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Basel, 11 September 2014
A.149/JBR

OECD consultation on how the framework for voluntary disclosure could be further improved

Dear Sir,
Dear Madam,

The Swiss Bankers Association is the leading professional organisation of the Swiss financial centre. Its main purpose is to maintain and promote the best possible framework conditions for the Swiss financial centre both at home and abroad. The SBA was founded in 1912 in Basel as a trade association and today has 333 institutional members and approximately 18'700 individual members.

We would like to thank the OECD for the opportunity to comment on how the framework for voluntary disclosure could be further improved and what particular features might encourage taxpayers to come forward and take advantage of such programs. We are willing to share the experience that our members have gathered with respect to clients confronted with voluntary disclosure programs (VDPs). We support the initiative of the OECD to provide an update in order to improve the chances of VDPs to be successful.

The following considerations should be read in the context of the 2010 OECD report *"Offshore voluntary disclosure: comparative analysis, guidance and policy advice"* and should complement the recommendations already made in the 2010 report. Additionally, we would like to refer to the 2000 OECD report *"Improving Access to Bank Information for Tax Purposes"*¹ and the 2014 OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters².

¹ p. 16: "In taking this work forward, the Committee [on Fiscal Affairs] encourages countries to examine how to develop a voluntary compliance strategy to enable noncompliant taxpayers to declare income and wealth that they have in the past concealed by means of taking advantage of strict bank secrecy jurisdictions."

² p. 11: "Finally, because tax evasion is a global issue, the model needs to have a global reach so that it addresses the issue of offshore tax evasion and does not merely relocate the problem rather than solving it. Mechanisms to encourage compliance may be also required to achieve this aim."

Domestic stability

The success of a VDP is often not only dependent on the conditions for the VDP itself but also on the environment in the taxpayer's country of residence. Taxpayers are and will remain reluctant to come forward if they have to fear corruption, expropriation or common criminality (kidnapping, demands for ransom payments, etc.).

Thus fostering a stable domestic environment is key to success for any VDP: if citizens have no trust in their authorities, it will be more difficult to convince them to take part in a VDP.

Particular features that might encourage taxpayers to come forward

Legal scope / Legal certainty

The scope of the VDP must be clear and stated in a law or formal ordinance. It must not be up to individual departments / assessors to decide on the acceptance of submissions or the scope of the program.

The VDP should include all taxes due: not only taxes directly related to the disclosed assets / income / gains but must extend to all kind of taxes, i.e. include inheritance taxes, VAT, etc.

The programs should be open to all taxpayers and must not exclude certain groups such as civil servants or lawyers.

If a VDP is limited in time, the time limit has to be set when it is launched. Time plays an important role in a disclosure process: to gather documents or to convince relatives, who might be affected by an individual decision to disclose.

The system must also enable banks to promote and help the clients to go through the process without exposing themselves for aiding and abetting etc. Information gathered as a result of a VDP should not be used against banks that assist their clients in taking advantage of VDPs.

Fair monetary conditions / Predictability

The system must be affordable, i.e. not be prohibitive in financial terms and provide an incentive to participate such as promises of immunity or reduction of sentences. Charges and possible fines / late payment interest should be fair and not punitive. The fact that tax payers are coming forward voluntarily should be honored.

The rules should be clear and taxpayers must be able to understand upfront what the consequences of VDP participation are.

Conditions of a VDP must not be changed after the announcement and it must be clear that no "better deal" will come forward. Attractive conditions for the VDP with the im-

plementation of stiff consequences for taxpayers that do not come forward should be considered.

No criminal prosecution

Reliable immunity of clients from penal prosecution must be ensured. Participation in a VDP should in general shield the taxpayer from criminal prosecution with respect to tax offenses. The protection must not be limited to the taxes directly related to the disclosed assets / income / gains but must extend to all kind of taxes, i.e. include inheritance taxes, VAT, etc.

Fair treatment after successful completion

It must be ensured that taxpayers that went through a VDP are subsequently not specifically targeted for enhanced scrutiny (this should include their family members and companies).

Specialized departments for handling the VDPs, working separately from the regular (income) tax assessment groups should be considered for this purpose.

In case tax requirements are (or could be) related to other requirements such as foreign exchange regulations it must be ensured that all are captured.

Confidentiality

The VDP should take into account personal security concerns, i.e. confidentiality based on solid robust legal basis / possibilities to use anonymous solutions.

Disclosed information must only be used for the intended purposes and must not be shared with entities other than the tax authorities themselves. We would recommend a strict specificity principle and no sharing of information for other than the VDP purpose, e.g. not sharing with other authorities for other purposes.

It must be ensured that there is a legal obligation to keep the data confidential and that the data provided is also actually kept confidential.

Confidentiality must be guaranteed in the respective law / ordinance and may not be just dependent on practice or (verbal) commitments made by individual persons or governmental entities.

Countries with known confidentiality problems should be encouraged to use anonymous solutions through institutional / licensed / certified intermediaries in their jurisdictions. Anonymous solutions might also be helpful, when there are uncertainties with respect to the conditions of a VDP, implying that a certain degree of appreciation remains.

No repatriation of assets / No discriminatory approach for assets held abroad

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There must be no requirement which would force the clients to repatriate their assets as a condition to participate in a VDP or to repatriate them following the participation, either as part of the VDP or as part of a separate foreign exchange or currency control regulation. This is important not only for the banks but also for fully compliant taxpayers themselves who often want to hold assets outside their country of residence: a notification / report should be sufficient.

It must be assured that in connection with VDPs assets held abroad, respectively the income and gains derived from such assets, are not discriminated compared to assets held domestically, e.g. no higher tax rates and no additional reporting / approval / repatriation requirements.

Pragmatic procedural approach

The conditions for participation in a VDP should provide clear and easy to understand instructions to avoid uncertainty for taxpayers and be designed in a way that potential participants can fulfill them without undue burden or cost. Measures to permit such may include:

- Look back periods should be limited and not exceed a certain number of years (e.g. 5-10 years) because limitation periods of documentation retention laws in different countries may limit access to documentation.
- Clarity and practicability regarding the type of documents which clients need to provide. Generally, required documents should be limited to those the client is realistically able to provide, namely account related documents (with look back period of last 10 years, with room for exceptions, etc.) or which the bank can provide based on account information available for the look back period (e.g., account and transaction statements of last 10 years). The documentation requirements should also be in line with international standards so that it must be possible in practice for the account holders, respectively their banks, to fulfil these requirements.
- Pragmatic handling where not all documents and information can be procured – e.g. in case historic purchase prices are not available to calculate taxable gains.
- Pragmatic / simplified approach regarding the calculation of taxable income / gains throughout the regularization period, e.g. adopt tax-neutral approaches like avoiding that the interposition of investment structures or the occurrence of non-cash events in the portfolio (e.g. split / reverse-split, exchange or conversion of securities, etc.) trigger the obligation to proceed with specific / complex tax calculations and / or artificially lead to a prohibitive tax burden in comparison with the current value of assets that remained invested throughout the period; due account should be taken of how clients hold their assets and a certain tax neutrality should be allowed where required within / before / after the VDP to transfer assets from an investment structure to a beneficial owner.
- Pragmatic procedure to determine representatives for account / assets subject to the VDP in case the identity of the owner of the account / assets has changed after an inheritance, divorce, marriage, or similar cases.

- Fast track or formula based solutions for certain taxpayer groups (small accounts; simple investment structures, etc.)³.

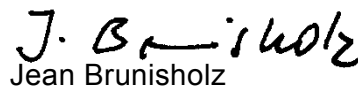
Furthermore, it must be avoided that the preparation of a VDP is more costly than the back taxes and fines / late interest / penalties and overly-complicated leaving a risk to the taxpayer that the disclosure is not effective due to mistakes in the preparation of its disclosure. It must also be avoided that the back taxes and fines / late interest / penalties exceed the current value of the assets or represent a prohibitive portion thereof (e.g. after a financial crisis or economic downturn).

To sum up, simplicity, predictability and a fair amount to be paid by the persons taking part in a VDP are important features that might lead to its success and might encourage even more taxpayers to come forward. Alone, these features are however not sufficient: citizens should also have sufficient trust in their authorities to enter a VDP.

We hope that the experience we have gathered can be helpful for your subsequent work on this issue and we are ready to further discuss it with you if you so wish.

Yours sincerely,
Swiss Bankers Association


Urs Kapalle


Jean Brunisholz

³ These methods are often criticized for not being fair with respect to taxpayers who have always been fully compliant. One should however recall that the simplicity of these methods contributes to encourage even more taxpayers to come forward. In that context, one might recall that Switzerland has concluded cooperation agreements in the area of taxation with Austria and the United Kingdom a part of these being dedicated to the issue of regularising the past. It is fair to state that all the assets held by taxpayers of Austria and the UK deposited in banks in Switzerland are fiscally compliant thanks to the application of a fairly straightforward calculation.