million in reputational damages against UBS, Birkenfeld, and 35 codefendants from the private banking industry. He claims the Swiss bankers misled him about the nature of his domestic liabilities resulting from his offshore activity. UBS denies the charges and intends to aggressively defend the lawsuit.

Birkenfeld most recently made headlines for claiming a whistle-blower reward under section 7623(b) related to his UBS disclosures. Depending on whether he qualifies for the mandatory reward scheme, his claim could be enormous. By statute, the size of the reward ranges from 15 percent to 30 percent of the tax revenues collected from the whistle-blower's disclosures. When Birkenfeld leaves federal prison in 2013, he could be a billionaire — just like the clients he previously serviced.

2009 has been a year of more drama than any of us expected. Tax attorneys around the world have one man to thank for the fact that their phones were ringing off the hook with new clients seeking to exit the offshore sector. Birkenfeld may be going to prison in a few days, and he faces a half-billion-dollar lawsuit from his former prized client, but at least he can enjoy the comfort of knowing he is — without any doubt — Tax Notes' Person of the Year.

Other notable and talented figures in the tax world were considered for Person of the Year. Despite their many contributions (both positive and negative) to tax policy, legislation, practice, and academia, no one quite matched Birkenfeld's feat in 2009.

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UBS whistleblower Bradley Birkenfeld deserves statue on Wall Street, not prison sentence

JUAN GONZALEZ - NEWS
DAILY NEWS STAFF WRITER
Wednesday, January 06, 2010

Barack Obama, who entered the White House promising all this change, should be hailing Bradley Birkenfeld as a modern-day hero.

He should erect a statue on Wall Street for this former banker for Swiss giant UBS who blew the whistle on the biggest tax-evasion scheme in U.S. history.

Instead of rewarding Birkenfeld, Obama's Justice Department is sending him to prison. He begins serving a 40-month federal sentence Friday for conspiracy and bank fraud.

What about his former bosses and fellow bankers at UBS and thousands of rich American clients who for decades stashed billions of dollars in secret UBS accounts to evade paying federal taxes?

Well, the government let them buy their way out of jail.

UBS pleaded guilty and paid a \$780 million fine in February, while thousands of Americans with unreported offshore accounts have been allowed to belatedly disclose them and pay civil penalties.

Only Birkenfeld, the 44-year-old whistleblower, ends up in jail - the No. 1 example of injustice and hypocrisy in the age of Obama.

Who can forget that priceless photo of the President playing golf on Aug. 24 during his Martha's Vineyard summer vacation with Robert Wolf, president of UBS Americas?

Wolf and his employees donated \$540,000 to Obama's presidential run. That made UBS the 12th largest source of his campaign funds.

Of all the people in America to choose for a golf partner, Obama chose Wolf.

The outing was only three days after Birkenfeld's harsh sentencing and less than a week after UBS agreed to turn over the names of 4,450 of its American clients to the Justice Department. That's just a portion of 19,000 American accounts the bank has admitted keeping secret from U.S. tax officials.

So why is Birkenfeld, who gave hundreds of those names to prosecutors, going to jail?

"Without Mr. Birkenfeld ... I doubt ... this massive fraud scheme would have been discovered," Assistant U.S. Attorney Kevin Downing conceded at the Aug. 21 sentencing hearing.

Prosecutors also claimed in that hearing and in a "60 Minutes" interview Sunday night that Birkenfeld withheld information on how he had helped his biggest U.S. client, California billionaire Igor Olenicoff, hide hundreds of millions in assets. So when Birkenfeld flew here from Switzerland in early 2008, they arrested and charged him.

Birkenfeld's lawyer Stephen Kohn denies those allegations. He says the government is sending a terrible signal to future whistleblowers.

Kohn filed a formal complaint yesterday with the U.S. attorney general's office of professional responsibility, claiming the "main allegations used to secure [Birkenfeld's] indictment and imprisonment were not based on accurate or truthful information."

Birkenfeld offered to provide every name he knew of secret account holders at UBS, Kohn said, but he first wanted a formal subpoena because he was then a resident of Switzerland. Under Swiss law it is illegal to disclose client information.

The Justice Department refused to issue the subpoena, so Birkenfeld then went to the IRS, the Securities and Exchange Commission and the U.S. Senate during the summer of 2007 offering the information to them.

The Senate's permanent investigations subcommittee agreed to subpoena him. He gave the committee a detailed deposition on Oct. 11, 2007 about UBS fraud



scheme with lots of names, including that of Olenicoff. E-mails Kohn provided back up that claim.

Birkenfeld gave the same information to the IRS and the SEC.

Several weeks later, Olenicoff was indicted. He pleaded guilty and paid a \$53 million fine.

Kohn has asked Attorney General Eric Holder for a formal investigation of the actions of Justice Department prosecutors.

Holder has his own UBS headache. Last year, the attorney general recused himself from the case because he once served as a lawyer for the Swiss bank.

The Birkenfeld case has exposed a lot more than hidden bank accounts.

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Why Bradley Birkenfeld's Prosecution Was Unjustified

1. Bradley Birkenfeld served the public interest

Mr. Birkenfeld's voluntary disclosures were historic in nature in terms of cracking the vault of bank secrecy. His official contributions forced UBS to pay \$780 million to the United States in fines and penalties. His work also led to the creation of IRS amnesty programs, under which the United States recovered \$20 billion for taxpayers from 33,000 people who admitted to holding illegal offshore bank accounts. Ultimately, UBS was forced to shut down its entire \$20 billion program that existed to solicit and encourage wealthy Americans to hide their money in illegal offshore bank accounts. The *NY Daily News* asserted that, "Bradley Birkenfeld deserves a statue on Wall Street, not a prison sentence."

2. Bradley Birkenfeld never would have been charged if his original attorneys used whistleblower protection laws

Whistleblower protection laws apply to those who come forward with original information *even if they have participated in illegal activity*. Protection laws exclude only the narrowly-defined group of "planners and initiators."

The effort to combat fraud against the government (such as tax evasion) is based on an old Civil War statute that provides protection and rewards for whistleblowers. When passed, Congress knew that people who participate in crimes are key sources of information. Senator Jacob M. Howard, the lead Senate sponsor, endorsed rewarding participants, stating that, "**setting a rogue to catch a rogue is the safest and most expeditious way I have ever discovered of bringing rogues to justice.**"

Of the thousands of whistleblowers who have come forward under whistleblower protection laws (many of whom directly participated in underlying frauds), Bradley Birkenfeld is the first to face prosecution. The Justice Department's treatment of Mr. Birkenfeld is unprecedented and undermines the integrity of America's anti-fraud laws.



3. The crackdown of illegal offshore banking would not have begun without Bradley Birkenfeld

The Department of Justice and UBS both agree (*Section 15 to Exhibit C of Deferred Prosecution Agreement*) that UBS could have solved **all problems** had they properly investigated Mr. Birkenfeld's complaint. Brad Birkenfeld is a true whistleblower who tried to get UBS to fix the problem. UBS left him no choice but to resign and give up his international banking career. At his sentencing hearing the Court asked the Justice Department prosecutor: **"But for Mr. Birkenfeld this scheme would not have been discovered by the U.S. government?"** The answer was clear: **"I believe that Your Honor, yes."** This finding was stated multiple times during Mr. Birkenfeld's sentencing hearing. In addition, multiple government agencies, including the Securities and Exchange Commission, the Internal Revenue Service, and the Senate, have sent letters that point to the information revealed by Mr. Birkenfeld as crucial to the investigation of UBS.

4. Prosecutors based Bradley Birkenfeld's sentence on a misrepresentation of his whistleblowing activity

At his sentencing hearing, the Department of Justice Attorney said that if Mr. Birkenfeld had turned in one of the biggest tax offenders, his former client Igor Olenicoff, in 2007, he would not have been prosecuted. **In fact, Mr. Birkenfeld did voluntarily release this information in 2007** to the Senate Subcommittee on Investigations and other government agencies. The Senate has a transcript detailing all of the disclosures Mr. Birkenfeld made, including those regarding Mr. Olenicoff, which confirms that these disclosures were made before Mr. Olenicoff was indicted or submitted his plea.

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