



Basic information

Date 10 August 2011

Tax agreement between Switzerland and Germany

Germany and Switzerland wish to consolidate relations in the financial area and strengthen cooperation regarding tax matters. Consequently, both countries' negotiators worked on reaching an agreement that will ensure effective taxation of German taxpayers' assets in Switzerland and formally concluded their negotiations on Wednesday, 10 August 2011 with the initialling of the agreement. This should apply both retroactively and for the future, and bring about

1. the levying of a tax with a fundamental compensatory effect on future investment income and gains on assets in accordance with the provisions of this agreement, and
2. the retrospective taxation of German taxpayers' previously untaxed assets in Switzerland under this agreement.

The Swiss and German governments have been occupied with the taxation of German citizens' investments in Switzerland for quite some time. It became apparent that a satisfactory solution could not be achieved with unilateral measures alone. Germany and Switzerland therefore adopted a joint approach in order to find a solution that would both fulfil future German tax claims regarding the investments of German taxpayers in Switzerland and set out acceptable provisions for all concerned regarding the past in the form of lump-sum retrospective taxation.

The agreement negotiated combines two legitimate concerns, i.e. the protection of bank clients' privacy and the implementation of legitimate tax claims.

Germany and Switzerland acknowledge that the bilateral cooperation established under the agreement will have a long-term impact that is equivalent to the automatic

exchange of information in the area of investment income.

Future taxation of German taxpayers' investment income in Switzerland

It is planned to introduce a final withholding tax that corresponds in terms of content to Germany's flat-rate withholding tax for the investments of German taxpayers in Switzerland. The agreement between Germany and Switzerland therefore stipulates that Swiss paying agents are to levy a final withholding tax that corresponds to Germany's flat-rate withholding tax. This will not affect the Agreement of 26 October 2004 between the European Community and the Swiss Confederation providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments.

The rate of the final withholding tax is in line with Germany's flat-rate withholding tax, and amounts to 25%. Simultaneously, Swiss paying agents will levy a sum corresponding to Germany's solidarity supplement. This amounts to 5.5% of the tax to be collected, which brings the total tax rate to 26.375%. Swiss paying agents will also deduct a sum for the church tax if requested to do so by the taxpayer.

However, German taxpayers can also avail themselves of the possibility of the Swiss paying agent disclosing their income to the German tax authorities.

This arrangement will ensure overall that investment income is taxed in the same way in Switzerland and Germany, and thus competition between the German and Swiss financial centres will no longer be distorted by tax considerations.

Retrospective taxation of previously untaxed assets

In order to find a satisfactory solution for the taxation of future investment income, the issue of the past had to be resolved at the same time.

In accordance with an assessment basis defined in the agreement, a one-off, flat-rate retrospective tax payment can be made anonymously. This will be forwarded to the German tax authorities and be distributed to the eligible bodies in line with the rules applicable for income tax.

In principle, the assessment basis is the capital present in Swiss accounts or safekeeping accounts on a specific reference date in the past.

The combination of an assessment basis and tax rate when calculating the tax will take into account how long the assets were held untaxed in Switzerland. The individual burden will then range from 19% to 34%. The calculation of this individual burden will be based on the duration of the client relationship as well as the initial and final amount of the capital. Among other things, this takes into consideration the fact that German tax claims are likely to have already lapsed in part.

Anyone who does not contemplate a flat-rate retrospective tax can consent to the

disclosure of the data necessary for individual taxation to the relevant German tax authorities.

Due to retrospective taxation, the tax claims still pending when it came into existence are considered to have expired. Thereby the basis for a fresh start will be created.

However, this expiry will not be binding if the assets originate from criminal sources or the responsible German authority had indications before the agreement was signed that the assets were untaxed.

Whoever declares that they do not wish their untaxed assets in Switzerland to be retrospectively taxed using a flat rate or retrospectively taxed individually must close their accounts or safekeeping accounts in Switzerland. Switzerland will provide aggregated data on this matter. It should be noted that the OECD is drawing up a system which allows administrative assistance to be carried out on entire groups of foreign banking clients within a defined framework.

In order to provide the parties concerned with the possibility to come to a decision, within two months after the agreement has come into effect they will be provided with information by their credit institutions on the content of the agreement and the resulting rights and obligations. Thereafter, those concerned have time to decide how they wish to react and to make the relevant arrangements.

Retrospective taxation will be conducted in Switzerland. The Swiss authorities will ensure that this is implemented correctly and that the banks involved are monitored. As a sign of goodwill in implementing the agreement in accordance with its aim and purpose, the Swiss banks have committed themselves to making an advance payment in the amount of CHF 2 billion. This advance payment will be offset by the one-off payments and thereby reimbursed to the banks.

Finally, the solution negotiated ensures that there will no longer be any untaxed investments in Switzerland held by German taxpayers in accounts or safekeeping accounts.

Security for the future:

In order to prevent "black money" from once again being invested in Switzerland in the future, even assuming acceptance of the final withholding tax, provision has been made for a security mechanism to be introduced. This consists of an obligation on the part of the Swiss authorities to provide information which goes beyond the current OECD minimum standards. It is obvious for both contracting parties that no arbitrary requests for information may be made and thus so-called fishing expeditions will not be permissible.

If the responsible German tax office sees a plausible reason in the case of a German taxpayer to check the accuracy and completeness of the information concerning the taxpayer in their tax return about possible capital investments in Switzerland, the

German tax authorities may in future verify this information by sending a request to Switzerland for information as to whether the taxpayer concerned held or holds an account or safekeeping account with a Swiss paying agent. It is not necessary to indicate a Swiss paying agent in such case.

In principle, Switzerland must respond to the request submitted as to whether or how many accounts or safekeeping accounts the taxpayer concerned holds in Switzerland. The number of requests of this nature is limited and, after the agreement enters into force, will be set within the range of 750 to 999 requests for a two-year period by a committee on the basis of collective representation from both contracting states; the number may subsequently be adjusted based on the results.

Other points in the agreement:

Against this backdrop, market access should also be improved by reductions in the administrative burden for Swiss credit institutions in Germany. In particular, the implementation of the exemption procedure for Swiss banks in Germany will be simplified, and the obligation to initiate client relationships via a local institution will be eliminated.

In addition, against the backdrop of the agreement, Germany no longer sees any reason for the purchase of stolen bank client data. Switzerland undertakes to waive criminal prosecution of persons on account of involvement in illegally acquiring bank data.

It is also envisaged in the agreement that Germany will refrain from the criminal prosecution of bank employees due to participation in tax offences which were committed before the agreement was signed so long as the corresponding facts were not known before the signing of the agreement and that those involved knew this or clearly had to reckon with this.

In an initial statement, Finance Minister Eveline Widmer-Schlumpf revealed her satisfaction with the outcome of the negotiations. "The negotiators conducted tough negotiations and achieved good results. The agreement is an important part of the financial market policy of the Federal Council, which consistently focuses on the management of tax-compliant assets. This creates legal certainty and will strengthen the competitiveness and the reputation of Switzerland as a financial centre in the long term".

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