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January 2012

## New Voluntary Disclosure Program – just in time for U.S. clients of Swiss banks

### New Offshore Voluntary Disclosure Program

On January 9, 2012 the U.S. Internal Revenue Service (“IRS”) announced the opening of a new offshore voluntary disclosure program (“OVDP 2012”) which shall encourage and help U.S. citizens, residents, other persons and their representatives to disclose their inadvertent or intentional concealment of offshore accounts or assets.

The IRS opened this new OVDP 2012 due to the strong and continued interests from tax payers and tax practitioners after the two previous OVDP 2009 and 2011 have been closed. By the two previous OVDPs the IRS has not only collected approximately USD 4.4. billion so far, more important, the 33,000 U.S. tax payers that have come forward and became compliant under the two OVDP enabled the IRS to gather valuable information on banks, their practices and clients. Furthermore, as the IRS Commissioner Doug Shulman stated the IRS is “... following more leads and the risk of people who do not come in continues to increase.” This new OVDP 2012 is again a possibility for U.S. tax payers still hiding assets overseas to come into compliance with their U.S. tax obligations.

In principal, the OVDP 2012 and its overall penalty structure is similar to the OVDP 2011. There are, however, some key differences:

- a) Unlike the two previous OVDPs the new program is **open-ended**, i.e. there is no deadline to submit a voluntary disclosure.
- b) The **penalty** increased from 25% (OVDP 2011) to **27.5%** of the highest aggregate balance in undisclosed foreign accounts/entities or value of foreign assets during the relevant period, which is eight full tax years prior to the disclosure. For taxpayers with offshore accounts or assets that did not surpass USD 75,000 in any calendar year covered by the OVDP 2012 the penalty remained at 12.5%. Similarly for the 5% penalty which remained the same and which is applicable to certain exceptions.
- c) The terms of the program may be changed by the IRS at any time, i.e. there is **no guarantee**, and the IRS could at its own discretion and any time increase penalties, repeal the different penalty classes or finally end the program.

In order to qualify for a voluntary disclosure it is essential that the taxpayer initiates such procedure **before** the IRS finds him or her. In view of this precondition, as well as the fact that the IRS is continuing with its efforts to pursue criminal prosecution of international tax evasion but also in view of the possibility that the terms of the new OVDP 2012 may change at any time, non-compliant U.S. taxpayers are well advised to come forward as soon as possible.

Additionally, the implementation of the Foreign Account Tax Compliance Act ("FATCA") will confront not only the banks with the issue of U.S. tax compliance but especially all U.S. tax payers holding an offshore account. A timely voluntary disclosure can help to avoid a U.S. taxpayer from being detected by the IRS and becoming subject of a criminal procedure.

Although the OVDP 2012 offers the taxpayers a fairly well defined means of bringing their offshore accounts into compliance, for some taxpayer it might make sense to disclose their foreign accounts outside the terms of the OVDP 2012 and rather opt for being examined. Whether one way or the other is more favourable needs to be examined carefully.

## Relevance for US clients of 11 Swiss banks targeted by the U.S.

It is known that the U.S. are inquiring against 11 Swiss banks which are accused of having accepted U.S. clients committing U.S. tax evasion. The efforts of the U.S. in this regard will result in requests of the IRS for administrative assistance seeking disclosure of information on US clients with these Swiss banks. It is of utmost importance for concerned U.S. clients of these banks not being in compliance with U.S. tax provisions to consider disclosing the accounts prior to a disclosure obtained by the IRS in the context of a request for administrative assistance. The new OVDP 2012 is one of the options for the concerned U.S. client to get tax compliant.

## We can advise

ALTENBURGER has been assisting and advising many U.S. tax payers who decided to become tax compliant in the U.S. since 2009 when the first OVDP was opened. We are assisting clients with regard to all relevant Swiss aspects whereas the U.S. legal and tax aspects are taken care of by a renowned and excellent U.S. law firm. Since the OVDP 2009, we helped hundreds of clients initiating a voluntary disclosure. Together with our U.S. partners, we can ensure for a professional handling of such matter.

## Contact

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