

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 08-CR-60099-ZLOCH**

UNITED STATES OF AMERICA

vs.

BRADLEY BIRKENFELD,

Defendant.

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STATEMENT OF FACTS

The United States Attorneys Office for the Southern District of Florida, the United States Department of Justice, Tax Division, and the defendant, Bradley Birkenfeld (hereinafter referred to as the “defendant Birkenfeld”) and his counsel agree that, had this case proceeded to trial, the United States would have proven the following facts beyond a reasonable doubt, and that the following facts are true and correct and are sufficient to support a plea of guilty:

The Qualified Intermediary Program

Beginning in 2000, the Internal Revenue Services (“IRS”) sought to increase the collection of tax revenues without raising tax rates. In furtherance of this mission, the IRS established the Qualified Intermediary (“Q.I.”) Program. Pursuant to the Q.I. Program, foreign banks voluntarily entered into Qualified Intermediary agreements with the IRS pursuant to which these foreign banks agreed to identify and document any customers who held U.S. investments, which were generally marketable securities and bonds, or received United States source income into their off-shore accounts. In accordance with IRS requirements, foreign banks agreed to have their customers fill out IRS Forms W-8BEN, which required the beneficial owner of a bank account to be identified on the form, or IRS Forms W-9, which required United States beneficial owners of bank accounts to be identified.

Foreign banks further agreed to issue IRS Forms 1099 to United States customers for United States source payments of dividends, interest, rents, royalties and other fixed or determinable income paid into the United States customers’ off-shore bank accounts. Alternatively, if a client refused to be identified under the Q.I. Agreement, foreign banks agreed to withhold and pay over a twenty-eight percent withholding tax on U.S. source payments and then bar the client from holding U.S. investments. In addition, the sales proceeds, interest and

dividends earned on non-United States investments, if the purchase or sale of the investment was made as a result of contact (in person, via email, telephone or fax) with the U.S. client in the United States, were subject to the Form 1099 reporting requirements or twenty-eight percent withholding. These transactions are referred to under the Q.I. Program as “deemed sales.”

In January 2001, a large Swiss bank (“Swiss Bank”), entered into a Q.I. agreement with the IRS. Swiss Bank owns and operates banks, investment banks and stock brokerage businesses throughout the world, and has locations in the United States, with branch locations in the Southern District of Florida. This agreement was a major departure from historical Swiss bank secrecy laws under which Swiss banks concealed bank information for United States clients from the IRS. At all relevant times to this indictment, the Swiss bank represented to the IRS that it had continued to honor this Qualified Intermediary agreement.

Defendant Birkenfeld’s Employment

During the entire period from 1998 through 2006, defendant Birkenfeld was employed by various banks in Switzerland as a private banker primarily servicing United States clients. From 1998 through July 2001, defendant Birkenfeld was employed by Barclays Bank in Geneva, Switzerland. In 2001, Barclays Bank entered into a Q.I. agreement with the IRS. In order to comply with the terms of the Q.I. agreement, Barclays Bank decided to terminate its off-shore private banking business for United States clients that refused to complete an IRS Form W-9. Accounts owned by United States clients that refused to fill out IRS Forms W-9 were known in the off-shore banking business as “undeclared” accounts.

From 2001 through 2006, defendant Birkenfeld was employed as a director in the private banking division of a large Swiss bank (“Swiss Bank”), which owns and operates banks, investments banks, and stock brokerage businesses throughout the world, including the United States, with offices in the Southern District of Florida. A manager at the Swiss Bank assured defendant Birkenfeld that even though the Swiss Bank signed a Q.I. Agreement, the Swiss Bank was committed to continue to provide private banking services to United States clients who wished for their accounts to remain undeclared. Swiss Bank managers authorized and encouraged defendant Birkenfeld and other private bankers to travel to the United States to solicit new clients and conduct banking for existing United States clients. The Swiss Bank sponsored events in the United States where Swiss bankers met with U.S. clients, including Art Basel in Miami and the NASDAQ 100 tennis tournament in Miami. The Swiss Bank trained bankers traveling to the United States in techniques to avoid detection by United States law enforcement authorities, including training bankers to falsely state on customs forms that they were traveling into the United States for pleasure and not business. Defendant Birkenfeld, Swiss Bank managers and bankers knew that they were not licensed to provide banking services, offer investment advice or solicit the purchase or sale of securities through contact with clients in the United States.

The Tax Fraud Scheme

When the Swiss Bank notified its U.S. clients of the requirements of the Q.I. agreement, many of the Swiss Bank's wealthy U.S. clients refused to be identified, to have taxes withheld from the income earned on their offshore assets, or to sell their U.S. investments. To these clients, the Q.I. reporting requirements defeated the purpose of opening a Swiss bank account; to conceal their accounts from the IRS and to evade U.S. income taxes. These accounts were known at the Swiss Bank as the United States undeclared business. Rather than risk losing the approximately \$20 billion of assets under management in the United States undeclared business, which earned the bank approximately \$200 million per year in revenues, managers and bankers at the Swiss Bank, including defendant Birkenfeld, assisted these wealthy U.S. clients in concealing their ownership of the assets held offshore by assisting these clients in creating nominee and sham entities. These entities were usually set up in tax haven jurisdictions, including Switzerland, Panama, British Virgin Islands, Hong Kong and Liechtenstein. Defendant Birkenfeld, Swiss Bank managers and bankers and U.S. clients prepared false and misleading IRS Forms W-8BEN that claimed that the owners of the accounts were sham off-shore entities and failed to prepare and file IRS Forms W-9 that should have identified the owner of the account, the U.S. client.

Managers and bankers at the Swiss Bank, including defendant Birkenfeld, maintained relationships with Swiss and Liechtenstein businessmen, such as Mario Staggl, who would set up these nominee and sham entities for the Swiss Bank's U.S. clients and pose as owners or directors of these entities. By concealing the U.S. clients' ownership and control in the assets held offshore, defendant Birkenfeld, the Swiss Bank, its managers and bankers evaded the requirements of the Q.I. program, defrauded the IRS and evaded United States income taxes.

In order to further assist U.S. clients in concealing their Swiss bank accounts, defendant Birkenfeld, Mario Staggl, other private bankers and managers at the Swiss Bank and others advised U.S. clients to:

- place cash and valuables in Swiss safety deposit boxes;
- purchase jewels, artwork and luxury items using the funds in their Swiss bank account while overseas;
- misrepresent the receipt of funds from the Swiss bank account in the United States as loans from the Swiss Bank;
- destroy all off-shore banking records existing in the United States, and;
- utilize Swiss bank credit cards that they claimed could not be discovered by United States authorities.

On one occasion, at the request of a U.S. client, defendant Birkenfeld purchased

diamonds using that U.S. client's Swiss bank account funds and smuggled the diamonds into the United States in a toothpaste tube. Defendant Birkenfeld and Mario Staggi accepted bundles of checks from U.S. clients and facilitated the deposit of those checks into accounts at the Swiss Bank, Liechtenstein and Danish banks.

The Billionaire U.S. Real Estate Developer

Defendant Birkenfeld's largest client was a billionaire real estate developer whose initials are I.O. (hereinafter identified as "I.O."). I.O. had residences in Southern California and in Broward County, within the Southern District of Florida. On several occasions, defendant Birkenfeld, Mario Staggi and Swiss Bank managers met with I.O. in Switzerland and in the United States. It was well-known at the Swiss Bank that I.O. was a U.S. citizen, that the income earned on his accounts was subject to Q.I. withholding and reporting requirements, however, during the period from 2001 through 2005, the Swiss Bank issued no Forms 1099 to I.O., nor did the Swiss Bank report any Form 1099 information to the IRS or withhold or pay over any taxes to the IRS.

From at least 2001 through the date of the Indictment, defendant Birkenfeld conspired with Mario Staggi, an owner and operator of a Liechtenstein trust company, I.O., additional private bankers and managers employed by the Swiss Bank, and others to defraud the United States by assisting I.O. in evading income tax on the income earned on \$200 million of assets hidden offshore in Switzerland and Liechtenstein. In order to circumvent the requirements of the Q. I. Agreement, the defendant and others conspired to conceal I.O.'s ownership and control of the \$200 million of assets hidden offshore by creating and utilizing nominee and sham entities.

Defendant Birkenfeld, Mario Staggi, I.O, additional private bankers and managers employed by the Swiss Bank, and others committed numerous overt acts in Broward County in the Southern District of Florida, Central District of California, Switzerland, Liechtenstein, and elsewhere in furtherance of the conspiracy, including the following:

On or about June 21, 2001, I.O. caused to be sent completed bank account opening documents for an account at the Swiss branch of a large bank based in London to defendant Birkenfeld, including a Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding that falsely and fraudulently claimed that the beneficial owner of the newly opened account was a shell corporation located in the Bahamas.

On or about July 26, 2001, defendant Birkenfeld caused to be sent an email to I.O. and others that the large bank based in London was terminating North American clients, travel and resources, and that his new employer, the Swiss Bank, had a superior network, product range and

management, and had recently acquired a large United States securities brokerage house in order to enhance United States investment expertise.

On or about October 19, 2001, defendant Birkenfeld caused to be sent via facsimile to I.O. at a United States facsimile number Swiss bank account opening documents from the Swiss Bank, including a form entitled "Verification of the beneficial owner's identity." This form, executed by I.O., falsely and fraudulently stated that I.O. was not the beneficial owner, and that a nominee Bahamian corporation was beneficial owner of the account. The application further listed I.O. as a signatory to the account.

On or about December 4, 2001, Mario Staggel recommended to I.O. that in order to further conceal I.O.'s ownership of off-shore assets, in addition to setting up Liechtenstein trusts and Dutch holding companies, I.O. should set up an entity in the British Virgin Islands, Panama or Gibraltar that "would lead to another 'safety break' in a tax and anonymity aspect."

On or about December 19, 2001, Mario Staggel caused to be executed a "Letter of Intent," which stated that New Haven Trust Company Limited, trustee of The Landmark Settlement, intended to hold the trust property for the benefit of I.O., and, after his demise, for his children.

On or about March 13, 2002, defendant Birkenfeld caused to be sent a facsimile to I.O. at a United States facsimile number listing \$15 million of bonds that an investment manager at the Swiss Bank had purchased for I.O.

On or about March 25, 2002, I.O. caused to be sent a facsimile to defendant Birkenfeld authorizing defendant Birkenfeld to issue five credit cards from the Swiss Bank to I.O. and others.

On or about April 16, 2002, I.O. caused to be sent a letter to defendant Birkenfeld authorizing the wire transfer of \$80 million from one account at the Swiss Bank to another account at the Swiss Bank.

On or about April 23, 2002, Mario Staggel caused to be sent an email to I.O. in the United States with instructions for I.O. to transfer a portfolio, worth approximately \$60 million, containing United States securities from a brokerage house in London to an account in the name of a Danish shell corporation at a Liechtenstein bank.

On or about April 25, 2002, an unindicted co-conspirator caused to be sent an email to I.O., with a copy to Mario Staggel, that recommended that in addition to the Liechtenstein trusts

and Danish holding companies, I.O. should set up United Kingdom companies to act as nominee shareholders. As stated in the email, "... the partners appear to be U.K. companies and Liechtenstein does not appear to be connected.... The role of the U.K. companies is simply to act as nominee shareholders."

On March 25, 2002, I.O. caused to be sent a fax authorizing defendant Birkenfeld to wire transfer \$39 million from one account at the Swiss Bank to another account at the Swiss Bank.

On or about May 7, 2002, Mario Staggl caused to be sent a reply email advising I.O. not to put his name on any Liechtenstein accounts because doing so could "jeopardize the structure," and reminded I.O. that he had executed blank account signature cards that Mario Staggl could use.

On or about April 15, 2003, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2002 tax year, listing his address as Sanctuary Cove, Florida that fraudulently omitted income earned on off-shore assets.

On or about May 19, 2003, Mario Staggl caused to be sent an email to I.O., with a copy to defendant Birkenfeld, that stated that Mario Staggl's lawyers in Gibraltar told him "that everything is now in order to proceed with the application to transfer ownership to Gibraltar" of I.O.'s 147 foot yacht.

On or about March 24 and March 25, 2004, defendant Birkenfeld traveled to the Southern District of Florida to meet with I.O. and a banker from the Swiss Bank's New York branch in order to solicit I.O. to take out real estate loans with the Swiss Bank using his undeclared off-shore assets as collateral.

On or about April 15, 2004, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2003 tax year, listing his address as Lighthouse Point, Florida that fraudulently omitted income earned on off-shore assets.

On or about April 15, 2004, I.O. filed his United States individual income tax return, Form 1040, for the 2003 tax year, listing his address as Lighthouse Point, Florida that fraudulently omitted income earned on off-shore assets.

On or about April 15, 2005, I.O. filed his United States Individual Income Tax Return, Form 1040, for the 2004 tax year, listing an address in Lighthouse Point, Florida that failed to report the income earned on off-shore assets.

On or about June 12, 2005, defendant Birkenfeld and Mario Staggl met with I.O. at a Liechtenstein bank and advised him to transfer all of his assets held by the Swiss Bank to a Liechtenstein bank because Liechtenstein had better bank secrecy laws than Switzerland.

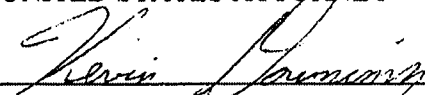
The tax loss associated with the conspiracy involving the evasion of income taxes of the approximate \$200 million I.O. concealed offshore is \$7,261,387 million, exclusive of penalties and interest.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Date: 6/10/08

By:


KEVIN DOWNING
SENIOR TRIAL ATTORNEY
MICHAEL P. BEN'ARY
TRIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE
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Date: 6/10/08

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ATTORNEYS FOR DEFENDANT

Date: 10/06/08

By:


BRADLEY BIRKENFELD
DEFENDANT