

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:09-CV-20423-GOLD/MCALILEY

UNITED STATES OF AMERICA,

Petitioner,

v.

UBS AG,

Respondent.

REPORT OF ALIXPARTNERS, LLP

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I. INTRODUCTION

AlixPartners, LLP ("AlixPartners") was retained by Wachtell, Lipton, Rosen & Katz ("WLRK") on behalf of its client UBS AG ("UBS" or the "Bank") in connection with, among other things, litigation involving the John Doe summons (the "Summons") issued to UBS to perform certain forensic analyses relating to UBS' Qualified Intermediary Agreement ("QIA") with the U.S. Internal Revenue Service ("IRS").

II. BACKGROUND

On July 1, 2008, the United States District Court for the Southern District of Florida granted the IRS leave to serve the Summons on UBS. The Summons seeks information on U.S. taxpayers who maintained financial accounts at UBS in Switzerland during the years ending December 31, 2002 through December 31, 2007 and who did not provide UBS with an IRS Form W-9.

AlixPartners was asked to carry out a forensic analysis of the UBS accounts of U.S. persons who had chosen not to provide UBS with an IRS Form W-9 to determine whether such accounts held U.S. securities.

III. EXECUTIVE SUMMARY

Based upon a forensic review of UBS databases, pursuant to which AlixPartners sought to identify U.S. account holders who held U.S. securities without providing UBS with an IRS Form W-9, AlixPartners determined that virtually none of the accounts maintained by such clients held investments in U.S. securities during the 2002 – 2007 period.

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IV. METHODOLOGY

AlixPartners reviewed and worked with UBS databases that contained information about client accounts of U.S. domiciled persons and U.S. nationals.¹ The account information reviewed represents the population of direct account holders who were either domiciled in the U.S. or were U.S. nationals and who maintained cash or custody accounts at UBS in Switzerland in any year between 2002² and 2007.

A. Sources of data

AlixPartners' analysis was designed to be as broad as possible in order to maximize the likelihood of capturing all relevant clients. AlixPartners' analysis was based primarily on two sources, the Client Information File ("CIF") and UBS' order manager and internal trading system ("AAA").

CIF: The CIF is a platform that maintains client records including such information as accounts owned, domicile and nationality of account holder, whether the client relationship is active or inactive, and the date an account was opened and closed (in the case of inactive accounts). For purposes of our analysis, AlixPartners used the CIF as of December 31, 2007.

Basic client information for clients meeting the following criteria was extracted from the CIF:

¹ In order to operate in accordance with Swiss financial privacy and data security laws, AlixPartners' work was conducted in Switzerland and pursuant to a series of restrictions on the access to and the use of confidential account information. These restrictions did not impact the substance of our work.

² Due to certain changes and enhancements made in 2002 to the Bank's accounting system, the financial data that was compiled may not be fully inclusive for that year.

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- All active and inactive clients whose nationality and/or domicile were designated as the U.S.
- All active and inactive clients whose nationality and domicile were designated as a country other than the U.S., but for which the QI String³ indicated that the client had some other relationship to the U.S.

AAA: UBS' AAA system contains information on individual trades consummated by the Bank, such as trade date, quantity traded, security traded, total price, and stock exchange where the trade was placed. AAA also contains trade data specific to the client making the trade, such as client account number, client type, and nationality and domicile of client. All trades during the period 2002 through 2007 were considered, and all trades for which the domicile or nationality of the account holder was the U.S. were selected for further analysis.

The trade data from the AAA database was used to collect additional client accounts for the population because of the static nature of the CIF. The CIF data is current at any point in time; therefore it can only be used to determine the current nationality and domicile of a client. Thus, if a client changed his or her nationality or domicile from the U.S. to a country other than the U.S. during the period being analyzed, that client would not be collected from the current CIF data. However, when a trade is completed, the AAA database collects the current client information at that point in time (including nationality and domicile) and memorializes it as part

³ Clients wishing to invest in U.S. securities are classified within the CIF system and "flagged" if they have any relationship to the U.S. which may trigger reporting or withholding obligations under the QIA, regardless of their nationality and domicile. A string of fields in the CIF (together known as the QI String) identify a number of attributes of a client in addition to the nationality and domicile, which allows the Bank to identify persons that could potentially be considered U.S. persons (e.g., U.S. green card holders).

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of the trade record. Therefore, the AAA database contains historical client information which will indicate whether a client was a U.S. person at the time of a trade.

To complete the population of clients that were identified as having a nationality and/or domicile as U.S. at any point in time between 2002 through 2007, all client accounts contained in the AAA database that had a trade record indicating a nationality or domicile of U.S. for the account holder at any time during this period were selected and added to the accounts identified in the CIF.

B. Additional data

Once the initial population was identified, additional sources of data were used to gain further information.

Most relevant was the use of Valor data. A “Valorenummer” (or Valor number) is used in Switzerland for numbering securities for identification and classification purposes. Valor numbers are unique to a security and are publicly available. The Bank utilizes an external system to collect the Valor number and related information on the particular securities being traded by the Bank's clients, such as domicile, status of security (i.e., active, inactive), and nominal currency.

AlixPartners was provided a Valor table of all securities traded by the population of accounts in Booking Center Switzerland from 2002 through 2007. This database, obtained by the Bank from Telekurs, an outside provider, identifies U.S. securities that were deemed to be

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securities that give rise to (or may give rise to) reportable payments for US tax purposes by a field in the table provided (specifically, a field labeled US_TAX_REP).

V. ANALYSIS OF DIRECT U.S. CLIENT ACCOUNTS

Using the account information derived from the CIF and AAA, AlixPartners sought to identify whether there were U.S. clients who held investments in U.S. securities at any point during the 2002 through 2007 period without providing UBS a Form W-9. The following is a summary of the criteria used to analyze active client accounts on a year-by-year basis for all years from 2002 through 2007.

A. Isolation of relevant accounts

Clients that provided a Form W-9 to UBS: Any clients for whom the Bank had a Form W-9 on file were removed from the population of accounts subject to further review.⁴

Banking only accounts: Only clients holding what is known as a “custody” account have the ability to invest in any kind of securities products. As banking-only and other non-custody accounts could not have been used to trade in securities, they were removed from the population of clients subject to further review.

Special visa holders: Certain account holders domiciled in the U.S. identified in the analysis were not considered U.S. persons as they hold certain types of visas, such as diplomats and international students and teachers. For purposes of this analysis these visa holders, who are

⁴ For purposes of the analysis, a client was removed from the population in the initial year in which a Form W-9 was submitted to the Bank and all subsequent years.

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required to file QI-Form 61391 with the Bank, were assumed to be outside the population of U.S. direct account holders.

Review population: Excluding accounts based on the categories described above, the total population of accounts identified that were held by U.S. clients was between 25,831 and 30,168 in any given year. Accounts in this review population were then evaluated to determine whether there were any trades in any U.S. securities at any time within the period under review.

B. Analysis of trading in U.S. securities

Identifying U.S. securities: As described above, the Bank relies upon an outside data provider, Telekurs, to provide data on securities traded by the Bank's clients. Included in this data is a flag on securities that are considered to be securities that give rise to (or may give rise to) reportable payments for U.S. tax purposes. Within this database, U.S. securities include shares (in any form) of U.S. companies, bonds of U.S. issuers intended for the U.S. domestic market, and investment funds of U.S. issuers. The Telekurs database identifies U.S. reportable securities based on the most current (i.e., 2009) classification.^{5,6}

Trading in U.S. securities by U.S. persons: The trades in the accounts in the review population were analyzed to determine whether securities that give rise to (or may give rise to)

⁵ The most current classification for expired securities would be the classification at the date of expiration.

⁶ It is theoretically possible that the classification for a security currently identified as non-reportable could have switched from reportable at some point over the period analyzed. If such an event took place, it should have been captured in the UBS bi-monthly review of accounts (see Appendix A).

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reportable payments for U.S. tax purposes (as identified by the Telekurs flags) were traded during the relevant time period.

C. Conclusion

The review of the securities traded in the accounts in the review population confirms that, except with respect to a very limited number of accounts (discussed below), trading in these accounts was limited to non-U.S. securities, with virtually no accounts containing securities identified as reportable for U.S. tax purposes during the period analyzed.

Through our review, we were able to confirm that 99.26% to 99.98% of the total number of the accounts in the review population in any given year contained no evidence of any trading in U.S. securities.

There were a very small number of trades in a very small number of accounts that could not be verified as involving no U.S. securities. Upon further review, it was determined that the trades in question in 80% of this very small population of accounts were solely trades between 2002 and 2004 of two securities of a German bank that were related to the issuance of Eurobonds. These securities appear to have been classified by Telekurs as securities that give rise to (or may give rise to) reportable payments for U.S. tax purposes. Based on a sample of the trade data for these trades, it appears that these trades had not been picked up as reportable for U.S. tax purposes at the time the trades were made, perhaps due to an error in the Telekurs data

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or the inputting of that data,⁷ or perhaps because the securities were not in fact reportable at that time for U.S. tax purposes. Based on our review of UBS' procedures (see Appendix A) and UBS data on backup withholding, the majority of the accounts in the remaining 20% of this very small population of accounts would have been subjected to backup withholding on reportable payments.

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⁷ In 2005, the Bank switched to a new system which allowed for a more automatic retrieval of data from Telekurs and automatic integration of that data into the Bank's accounting system. Prior to 2005, the process involved a more manual treatment of the data.

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APPENDIX A

AlixPartners reviewed the control procedures employed by UBS in connection with the booking of securities trades. When a client opened an account with the Bank, a determination was made as to whether the client was a U.S. person. If the client was a U.S. person, the account was flagged as such within the Bank's accounting system. If the client provided a Form W-9 to the Bank, the client's account was permitted to trade U.S. securities. If the client did not file a Form W-9, then the client was blocked by the Bank's trading system from trading in any securities identified by Telekurs as being U.S. securities. This restriction was fully automated, and prohibited a trade in a restricted security from being completed.

AlixPartners also analyzed the processes used by the Bank to identify any U.S. client accounts to be subject to backup withholding. To protect against any holdings in restricted accounts that had not previously been disallowed by the control procedures (which might occur, for example, if the classification of the security changed⁸ or the status of the account holder changed, because, for example, an account holder moved to the U.S.), a standardized query was run every two months on the entire pool of accounts held by U.S. persons and an exception report was generated that identified any accounts that held securities flagged as securities that give rise to (or may give rise to) reportable payments for U.S. tax purposes.

⁸ For example, if there is a reclassification by Telekurs of a security from non-reportable to reportable for U.S. tax purposes, and that security is already held in an account owned by a U.S. person, that account would be identified on the exceptions report.