

Banker's Plea Agreement Could Affect Credit Suisse Tax Probe

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A plea agreement signed by U.S. prosecutors and former UBS banker Christos Bagios could be viewed as a sign that Bagios, who also worked at Credit Suisse, is providing information in the government's investigation of Credit Suisse.

Bagios on November 6 pleaded guilty to conspiring to defraud the United States by helping eight U.S. clients of Swiss bank UBS open and maintain undeclared bank accounts. Judge Kenneth Marra of the U.S. District Court for the Southern District of Florida accepted the plea agreement reached by Bagios and U.S. prosecutors and sentenced Bagios to time already served (37 days of imprisonment between January and March 2011, and more than 19 months of house arrest following his release from prison).

Bagios, a 47-year-old Greek citizen, worked as a private banker for UBS in Switzerland between 1999 and 2005. From 2005 to 2008, he was employed by UBS Swiss Financial Advisers AG. He worked at Credit Suisse Private Advisors AG from 2009 until February 2012. Bagios was arrested in New York in January 2011 as part of the U.S. government's crackdown on offshore tax evasion. A January 2011 criminal complaint accused Bagios of conspiring to defraud the U.S. government by helping as many as 150 U.S. clients hide up to \$500 million in assets during his time at UBS. (For prior coverage, see *Tax Notes*, Mar. 7, 2011, p. 1136, *Doc 2011-4408*, or *2011 TNT 42-8*.)

In an information document filed in October, the prosecutors narrowed the scope of the charges against Bagios and accused him of helping eight clients open and maintain undeclared bank accounts. Prosecutors estimated that Bagios's actions defrauded the United States of about \$1.09 million in tax revenue. Bagios entered a plea of not guilty on October 17, but he later filed papers seeking to change his plea, prompting observers to speculate that he was cooperating with prosecutors as part of the Justice Department's broader investigation of 11 Swiss banks, including HSBC, Credit Suisse, and Julius Baer, for allegedly assisting clients in evading U.S. tax obligations.

In the November 6 plea agreement, the prosecutors recommended that Bagios be sentenced to time served in light of his "cooperation and substantial assistance regarding his former colleagues and customers at UBS AG," and because his conduct was not as egregious as that of other foreign bankers and asset managers who have been prosecuted or indicted for conspiring with U.S. taxpayers to defraud the IRS.

Scott D. Michel of Caplin & Drysdale told Tax Analysts that he finds it interesting that Bagios and the prosecutors agreed to a binding plea agreement (which allows either side to withdraw its consent if the court does not sentence the defendant according to the terms of the deal). But he said the government sent a clear signal in the agreement that if the court were to seek to impose a sentence other than that agreed upon, the prosecutors would file the appropriate papers and pursue a more lenient sanction.

Michel said the agreement refers to Bagios's cooperation against customers and employees of UBS but doesn't mention other banks. "Bagios worked at Credit Suisse, and it would be quite surprising were his cooperation not to extend to that institution as well," he said.

Robbins called Bagios's sentence 'remarkably low' given the seriousness of his crimes. 'He must've really given the government a lot of help.'

"Indeed, it is likely that he is cooperating against that bank and the government did not want to disclose that in this plea agreement," Michel said. "When individuals plead guilty and then cooperate, they normally cannot pick and choose their cooperation targets — the government will expect full and complete cooperation on all relevant subjects. So I strongly suspect that Bagios has been telling the U.S. about more subjects than just UBS, and if that's the case, that will increase pressure on Credit Suisse and perhaps other banks to try to resolve their differences with the Justice Department as quickly as possible." (For related analysis of the U.S. investigation of Swiss banks, see *Tax Notes*, Apr. 2, 2012, p. 7, *Doc 2012-6398*, or *2012 TNT 63-1*.)

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Edward M. Robbins Jr., a former U.S. prosecutor now with Hochman, Salkin, Rettig, Toscher & Perez PC, said Bagios's sentence is "remarkably low" given the seriousness of his crimes. "He must've really given the government a lot of help and possibly provided them with information on other banks," he said.

William M. Sharp of Sharp Kemm PA said the Bagios plea deal clearly shows that the government is pursuing individual cases against Swiss-based banks and noncompliant U.S. taxpayers, as well as cases against individual Swiss bankers and other offshore-based representatives. "The Swiss banking

community would clearly benefit from a global settlement that includes protection of all bank employees and agents who followed bank policies, but these settlement discussions seem to have died," he said. "And so the U.S. government continues to press a myriad of individual cases, which we understand will be a protracted undertaking, possibly lasting over the next few years in the absence of a global deal."

Charles Miller, spokesman for the DOJ Tax Division, told Tax Analysts that the department had no comment on the Bagios plea agreement. ■