

## UK agrees landmark tax deal with Switzerland

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The UK and Switzerland yesterday published the first details of their long-awaited tax agreement for UK residents with accounts in Switzerland (the 'Agreement'). As expected, it is broadly similar - although not identical - to the agreement concluded between Switzerland and Germany earlier this month. Subject to ratification by the UK and Swiss governments, the Agreement is due to enter into force on 1 January 2013.

### Scope of the Agreement

Where it applies, the Agreement will allow UK taxpayers with assets in Swiss banks to keep their Swiss assets confidential in exchange for a one-off charge to meet any past UK tax liabilities and an automatic annual withholding of tax for future years.

#### *Past liabilities*

The one-off charge applies to UK-resident clients with Swiss accounts open on 31 December 2010 (and still open on 31 May 2013) who have unpaid tax liabilities referable to the accounts. The charge will be levied at a flat rate of between 19% and 34% (depending on the length of time the account has been held) and will be calculated and deducted by the Swiss financial institution on an anonymous basis. This payment will extinguish the client's past UK tax liabilities in relation to the assets held by the financial institution. It is anticipated that the effective rate of the charge for most clients will be between 20% and 25% of the assets held by the financial institution.

As an alternative to the deduction, a client will be given the option to make a voluntary disclosure to HMRC without penalty.

UK taxpayers who are already compliant will have to make a notification to the Swiss federal tax authorities in order to avoid the one-off charge. The form of this notification is not yet known.

#### *The future*

The withholding tax rates applicable from 2013 onwards are stated to be 48% on interest income, 40% on dividend income and 27% on capital gains. Again, the deductions will be levied on an anonymous basis. The withholding of the tax by the financial institution will render the client UK tax compliant in relation to the assets in Switzerland (but not in relation to any other assets or profits).

The withholding rates are higher than the rates applicable under the agreement between Switzerland and Germany and are only marginally less than the actual maximum UK rates. If UK tax rates change in the future, the withholding rates will also change accordingly.

The withholding tax will not apply if a client elects to deal with past liabilities by making a voluntary disclosure, or if he is already tax-compliant and has made a voluntary notification to the Swiss authorities. In either of these cases he will be required to report income and gains on the Swiss account in his future tax returns in the normal way.

#### *Who is eligible to use the Agreement?*

The Agreement is stated to apply only to natural persons who are domiciled in the UK. The precise scope of the Agreement as regards indirectly held accounts is not yet clear, as it appears that it will apply only in relation to tax liabilities of the individual taxpayer. It remains to be seen how this will be interpreted as regards some of the UK anti-avoidance legislation relating to offshore structures.

It should also be noted the Agreement will *not* apply to non-domiciled individuals. One consequence of this will presumably be that the banks will have to establish which of their UK resident account holders are not domiciled in the UK, as the one-off deduction for past liabilities does not apply to them.

#### **What does the Agreement mean to Switzerland and the UK?**

The authorities in both Switzerland and the UK have welcomed the Agreement, albeit for different reasons. The Swiss government regards it as a means of preserving banking secrecy while at the same time allowing Switzerland to move forward as a financial centre by focussing on the management of tax-compliant assets. The Swiss Banking Association shares this view, despite the fact that there is a price tag attached: the Swiss banks have agreed to make an upfront payment to the UK of CHF 500 million (which will be offset against the amounts collected from clients).

For the UK, the preservation of banking secrecy is more controversial, but this aspect has been outweighed by more pressing economic concerns. The Agreement is expected to yield up to £5 billion for the UK Exchequer in a relatively painless way, and as such it is regarded as a pragmatic solution to a tricky issue.

#### **Options for UK account holders**

Although the Agreement is not due to enter into force until 2013, UK residents with undeclared Swiss accounts will need to consider their options. Broadly, these are:

- anonymous regularisation under the Agreement;
- voluntary disclosure under the Agreement;
- voluntary disclosure under the Liechtenstein Disclosure Facility (LDF); or

- moving the funds out of Switzerland before 2013.

The best route to take will vary depending on individual circumstances and preferences, and there are a number of factors to be considered.

One important point to note is that the Agreement will run alongside the LDF and many UK taxpayers will - if they are domiciled in the UK - be eligible to make use of either facility. In our experience, many taxpayers who use the LDF have a total liability of less than 20% - 25% of the assets held, so in pure economic terms the LDF may be a more attractive option than anonymous regularisation under the Agreement. In addition, whilst the LDF allows for regularisation of tax payable in respect of all assets and structures, regularisation under the Agreement will be limited to Swiss bank accounts. That said, anonymous regularisation will potentially be attractive to those who place great value on their privacy or who fear implicating others by making an LDF disclosure.

The Agreement states that it will be possible to make a voluntary disclosure without penalty. The precise meaning of this is not clear at this stage but it is interesting in that the UK authorities have previously stressed that any future disclosure facility would be on less favourable terms than the LDF under which there is a requirement to pay a penalty. If it is possible under the Agreement to make a voluntary disclosure without any penalty then this may be economically more advantageous. One point which is already clear is that the Agreement will not apply if a taxpayer closes his Swiss account before 2013. The Agreement expressly envisages this as an option and some account holders may therefore decide to follow this route. Although it appears that this will not trigger sanctions under the Agreement itself, it should be noted that the protection against investigation by HMRC and/or criminal prosecution offered by the Agreement (or the LDF) will be lost.

In relation to new assets brought into Switzerland, the Agreement also states that the UK authorities will be entitled to make a maximum of 500 information requests a year which will not need to name the bank but must give the identity of the taxpayer and reasons for the request. Assets which have been regularised by the one-off payment will not be subject to this process.

## Conclusion

There are a number of unanswered questions in the material published so far, not least how the flat rate for the one-off payment will apply to calculate the amount payable to regularise the past. Holders of undeclared Swiss accounts will need to wait to see the full Agreement before knowing whether this option will be best for them.

However, the Agreement offers another option to those keen to put their affairs in order and a potential boost to the attractiveness of Switzerland as a place for clients to hold funds.

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