INDUSTRIE- UND FINANZKONTOR

News

No. 2 / November 2012

Content

Here today, gone tomorrow

In the meantime, what was long denied has now become obvious: today's «crisis» is of a fundamental nature and has intensified from a financial and economic crisis into a crisis of political institutions. The actual cause dates way back. The economic boom in the Western world that rapidly set in following the end of the Second World War evoked an intense desire to ensure prosperity. That desire ultimately induced a short-sighted «political policy of promises».

As a result, the eminently logical law stipulating that expenditures may not exceed income was wantonly violated again and again. The consequences? They now cannot be avoided.

Today, horrendous levels of national indebtedness have engendered an environment in which personal wealth is gravely threatened. For political reasons, government outlays can be geared down only to a very limited extent. This of course means that state income needs to be boosted commensurately. Therefore, under the guise of «social equity», many countries are trying to get their hands on private wealth. In doing so, they shy away neither from questionable legislation nor confiscatory measures such as forced loans, «solidarity contributions», exorbitant tax rates, artificially low interest rates, etc. «The rich should pay!» serves as the rallying cry in this regard. But the fact that those measures do not primarily impact the wealth of the «rich», but rather that of the middle class, is knowingly swept under the rug.

What will happen with all of those new (ill-gained) revenues? Will government debt be paid down with it? Unfortunately, no. First and foremost, the funds will serve to finance ongoing government spending. What will be left over afterwards? Nothing, except the debts. Or as the old chestnut so quaintly yet tellingly expresses: «After the gathering comes the scattering!»

For entrepreneurs and private individuals, this boils down to: the more acute the political situation, the more endangered is one's private, legitimately gained wealth – and the more it has to be carefully shepherded. Because at the end of the day, private wealth makes a significant contribution to economic growth and social wellbeing. But that can only happen as long as private wealth is safeguarded. This is why it is so important and so proper that one gives thought as to how private wealth can be preserved and secured over the long run.

Michael von Liechtenstein

Swiss Tax Treaties

The public finance situation in many Western countries is extremely tense. Accordingly, it is important to policy-makers that new, efficient sources of revenue are tapped. The tax area offers an ideal means of achieving that.

Switzerland has responded to this development and, by negotiating tax treaties[1] with Germany, Austria and Great Britain, is taking a constructive approach. The advantages of these treaties are twofold: the contracting states receive millions in tax revenue, and the private sphere of the affected individuals remains safeguarded. The tax treaties with Austria and Great Britain will presumably enter into force on 01.01.2013. The treaty with Germany has yet to be ratified and it is questionable at present whether it actually will be adopted.

The three treaties are quite similar in terms of their composition and functionality. Under the terms of the treaties, Switzerland will administer the anonymous taxation of natural persons who reside and are liable for taxes in the relevant contracting state (Germany, Austria or Great Britain) and who own assets held by a Swiss paying agent (in most instances, banks).

Specifically, the treaties regulate both the regularisation of the past of untaxed assets (i.e. assets held in account) and the taxation of future capital returns on assets.

This is how the regularisation of the past works:
The persons affected by the given tax treaty have three options for paying back taxes on undeclared assets (see diagram).

«Voluntary disclosure» option:
With the voluntary disclosure approach, the relevant person empowers the responsible Swiss bank to report the banking relationship to the appropriate tax authorities. This results in an individual regularisation of the past of the assets by the responsible tax authority (in Germany, Austria or Great Britain). Thereupon, all past tax claims are deemed settled.

«Anonymous payment» option:
With the anonymous payment approach (modelled after the «flat-rate final withholding tax»), details of the banking relationship in Switzerland are not disclosed. Instead, a Swiss Bank pays on behalf of the relevant person a one-off, all-inclusive flat-rate tax to the appropriate tax authority. Thereupon, all past tax claims are deemed paid in full.

Which of these two options makes more financial sense for a relevant person needs to be clarified on a case-by-case basis. The applicable final withholding tax rates are defined in the given tax treaty. The specific amount depends on the amount of time the assets were held in account at the Swiss bank and how the capital in-/outflows of the past looked.

In Germany, the final withholding tax rates lie between 21 % and 41 %; in Austria, between 15 % and 38 %; and in Great Britain, between 21 % and 41 %. The applicable level of the final withholding tax rate can be calculated with the aid of the formula included in the given tax treaty.

«Account closure» option:
Another possibility is to close the banking relationship. However, the relevant person should be aware that this option does not represent a sustainable solution.

Apart from the three aforementioned options, there is also the possibility to lodge a voluntary declaration. In contrast to a voluntary disclosure, relevant persons must take action on their own with this variation. The advantage of voluntary declaration is that the delinquent taxpayer, together with a tax advisor, can compile all necessary documentation in advance, clarify any uncertainties, and thereby prepare for a dialogue with the tax authorities.

Who are considered «relevant persons»?
In principle, these are natural persons who fulfil cumulatively the following criteria:

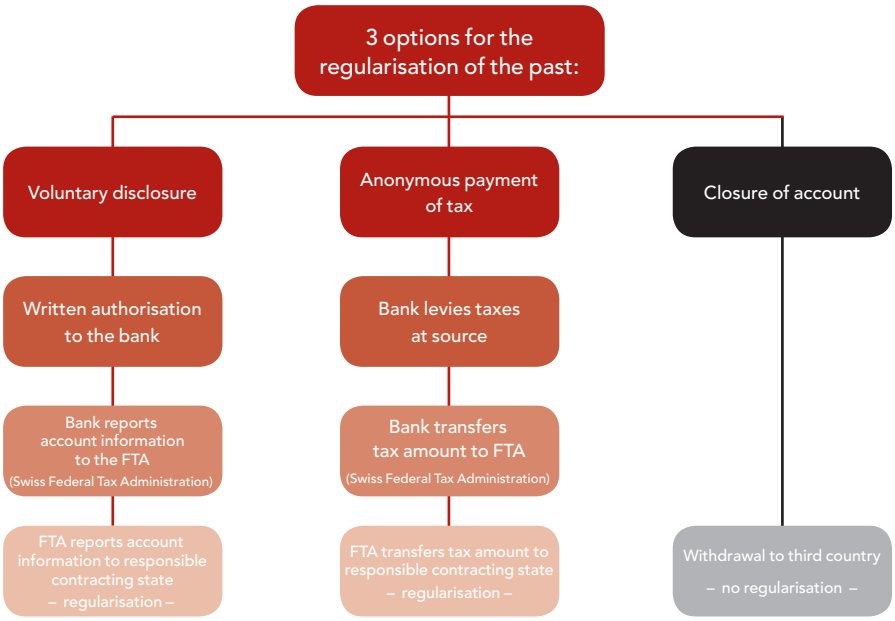

Diagram: Possibilities for the regularisation of the past of previously undeclared assets.
Source: www.sif.admin.ch > International tax policies > Withholding tax agreements: «How the tax agreements work».

[1] Liechtenstein was a pioneer in this area with its *Liechtenstein Disclosure Facility* (see I&F News No.1/April 2010, which is available at: www.iuf.li > Publications).

– reside in one of the three contracting states on the appointed date of 31.12.2010;
– maintain(ed) an account or deposit at a Swiss bank on the appointed date of 31.12.2010 and 01.01.2013 (in the case of Germany and Austria);
– maintain(ed) an account or deposit at a Swiss bank on the appointed date of 31.12.2010 and 31.05.2013 (in the case of Great Britain);
– be the beneficial owner of relevant assets.

With only few exceptions, those natural persons who are beneficial owners of domiciliary companies (e.g. foundations, establishments, trusts, etc.) and similar are also relevant persons. Who those individuals in fact are must be clarified on a case-by-case basis.

Clients are affected by one of the three treaties if they:

– own a company that maintains an account relationship with a Swiss bank;
– themselves have the right of usufruct to that company; and
– have their place of residence in Germany, Austria or Great Britain.

This is how the taxation of future capital returns will work:
Once the tax treaties enter into force and the regularisation of the past of undeclared assets has taken place, the following procedure applies:

Relevant persons have two possibilities for the taxation of their future capital returns. Either they decide also here for the anonymous payment approach (at which point all tax claims are deemed paid in full), or they opt for the voluntary disclosure route and empower the responsible Swiss bank to disclose their banking relationship to the appropriate tax authority. In the former case, the final withholding tax rates specified in the treaties are applicable (see table). Those percentages will change if a contracting state adjusts its generally valid tax rates.

Germany:
26.375 % on investment income and capital gains (plus church tax upon application)
Austria:
25 % on investment income and capital gains
Great Britain:
48 % on interest income
40 % on dividend income
27 % on capital gains

Table: The final withholding tax rates specified in the treaties.

What do we recommend that our clients do?
Which option for regularisation of the past makes the most sense for a client with untaxed assets can only be assessed on a case-by-case basis. In order to arrive at that assessment, we conduct at the request of a client an enlightening in-depth comparative analysis in collaboration with a tax expert from our international network. It is important here that the client does not lose too much valuable time, because it takes quite a bit of preparatory work to evaluate the best solution. Clients should contact us at very latest by the end of November 2012.

In terms of the anonymous final withholding tax, clients should be aware of the following:

– If a client does not approach the Swiss bank, the bank will automatically take the anonymous payment approach.
– If there are insufficient liquid funds in an account, the Swiss bank (after expiry of a grace period during which time the client can deposit the necessary funds) must report the client's data to the appropriate tax authority. The bank does not need the client's authorisation to do so!
– If an account or deposit is empty but has yet to be formally closed by the 01.01.2013 appointed date (or, as it were, 31.05.2013 in the case of Great Britain), the conditions of the given tax treaty will nevertheless apply to the relevant person.

Moreover, it is important for clients from Great Britain to know that they can file under two tax treaties: on the one hand the Swiss tax treaty with Great Britain, on the other hand the *Liechtenstein Disclosure Facility*.

Summary and outlook:
For clients from Germany, Austria or Great Britain, it is crucial that they deal promptly with the tax treaty issues and options described herein. We at Industrie- und Finanzkontor stand ready to assist affected clients with our competence and expertise.

Liechtenstein itself is currently in related negotiations with Austria. Negotiations with Germany are on hold for now pending the outcome of Switzerland's tax treaty with Germany.

You can contact us at this e-mail address: taxes@iuf.li

Tax Department: Competence and Expertise

Hans-Peter Naef
Chief Financial Officer

«Ignorance of the tax laws does not free one from the duty to pay taxes. But knowledge of them frequently does.»

Mayer Amschel Rothschild
Businessman and banker (1744 – 1812)

Dear Reader

Most economic decisions are influenced by the «tax aspect». That's nothing new. But developments in recent years (rapidly changing tax laws, new tax treaties, etc.) have made the tax aspect even more complex. Obtaining professional, situatively appropriate tax advice and accompaniment has become practically an imperative.

In essentially the role of a «general contractor», Industrie- und Finanzkontor offers clients the profound expertise of its Tax Department for all tax-related matters. The team's activities involve tax accompaniment of permanent mandates as well as tax consulting for mandates of a project nature.

Our team members stand out for their legal, accounting and business know-how, whereas our core competence lies in Liechtenstein tax law. In this area, we advise and accompany both entrepreneurs and private individuals in terms of:

- appropriate, case-specific application of Liechtenstein corporate law;
- questions pertaining to value added tax;
- income and wealth tax matters;
- the application of tax information exchange agreements, double taxation agreements and treaties aimed at «regularising» one's tax history, as is possible for example via the *Liechtenstein Disclosure Facility.*

When it comes to crossborder matters, our activities centre not only on developing and realising tax-efficient forms of organisation and transnational corporate structures, but also on working out need-consistent solutions which become necessary due to specific challenges (e.g. within the framework of wealth-protection structures, impending succession issues or country-specific tax treaties). In doing so, we work together closely with our international network of tax experts.

Our advantage is that, in response to client inquiries (e.g. with regard to the tax treaties Switzerland has negotiated with third countries), we can draw on the skills of a multidisciplinary team within Industrie- und Finanzkontor. For instance, in matters pertaining to the Swiss tax treaties, we collaborate with our client accounting department and together compile documentation to assist in the decision-making process as to whether it is more advantageous financially for «relevant persons» to opt for the flat-rate final withholding tax or for disclosure. Our accounting department can efficiently reconstruct account movements that extend far back in time, thereby making it possible for us to rapidly analyse that information in anonymised form with the appropriate tax expert within our international network.

We are aware that the needs of each client are different. Accordingly, we always develop individualised, need-consistent solutions. We do our best to keep tax-related matters as simple and comprehensible as possible, because ultimately the client has to understand and wilfully embrace the solution. Only then does our competence and expertise become tangible.

Hans-Peter Naef

Industrie- und Finanzkontor • P. O. Box 339 • Herrengasse 21 • FL-9490 Vaduz • Liechtenstein
Phone +423 237 58 58 • Fax +423 237 58 59 • www.iuf.li • info@iuf.li