

VOLUNTARY DISCLOSURE –  
MULTI-JURISDICTIONAL BEST PRACTICE  
REGULARIZATION APPROACH

# AGENDA

BAUMGARTNER & PARTNER

27 July 2016

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- I. INTRODUCTION
- II. OVERVIEW VOLUNTARY DISCLOSURE PROGRAMS (VDP)
- III. REGULARIZATION APPROACH
- IV. PSYCHOLOGICAL ASPECTS
- V. Q&A

# I. BAUMGARTNER & PARTNER: WHO WE ARE

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- BAUMGARTNER & PARTNER was established in 2005 and offers tailor-made tax and legal advice. BAUMGARTNER & PARTNER is one of the leading firms in the field of criminal tax law, especially with regard to voluntary disclosures.
- We have more than 10 years of experience with voluntary disclosures in different countries. We successfully filed several thousand cases so far, including Germany which is known for its most complex taxation and voluntary disclosure system.
- BAUMGARTNER & PARTNER cooperates with law firms and tax advisors all over the world to assist persons who seek legal advice before and during the filing of a voluntary disclosure.

# I. BAUMGARTNER & PARTNER: WHO WE ARE

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- The services rendered by BAUMGARTNER & PARTNER within the framework of these cooperation projects are intended for persons with investment assets in countries outside the country of residence. In many cases the European countries where the foreign assets are deposited are Switzerland, Liechtenstein, Luxembourg, Austria and Germany.
- The work of BAUMGARTNER & PARTNER consists mainly in the procurement and processing of the data and documents necessary for the voluntary disclosure. The advantage for clients of rendering the preliminary work outside the country of residence is the continuity of the high data protection level in a secure environment.

# I. INTRODUCTION

- **New era of tax transparency:**

- Automatic Exchange of Information (AEOI): as at 9 May 2016  
101 jurisdictions have committed (e.g. Brazil, Switzerland, Germany, UK, Liechtenstein, Luxembourg)  
First Exchange of Information to Brazil from other participating jurisdictions will occur in 2018 with data of 2017
- Base Erosion and Profit Shifting (BEPS) Project: corporate tax transparency
- Risk of group requests (where agreed in a double tax treaty)
- Panama Papers: considerations of the informal G5 group of states (UK, France, Germany, Spain and Italy) with regard to an automatic exchange of information on beneficial ownership

## II. OVERVIEW VDP

- In the light of the future transparency many states established VDPs.
- There are both general and special Voluntary Disclosure Programs, currently in around 35 jurisdictions.
- Typical elements of a Voluntary Disclosure Program are:
  - Immunity from criminal prosecution with respect to tax evasion is granted.
  - Evaded taxes have to be paid according to the provisions of the program (in many cases a specific reduced tax rate applies)
  - Monetary penalties and interests may be reduced or waived in whole.
  - In most cases no repatriation of assets is necessary.

## II. OVERVIEW VDP

- Countries with **special (e.g. temporary) VDP**, for instance:
  - India: VDP possible by 30 September 2017
  - Brazil: VDP possible by 31 October 2016
  - Malaysia: VDP possible by 15 December 2016
  - Turkey: VDP possible by 31 December 2016  
(pending legislative procedure)
  - Argentina: VDP possible by 31 March 2017
  - South Africa: VDP possible by 31 March 2017
  - Indonesia: VDP possible by 31 March 2017
  - Luxembourg: VDP possible by 31 December 2017

## II. OVERVIEW VDP

- Countries with **special (e.g. temporary) VDP, already ended**, for instance:
  - Mexico: VDP running from 1 January 2016 to 30 June 2016
  - Chile: VDP running from 1 January 2015 to 31 December 2015
  - Russia: VDP running from 8 June 2015 to 30 June 2016
  
- Usually, only short timeline to apply for a Voluntary Disclosure Program



## II. OVERVIEW VDP

- Countries with **general VDP**, for instance:
  - Austria
  - Germany
  - Liechtenstein
  - Switzerland
  - Belgium (pending legislative procedure)

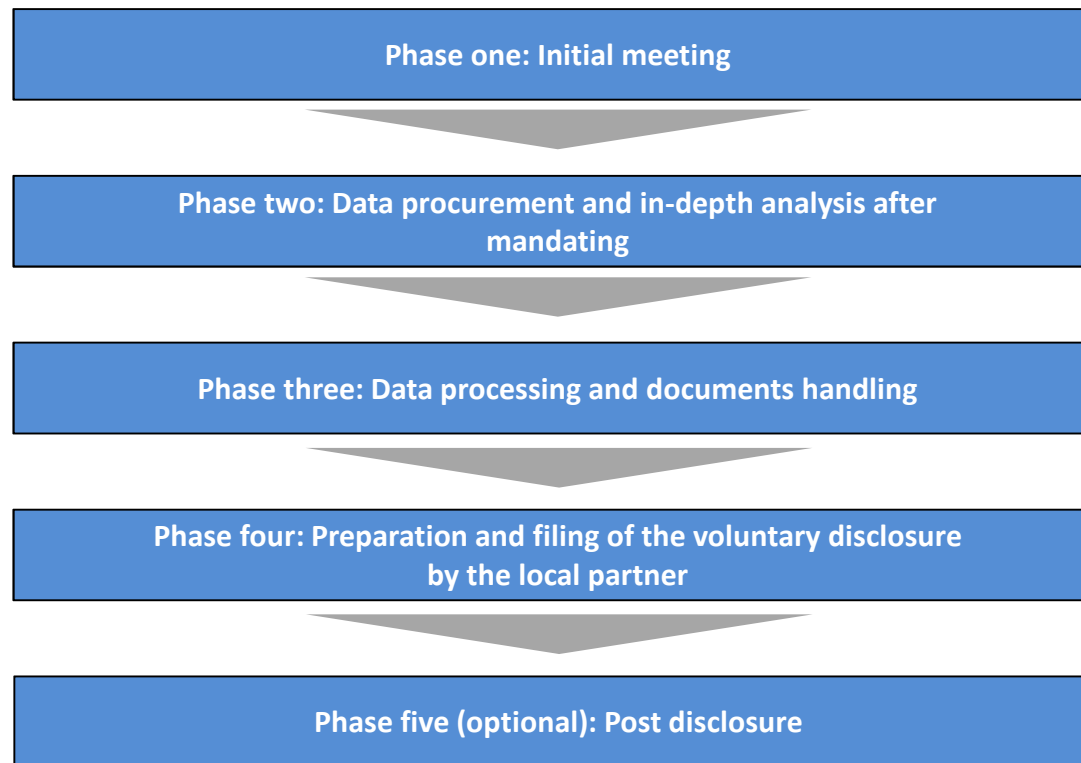
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## Overview: Phases of regularization procedure



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## ■ Phase one: Initial meeting

- Free initial client meeting in Zurich, Luxembourg or Germany, in one of our offices or in an office of a bank or a service provider if the office is in a city where Baumgartner & Partner is represented or alternatively free initial consultation by phone
- Meeting possible also on an anonymous basis if it is a client known by a financial, fiduciary or tax/legal consultancy service provider
- Information about the possibility to file a voluntary disclosure, e.g. availability of a permanent or temporary Voluntary Disclosure Program, possibility of a voluntary disclosure on an administrative basis, possible limitation periods, potential reasons for an ineffectiveness of a voluntary disclosure, general considerations according to a disclosure
- First non-binding assessment of possible tax risks on the basis of the client's description of the facts
- Identification of persons affected by a possible voluntary disclosure (e.g. other family members, employees)

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- **Phase two: Data procurement and in-depth analysis after mandating**
  - Request of all relevant bank or other documents (documents of trusts, foundations, companies, funds)
  - Close coordination with banks, trustees, councils of foundations, wealth managers etc.
  - Evaluation of bank documents
  - Evaluation of documents of structures and vehicles such as trusts, foundations or other fiduciary structures, funds or CFC-structures including underlying companies in close cooperation with the service providers
  - Clarification whether the form of the structure corresponds with the substance
  - Clarification of the legal and the beneficial ownership of assets according to the provisions of the respective national law
  - Clarification of the correct attribution of assets and income for tax purposes

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- **Phase three: Data processing and documents handling**
  - Processing of all relevant data according to the respective national law (such as list of assets, incoming and outgoing payments in order to check the source of funds, etc.) in close cooperation with the local partner
  - If necessary, arranging the legal certification procedure and the issuance of apostils
  - If necessary, arranging the translation of documents
  - Handing over the data and the documents to the local partner upon approval by the client

## VDP Brazil:

- A failure related to documentation requested by the tax office may lead to exclusion from the VDP, valid documentation in the appropriate format is an indispensable requirement.
- Until 13 August 2016 foreign public documents need to be notarized in the foreign country and subject to legalization (stamped) by the nearest Brazilian consulate or embassy.
- As from 14 August 2016 notarized and apostilled documents according to the 1961 Hague Apostille Convention will be sufficient.

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- **Phase four: Preparation and filing of the voluntary disclosure by the local partner**
  - Evaluation of the documents, estimation of the tax burden and preparation of the voluntary disclosure by the local partner
  - Filing the voluntary disclosure with the local tax authorities by the local partner upon decision of the client

## VDP Brazil:

- No submission of documents is necessary, but taxpayer needs to have them for future submission to the Revenue Department if so requested.
- Thus, the documentation should be obtained as soon as possible, especially because of short deadlines applying if disclosure procedure is initiated.

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- **Phase five (optional): Post disclosure**
  - Reevaluation and, if necessary, adjustment of existing structures (e.g. trusts, foundations, companies, funds)
  - Assistance in establishing new structures for the post-disclosure era insofar they would be more appropriate
  - Tax reporting for future tax periods for different countries (e.g. Brazil) according to their local laws
  - Refund of tax deducted at source (e.g. Swiss Verrechnungssteuer, *VST*) if a double tax treaty applies

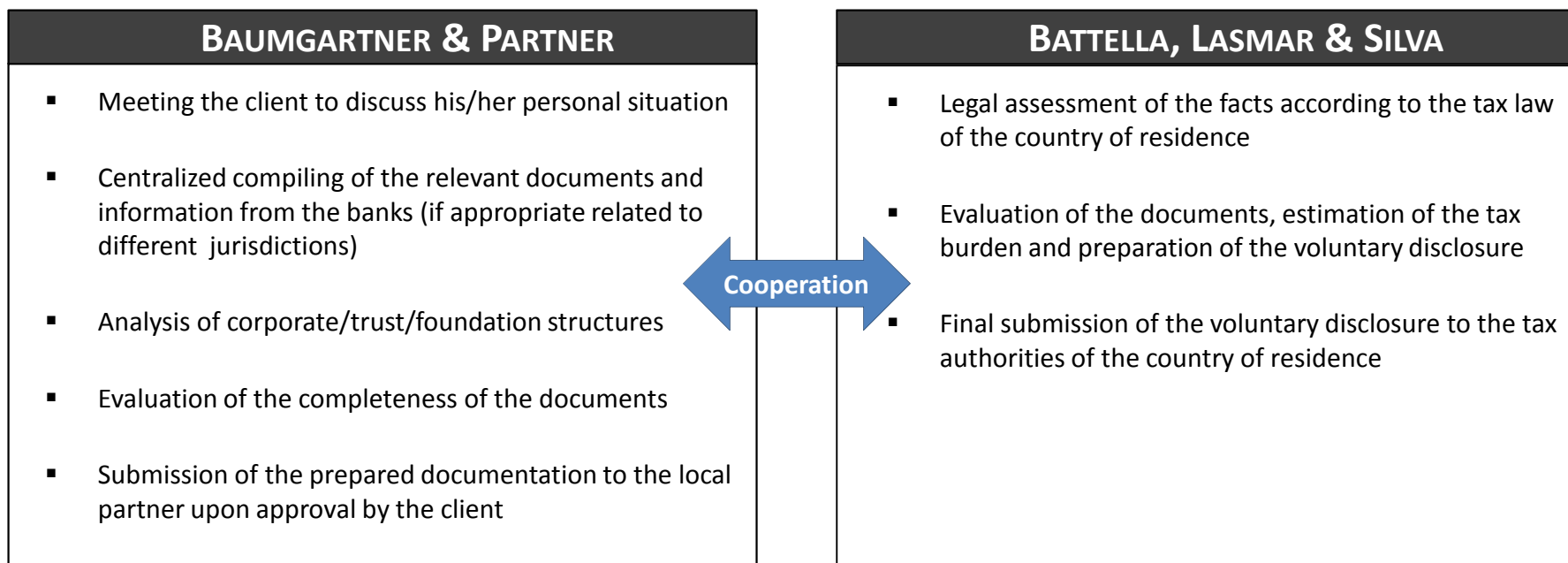
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## Best Practice related to Voluntary Disclosure using the example Brazil





# IV. PSYCHOLOGICAL ASPECTS

## Overview: Psychological aspects of a voluntary disclosure/conflicting interests?

### Tax evader

- Pay nothing or at least as little as possible
- Knowledge of facts for a carefully weighed decision
- Avoidance of criminal prosecution
- Absolute confidentiality
- Harmony and peace in the family
- Cultural specificities

### Tax administration

- Completeness of all relevant information
- Payment of taxes, fees and penalties
- Possible prosecution

Psychological aspects/  
conflicting interests?

### Involved banks/fiduciary services providers

- Keeping the client
- Full tax compliance of the client
- Avoidance of the violation of compliance requirements

### Legal or tax advisor of the client

- Keeping the client
- Breach of confidence
- Avoidance of the risk of a criminal prosecution

# V. Q&A

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# Questions?

# DISCLAIMER

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The information contained in this presentation is for general guidance only. This presentation does not and cannot render or replace legal or other professional advice. Please consult BAUMGARTNER & PARTNER in order to obtain such services.

# YOUR PERSONAL CONTACTS

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