SWITZERLAND
ADAPTING TO (EX)CHANGE

TTN Rome
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Switzerland
Adapting to (ex)change

- Exchange of information
- Offshore leaks
- Prosecution of Swiss bank(er)s – Swiss bank deal
- RUBIK
- Troubles with the neighbors
- 2013 tax treaty update
- EC-Swiss cantonal tax dispute 2005-2013
- Domestic tax developments

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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

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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

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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

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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 Trusts, Foundations, etc.
- Automatic exchange under EC Savings Directive *bis*
- Automatic exchange new OECD / International Standard
- More purchases of stolen data
- Offshore leaks and the influence of media and NGO's
- Focus may quickly shift to corporate taxpayers / transfer pricing disputes (Google, Starbucks, Amazon, Apple, etc.)

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Offshore leaks

- BVI, Panama, New Zealand, Singapore … and not Switzerland ?
- Swiss banks and lawyers mentioned as **promoters**
- **Bank secrecy** now also under pressure for Swiss residents
- Savings Directive *bis* and **automatic exchange** boosted
- **Singapore** on the radar, MAS responded quickly, level playing field - OECD’s Multilateral Convention on Mutual Administrative Assistance in Tax Matters signed on May 29, 2013
- Offshore becomes equal to fraud, **fast justice by the media**
- Onshore with attractive tax rates and with substance obvious alternative: **Ireland, the Benelux countries and Switzerland may benefit**

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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)

Swiss bank deal

- 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

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Swiss bank deal (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

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Swiss bank deal (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

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Is FATCA the answer?

- US-Swiss intergovernmental agreement (IGA) signed on February 14, 2013
- Model II IGA (non-reciprocal, CH refusal of automatic exchange)
- Approved by Lower House of Parliament on September 9, 2013 – Senate vote a formality
- Entry into force foreseen by July 1, 2014
- Solution for the future, but not for the past

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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)

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Troubles with the neighbors

France	Swiss lump-sum taxpayers no longer considered resident under FR-CH DTT
	New FR-CH succession treaty seeks to tax heirs in even if estate is Swiss
	Border workers subject to French social medicare
	Swiss banks under criminal investigation
Italy	Switzerland remains on grey list (corporate tax)
Germany	No RUBIK, purchases of stolen data continue
	Swiss banks under criminal investigation
Austria	Playing hard ball in cantonal tax dispute

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2013 Swiss treaty update

Treaty news: over 45 (+3) treaties with exchange (97+3 treaties in total)

- In force + exchange : Austria, Canada, Chinese Taipei (Taiwan), Denmark & Faroe Islands, Finland, France, Germany, Greece, Hong Kong, India, Japan, Luxembourg, Malta, Mexico, the Netherlands, Norway, Poland, Qatar, Romania, Russian Federation, Singapore, Slovak Republic, South Korea, Spain(MFN), Sweden, Turkey, the UAE, the UK and Uruguay
- In force soon + exchange (accepted by CH parliament): Kazakhstan and the US
- Signed with: Australia, Bulgaria, Czech Republic, Hungary, Ireland, Peru, Portugal, Slovenia and Turkmenistan
- Initialed with a/o: Belgium, Colombia, Costa Rica, Estonia, North Korea, Oman, PR China and Zimbabwe
- Negotiations with a/o: Brazil, Israel, Italy, Libya, Saudi Arabia, Senegal, South Africa, Syria and Ukraine

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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**)

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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 by made in **2013**
- Cantonal tax regimes becoming Eurocompatible (NE, NW)
- General rates possibly lowered (12 to 14% range, GE 13%)
- Parliament proposed (i) a proper **participation exemption**, (ii) an **interest box** / group financing regime and (iii) an IP / **licensing box**

Federal and cantonal proposals (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

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

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

Federal and cantonal proposals (2)

- Corporate income tax generally at **12 to 14%**
- Reduction or abolition of **stamp duties and corporate net wealth tax**
- In anticipation of changes, some cantons had already amended their cantonal tax systems, e.g. **NE** gradual reduction of the cantonal corporate tax
- **NE** Overall effective tax rate of approx. 22.2%2 in 2011 reduced to approx. 15.6% by 2016.
- **NW** has introduced a new special regime, 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)

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 but also opportunities for the BeNeLux, Ireland and Switzerland*

- **Germany:**
  - has called for the abolition of IP boxes throughout the EU

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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 6 cantons** : Berne, Lucerne, St Gall, Thurgau, Nidwalden and Glarus
- **Upcoming votes** in Zug, Geneva, Aargau and Obwalden (and <u>not</u> 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 2014/15

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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 in **2014/2015**

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

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Any questions ?

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