

SWITZERLAND CHANGES AND CHANCES

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Switzerland

Changes and chances

- (Automatic) Exchange of Information - update
- DOJ Program Swiss Banks
- Troubles with the neighbors
- 2014 tax treaty update
- 3rd Enterprise Tax Reform
- IP & Royalty Boxes

The history of exchange

- 1996 US-CH DTT: information exchange in case of «**tax fraud and the like**»
- 2004 EC-Swiss **Savings Tax** Agreement: withholding tax and information exchange for purposes of the Agreement
- 2006 **New treaty policy** Swiss-Austrian DTC - exchange
 - (i) for purposes of the Treaty,
 - (ii) in case of tax fraud and
 - (iii) for holdings+ assistance with collection of taxes (e.g. border workers)
- 2009-2 **UBS settlement** with exchange of client names

The history of exchange

2009-3 Political landslide:

OECD model based exchange **upon request**

2011-2 **Conditions** for information request **relaxed**

2012-4 Decision to negotiate **TIEA's**

2013-4 **Automatic exchange** of information no longer excluded,
provided

(i) it becomes the new OECD standard,

(ii) a true level playing field is created,

(iii) beneficial ownership is properly identified and

(iv) the exchange is reciprocal

2013-8 Switzerland signs it's **first TIEA** with Isle of Man

The history of exchange

2013-9 Consultation completed on Swiss implementation law of the **2012 FATF recommendations** – proposed law to be submitted to Parliament before the end of 2013

- bearer shares may be electronically registered
- tax offences → predicate offences to money laundering
- reporting duties for financial intermediaries

2013-9 G20 St Petersburg:

automatic exchange new international standard

2013-9 TIEA's signed with **Guernsey and Jersey**

negotiations ongoing with other jurisdictions

The history of exchange

2013-10 Switzerland becomes 58th signatory to the **OECD/ Council of Europe** Convention on Mutual Administrative Assistance in Tax Matters

2013/14 Further **TIEA's** signed with Seychelles, San Marino, Greenland & Andorra

2014-02 **Common Reporting Standard (CRS) AEOI**

2014-03 « **Early Adopters Group** » CRS (Jan 1, 2016, AEOI 2017/2018) = 34 countries (All EU Member States except AT LU) + AR CO IS IN LI MX NO ZA + UK Crown Dependencies and Overseas Territories

2014-03 **EU Savings Directive *bis*** adopted

And the future of exchange?

- CH: taxpayer no longer always informed about a request
- CH: **bearer shares** may be abolished or only allowed if beneficial owner can be identified
- Identification of UBO in case of Companies, Trusts, Foundations, etc. - 2014-02 New AML Directive EP :
“**Transparency Register**” – UK position ?!
- Offshore leaks and the influence of media and **NGO’s**
Oxfam lobby, “Business Among Friends” report etc.
- Focus shifts to corporate taxpayers / **transfer pricing disputes**
(Google, Starbucks, Amazon, Apple, etc.)

Prosecution of Swiss bank(er)s

- At least **16** Swiss banks subject to **criminal investigation** for assistance to US taxpayers evading taxes (including notably Credit Suisse, HSBC, Julius Baer, Zurich Cantonal Bank)
- **UBS** settled, **Wegelin** has been liquidated, Zurich Cantonal Bank was indicted, **Bank Frey** was attacked
- Several Swiss bankers and lawyers arrested and indicted
- Non-Swiss banks also under attack (Bank Leumi indicted, **John Doe Summons against CIBC / Wells Fargo** as US correspondent bank)

DOJ Program Swiss banks

- 3 years of negotiations (25 meetings in DC) about a **general settlement**
- **Draft MoU** was ready but Swiss federal council wanted to submit to **Parliament** - regarded as violation of its judicial sovereignty by US – MoU withdrawn
- Swiss federal council on May 29, 2013 presented a «**Lex USA**» to Parliament allowing banks to transmit data regarding clients, bank employees and third parties (asset managers, trustees, lawyers, etc.)
- Swiss Parliament refused the Lex USA
- Swiss Federal Council had to return to the negotiation table with the US Department of Justice
- Joint Statement and Program for Swiss Banks signed and presented by US and Swiss governments on August 29, 2013

DOJ Program Swiss banks (2)

- **4 categories of Swiss banks :**
 - (1) banks already under DOJ investigation (16 in total) – excluded from the Program
 - (2) banks that have assisted US taxpayers evading taxes and that want to conclude a non-prosecution agreement
 - (3) banks that believe they have not rendered such assistance and seeking a non-prosecution agreement
 - (4) local banks (cf. FATCA) requesting a non-target letter
- **FATCA on Steroids** – Switzerland as testing ground for FATCA
- Program requires detailed disclosure on US client business, including so-called Leaver Lists and details of **employees and 3rd parties** involved
- Staggering amount of data to be rendered to the DOJ
- No customer data concerned but enough detail allowing US to prepare group requests

DOJ Program Swiss banks (3)

- **Group requests** allowed under 1996 US-Swiss double tax treaty (Swiss Federal Court ruling of 5 July 2013 in Credit Suisse matter)
- **Hefty penalties** apply under the program: **20, 30 or 50%** of the maximum USD value of a US person's account during 1 August 2008 and 31 December 31 (UBS, Wegelin and LLB only paid 4.5, 6 and 7% resp.!))
- **No general solution**: 16 banks already under investigation excluded
- **High costs** for complying with the Program
- **No** effective employee and 3rd party **protection** under the Program
- It is not a negotiated agreement, rather a unilateral offer from the DOJ applicable only to certain Swiss banks
- Switzerland has obtained nothing under this Program

DOJ Program Swiss banks(4)

- **DOJ Program for Swiss banks : 106** Swiss financial institutions applied for **Category 2** but according to DOJ not all (i) may be Swiss and not all (ii) may be banks ...
- **Insurance companies** do not qualify under the Program, but subject to **FATCA as of July 1st, 2014**
- Problem with **insurance wrappers** sold to US taxpayers (a/o Swiss Life)
- New round of investigations after July 1, 2014 ?

DOJ Program Swiss banks (5)

- Feb 26, 2014 - **Credit Suisse** testified before **US Senate Subcommittee**
- **22'000** accounts held by US taxpayers - assets USD 10 to 12 Billion
- CS CEO **Brady Dougan** estimates **USD 7 Billion** was not declared and blames a “**few rogue employees**” ...
- **Backfire** : employees come forward, plead guilty and testify against CS
- **DOJ on the grill** of the same Senate subcommittee for lack of results
- CS now main target of DOJ / Category 1 - Looking for **(i) guilty plea, (ii) names and (iii) hefty penalties** – coordinated action in US expected
- Swiss government looking to avoid indictment – **emergency law** to be applied as in the UBS Case ? (**names ...**)
- Likely to be resolved still in **May 2014**, stay tuned !

Is FATCA the answer?

- US-Swiss intergovernmental agreement (IGA) signed on February 14, 2013
- **Model II IGA** (non-reciprocal, CH refusal of automatic exchange – will this change in the future?)
- Approved by Swiss Parliament in September 2013
- Entry into force by **July 1, 2014**
- Solution for the future, but not for the past
- **Services to US persons in Switzerland**

Rubik, the magic is gone

- Rubik WHT agreements in force with the UK and Austria
- Negotiations with Greece, Italy, Spain and other EU member states (Belgium?)
- Rubik refused by German Parliament - new discussions with Germany (unlikely to be fruitful this election year)
- Rubik to become obsolete when automatic exchange of information enters into force and/or when Savings Directive *bis* becomes applicable
- Still important to regulate the past, looking at LDF Model as an alternative, amnesty needed (even domestically)

Troubles with the neighbors

France

Swiss lump-sum taxpayers no longer considered resident under FR-CH DTT

France seeks to tax resident heirs of Swiss decedents (DTT to be terminated July 2014)

Border workers subject to French social medicare

Taxation of border workers

Swiss banks under criminal investigation (UBS)

Italy

Switzerland remains on grey list (corporate tax)

Germany

No RUBIK, purchases of stolen data continue

Swiss banks under criminal investigation

2014 Swiss treaty update

- Swiss treaty network : **108** (!) double tax treaties in total
- Since 2009 **Exchange of Information** agreed upon with **52** treaty partners
- **38 DTT's with EOI are in force** : AT BG CA CZ DK FO FI FR DE GB GR HK IN IE JP KZ KR LU MT MX NL NO PE PL PT QA RO RU SG SK SI TW ES SE TR TM AE UY
- **14 DTT's with EOI are waiting for ratification** : Argentina, Australia, Belgium, China, Colombia, Cyprus, Estonia, Ghana, Hungary, Iceland, Oman, Ukraine, USA and Uzbekistan
- **7 TIEA's initialled** with : Andorra, Greenland, Guernsey, Isle of Man, Jersey, San Marino, Seychelles

New Swiss treaty policies

New treaty policies :

- Exemption from WHT on dividends paid to **qualifying pension schemes**
(e.g. new treaties with Hong Kong, the Netherlands, Qatar, UAE, UK and USA)
- Exemption from WHT on dividends paid to **sovereign funds** (Qatar and UAE)
- Tax Information Exchange Agreements (**TIEA's**)

EC-Swiss cantonal tax dispute

- EC-CH tax dispute on **cantonal corporate taxation** since 2005
- EU claims that the Swiss cantonal tax privileges constitute **forbidden state aid** (based on FTA 1972)
- Since 2010 “dialogue” also addresses **Code of Conduct** (ECOFIN 1997)
- Concrete proposals must be made in **2014**
- Cantonal tax regimes becoming **Eurocompatible** (NE, NW)
- **General rates lowered** (12 to 14% range, **GE 13%, VD 13.7%**)
- **Parliament** proposed (i) a proper **participation exemption**, (ii) an **interest box** / group financing regime and (iii) an IP / **licensing box**

3rd Enterprise Tax Reform (1)

- The cantons and the Confederation presented **solutions** to the EC-Swiss tax dispute on **May 17, 2013**
- **Criticized cantonal regimes** (e.g. auxiliary and holding status) abolished by 2018/2019

Introduction of **new special regimes** as per 2018/2019:

- License box:** Introduction of a license box with advantageous tax rates applicable to royalty and other IP income;
- R&D incentives:** Special tax deductions for R&D activities should be introduced;
- Notional interest deduction:** A reasonable interest rate deduction would be allowed on a company's (excess) equity;
- Participation exemption:** The Swiss participation reduction rules should provide for a direct exemption instead of the current indirect system.

3rd Enterprise Tax Reform (2)

- Corporate income tax could be reduced to **12 to 14%**
- Reduction or abolition of **stamp duties and corporate net wealth tax**
- In anticipation of changes, some cantons already amended their cantonal tax systems:
 - NE** Overall effective tax rate of approx. 22.2% in 2011 reduced to approx. 15.6% by 2016. Further reductions ?
 - NW** introduced the license box whereby the cantonal corporate income tax rate on net license income is reduced by 80% to an overall effective rate of only 8.8% (incl. federal tax)

3rd Enterprise Tax Reform (3)

- **NID “light”**: reasonable interest rate deduction (CHF 2 to 4%, or margin of 25/50 BP) on “excessive equity”, i.e. equity in excess of safe harbor thin cap rules. ETR on group financing can be 3 to 6%.
- Transitory rules **Swiss principal companies** : tax free step up in 2017/2018 for “goodwill”, followed by tax deductible amortization over 5 or 10 years as of 2018/2019.
- **Embedded royalties** in IP Box ? **Tonnage tax** ?

3rd Enterprise Tax Reform (4)

- **April 2014** – cantons generally accept the proposals
- Most cantons seem to favor **license box**
- VD, NE and GE favor **general rate reductions**
- **Other measures** (NID, abolition of stamp duty, reduction of net wealth tax, transitory infocap rules, participation exemption, WHT reform, tonnage tax, etc.) are **NOT a priority** for most cantons
- A (limited) **capital gains tax** may be introduced, likely for substantial participations (10% or more)
- **Draft law** will be presented in **September 2014**

Royalty box (1)

- Royalty boxes exist among others in Belgium, the Netherlands and Luxembourg
- BE: patent deduction of 80%, both for generated and acquired patents, but not for other kinds of IP
- NL: innovation box with a 5% effective tax rate for royalty income on patents and specific approved R&D projects
 - does not apply to other intellectual property, restricted to patents linked with R&D activities in the Netherlands
- LU: 80% exemption for income from and capital gains realized with IP (larger definition than NL and BE)
- UK (since 2013): patent box with a 10% effective rate

Royalty box (2)

- **Analysis of royalty box regimes:**
- A patent box would not be considered State Aid if it forms an integral part of the general tax system and is not selective but accessible to all enterprises (in terms of conditions, restrictions, etc.)
- But ... beware of discretionary and/or standardized rulings
- Not a harmful tax regime if no distinction is made based on source (e.g. domestic or foreign source, from related companies or from third parties)
- Even if it were State Aid, it could still be a justified regime if and to the extent it promotes the investment in innovation and R&D

Royalty box (3) – future?

- **OECD BEPS Action Plan of 19 July 2013:**
 - focusing a/o on transfer pricing in general
 - on transactions with IP specifically
 - relating to the digital economy particularly
 - raising questions about substance and transparency
 - implications for IP boxes?
 - *risks/chances for the BeNeLux, Ireland and Switzerland*
- **Germany** called for the abolition of IP boxes in the EU
- **EU Commission** investigating **LU** IP boxes – requested rulings - dispute taken to ECJ
- **IP boxes without R&D or innovation at risk**

Lump sum tax under pressure

- **Abolished in 5 out of 26 cantons:** Zurich (2009), Schaffhausen (2011), Appenzell-Ausserrhoden and Basel-Land (2012) as a result of a popular votes (referendum). Abolished by Parliament in Basel-City (2012).
- **Lump-sum reinforced in 7 cantons :** Appenzell-Innerrhoden, Berne, Lucerne, St Gall, Thurgau, Nidwalden and Glarus
- **Upcoming votes** in Zug, Geneva, Aargau and Obwalden (and not in Vaud)
- **New federal and cantonal laws** re lump sum taxation, **as per 2016 :**
 - increase minimum **from 5 to 7 times rental value** or annual rent ;
 - fix a **minimum** tax base of **CHF 400'000** for federal tax purposes and the cantons will also have to fix a minimum tax base ;
 - the lump sum tax treatment will also **include net wealth tax** ;
 - existing rulings respected for a **transitory period of five years**
- **Popular initiative against lump sum taxation:** vote expected in **2015**

Gift and inheritance tax initiative

- People's initiative to introduce **federal** gift and inheritance tax
- Today **0% or low %** in direct line / btw spouses
- Proposal : **20% flat rate** in all cases (except spouses)
- Estates **as of 2M CHF** / gifts as of 20K CHF
<2% of taxpayers – too selective / discriminatory?
- **Retroactive** as of 2012
- Referendum to be held likely in **2015**

Stamp tax on the way out

Since April 1, 2012 : stamp issuance tax on debt instruments (bonds and the like) abolished

March 19, 2013 : Swiss Parliament proposes to abolish stamp duty on equity (currently 1%) as well

Next step WHT ?

Discussion (government, Parliament, practitioners) whether the interest and dividend WHT should transition into a paying agent system

Any questions ?

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