



Duke Law Firm, P.C.-in the News

400 Vestavia Parkway, Suite 100
Birmingham, Alabama 35216-3750 USA

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Study Regarding Planning for Ultra-High-Net-Worth Family Businesses

A June 11, 2008 report, sponsored by U.S. Trust, Bank of America Private Wealth Management, finds that the majority of owners of ultra-high-net-worth family businesses are leaving their professional and personal interests vulnerable to inadequate business succession, asset protection and estate planning.

The report states that "owners of ultra-high-net-worth (UHNW) family businesses are leaving their professional and personal interests vulnerable through inadequate business succession, asset protection and estate planning. While these families are highly successful in building and managing their businesses, they are often less

successful when it comes to transitioning their companies from one generation to the next, with only 15 percent of family-owned companies lasting past the second generation. Conducted by Prince & Associates, Inc. and Campden Research, the study surveyed 242 second—to third-generation business owners with interests valued at a minimum of \$300 million, and mean value approaching \$730 million."

The report classified two specific groups referred to as business-focused and family-focused. The business-focused segment focuses on the needs of the business above the family members. Those who are family-focused use the business to help family prosper, as well as addressing family issues. The business-focused group own businesses with greater net-worth and are more apt to implement succession and estate plans in greater numbers.

The most significant aspect of the report appears to be that "a significant portion of owners of UHNW family businesses desire to maintain control of the business and are concerned with protecting their wealth, yet fail to create asset protection plans, which provide wealth structuring strategies and maximize tax efficiencies and mitigate risk."

The report continues by stating that "most owners of ultra-high-net-worth family businesses don't implement strategies for asset protection in large part because no one has educated them about such options ..."

The complete report can be accessed at:

<http://biz.yahoo.com/prnews/080611/clw030.html?v=101>

Asset Protection Planning for High-Net-Worth Individuals

Wealth protection planning includes estate planning, income tax planning (primarily tax compliance and tax reporting) and asset protection planning. Asset protection planning is necessary for the high-net-worth, as well as ultra-high-net-worth individuals and families.

Basic domestic asset protection includes the formation of a good limited partnership in a jurisdiction that includes, in the limited partnership, the following four features:

1. The authorization to file an election to treat the limited partnership as a limited liability limited partnership ("LLLLP") or a limited liability partnership ("LLP"), which provides the general partners, as well as the limited partners, with limited liability protection;
2. The charging order is the sole and exclusive remedy available to creditors against a partner;
3. The partnership can be terminated only by unanimous consent of the partners; and
4. If a partner withdraws, he receives no part of his capital account until the partnership is terminated.

The LLLL or LLP then forms several one-member subsidiary limited liability companies ("LLCs"), each to hold separate pieces of property (real estate, investments, potentially business interests, and

other property). This is referred to as “layering and separating” the property. The layers are the one-member LLC and the parent LLLP. The separating refers to the fact that each piece of property is separated from the other property by being placed in a separate LLC so that if a lawsuit is filed against one property held in an LLC, the other property is not subject to that lawsuit.

Domestic asset protection may also include the use of a domestic asset protection trust (“DAPT”) in a jurisdiction that contains legislation providing asset protection benefits with respect to the trust assets. The DAPT trust laws do not recognize judgments in states other than the state in which the trust is formed. These asset protection benefits include protection against claims of future creditors.

International asset protection includes a variety of choices, the most prominent being the use of a foreign asset protection trust (“FAPT”) and offshore variable life insurance.

Initial Comments of Duke Law Firm Regarding U.S./UBS

Additional comments will be made by Duke Law Firm (“DLF”) in future issues of this newsletter regarding the potential consequences of the U.S./UBS/Swiss private banking, which will be discussed below. Future comments will include the specific tax laws and the specific tax compliance and reporting requirements with respect to the apparent transactions between Switzerland and Liechtenstein, as well as discussions of the qualified intermediary rules and forms (such as Forms W-9, W-8BEN and W-8IMY).

We will begin with the following comments:

1. If you are a U.S. person and have an offshore account, either made directly or through a structure, such as a trust or other entity,

you need not worry if you have filed your required tax returns and paid your taxes.

2. If you have an unreported account or accounts, you:

(a) must seek advice only from a practicing lawyer and speak to no one else in order to preserve the attorney-client privilege (if you discuss these matters with anyone other than a lawyer, you will waive the attorney-client privilege and your communications, even to your lawyer, may not be privileged and confidential);

(b) should consider speaking only with an international tax lawyer or criminal tax lawyer who is familiar with international tax compliance and reporting requirements; and

(c) must disclose everything pertaining to the offshore accounts to the lawyer representing you;

(d) must seriously consider “coming clean” with the IRS because unreported accounts and structures may constitute tax evasion or tax fraud, as well as the crime of money laundering, and even more so, the crime of wire or mail fraud (that is easier for the government to prove); and

(e) must realize that because the U.S. and other major countries are seeking the names of individuals with unreported accounts in private banks, and the countries are sharing those names with the other countries, now is the time to seek advice from an appropriate practicing lawyer.

3. One comment that got our attention was the following statement: “The arrangement—outlining a legal analysis prepared in 2000 by the Swiss Bankers’ Association and in a separate set of LGT documents—involved setting up companies and trusts to act as the nominal owners of the assets, thereby shielding the identities of U.S. citizens seeking to shelter the funds from the IRS.” This arrangement outlined and prepared by the Swiss Bankers’ Association apparently made some in the U.S. government angry.

Nominees and nominal owners are completely ignored under the U.S. tax laws, the tax compliance and reporting requirements and in determining the “beneficial owner” of the qualified intermediary and withholding Treasury Regulations. If you originated the transfer of funds, then you are the owner of the account and are subject to specific tax compliance and reporting requirements, and you are the beneficial owner, regardless of any actions or structures created thereafter attempting to hide your name. The attempt, with structures, to hide your name is not sophisticated planning. On the contrary, it is what Mr. Duke refers to as “blatant kindergarten” fraudulent tax planning. We will discuss the various issues with the structuring between Switzerland and Liechtenstein in more depth in later issues of this newsletter.

The United States Seeks Help from Switzerland in the UBS Tax Evasion Probe

*STEP International News Digest
17th June 2008*

USA-US requests Swiss authorities to break bank secrecy
Reuters, AP, AFP, Dow Jones, Thomson Financial, SonntagsZeitung, Neue Zuercher Zeitung

The US government last Wednesday (11 June) filed a formal request to Switzerland's Federal Office of Justice, asking it to order the banking giant UBS to name its US clients, according to the newspapers SonntagsZeitung and Neue Zuercher Zeitung. Swiss federal prosecutors must now decide whether the request complies with Swiss law, which requires strict banking secrecy except in fraud cases.

U.S. investigators allege that UBS American clients have hidden \$20 billion in offshore accounts, resulting in \$20 million a year in revenue to UBS for managing these U.S. undeclared accounts. A former UBS executive, Bradley Birkenfeld, has pleaded guilty with conspiring to evade taxes.

<http://uk.reuters.com/article/governmentFilingsNews/idUKL1560638020080615>

<http://www.lloyds.com/CmsPhoenix/DowJonesArticle.aspx?id=394747>

http://orange.advfn.com/news_United-States-asks-for-Swiss-help-with-UBS-probe_26870828.html

<http://uk.news.yahoo.com/afp/20080615/tbs-switzerland-us-banking-company-ubs-8cc5291.html>

Several Wall Street Journal (WSJ) articles were written about UBS and unreported accounts held by Americans. A May 15, 2008 article in the WSJ, "U.S. to Seek Client Names from UBS in Tax Case," quotes David Schwedel, Mr. Birkenfeld's partner at a Geneva financial boutique called Union Charter SA: "This is just the beginning. This appears to be the IRS's effort to pursue UBS in what most likely will become a larger case. Bradley will not be the first or only private banker of UBS to be called in on this issue. Most assuredly he will not be the last." Martin Liechti, the head of the UBS wealth management business for the Americans, was detained in April 2008 by U.S. authorities under a "material witness" warrant.

A May 21, 2008 WSJ article titled "Offshore-Account Holders Bite Their Nails," reported that government officials are intensifying a multi-national crackdown on offshore bank accounts and many Americans are facing a difficult decision: "Whether to turn themselves in—and if so, how." A Beverly Hills, CA, tax lawyer states: "People are having trouble sleeping at night. They don't want to go to prison."

This May 21 WSJ article further states:

Lawyers advising tax dodgers are saying their clients are struggling to decide among several alternatives. They can confess and plead for mercy. They can quietly file amended returns, pay up, make other required disclosures and hope overworked government prosecutors won't follow-up. Or they could choose to do nothing and pray their names won't turn up.

Tax dodgers are facing these stark choices as major cracks emerge in what once appeared to be an impenetrable wall of secrecy surrounding bank accounts in such well-known havens as Liechtenstein and Switzerland. While officials have launched many similar campaigns in the past, their latest efforts are attracting widespread attention because they are coming from so many different directions.

Another WSJ article, dated May 30, 2008, titled "Ex-Banker to Cooperate, Plead Guilty in UBS Probe," states that it is expected that Mr. Birkenfeld will disclose his knowledge of the UBS operation in federal court in Ft. Lauderdale, Florida in exchange for possible leniency at sentencing. Apparently, all "undeclared" U.S. client accounts that Mr. Birkenfeld handled for UBS allegedly were used by a banker in Liechtenstein. In this article, UBS said in statement:

We confirm that the Department of Justice and the [Securities and Exchange Commission] are examining UBS's conduct ... UBS is however treating the investigations with the utmost seriousness and his committed substantial resources to cooperate with both investi-

gations. UBS intends to appropriately and responsibly address and correct any issues raised in the investigation.

The May 30, 2008 WSJ article further states:

Despite an "information-sharing agreement" with the U.S. in 2000, Swiss banks continue to secretly manage the assets of wealthy Americans, according to banking documents, court filings and several people familiar with the arrangements. But to keep that work secret from U.S. authorities, the Swiss banks used shell companies and sometimes directed their American customers to put their accounts in Liechtenstein.

The arrangement—outlining a legal analysis prepared in 2000 by the Swiss Bankers' Association and in a separate set of LGT documents—involved setting up companies and trusts to act as the nominal owners of the assets, thereby shielding the identities of U.S. citizens seeking to shelter the funds from the IRS.

LGT raised rules requiring any offshore companies established by Americans to file a statement claiming "non-U.S. status" with LGT's Zurich branch.

According to the article, this enabled LGT Bank in Liechtenstein, Zurich branch, to treat the entity as a non-U.S. person. The article continued by stating that the Birkenfeld case involves dealings between UBS, another Liechtenstein bank and Mario Staggl, who is alleged to be an accomplished Liechtenstein trust advisor for a company called New Haven Trust Co. On April 23, UBS instructed its

private bankers not to travel to the U.S. This WSJ article further reveals that between 1992 and 2007, Igor Olenicoff transferred almost \$500 million between banks in London, The Bahamas, Switzerland and Liechtenstein using the names of approximately six corporate entities. Mr. Olenicoff pleaded guilty in December to the charge of filing a false 2002 return and agreed to cooperate with prosecutors. Mr. Olenicoff began working with Mr. Birkenfeld in 2001. Mr. Birkenfeld allegedly told Mr. Olenicoff that his employer, UBS, "had a superior network" and investment expertise. Apparently, Messieurs Birkenfeld and Staggl helped Mr. Olenicoff set up various companies and accounts.

A June 20, 2008 WSJ article titled "Guilty Plea by Ex-Banker Likely to Aid Probe of UBS," states that the former banker at UBS, Bradley Birkenfeld, pleaded guilty in federal court to helping a billionaire client evade taxes by hiding \$200 million in assets in offshore accounts. This article report is a move expected to aid U.S. prosecutors in their probe of UBS.

The banker, Bradley Birkenfeld, 43 years old, answered softly when U.S. District Judge William Zloch asked why he had participated in the scheme. "I was employed by UBS. ... I was incentivized to do this business," he said.

Mr. Birkenfeld has provided evidence showing how bankers advised clients to hide their wealth, including purchasing artwork and jewels with funds from Swiss accounts.

This WSJ article states that the bank generated \$200 million in revenue from managing \$20 billion in assets of undeclared U.S. accounts, according to the prosecutors. The justice department is talking to UBS to learn the names of the bank's U.S. clients, and states that UBS continues to work

with U.S. governmental authorities to achieve the satisfactory resolution of the matters.

Swiss Banker Pleads Guilty

The following article is from the Friday, June 20, 2008 issue of the Daily Tax Report:

Former Banker Pleads Guilty to Conspiring To Assist Billionaire Developer in Tax Evasion

Former UBS AG banker Bradley Birkenfeld pleaded guilty June 19 to conspiring with a U.S. billionaire real estate developer, Swiss bankers, and a co-defendant to help the developer evade paying \$7.2 million in U.S. taxes by assisting in concealing \$200 million of assets in Switzerland and Liechtenstein (*United States v. Birkenfeld*, S.D. Fla., No. 08-CR-60099-ZLOCH, plea entered 6/19/08).

In a statement of facts filed with the court, Birkenfeld admitted that, between 2001 and 2006, while employed as a director of an unnamed Swiss bank, he routinely traveled to and had contacts within the United States to help wealthy residents conceal their ownership in assets held offshore and evade the payment of taxes on the income generated from those assets.

While the bank is not named in the statement, it has been widely reported that Birkenfeld was employed by UBS at the time. Additionally, the real estate developer who Birkenfeld assisted in evading taxes was only identified by the initials "I.O." in the statement but it is widely believed to have been Igor

Olenicoff, who pleaded guilty to one count of filing a false return in December 2007.

Mario Staggl, a Liechtenstein businessman, was indicted along with Birkenfeld but remains at large. Birkenfeld admitted in his statement of facts to conspiring with Staggl to defraud the United States.

Qualified Intermediary Program

The Internal Revenue Service established the qualified intermediary (QI) program, under which foreign banks entered into agreements with IRS to identify and document customers who held U.S. investments, which were generally marketable securities or bonds, or received U.S. source income in their offshore accounts.

The foreign banks also agreed, under the QI program, to issue IRS Forms 1099 to U.S. customers for U.S. source payments paid into offshore bank accounts. Sales proceeds and other income from non-U.S. investments, if the purchase or sale was made as a result of contact with the U.S. client, were also subject to the Form 1099 reporting requirements.

The Swiss bank signed the QI program agreement in 2001. Birkenfeld and Staggl and various managers at the bank advised U.S. clients to place cash and valuables in Swiss safety deposit boxes and purchase valuables using the funds in the Swiss bank account while overseas. The clients were advised to misrepresent

the receipt of funds from the Swiss bank as loans, destroy all offshore banking records, use Swiss bank credit cards, and file false U.S. individual income tax returns that omitted income earned by the clients.

To hide the ownership and control of the developer's assets, nominee and sham entities, including Bahamian corporations, Liechtenstein trusts, and Danish corporations, were created.

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Swiss Officials Visit Washington *AccountancyAge.com*

Accountancy Age, 23 Jun 2008, reports that Swiss officials went to Washington for talks on tax evasion following UBS employee admits guilt to tax fraud. This reports states that the delegation from the Swiss finance and justice ministries will discuss a request for judicial cooperation with their US counterparts after the guilty plea by banker Bradley Birkenfeld before a federal court in Florida, a Swiss justice ministry spokesman told Swiss news agency ATS.

Changing the Use of the Word "Offshore" Recommended

The deputy director of U.S. anti-money laundering agency FinCEN (the Financial Crimes Enforcement Network) suggested that the Isle of Man refer to itself as an "independent financial centre" as opposed to continuing with the label "offshore."

<http://www.financialdirector.co.uk/accountancyage/news/2219300/isle-man-urged-rebrand>

http://www.tax-news.com/asp/story/US_Treasury_Praises_IoM_For_Role_In_Fight_Against_Financial_Crime_xxxx31363.html

Germany Conducts New Searches in Liechtenstein

It is reported that German prosecutors have begun a new series of searches in further development of the Liechtenstein tax investigation.

<http://uk.news.yahoo.com/afp/20080621/tbs-eu-tax-fraud-germany-liechtenstein-5268574.html>

Russian Federation's \$22.5 Billion Lawsuit Against Bank of New York Moving Forward

MOSCOW, May 30 /PRNewswire/ -- Maxim Smal, a Moscow-based attorney representing Russia's Federal Customs Service in its \$22.5 billion lawsuit against the Bank of New York (NYSE: BK), today responded to several news reports about the current status of the suit filed in Russian court on May 17, 2007.

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Duke Law Firm, P.C.
(205) 823-3900
Facsimile: (205) 823-2630
400 Vestavia Parkway, Suite 100
Birmingham, AL 35216 USA
<http://www.assetlaw.com>