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Current tax developments

Switzerland 2009

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1. Hot topics – international developments

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OECD/G20 greylisting

Swiss bank secrecy concessions

OECD Model compliant Article 26

Information exchange US-CH (UBS) – John Doe Summons

US Stop Tax Haven Abuse Act

Cantonal corporate tax dispute with the EU

Treaty developments

Anti-treaty abuse rules

Art. 26 OECD MTC - New Swiss treaty policy

- Switzerland will now apply OECD standards and Article 26 MTC compliant provisions will be included in double tax treaties on a bilateral basis
- First candidates: Japan, Poland, the Netherlands, USA (not Germany)
- First new treaty subject to optional referendum
- 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.

2. Current domestic tax developments

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Enterprise tax reform II – implementation

Enterprise tax reform III – consultation, in preparation

Enterprise tax reform IV – future, international tax competition

VAT reform

Abolition of lump-sum taxation in Zurich

Rangel Tax Reform Bill - A Swiss view (1)

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- Individuals: strong incentives for non-US citizens with high income and/or capital gains expectations to relocate, possibly to Switzerland
- An early minority has already made concrete investigations, particularly individuals from the financial services industry
- Corporate: expense and tax allocation rules will affect Swiss subsidiaries of US multinationals
- Not much movement of US multinationals seen in this context yet. Some projects are on hold, but this seems to relate more to the state of the economy

Rangel Tax Reform Bill: A Swiss view (2)

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- Swiss government has not responded and will likely not directly address such measures, but there is of course a general concern about the proposals
- In order to compensate for the possible loss of relative attractiveness, Net wealth tax, stamp duties, etc. may be reduced or even abolished
- No reciprocal measures are foreseen, i.e. Swiss companies with US activities will not be treated differently

Stop Tax Haven Abuse Act - Swiss view (1)

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- Switzerland is not an offshore secrecy jurisdiction
- Modern treaty, with full LOB, and exchange of information provision in place
- Switzerland has already agreed to extend the exchange of information provision to cases of mere tax evasion
- Bank secrecy is not an obstacle for exchange of information, not even today
- Swiss banks are willing to push US clients to voluntarily disclose, but seem to be hesitating because of the name and shame provisions of the disclosure procedure (without which the banks would probably very quickly and efficiently do away with US undeclared funds)

Stop Tax Haven Abuse Act - Swiss view (2)

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- Inversion companies have been anticipating new legislation and moved from tax haven jurisdictions to US treaty partners such as Switzerland
- Switzerland apparently not seen as an off-shore secrecy jurisdiction by US multinationals
- Swiss government is seeking to be removed from the draft list because of the bad publicity and its potential impact on foreign investment in the country
- No reciprocal measures envisaged. Swiss tax authorities are in fact working on their own version of anti tax haven abuse rules and are taking selected cases to court (often with success, e.g. based on lack of substance, effective management, etc.)

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