Switzerland: Agreement with Germany on Final Withholding Tax and further topics

Regularisation of the past and final withholding tax for the future

Today Switzerland and Germany have initialled an agreement that is designed to resolve several pending taxation issues in the interest of both countries and the persons and institutions affected by the agreement. Key aspects of the agreement are:

- *Regularisation of the past for German resident individuals with bank accounts in Switzerland*

  German clients with Swiss bank accounts will have two options to regularise untaxed assets held in Switzerland. They can either pay a flat rate one-off sum anonymously or voluntarily disclose untaxed assets to the German Authorities.

  With the anonymous payment of the one-off sum the client will have fulfilled his tax obligation for the past in Germany. A rate of 19% to 34% of the assets will apply for the one-off payment. However, the effective rate for clients is expected to be between 20% and 25% of total assets.

- *Final withholding tax for the future*

  For the future the Swiss banks will deduct an amount annually on an anonymous basis from income from assets equivalent to German income tax (current rate is 26.375%). The deduction of this withholding tax will have the effect of satisfying any tax liability in Germany. If a client does not wish tax on the income of the assets to be withheld upon in the future the option also exists to authorise the Swiss bank to report his income from assets to the German Authorities through the Swiss Federal Tax Administration and to disclose this income in the German tax return.

The treaty will be signed by both governments within the next weeks and subsequently ratified by the parliaments of both countries, after which it enters into force. Currently expected date for entering into force: 1 January 2013.

Other noteworthy aspects of the agreement are:

- Decriminalisation of banks, bank employees and bank clients by means of regularising of the past
- Swiss banks have committed to making an advance payment of CHF 2 billion after the agreement comes into effect. This payment will be offset against tax payments made under the Final Withholding Tax regime.
- Simplification of cross-border business/easier market access for Swiss banks in Germany
- The Swiss Federal Tax Administration (SFTA) will be solely responsible for the correct application of the final withholding tax. However, the German Tax Authorities are entitled to monitor the correct implementation of the German final withholding tax by Switzerland through random queries.

Some challenges

For German resident clients with bank accounts in Switzerland	For Banks operating in Switzerland
Making an educated decision regarding the various options to regularise the past and taxation regime for the future: • Past income: settle all past tax claims for previously undeclared assets (voluntary disclosure) vs. a one-off lump-sum payment. • Future income: settle all tax claims through declaration vs. deduction of final withholding tax (direct taxation of earned income without declaration).	• Knowing the regularisation process for the past with regards to self-declaration and payment of flat-rate one-off sum. • Providing the clients with adequate information to make a decision on which taxation option to choose for the past and the future. • Being able to deal with the complexity of the requirements on the IT system side with regard to the set up of an automated, transaction-based final withholding tax for Germany.

Conclusion and recommendation(s) for action(s)

The agreement will allow German resident clients with bank accounts in Switzerland to be fully tax compliant for the past and the future while maintaining their privacy at the same time. German clients will have various options to choose from to regularise the past and for future taxation of assets held in Switzerland and Swiss banks will have to implement the operational capabilities to deal with the regularisation of the past and the final withholding tax going forward. However, the full text of the agreement has not been published yet and the agreement will still have to be ratified by the parliaments of both countries.

Contacts

Zurich

Christoph Schärer
christoph.schaerer@ch.pwc.com
Tax & Legal Services
Tel: +41 58 792 93 05

Martin Büeler
martin.bueeler@ch.pwc.com
Tax & Legal Services
Tel: +41 58 792 43 92

Victor Meyer
victor.meyer@ch.pwc.com
Tax & Legal Services
Tel: +41 58 792 43 40

Dr. Marcel Widrig
marcel.widrig@ch.pwc.com
Tax & Legal Services
Tel: +41 58 792 44 50

Bianca Patkos
Bianca.patkos@ch.pwc.com
German Tax Desk
Tel: +41 58 792 42 21

Geneva

Van Thanh Bui,
van.thanh.bui@ch.pwc.com
Tax & Legal Services
Tel: +41 58 792 93 05

Stéphane Tanner
stephane.tanner@ch.pwc.com
Tax & Legal Services
Tel: +41 58 792 90 17