Switzerland

Switzerland taxes Swiss residents on their worldwide income. There is also a wealth tax based on the worldwide assets of Swiss residents.

Switzerland has been considered one of several key jurisdictions where non-residents have placed deposits to potentially avoid taxes in their country of residence. This is underscored by Switzerland’s history of bank secrecy and recent cases regarding the use of Switzerland banking facilities to enable tax evasion in the US, Germany, Argentina, France and the UK. Accordingly, most of the comments below pertain to Switzerland as an offshore booking jurisdiction for non-Swiss residents. Nevertheless, there are also some comments below that are relevant to Swiss taxes on Swiss residents as well.

Current Trends

The developments noted above have caused significant changes in Switzerland. Notably, the following initiatives have been implemented in recent years:

EU Savings Directive

The EU Savings Directive (“EUSD”) became effective in 2005. Switzerland took part in this regime by way of an intergovernmental agreement. The EUSD requires interest income of a natural person resident in the EU and banking with a Swiss bank to be reported provided this person agrees to this reporting. Alternatively, taxpayers can elect to have a 35% tax withheld on such interest income and remitted to the respective EU country. If the income is reported, the information on the interest income is sent by the bank to the Swiss Federal Tax Authorities and stored on a server which the fiscal authorities of the EU countries have access to and where they may retrieve the information. In the near future, however, it is expected that this regime will be replaced by the automated exchange of information regimes (see below). To this end, Switzerland has signed an agreement with the EU in May 2015 which provides for the automatic exchange of information between Switzerland and the EU member countries starting in 2018 (based on client data captured in 2017).

US FATCA

Operational since mid-2014, FATCA requires foreign financial institutions to report information regarding accounts owned directly or indirectly by US persons to the IRS. The current Model 2 IGA between Switzerland and the US provides for the information to be sent directly from the Swiss financial institutions to the IRS. A negotiation is currently underway to change the Model 2 IGA into a Model 1 system. Under the Model 1 system the Swiss government will collect the information from local financial institutions and will share it with the US IRS rather than enabling those institutions to report directly to the US IRS as per Model 2. This means that Swiss financial institutions and their clients will be bound directly by rules and forms issued by the Swiss government to register and provide the information. Regardless of which IGA Model is to be applied, FATCA has called into question many banking secrecy issues. The Swiss Government lifted the restrictions of banking secrecy and the ban to act for the benefit of a foreign government, albeit only in respect to accounts held by non-residents. The name, address and social security number of US persons (even if they are not direct clients of the bank but rather controlling persons of a structure, PIC, trust or similar arrangement) as well as assets and income (now: US source and foreign source) will be reported.
International withholding tax (UK and Austria)

Currently, Switzerland also has international withholding tax arrangements with UK and Austria. Under these arrangements, if a UK or Austrian resident client holds an account or depository account with a Swiss bank and does not exercise his option to have tax information disclosed to the UK or Austrian tax authority, the Swiss entity would directly apply Austrian or UK tax rules to withhold the respective Austrian or UK tax rate and forward the amount to the Austrian or UK government. This withholding would then be a payment with finality, which means, the clients do not have to declare their income in their countries of residence. In the near future, however, it is expected that this regime will be replaced by the automated exchange of information regimes (see below).

Automated exchange of information under the OECD Common Reporting Standard (CRS)

Switzerland is one of the signatory countries of the Convention on Mutual Administrative Assistance in Tax Matters (OECD) which serves as one of the legal bases of the automated exchange of information.

Once the CRS is implemented, only reporting and no withholding will be required. Reporting will be more pervasive with multiple classes of income to be reported alongside the name and address as well as further identifiers of the client. Companies and structures will also need to be reported, and multiple reporting may be necessary if there are indicia that the client might be resident in more than one country and the client fails to refute this assumption through documentary evidence. From this perspective, it is realistic to assume that the CRS will prove much more complicated than the transparency initiatives before.

Switzerland is not an early adopter country. Hence, the first exchange of information can be expected in the year 2018, based on the account information collected in 2017.

Exchange of information upon request / group enquiries

Switzerland will exchange tax information upon request under the applicable double tax agreement/tax convention (usually art. 26 — exchange of information between revenue authorities) if the Federal Tax Administration (“FTA”) concludes that the grounds for the request were legitimate and did not constitute a “fishing expedition”. The FTA would then ask the concerned bank to disclose the requested information and after necessary redactions, send it to the foreign fiscal authorities.

AML-related developments

It should also be noted that in 2016 Switzerland implemented the Financial Action Task Force’s (FATF’s) recommendation to consider serious tax offenses as predicate offenses to money laundering. Switzerland decided to consider all tax crimes “predicate offenses” where the taxpayer has used false or falsified documents and where taxes were evaded in excess of CHF 300,000 (or foreign equivalent) per tax period, which usually coincides with the calendar year.

Switzerland as a CPB Booking Center

Switzerland is a CPB Booking Center country. Thus, non-residents of Switzerland who place accounts in Switzerland, directly or indirectly (through intervening legal structures), may be subject to information reporting of their Switzerland accounts to their country of residence. Based on the detailed discussion above, there are numerous regimes, including FATCA, EUSD and CRS that require information reporting to approximately 100 countries (upon full implementation of CRS).
Amnesty and Disclosure Regimes (For Swiss Taxpayers)

Switzerland currently has an amnesty facility (introduced in 2010), which allows every Swiss taxpayer a "once-in-a-lifetime" application of this amnesty provided that all evaded taxes are declared properly and comprehensively and the taxpayer ensures his/her unconditional support in case of further requests from the tax office. While back taxes and charges for late payment need to be paid under such voluntary disclosure, there are no penalty payments. According to press news and statistics published by cantonal tax authorities, since 2010 c. 30,000 taxpayers have made use of this facility. This resulted in additional tax payments of c. CHF1.3 bn and the legalization of approximately CHF13.5 bn in assets.

With the exception of the automated exchange of information (CRS), none of the initiatives are reciprocal in nature. Therefore, there is no regime in place that would result in Swiss resident taxpayers being reported on by a foreign financial institution. Likewise, other than any statutory withholdings on foreign dividends and interest payments, there is currently no foreign withholding or reporting program in place that would ask any foreign financial institution maintaining accounts for Swiss resident taxpayers to report (or alternatively withhold) on any financial income derived by such person.

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Note that all references to “resident,” “residents” or “residence” is intended to be a reference to tax resident, tax residents or tax residence, under the applicable tax laws.