

Tax Spotlight Article

UBS — Swiss Banking and Voluntary Compliance

by

Arthur Boelter

Mr. Boelter is a tax attorney and West author. He practices in Seattle, Washington specializing in tax litigation, income and estate tax planning, and asset protection strategies.

History/Introduction

What happens when the unstoppable force hits the immovable object. It is likely we are about to find out. At stake is nearly 100 years of Swiss Banking secrecy and hundreds of millions of U.S. tax dollars.

U.S. citizens are required to pay tax on their world-wide income. Under the Bank Secrecy Act, U.S. citizens or residents or a person in and doing business in the U.S. must file a report with the U.S. Treasury if he or she has a financial account in a foreign country with a value exceeding \$10,000 at any time during the calendar year.[FN1] This is done by checking the box and filing Form TD F 90-22.1, Foreign Bank and Financial Account Report (FBAR) with the IRS.[FN2] Civil penalties are applied for violation of these reporting rules.[FN3] It is important to note, though, asset protection trusts and foreign accounts are perfectly legal as long as the above requirements are met. Additionally, there is nothing wrong with obtaining and/or using a credit card issued by a foreign bank.

The other aspect of this conflict is that of "bank secrecy". There is a centuries-long tradition preventing one jurisdiction from assisting another jurisdiction with collection of its taxes. This doctrine, known as the "Revenue Rule", is rooted in common law and sovereign immunity. It is often referred to as Lord Manfield's Rule, who stated, "[N]o country ever takes notice of the revenue laws of another." This doctrine remains the cornerstone of all common law jurisdictions and is abrogated only by state-to-state negotiations such as multilateral or bilateral treaties. (An example of this is Qualified Intermediary Agreements with Switzerland and other countries.) Tensions arise when the confidentiality of the information sought is in conflict with the other state's interest.

In January of 2003 the IRS announced an initiative aimed at individuals who used offshore credit cards and other arrangements to hide income.[FN4] In the two years prior to this initiative, known as the

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Offshore Voluntary Compliance Initiative (OVCI), the IRS had summonsed records from VISA, MasterCard and American Express for records concerning the use by U.S. taxpayers of cash debit cards to access offshore bank accounts as part of its Offshore Credit Card Program.[FN5] It was estimated that there were over 1 million cash debit cards for foreign accounts in use. As these individuals were identified, the IRS began civil and criminal actions.

The OVCI as promulgated states that it applies to taxpayers who "have underreported their U.S. tax liability through financial arrangements that in any manner rely on the use of offshore payment cards... issued by banks in foreign jurisdictions or offshore financial arrangements (including arrangements with foreign banks...)." The relief provided was that with respect to the unreported income, the IRS:

1. Would not impose civil fraud (§ 6663) or the fraudulent fail to file (§ 6663(f)) penalties nor the information return penalties under IRC §§ 6035, 6038, et seq; and

2. Would impose the delinquency penalty under § 6651, the accuracy penalty under § 6662 or both; if taxpayers voluntarily file or amend all tax returns from 1999 forward. The Service also indicated it would not impose any of the penalties for failure to file the FBAR. The taxpayer would be required to enter into a Closing Agreement. The taxpayer would also be required to disclose all the information related to the issuance and use of the credit cards.

Eligibility was conditioned upon:

1. The taxpayer filing the written request to participate before the IRS initiated a civil or criminal examination;
2. The taxpayer had not promoted or solicited the participation of others;
3. The taxpayer had not derived income in the years in question from illegal sources; and
4. The taxpayer did not use the offshore payment cards to facilitate illegal activities not related to taxes.

The OCVI program had moderate success and as of July 2003 it has received applications from 1299 taxpayers resulting in over \$75 million in taxes and identified 400 offshore promoters.[FN6]

In 2000, the Treasury Department and the IRS implemented a Qualified Intermediary (QI) program[FN] with a number of financial institutions in various countries including Liechtenstein Global Trust Group ("LGT")[FN8] in Liechtenstein and UBS in Switzerland.

Fast Forward

In June of 2008, a former UBS banker named Bradley Birkenfeld found himself facing significant jail time, so he did what any white col-

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lar criminal does — he cut a deal.[FN9] The result was an Information filed in the Southern District of Florida charging UBS[FN10] AG (hereinafter “UBS”) with conspiracy (18 USCA § 371) to conceal the identities and assets of U.S. taxpayers from the IRS and evading U.S. taxes. The Information charged UBS with knowingly and intentionally assisting U.S. taxpayers to file false income tax returns and fail to file FBARs. Further, the Information charged that the conspiracy began in 2000 and that there were 20,000 U.S. clients who concealed at least \$20 billion in assets.

Little did they know. Recent estimates of the number of U.S. UBS clients are as high as 52,000.

On February 19, 2009, the U.S. entered into a Deferred Prosecution Agreement with UBS AG. Under this Agreement UBS:

1. Accepted responsibility for violations of U.S. tax law emanating from its activities from 2000-2007;
2. Agreed to pay to the U.S. \$780 million including \$400 million of backup withholding which was required to be withheld from accounts from 2001-2008;
3. Agreed not to deduct any of the payments on its U.S. tax returns;
4. Agreed to require all U.S. clients to supply fully executed W-9 and to implement an “Exit Program” for existing U.S. clients;
5. Agreed to some sort of disclosure to the U.S. of identities and account information; and
6. Agreed to cooperate with the U.S. Government to the degree permitted under Swiss law.

On July 21, 2008, the IRS issued a “John Doe” Summons to UBS directing it to produce various documents relating to its undisclosed U.S. clients. On February 19, 2009, the U.S. filed a Petition to Enforce the Summons. On May 15, 2009 five business and banking groups urged Judge Gold to reject the IRS demands for names. The prior month, the Swiss government in a similar filing said any exchange of names and data should be handled through existing treaties rather than the courts. On May 7th, Judge Gold ordered U.S. Attorney General Eric Holder to respond to the Swiss Government and gave him until June 30th.

New Voluntary Disclosure Initiative

The IRS announced a new voluntary disclosure practice in three internal IRS memoranda publicly released on March 23, 2009.[FN11] The essence of the “carrot” offered by the IRS is that U.S. taxpayers must come forward prior to September 23, 2009, report their failure to comply fully with their U.S. reporting and compliance requirements with respect to certain offshore income or interests, and pay the income

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taxes, interest and certain penalties that are due. Specifically, this new voluntary disclosure program has three key elements:

1. The taxpayer must file six years of amended or delinquent U.S. income tax returns and reports, and pay the additional income taxes and accrued interest thereon. The delinquent reports could include: Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, which is used to report income allocated from Controlled Foreign Corporations; Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, which is used to report distributions by foreign trusts to U.S. persons; or Form 8621, Return by a Shareholder of a Passive Investment Company or Qualified Electing Fund, which is used to report income allocated from a Passive Foreign Investment Company. It would also include the necessary FBAR forms (TD F 90-22.1).

2. The taxpayer must pay a 20 percent accuracy related penalty (IRC § 6662) for income previously omitted from a return or a 25 percent delinquency penalty (IRC § 6651) for failure to file the return in question in a timely manner. One of these penalties must be applied to each of the six years in question, and "reasonable cause" may not be used as a defense against the imposition of the penalty.

3. The taxpayer must pay a one-time 20 percent penalty for the amount in either the foreign bank account or the undisclosed foreign entity based on the year with the highest potential penalty exposure. [FN 12]

There are two exceptions to these elements. First, if the period of noncompliance is less than six years, the relevant period is limited to the period of noncompliance. Second, the 20-percent "special" penalty, described in (3), can be reduced to 5 percent if the taxpayer did not establish the foreign account or entity; and all U.S. taxes have been paid on the funds in the account or foreign entity.

Taxpayers who are considering use of this new voluntary compliance program need to consider several important points. The program is not available to certain U.S. taxpayers. A taxpayer will not qualify for the program if the IRS has (i) already initiated a civil or criminal investigation of the taxpayer or one that will directly or indirectly involve the taxpayer; (ii) notified the taxpayer that it intends to commence such an examination; (iii) received information from a third party regarding the taxpayer's noncompliance. Disclosures will be first submitted to the Criminal Investigation unit of the IRS to determine the taxpayer's eligibility. If the taxpayer is eligible, the matter will be referred to the Philadelphia Offshore Identification Unit for civil processing.

The program requires that: (i) the taxpayer makes a full and complete voluntary disclosure; (ii) the taxpayer must assist the IRS in

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its investigation of offshore activities of other taxpayers and (iii) must disclose the person who guided or assisted the taxpayer in his or her noncompliance activities. If a taxpayer refuses to cooperate with the IRS, he or she risks losing the benefits of the voluntary disclosure program after the taxpayer's own information has been disclosed.

On May 6, 2009, the IRS posted on its website a series of questions and answers related the new Program. A short summary follows.

1. The internal guidance was issued according to the Service to resolve the cases in an organized manner and to make exposure to civil penalties more predictable. This would ensure that taxpayers are treated consistently and predictably.

2. The objective is to bring taxpayers into compliance and to gather information from taxpayer as to how foreign accounts and entities are promoted.

3. The Service emphasizes that its Voluntary Disclosure Practice has been around a long time and is found in the IRM at 9.5.11.9.

4. Tax professionals or individuals who want to initiate a voluntary disclosure should call their local CI office. For a list of CI offices, visit: www.irs.gov/compliance/enforcement/article/0,,id-205909,00.html. This list has a contact phone number for every state, Canada and virtually every foreign country. Taxpayers with questions may call the IRS Voluntary Disclosure Hotline at (215) 516-4777, visit www.irs.gov, or contact their nearest CI office.

5. The form/format of the voluntary disclosure is: The taxpayer's representative should send a letter to the nearest Special Agent in Charge, IRS Criminal Investigation, stating that the taxpayer wishes to make a voluntary disclosure. The letter must include name, address, Social Security Number or other Taxpayer Identification Number, passport number and date of birth, and should also include an explanation of any previously unreported or underreported income or incorrectly claimed deductions or credits related to undisclosed foreign accounts or undisclosed foreign entities, including the reason(s) for the error or omission. It should also include a power of attorney (Form 2848), and daytime contact information. If the taxpayer has already completed the amended or delinquent returns, those should be submitted with the letter, but it is not necessary to include them with the initial submission. At a minimum, however, the initial submission must include the taxpayer's name and identifying information described above. IRS Criminal Investigation will follow up on the facts and circumstances to assess the timeliness, completeness, and truthfulness of the voluntary disclosure.

6. If the taxpayer is currently under examination he cannot come in under voluntary disclosure.

7. Taxpayers with offshore merchant accounts may also come

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under the voluntary disclosure practice. Note: In April of 2009, the IRS served a "John Doe" summons against First Data Corp. seeking the names of merchants who might be using a Bermuda corporation to funnel payment card sales into foreign accounts.

8. If a taxpayer has filed and paid all of the income taxes but has not filed all or any of the prior FBARs, he or she need not use the voluntary disclosure program. Rather, the taxpayer should file the delinquent FBAR reports according to the instructions and attach a statement explaining why the reports are filed late. Send copies of the delinquent FBARs, together with copies of tax returns for all relevant years, by September 23, 2009, to the Philadelphia Offshore Identification Unit at:

Internal Revenue Service

11501 Roosevelt Blvd.

South Bldg., Room 2002

Philadelphia, PA 19154

Attn: Charlie Judge, Offshore Unit, DP S-611

The IRS will not impose a penalty for the failure to file the FBARs.

9. What about "quiet disclosure"? Many practitioners use and advise the use of "quiet disclosure". "Quiet" disclosures are accomplished by filing amended returns and paying any related tax and interest for previously unreported offshore income without otherwise notifying the IRS.

In its question and answer format the Service acknowledges this practice and neither condemns nor applauds it. Rather, the Service states:

"Taxpayers who have already made "quiet" disclosures may take advantage of the penalty framework applicable to voluntary disclosure requests regarding unreported offshore accounts and entities. Those taxpayers must send previously submitted documents, including copies of amended returns, to their local CI office by September 23, 2009.

Taxpayers are strongly encouraged to come forward under the Voluntary Disclosure Practice to make timely, accurate, and complete disclosures. Those taxpayers making "Quiet" disclosures should be aware of the risk of being examined and potentially criminally prosecuted for all applicable years.

The IRS has identified, and will continue to identify, amended tax returns reporting increases in income. The IRS will be closely reviewing these returns to determine whether enforcement action is appropriate."

10. An example of the voluntary disclosure is provided in the Q&A:

Assume the taxpayer has the following amounts in a foreign ac-

count over a period of six years. Although the amount on deposit may have been in the account for many years, it is assumed for purposes of the example that it is not unreported income in 2003.

Year	Amount on Deposit	Interest Income	Account Balance
2003	\$1,000,000	50,000	1,050,000
2004		50,000	1,100,000
2005		50,000	1,150,000
2006		50,000	1,200,000
2007		50,000	1,250,000
2008		50,000	1,300,000

(NOTE: This example does not provide for compounded interest, and assumes the taxpayer is in the 35-percent tax bracket, files a return but does not include the foreign account or the interest income on the return, and the maximum applicable penalties are imposed.)

If the taxpayer comes forward and has their voluntary disclosure accepted by the IRS, they face this potential scenario:

They would pay \$386,000 plus interest. This includes:

- Tax of \$105,000 (six years at \$17,500) plus interest,
- An accuracy-related penalty of \$21,000 (i.e., \$105,000 x 20%), and
- An additional penalty, in lieu of the FBAR and other potential penalties that may apply, of \$260,000 (i.e., \$1,300,000 x 20%).

If the taxpayer above didn't come forward, he or she could be liable for up to \$2,306,000 in tax, accuracy penalty and FBAR penalty. This amount does not include civil fraud or willful failure to file the FBAR. The penalties for willful failure to file the FBAR are:

2003-2005	\$100,000 each year
2006	\$600,000 each year
2007	\$625,000 each year
2008	\$625,000 each year

11. The years included for Voluntary Disclosure are limited to 2003-2008.

12. The period for making the voluntary disclosure ends September 23, 2009. It is being made available for 6 months only, beginning March 23, 2009. At the end of that time, the Service will evaluate and decide whether to go forward and how. Taxpayers are cautioned not to wait hoping there will be a better deal or that the current terms will even be available after September 23, 2009. If the IRS receives specific information before a taxpayer attempts voluntary disclosure the disclosure will not be timely.

The penalty framework described in the March 23 memorandum will apply to all voluntary disclosures in process within the 6-month

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timeframe, so difficulty in completing a voluntary disclosure started during that period will not disqualify a cooperative taxpayer from the penalty relief. The key is to notify the Service of the intent to make a voluntary disclosure as soon as possible, and in any event, by September 23, 2009. Delays in getting records and/or filing the amended returns prior to September 23 will not foreclose getting the benefit.

13. Entities such as corporations, partnerships, and trusts are eligible to make voluntary disclosure and the 20% penalty applies.

14. There are presently no specific questions for taxpayers to answer. However, experience to date has been that Agents have a series of questions which are invariably asked and must be answered.

15. In order to determine the highest rate in each foreign bank account for purposes of the FBAR penalty, the Service advises that the exchange rate to be used is that in effect at the end of the year. Apply that rate of exchange to the highest balance in the account during the year.

16. In addition to the amended income tax returns, the taxpayer must also file:

Copies of original and amended federal income tax returns for tax periods covered by the voluntary disclosure

Complete and accurate amended federal income tax returns (or original returns, if not previously filed) of the taxpayer for all tax years covered by the voluntary disclosure;

An explanation of previously unreported or underreported income or incorrectly claimed deductions or credits related to undisclosed foreign accounts or undisclosed foreign entities, including the reason(s) for the error or omission;

If the taxpayer is a decedent's estate, or is an individual who participated in the failure to report the foreign account or foreign entity in a required gift or estate tax return, either as executor or advisor, complete and accurate amended estate or gift tax returns (original returns, if not previously filed) necessary to correct the underreporting of assets held in or transferred through undisclosed foreign accounts or foreign entities;

Complete and accurate amended information returns required to be filed by the taxpayer, including, but not limited to, Forms 3520, 3520-A, 5471, 5472, 926 and 8865 (or originals, if not previously filed) for all tax years covered by the voluntary disclosure, for which the taxpayer requests relief; and

Complete and accurate Form TD F 90.22-1, Report of Foreign Bank and Financial Accounts, for foreign accounts maintained during calendar years covered by the voluntary disclosure. Taxpayers are further advised to use the most current Form TDF 90.22-1 (revised October 2008) available for all reporting.

17. A taxpayer may use Voluntary Disclosure even if they cannot fully pay the tax and penalty. Although the March 23, 2009 memorandum states that the taxes, penalty and interest must be paid when the Closing Agreement is returned to the Service, it is possible to negotiate payment arrangements. The burden will be on the taxpayer to show an inability to pay.

18. No mediation at Appeals is available to negotiate different terms under the Closing Agreement.

19. The IRS expects taxpayers to seek qualified legal advice and representation in connection with considering and making a voluntary disclosure. If a taxpayer seeks the advice of a tax practitioner but nonetheless decides not to make a voluntary disclosure despite the taxpayer's noncompliance with United States tax laws, Circular 230, section 10.21, requires the practitioner to advise the client of the fact of the client's noncompliance and the consequences of the client's noncompliance as provided under the Code and regulations.

20. The Service discourages pre-disclosure hypothetical discussions posed to the IRS, and cautions that initiating these discussions does not itself constitute Voluntary Disclosure under the procedure.

UBS Response

As part of the Deferred Prosecution Agreement, UBS sent a letter to each of its U.S. clients advising them that within 45 days of the letter UBS would be terminating the client's account. Clients were advised to consult with a U.S. tax advisor to deter the U.S. tax consequences in connection with closure of the account and any prior year tax obligations.

Finally, the letter advises taxpayer of the "John Doe" Summons issued to it without indicating whether or not it will comply.

By separate correspondence which was not part of the DPA, UBS informed account holders of what records the IRS summonsed and asked U.S. account holders if they were "willing to cooperate with the IRS and to disclose to the IRS... all relevant information relating to the account held by UBS AG." The document also requests that the account holder authorize UBS to disclose to the IRS and to "waive the protection provided under bank secrecy laws of Switzerland".

Conclusion

From a purely legal point of view, it seems clear that UBS will be required to provide the names of all its non-compliant U.S. clients. An analysis of briefs in the UBS and the LTG cases make that conclusion inescapable. It is certainly possible that because of the political and economic issues involved that UBS will be allowed to somehow "save face" and still comply. With that in mind, U.S. taxpayers should start the process of voluntary compliance under the new initiative. This includes

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persons with dual citizenships, resident aliens, and individuals with indirect interests in foreign entities. Waiting will not result in a better deal. Waiting could result in a criminal prosecution. On April 2, 2009, the IRS indicted Steven Michael Rubenstein on charges of filing a false income tax return and failing to report income and assets in concealed UBS accounts. Similarly, Robert Moran on April 14, 2009 pleaded guilty to filing false income tax returns.[FN13]

Those with accounts in other banks should also consider voluntary disclosure as the IRS is planning to pursue "John Doe" summons against other banks. [FN 14]

There are nevertheless a number of unanswered questions and problems which remain.

1. UBS is paying \$400 million as back-up withholding. Are taxpayers who make voluntary disclosure entitled to an allocation of those monies as credits against taxes owed?

2. If UBS ultimately complies, taxpayers may have a civil action against them for a violation of their own bank secrecy provisions. Indeed, they recognize this possibility and are asking clients to waive the application of those laws to insulate them from lawsuit.

These and other unanswered questions mean that taxpayers should consult a qualified tax attorney as they move forward.

FOOTNOTES

FN 1: 31 USCA § 5314.

FN 2: In April of 2003, the Financial Enforcement Network (FinCEN) delegated enforcement of the FBAR to the IRS.

FN 3: 31 USCA § 5321(a)(5). The FBAR Penalties are authorized in Title 31 ("Money and Finance") of the United States Code, not Title 25 (the Internal Revenue Code). The FBAR provisions originated in the Bank Secrecy Act, Pub.L. 91-508, 84 Stat. 1114 (1970); and after the terrorist attacks of September 11, 2001, Congress directed, in the USA Patriot Act, that attempts should be made to improve compliance with these provisions. Title 31 U.S.C. sec. 5314 (2000) authorizes the Secretary of the Treasury to "require a... citizen of the United States... to... keep records and file reports, when the... citizen... maintains a relation for any person with a foreign financial agency." The Secretary of the Treasury exercised that authority by requiring that citizens report their foreign bank accounts, see 31 C.F.R sec. 103.24 (2007), and by ordering that the reports be made on forms to be filed with the IRS. Section 5321(a) of Title 31 provides for civil penalties for violations of the reporting requirements of section 5314, and section 5321(b)(1) provides that the Secretary of the Treasury may assess those penalties. Section 5321(b)(2) provides that the Secretary may "commence a civil action to recover" the penalty. The Secretary's authority to assess the civil FBAR

penalties has been delegated to the IRS. See 31 C.F.R. sec. 103.56(g)(2007) See *Williams v. C.I.R.* (31 TC No. 6 (2008)) (holding that the FBAR penalties are not reviewable by the Tax Court in the absence of a notice of deficiency (§ 6212) or a notice of determination under § 6321 or 6331.

FN 4: Revenue Procedure 2003-11 2003-4 I.R.B. 311.

FN 5: The OCCP was initiated by the IRS in 2000. As of July 31, 2003 the OCCP had resulted in approximately 2,800 tax returns selected for audit. See Joint Committee on Taxation, "Tax Compliance and Enforcement Issues with Hearing before the Subcommittee on Select Revenue Measures of the House Committee on Ways and Means" (March 30, 2009) 2009 WL 885334.

FN 6: See Joint Committee on Taxation Report supra FN5.

FN 7: See Revenue Procedure 2000-12, 2000-1 CB 387. QI withholding agreements allow for foreign institutions (banks, etc) whereby the intermediary secures a W-9 or profit of exemption from a payee to avoid withholding taxes at the backup rate. The QI agreements provide benefits to both the U.S. and the foreign institutions. The Treasury Department signed a QI Agreement with Switzerland in 2001.

FN 8: LGT, like UBS, apparently assisted U.S. taxpayers from 1998-2007 in hiding assets offshore. An inquiry into its activities was originated by German authorities. This inquiry resulted in enforcement action by the IRS involving more than 100 U.S. taxpayers. See Randall Jackson, "The Mouse That Roared: Liechtenstein's Tax Mess", 49 Tax Notes Int'l 707 (2008) Additionally, in December of 2008, the U.S. signed a Tax Information Exchange Agreement ("TIEA"), the terms of which would allow Liechtenstein to retain its treatment as an eligible QI jurisdiction if it in return changed its bank secrecy laws.

FN 9: *U.S. v. Birkenfeld*, Docket No. 08-CR-60099 ZLOCH (USDC SD Fla, 6-19-08) (Birkenfeld plead guilty to conspiring with an American billionaire real estate developer, Igor Olenicoff, Swiss bankers and his co-defendant, Mario Staggi, to help Olenicoff evade paying \$7.2 million in taxes by assisting in concealing \$200 million of assets in Switzerland and Liechtenstein. Birkenfeld admitted that between 2001 and 2006, while he was employed as a director of UBS, he routinely traveled to and had contacts within the United States to help wealthy Americans conceal their ownership in assets held offshore and evade the payment of taxes on the income generated from those assets. In evidence provided by Birkenfeld to the court, managers and bankers at the firm, including Birkenfeld, assisted the U.S. clients in concealing their ownership of the assets held offshore by helping these wealthy individuals create nominee and sham entities. He and additional private bankers at UBS advised U.S. clients to place cash and valuables in Swiss safety deposit boxes and purchase jewels, artwork and luxury items using the funds in their

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Swiss bank account while overseas. Additionally, they advised the clients to misrepresent the receipt of funds from UBS in the United States as loans from the bank; destroy all off-shore banking records existing in the U.S.; utilize Swiss bank credit cards that they claimed could not be discovered by U.S. authorities; and file false U.S. individual income tax returns that omitted income earned by the clients and fraudulently misrepresent that the clients did not have an interest in and signature authority over accounts held offshore.)

FN 10: UBS AG (UBS) is one of the largest banks in the world, currently managing client assets in excess of \$2.8 trillion. UBS is the product of a 1998 merger between two leading Swiss banks, Union Bank of Switzerland and Swiss Bank Corporation. In 2000, it grew even larger after merging with PaineWebber Inc., a U.S. securities firm with more than 8,000 brokers, nearly \$500 billion in client assets, and a substantial U.S. clientele.

UBS is incorporated and domiciled in Switzerland, but operates in 50 countries with more than 80,000 employees.

UBS AG is the parent company of the UBS Group which includes numerous subsidiaries and affiliates. UBS Group is organized into three major business lines: Global Wealth Management & Business Banking, Global Asset Management, and an Investment Bank. UBS has one of the largest private banking operations in the world, with hundreds of private bankers dedicated to providing financial services to wealthy individuals and their families around the world. In addition to its U.S.-based operations, UBS services U.S. clients through business units based in Switzerland and other countries. For example, beginning in about 2003, UBS established "U.S. International Desks" in three of its Swiss locations, Geneva, Lugano, and Zurich. These desks, staffed with private bankers known as Client Advisors, deal exclusively with U.S. clients. The U.S. International Desks originally categorized their U.S. clients according to the U.S. region where they lived, but in 2004, reclassified them according to the magnitude of their assets. "Core Affluent" clients were defined as those with assets ranging from 250 to 2 million Swiss Francs; "High Net Worth Individuals" (HNWI) had assets ranging from 2 million to 50 million Swiss Francs; and "Key Clients" had assets worth more than 50 million Swiss Francs. In 2005, UBS formed a new Swiss subsidiary, called "Swiss Financial Advisers," which is an investment adviser registered with the SEC. SFA is tasked with "serving US clients outside of Switzerland." All U.S. clients of SFA are required to file W-9 Forms. See U.S. v. UBS AG, Docket No 09-20423, (USDC SD Fla) (Declaration of Revenue Agent David Reeves at 38-39)

FN 11: These memoranda are titled Memorandum on Routing of Voluntary Disclosure Requests, Memorandum on SB/SE and LMSB Offshore Examination Cases, and Memorandum Authorizing Application of Penalty Framework. Direct links to these materials are available at the following: <http://www.irs.gov/newsroom/article/0,,id=206012,00.html>.

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FN 12: 31 USCA § 5321

FN 13: See News Release, April 14, 2009, www.usdoj.gov

FN 14: See, Mollenkamp, "IRS To Expand Use of 'John Doe' tactic",
April 29, 2009, www.wsj.com

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