

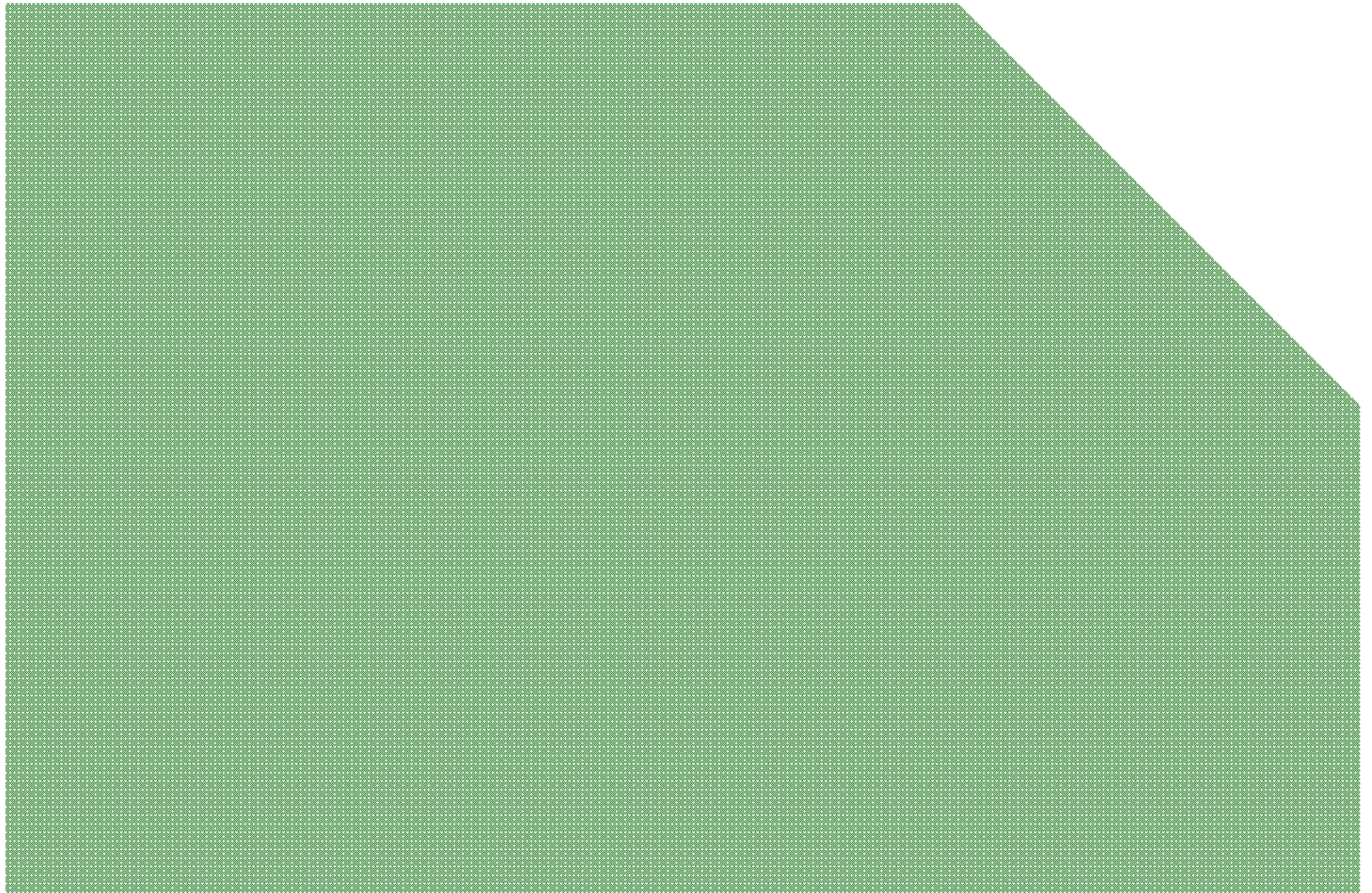
# Fatca – and other EoI Requests

Geneva – September 19, 2011



**Leonard Toenz**  
ALTENBURGER LTD legal + tax  
Seestrasse 39  
CH-8700 Küsnacht-Zürich  
toenz@altenburger.ch

- Cross-Border Exchange of Information (**EoI**)
- OECD MC
- US' special EoI Requests
- New DTT UK + G
- FATCA



## Different Sources of Law – Different Methods (1/2)

Source of Law	Type of Law	Subject	Form of Exchange
<b>OECD MC / DTT / TIEA</b>	Bilateral	Direct taxes	On request
<b>US' special Eol Requests</b>	Unilateral	Direct taxes	On request
<b>New DTT with UK + G / EU Savings Tax</b>	Bilateral	Direct taxes	Automatic
<b>FATCA</b>	Unilateral	U.S Accounts	Automatic

## Different Sources of Law – Different Methods (2/2)

Source of Law	Scope of Information	Reciprocity	Subsidiarity
<b>OECD MC / DTT / TIEA</b>	Taxpayer (named)	Yes	Yes
<b>US' special Eol Requests</b>	Taxpayer (named)	No	No
<b>New DTT with UK + G / EU Savings Tax</b>	Taxpayer (unnamed)	No	Yes
<b>FATCA</b>	U.S. Account holder (named)	No	No



## Art. 26 OECD MC - Overview

- EoI on Request
- Requesting Country must have a „reasonable suspicion“
- Information must be „foreseeably relevant“ (no fishing expeditions)
- Implementing domestic legislation (in the requested countries)
- Due process: the foreign taxpayer must have the possibility to file an appeal before information is being released to the requesting country

## OECD Global Forum

- 2010 OECD has launched the **Peer Review Process**
  - Phase 1 will examine legal and regulatory framework
  - Phase 2 will examine implementation of the standards in practice
  
- Schedule for **Switzerland**:
  - Phase 1: 2nd half 2010
  - Phase 2: 2nd half 2012

## Peer Review: Swiss Treaties do not meet Art. 26 OECD Standards

- OECD-Standard (Art. 5 para. 5 (a) OECD MC / TIEA):  
*“the identity of the person under examination or investigation....”*
- OECD-Standard (Art. 5 para. 5 (e) OECD MC / TIEA):  
*“to the extent known, the name and the address of any person believed to be in possession of the requested information”*
- Swiss-Standard (except for 2009 protocol with the U.S.):  
*“name and address of the person under examination or investigation”*
- Swiss-Standard (except for the U.S. and France):  
*“name and address of the person believed to be in possession of the requested information”*

# US' special EoI Requests



## UBS Case

- Disclosure of data on 255 clients without informing clients in February 2009
- John Doe Summons against UBS
- Agreement relating to the disclosure of 4'450 UBS clients being US persons

## New Case against Credit Suisse and others

- Negotiations with US of an Agreement pursuant to the model of Agreement reached with UK + G
- US refusal
- Swiss proposal to give new interpretation to the US-CH DTT: Collective Eol Requests are admissible pursuant to the language of the DTT
- New interpretation needs approval of Parliament: politically controversial, fishing expedition

## Possible deal

- Collective Eol requests based on new interpretation of DTT
- No further requests for the past
- Penalty to be paid

# New DTT UK + G

ALTENBURGER



## New DTT UK (1/2)

- Agreement initialled in August 2011
  
- Text will be made available after signing
  
- Concept: «Payment/Withholding of foreign taxes instead of disclosure of identity of taxpayer»
  
- Clearance of the past
  - One-off deduction between 19% - 35% of total assets  
or
  - Voluntary disclosure
  - Upfront payment of CHF 500 million

## New DTT UK (2/2)

- Future taxation: Withholding at rates of
  - 40% for interest
  - 40% for dividends and
  - 27% for capital gains
  
- Accounts in place on 31 May 2013 are concerned
  
- Easier access to UK market for financial institutions
  
- Significant cost of implementation for financial institutions
  
- Effective as per 1 January 2013

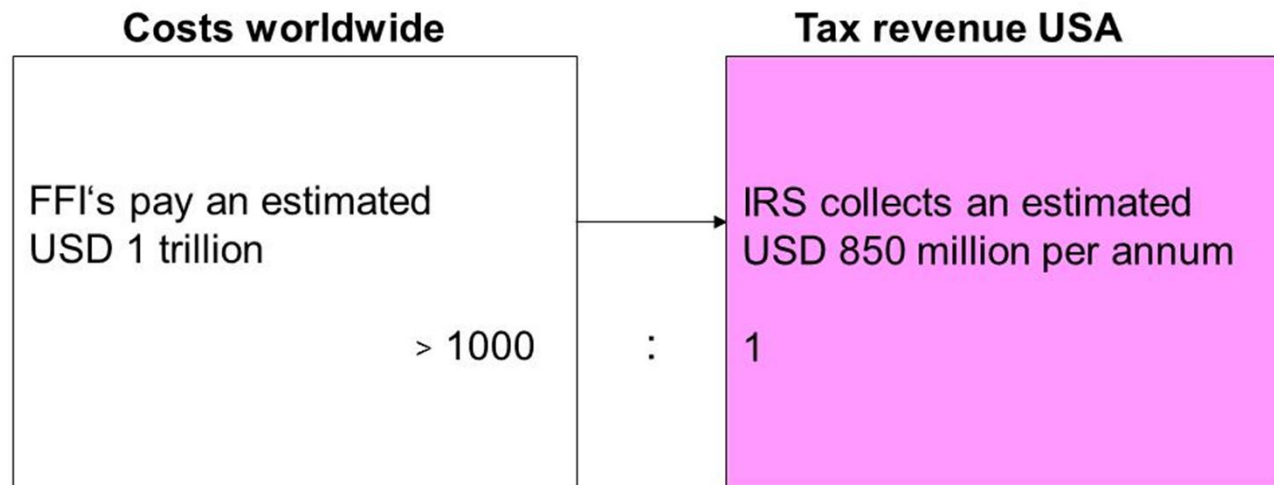
## New DTT Germany

- Same pattern as UK Agreement
- Upfront payment of CHF 2 billions
- Future taxation: 26.375% on revenues and capital gains
- No more purchase of stolen bank data



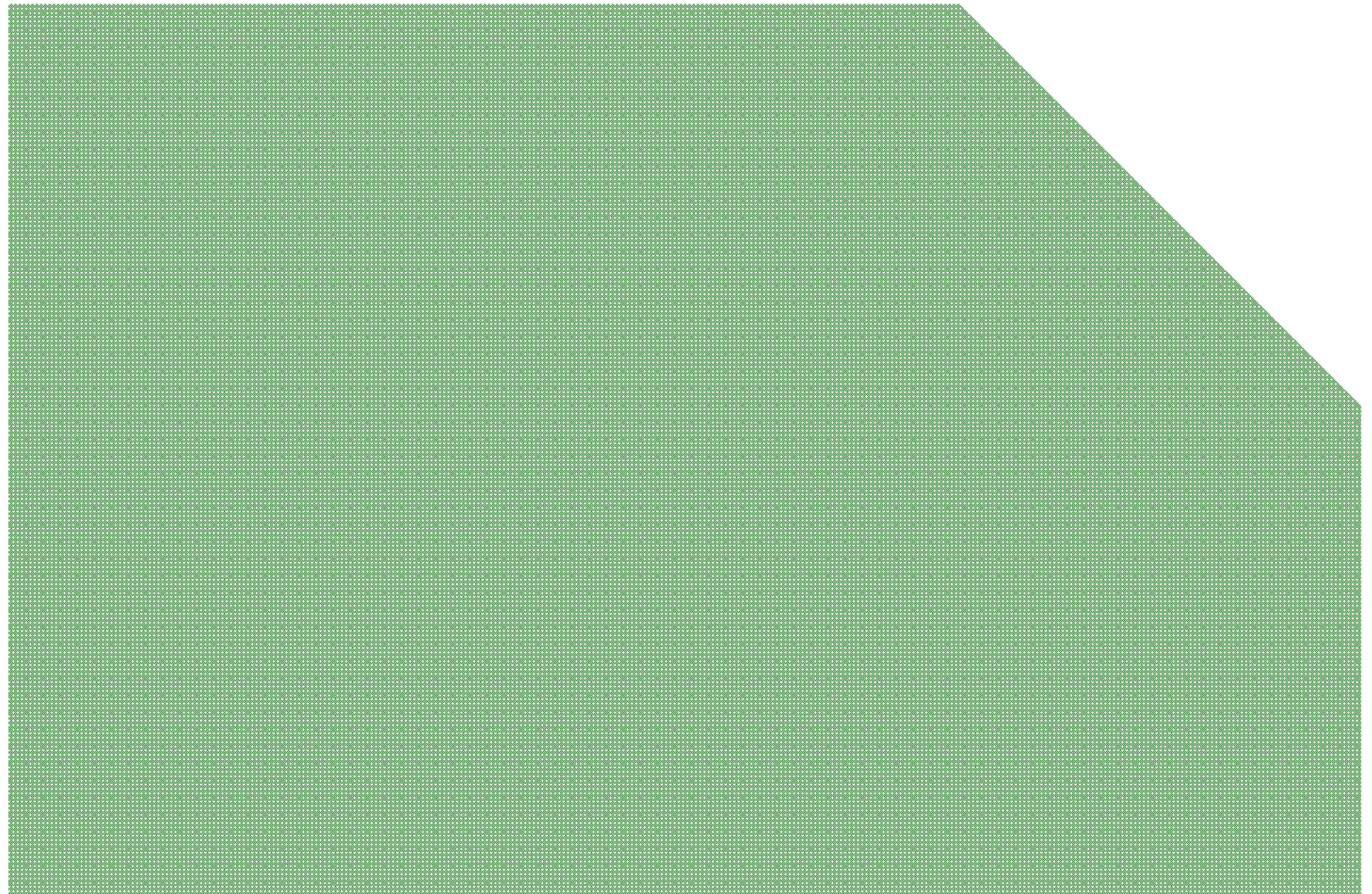
- Automatic Eol, incorporates on «Extraterritorial Unilateralism»
- Issue of (Dis-) Proportionality and Tax (In-) Efficiency

## Externalizing the Cost for the Collection of U.S. Tax



# Closing Remarks

---



- Common purpose of the different cross-border Eol systems is **tax enforcement**
- **OECD MC** states in Art. 26 the **Eol on request**
- Pursuant to **FATCA**, the U.S. will in effect require **automatic Eol** about U.S. Accounts
- FATCA obliges the FFI's around the world to provide information about «U.S. Accounts» without any reciprocity
- Swiss strategy: Eol based on DTT / **withholding regime** rather than **automatic Eol**

Thank you for your attention!



**Zurich**  
Seestrasse 39  
CH - 8700 Küsnacht  
Tel. +41 44 914 88 88  
[zurich@altenburger.ch](mailto:zurich@altenburger.ch)  
[www.altenburger.ch](http://www.altenburger.ch)

**Geneva**  
Rue Rodolphe-Toepffer 11bis  
CH - 1206 Geneva  
Tel. +41 22 789 50 20  
[geneva@altenburger.ch](mailto:geneva@altenburger.ch)  
[www.altenburger.ch](http://www.altenburger.ch)