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# dbrr DAILY BUSINESS REVIEW

## INSIDE

**WHISTLE-BLOWER** Birkenfeld exposed \$20 billion tax scheme



**DEALMAKERS**  
Kara MacCullough and Alexandra "Alix" Lumpkin of Greenberg Traurig used an off-the-shelf offering to refinance shorter term commercial paper and convert it into longer term debt for Ryder System. **A16**

Kara MacCullough and Alexandra Lumpkin

# Ex-UBS banker to get record \$104 million reward from IRS

by John Pacenti  
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A whistle-blower who helped the federal government uncover UBS AG's strategy for hiding assets of U.S. account holders was handed \$104 million by the Internal Revenue Service in possibly the largest ever award to a tax whistle-blower, his lawyers said Tuesday.

Bradley Birkenfeld, a former UBS private banker, detailed a \$20 billion tax evasion scheme by the largest Swiss bank and set the stage for the IRS to dismantle some of the world's tightest banking secrecy laws. Birkenfeld said UBS bankers even hid diamonds in toothpaste containers to help their American clients.

But prosecutors said the Massachusetts native held back information about a billionaire California developer and part-time Lighthouse Point resident, Igor Olenicoff,



BRADLEY BOWER/BLOOMBERG NEWS

Bradley Birkenfeld gave information that detailed a \$20 billion tax evasion scheme by UBS.

## LAW

### PRACTICE FOCUS: EMPLOYMENT LAW

Employers should closely monitor use of smart phones during off hours to avoid the obligation of having to pay for that work — sometimes at the overtime rate, write Michael Starr and Katherine Healy Marques of Holland & Knight. **A8**



Starr



Marques

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# WHISTLE-BLOWER: Congress strengthened awards in 2006

who was hiding \$200 million.

Olenicoff didn't serve any prison time. But Birkenfeld was sentenced to more than three years in prison in August 2009. Federal prosecutors said they would have recommended no prison time if he had disclosed all he knew. Birkenfeld is in a halfway house program in Philadelphia with a release date in November, according to the U.S. Bureau of Prisons.

Whistle-blower advocates criticized the sentence, saying it would dissuade other insiders from making disclosures about illegal activity. U.S. District Judge William Zloch in Fort Lauderdale refused to reduce Birkenfeld's sentence for his cooperation.

"This is the day I thought would never come," Birkenfeld said Tuesday through his attorneys. "This is a monumental day not only for me, but for every whistle-blower 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."

## 104 MILLION MESSAGES

Birkenfeld's attorneys, Stephen M. Kohn and Dean A. Zerbe, announced the award. Kohn is executive director of the nonprofit National Whistleblower Center. Zerbe is a partner with Zerbe, Fingeret, Frank & Jadav in Houston.

"The IRS today sent 104 million messages to whistle-blowers around the world — that there is now a safe and secure way to report tax fraud and that the IRS is now paying awards," the attorneys said in a joint statement on the Washington-based center's website. "The IRS also sent 104 million messages to banks around the world — stop enabling



Kohn

## BRADLEY BIRKENFELD

**2005:** Birkenfeld contacts U.S. with information on U.S. account holders at UBS.

**April 10, 2008:** Birkenfeld is charged in Fort Lauderdale with shielding billionaire Igor Olenicoff.

**Feb. 18, 2009:** UBS agrees to \$780 million deferred prosecution agreement.

**March 23, 2009:** IRS starts to offer amnesty for voluntary disclosure of hidden overseas assets.

**Aug. 21, 2009:** Birkenfeld sentenced to 40 months in prison.

**Jan. 4, 2010:** Judge denies reduction of sentence.

**Sept. 11, 2012:** Birkenfeld awarded \$104 million for his work as a whistle-blower.

tax cheats or you will get caught."

The attorneys said Birkenfeld provided information on taxpayer crimes that would have been impossible to detect.

"The comprehensive information provided by the whistle-blower was exceptional in both its breadth and depth," the statement read. "While the IRS was aware of tax compliance issues related to secret bank accounts in Switzerland and elsewhere, the information provided by the whistle-blower formed the basis for unprecedented actions against UBS.

The bank ended up paying a record \$780 million fine under a deferred prosecution agreement. More than 35,000 taxpayers also took part in an IRS program to voluntarily repatriate their illegal offshore assets, allowing for the collection of \$5 billion in back taxes, fines and penalties.

The Swiss government also altered centuries-old bank secrecy practices, changing its tax treaty with the United

States that resulted in UBS surrendering the names of more than 4,900 U.S. taxpayers with offshore accounts. A number of taxpayers who ignored the amnesty offer were investigated and prosecuted.

"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," said Birkenfeld, whose case was portrayed on CBS's *60 Minutes*.

## WHISTLE-BLOWER LAW

"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," Birkenfeld said.

Congress strengthened whistle-blower rewards in 2006 by passing a law that targets high-income tax dodgers, guaranteeing rewards for qualified whistle-blowers if at least \$2 million in unpaid taxes, interest and penalties are in play.

Lawmakers have complained the IRS has been slow to pay awards.

"The potential for this program is tremendous, and it's up to the IRS to continue paying rewards and demonstrating to whistle-blowers that the process will work and that they will be heard and protected," U.S. Senator Chuck Grassley, R-Iowa, who helped write the law, said in a news release. "An award of \$104 million is obviously a great deal of money, but billions of dollars in taxes owed will be collected that otherwise would not have been paid, as a result of the whistle-blower information."

Miami tax litigator Robert Panoff said he believed Birkenfeld would end up with nothing because of a provision in the law allowing the IRS to deny awards to convicted felons.

"I am surprised, based on Mr. Birkenfeld's role in the evasive conduct

"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."

BRADLEY BIRKENFELD  
UBS WHISTLE-BLOWER

and his conviction, that the IRS did not deny his claim," he said.

Panoff said he wouldn't be surprised that Birkenfeld would live the life of the clients he once served at UBS.

"Now he has enough money to buy a nice house in Miami and live the la vida loca."

Martin Press, a tax specialist and partner at Fort Lauderdale's Gunster, said the award connotes how the Justice Department and IRS viewed Birkenfeld and his cooperation.

"I see it is just an example of two different arms of the government looking at a case differently," Press said. "I was very surprised by the decision. I think the government should award honest whistle-blowers not convicted felon whistle-blowers."

The IRS looks at cases from a financial perspective, and Birkenfeld's information paid off, he added.

"Through the work of whistle-blowers, through the work of getting publicity on these cases of government going after people, the government has brought in more than \$5 billion through the various voluntarily disclosure programs," Press said.

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