

Results of exploratory talks between Switzerland and Germany

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1. Background and history

The financial sector is the key pillar of prosperity in Switzerland. It generates some 11% of GDP, contributes 12-15% of the country's tax revenues and provides around 200,000 skilled jobs. The legitimate protection of clients' privacy in financial matters is an important part of this success. However, this protection of privacy must not be abused to conceal illegal activity.

Switzerland has therefore made tremendous efforts to prevent abuse at international level by means of international administrative and judicial assistance processes and cooperation based on multilateral and bilateral agreements. The Swiss financial services industry has consistently supported these efforts and implemented the corresponding measures. For example, in a further step in relation to administrative assistance in tax matters, Switzerland undertook in March 2009 to implement the standard promulgated by the Organisation for Economic Cooperation and Development (OECD) regarding the exchange of information in tax matters. The result is that administrative assistance can be provided on request for all tax offences on a case-by-case basis. Switzerland has since initialled some 30 double taxation agreements incorporating this international standard. Banks in Switzerland and the Swiss government share the view that, particularly with interested EU member states, Switzerland should go beyond simply concluding new DTAs. A variety of problems and issues have arisen in cross-border banking business in recent times that jeopardise the important political and economic bilateral relations. In the interests of preserving foreign clients' trust in Swiss banks, which has been painstakingly built up over the years, the Swiss government has been holding exploratory talks with various European countries, for example with Germany. These discussions have centred on the objective that clients who have not fulfilled their tax obligations in their country of residence should be able either to make a voluntary self-disclosure or be provided with a means of regularising the tax status of their assets while at the same time protecting their privacy. In addition, cross-border access for Swiss banks in other countries should also be improved. Yet another aim was to defuse the mounting conflict over the possible criminalisation of bank employees in connection with tax offences committed by bank clients.

2. Key aspects of the exploratory talks

The solution, the details of which are to be clarified during the negotiations, covers the following points in particular:

- **Regularisation of the past:** Untaxed existing assets should be regularised.
- **Final withholding tax for the future:** Future investment income should be covered by a withholding tax, the rate of which has yet to be negotiated. The final withholding tax is a tax at source. In principle, after it has been paid the tax obligation towards the country of domicile will have been fulfilled. Extended administrative assistance has been agreed in order to prevent any possibility of circumventing the withholding tax. This envisages that the German authorities can submit a request for administrative assistance which states the name of the client, but not necessarily the name of the bank. The number of requests that can be submitted is limited and must be well founded. So-called fishing expeditions are not permissible.
- **Further elements:** Switzerland and Germany intend to resolve the issue of mutual market access for financial institutions. In addition, the problem of purchasing tax collection data is to be resolved. The package includes resolving the problem of possible criminal prosecution of bank employees.

3. Position of the Swiss Bankers Association

The Swiss Bankers Association supports the decision of the Federal Council, based on the results of the exploratory talks, to open official negotiations on tax issues.

This agreement between Switzerland and Germany

- offers Switzerland as a financial centre the chance to implement its forward strategy and focus in future on acquiring and managing taxed assets.
- represents a milestone in bilateral relations between Switzerland and Germany.
- will help harmonise the differing interests of the German tax authorities, the Swiss financial centre and German clients.
- is fair and balanced. An equivalent solution to the automatic exchange of information has been created in such a way that the privacy of German clients of Swiss banks remains intact.
 - Germany will receive significant tax revenues.

- Switzerland will gain better market access.
- German clients of Swiss banks will have the opportunity of regularising undeclared assets while maintaining their financial privacy.
- will in future prevent the purchase of illegal data and criminalisation of Swiss bank employees.
- does not require any action on the part of clients, as the formal negotiations must first be conducted. Upon their successful conclusion, clients will be given sufficient time to choose freely between the available options.

4. Q&A

Significance for clients

What will happen for clients on the day that the results of the exploratory talks are announced?

Nothing will change for clients. Official negotiations between Switzerland and Germany must first be successfully concluded. Clients will then have sufficient time in which to choose between the available options.

What does regularisation mean for clients?

Bank clients from countries with an agreement of this kind who in the past have not been taxed in whole or in part on assets held with banks in Switzerland will be given the opportunity to regularise this situation by means of a one-off flat-rate payment covering all forms of tax. The solution will be implemented fairly and with the minimum of bureaucratic hassle by the banks acting on behalf of their clients, meaning that clients should not have to face high costs. Implementation will be performed under the strict control and supervision of the Swiss tax authorities, with clients' anonymity preserved. If clients opt for voluntary disclosure, this will not entail criminalisation.

What does “extended administrative assistance” mean?

Agreement has also been reached on “extended administrative assistance” (exchange of information upon demand) as an accompanying measure to the future final withholding tax. This envisages that the German authorities can submit a request for administrative assistance that does not have to contain the name of the bank. However, in every case the client must be identified by name and so-called “fishing expeditions” remain ruled out.

Other conditions are that the client in question must be informed about the request and that there must be a well-founded suspicion of tax irregularities. Once the requesting state has received the information concerning a relationship with a bank it then has to make a regular request for administrative assistance in line with the double taxation treaty which gives the client the possibility to appeal. This procedure conforms to the OECD 26 standard. Extended administrative assistance should be considered in the light of the whole package of measures that is designed to offer a client the possibility of regularising his past in an anonymous manner and also to benefit from the protection of privacy in the future. Extended administrative assistance will only apply going forward and it will have no retrospective effect.

What course of action will Swiss banks be recommending to their clients?

It is the responsibility of the clients to settle their own tax affairs. Swiss banks have already informed clients about legal changes in their home country/country of taxation that enable them to clarify their tax status. In the same way, the banks will explain the options resulting from this agreement to their clients.

How do you think clients will feel about an agreement of this kind?

In our opinion, the overwhelming majority of clients will recognise the benefits of such an agreement. In many cases the untaxed assets are already in the hands of the second or third generation, and their current owners were not involved in the non-declaration by previous generations.

Will many clients opt for the flat-rate tax or will they prefer voluntary disclosure?

We are unable to give an estimate. The crucial issue is that all clients will be able to choose freely and with sufficient time whether they wish to fulfil their tax obligations anonymously by means of the flat-rate tax or make a disclosure to their home country.

How secure is this agreement from the point of view of clients? Is there a danger that the client might later have to pay again for regularisation?

The details of an agreement must first be negotiated. However, the principle is that a second claim cannot be made for tax payments once settled.

Does this solution finally sound the death knell for Swiss bank-client confidentiality?

Quite the contrary. The legitimate protection of privacy in financial matters is preserved, and the solution safeguards it for the long term, thereby strengthening it. In an agreement of this kind, the flat-rate tax is recognised for the long term as equivalent to the exchange of information.

Haven't the banks breached their duty of fiduciary care towards their clients by agreeing to these terms?

No. Quite the opposite, in fact. Settlement of tax affairs has always been and will remain the sole responsibility of clients, and not of their bank. By introducing the flat-rate tax in combination with the protection of privacy, Switzerland is offering existing bank clients a simpler way than in the past to regularise their affairs anonymously.

Questions about the impact on the Swiss financial centre and the banks

What does the agreement mean for the Swiss financial centre?

We are confident that the agreement sends out a strong signal. It gives Switzerland the chance to implement its forward strategy for the financial centre. The parties to the agreement have clearly acknowledged that the flat-rate tax (also called a final withholding tax) is a long-term equivalent measure to an automatic exchange of information. The Swiss solution could thereby act as an international benchmark for third countries with regard to tax cooperation.

Is there still a future for offshore banking?

The Swiss financial centre continues to enjoy great attractiveness. Its expertise, innovation, discretion, international outlook and above all political, economic and social stability are still in place and represent the pillars of enduring success. The agreement will mean that the clients in question will enjoy even greater legal certainty and – where this is not yet the case – be able to invest their assets in Switzerland in compliance with tax law.

How much money will be regularised?

We are not able to say.

How much will implementation cost Switzerland's banks?

We think the figure will be at least in nine figures (in Swiss francs).

Do you expect to see assets being moved out of the country?

Movements of assets are likely to be very limited. Both bank clients and banks themselves have a great interest in keeping client relationships in Switzerland and having the assets continue to be managed in Switzerland with the high level of expertise, good service quality and protection of privacy that this entails. Switzerland's economic, legal and social stability represents a further major advantage.

How much additional business do you expect thanks to the improved market access?

It is not possible to answer that question at present.

Does the improvement in market access mean that a financial services agreement with the EU is finally off the agenda?

Switzerland is an open economy and as such will work at all levels towards non-discriminatory market access for its goods and services. We expect negotiations with Germany to aim for improvements in this area.

Will the competitiveness of the financial centre be hurt by this arrangement?

On the contrary, the financial centre will be able to reorient itself and grow from a position of strength. International reach, capital market expertise and quality of service, coupled with the good stability offered by Switzerland, are continuing to gain in significance for Swiss banking.

General questions

What happens now? What is the timetable?

Once the two countries have signed the joint declaration on principles, the negotiating mandates must first be prepared. Then the formal negotiations for drawing up and completing a state treaty will get underway. According to the present timetable negotiations could begin at the beginning of 2011. Once the treaty has been initialled and signed, the parliamentary process will start. On the condition that the solution reached continues to be in the interest of clients, the SBA is very keen to see the whole process completed as swiftly as possible.

Will similar solutions be reached with other countries?

We would welcome it if the same solution could be agreed with other European countries.

What will happen if things do not lead to a treaty being signed?

We expect that both sides will be able to agree on any outstanding details to their mutual satisfaction. The fundamental fact remains that Switzerland has taken an additional step on top of OECD 26 with its offer to introduce a flat-rate tax. If the treaty negotiations were to fail, only the newly-renegotiated DTA with its provisions for administrative assistance in line with OECD 26 would apply.

Can the treaty be terminated?

No treaty has been signed yet, so this question cannot be answered. In principle, however, all treaties can be terminated.

The EU is pushing for automatic exchange of information. How do you expect it to react?

EU member states are free to conclude bilateral agreements with third countries provided that they do not breach EU law. We expect that countries that have concluded such an agreement with Switzerland would work within the EU to have the flat-rate tax recognised for the long term as an equivalent measure to the automatic exchange of information.

Will the SBA call for Swiss diplomats to promote the flat-rate tax model in international organisations?

We would welcome that, and such a policy should be pursued in parallel with bilateral discussions with other European countries.

What will the impact of this solution be on other outstanding tax matters (such as EU taxation of interest income)?

The flat-rate taxes applicable to the future and the past are an alternative to the automatic exchange of information under the EU Savings Tax Directive. Switzerland can therefore continue the existing system in relation to EU taxation of interest income (tax retention or disclosure).

Technical questions

How will the flat-rate tax for future liabilities work?

The flat-rate tax will bring foreign assets into line with the tax laws in the clients' home countries. Clients will then have fulfilled their tax obligations in their home country. The level of flat-rate tax will apply irrespective of the income of the investor and be adjusted to

provisions in the country in question. The new Swiss flat-rate tax will cover interest income, dividends, investment income, capital gains and assets. It will be deducted by the paying agent (the bank or another financial institution) and transferred to the Swiss Federal Tax Administration, which once a year will pass the money to the tax authorities of the clients' home countries. Foreign countries will receive taxes on the assets invested by their citizens in Switzerland in a fast and uncomplicated way.

How will compliance with the agreement be monitored?

As with the EU taxation of interest income, the Swiss Federal Tax Administration will monitor compliance.

What does administrative assistance mean for the purposes of OECD 26?

The OECD provides a model double taxation convention (for cross-border tax issues) for its 30 member states. It represents neither applicable law nor valid legislation; Article 26 of the OECD model convention provides a definitive ruling on the exchange of information, i.e. administrative assistance between tax authorities of the signatory countries. States that have implemented the standard under Article 26 of the OECD model convention agree to the exchange of information upon request, but not to the automatic disclosure of information. "Fishing expeditions" are not permitted. This means that the country seeking information must produce a substantiated request, naming the taxable person and the specific bank or describing them in sufficient detail.