

Current tax developments

Switzerland 2010

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Exchange of information

UBS Case

Cantonal corporate tax dispute with the EU

Domestic tax reform

Improvement of federal ruling practices

- Switzerland now applies OECD standards and Article 26 MTC compliant provisions have already been included in 24 double tax treaties :

Austria, Denmark, Faroe Islands (extension of the treaty with Denmark), USA, Finland, France, United Kingdom, Netherlands, Luxembourg, Mexico, Norway, Qatar, Spain (through most favored nation clause), Canada, Kazakhstan, Turkey, Singapore, Poland, Japan, Uruguay, Slovak Republic, Germany, Greece, Hong Kong

- Two batches of each five new treaties are now pending for ratification by parliament. These treaties will likely be subject to an optional referendum

Swiss basic principles for exchange of information :

- Established administrative assistance procedures must be respected
- International cooperation exclusively within framework of treaty or agreement
- Administrative assistance limited to individual cases (specific and justified request) - no information exchanged in case of fishing expeditions
- Fair transitory solutions must be found
- Restricted to taxes that fall within the framework of the double tax treaty
- The principle of subsidiarity must be respected; and the other contracting state must be willing to eliminate discrimination.

A federal law on the exchange of information based on the above principles is in preparation and will be enacted soon

- Swiss domestic law provides for procedural rights protecting taxpayers, Swiss and foreigners alike
- No information can be exchanged before notifying the taxpayer concerned
- The taxpayer has the right to be informed of, to be heard on and to object to (and eventually appeal) a decision by the Swiss FTA to exchange information
- The objection or appeal suspends the exchange

- Initially resolved by the competent authorities in August 2009
- Overruled by the Swiss federal administrative court in January 2010
- Now pending in parliament as a protocol changing the treaty
- Ratification uncertain and possibly subject to referendum
- Outcome very uncertain and no other options left
- What happens if the protocol is not ratified ?

Enterprise tax reform II – implementation as per 2011 at the latest
→ most notably reduced taxation of dividend income for Swiss substantial shareholders and reduction of the participation exemption threshold from 20 to 10% (also new Swiss treaty policy)

Enterprise tax reform III – consultation, in preparation
(related to EU discussions on state aid)

Enterprise tax reform IV – future, international tax competition

VAT reform entered into force on January 1, 2010

Abolition of lump-sum taxation in Zurich as per 2010

- EU Swiss tax dispute on cantonal taxation since several years
- EU claims that the Swiss cantonal tax privileges constitute forbidden state aid
- Switzerland does not negotiate with the EU, but engages in a « dialogue »
- Cantonal tax privileges will likely have to be changed or abolished
- Proposed Enterprise Tax Reform III deals with only part of the problem
- Question is what attractive new regimes can replace the current ones
- According to the Swiss FTA a solution has been found with the EU – no further news yet

Two major recent developments in the Swiss federal ruling practice :

- Federal withholding tax (dividends) – in international holding context no longer necessary to prove physical and functional substance.
Generally sufficient that the foreign parent company disposes of sufficient equity (at least 30%) in order to be considered beneficial owner of the Swiss dividend received
 - easier to exit Switzerland at 0% by using holding companies in e.g. Malta or Cyprus or Luxembourg or the Netherlands
- Domestic anti-treaty abuse rules are relaxed for licensing or financing in case the Swiss company disposes of at least one competent employee
 - now possible to engage in royalty conduit structures or back to back financing and still make use of the extensive Swiss treaty network (over 80 treaties in force)

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