SWITZERLAND

Details

Population: c. 7,900,000

Capital: Berne

Time zone: GMT+1

Currency: Swiss franc (CHF)

Political status: Federal republic, with directorial system and direct democracy

Airport: Zurich and Geneva

Legislative update

Lump sum taxation

- Signatures presented to Federal government to force a public referendum to abolish the preferential "lump-sum" tax regime for wealthy foreigners. Submitted 19 October 2012, referendum is expected 2014 or 2015.

Federal Act on International Withholding Tax

- Contains provisions on organisation, procedure, judicial channels, criminal law provisions and domestic rules for upfront payment to the UK by Swiss paying agents. Went into force on 20 December 2012.

UK and Austrian Tax Agreements

- Bilateral treaties in respect of future taxation of funds deposited by UK and Austrian residents. Came into force on 1 January 2013.

Tax Administrative Assistance Act

- To govern execution of assistance under double tax treaties. Approved by parliament 28 September 2012, brought into force 1 February 2013.

Model 2 FATCA IGA with US

- A "Model 2" IGA for sharing financial information on bank accounts under the US FATCA legislation. Signed 14 February 2013.

Enhanced Due Diligence

- Two consultation Bills to provide for revised FATF recommendations 2012 and to extend due diligence requirements to indentify untaxed money. Adopted by Federal Council on 27 February 2013.

Bank Disclosure Programme

- Amnesty programme for Swiss banks to resolve potential US prosecution. Agreed by Swiss govt. and US Dept. of Justice on 29 August 2013.

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Switzerland – legislating for transition

REPORT SUMMARY

- Enhanced due diligence
- FATCA IGA signed
- EU Savings Tax Directive
- OECD Global Forum
- Lex USA
- Other legislation

BY HERMAN KRUL

The Swiss government has devoted significant time in recent years to debating the future of the Swiss banking industry. Despite the fact that it now represents no more than about 6% of Swiss GDP, Switzerland wants to remain a leading player in worldwide private banking, but in a modern, tax compliant way. To achieve this, the government is driving several initiatives.

Enhanced due diligence

On 27 February 2013 the government passed two draft bills proposing new legislation to combat money laundering and prevent tax evasion. The first set of proposed rules aims primarily at implementing the revised 2012 Financial Action Task Force (FATF) recommendations, including the registration of bearer shares. The Federal Department of Finance (FDF) drew up a dispatch which was referred to parliament by the Federal Council on 13 December and is due to be debated in the spring session.

The second set of proposed rules – a key element of Switzerland's "white money strategy" – introduces new diligence duties for banks and other financial services providers to keep untaxed money away from the Swiss financial sector. In view of the developments concerning automatic exchange of information (AEOI), the Federal Council decided on 29 November to harmonise the corresponding work with that on the AEOI.

FATCA IGA signed

In April 2013 the Swiss government formally adopted the intergovernmental agreement (IGA) signed with the US Internal Revenue Service (IRS) in February to implement the Foreign Account Tax Compliance Act (FATCA), which obliges foreign financial institutions to report offshore accounts by US taxpayers that amount to more than US$50,000.

Switzerland has opted for a non-reciprocal Model 2 version of the IGA under which client data will only be exchanged when the US authorities request administrative assistance. The IGA also allows for certain exceptions, notably for the insurance sector, pension funds and Swiss National Bank. It was approved by the Swiss senate on 27 September and will be implemented in Switzerland in phases from 1 July 2014.

EU Savings Tax Directive

On 18 December 2013, the Swiss Federal Council agreed to adopt a mandate for negotiations to implement proposed revisions to strengthen EU Savings Directive (EUSD), provided that other relevant countries do the same. It is generally expected that Luxembourg and Austria will finally accept the European Commission's proposals in 2014 and that they will apply from around 2016-17. At the same time, this implies that the Swiss "Rubik" tax agreements with the UK and Austria will be phased out.

On 19 December 2013, the Swiss Federal Council issued the final report on the Swiss Corporate Tax Reform III in response to EU and OECD challenges to certain cantonal tax regimes – such as the holding, domiciliary and mixed company regimes – which are deemed preferential. The council has confirmed that these regimes need to be abolished within a five to seven-year timeframe. Proposals in the final report include a reduction of cantonal corporate income tax rates to provide effective tax rates (including federal tax) that are as low as 12 to 14%. This may also offer new opportunities for private client structures, which would then be subject to regular Swiss taxation.

The European Parliament recently approved draft rules for ultimate owners of companies and trusts to be listed in public registers in EU countries. This, if it goes forward, would be a clear incentive for clients to use Swiss trustees.

However the EU's proposed MiFID II directive, which would compel non-EU companies doing business in the EU to have a physical presence in the EU, is a major source of concern. The costs of setting up physical operations in the EU could be prohibitive for smaller firms and effectively cut then off from the estimated CHF1 trillion (US$1.1 trillion) of EU assets currently being handled by Swiss banks.

OECD Global Forum

In November the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes issued its first ranking of the 50 jurisdictions to have completed both Phase 1 and Phase 2 peer reviews, which evaluated availability of information, access to and exchange of information. The Forum rated 18 jurisdictions as "compliant", 26 as "largely compliant", two as "partially compliant" and four as "non-compliant".

Switzerland was found not to have the required legislation for tax co-operation in place and therefore could not be rated. The OECD said it could be accepted for a Phase 2 peer review if it presented an additional report demonstrating progress.

The Federal Council voted to adopt the OECD standard for administrative assistance in tax matters in 2009 and the Tax Administrative Assistance Act (TAAA) entered into force on 1 February 2013. However to comply with the international standard for exchange of information, provision still has to be made for deferred notification of persons who are the subject of an administrative assistance request in certain cases and the procedure for group requests must be clarified. The Council of States will address this in the 2014 spring session.

Swiss-US deal on banks

On 29 May 2013, the Swiss government sought to end the dispute between the US and Swiss banks over alleged tax evasion by adopting a draft bill – the so-called Lex USA – that would enable Swiss banks to co-operate with the US Department of Justice to regularise their situation with the US authorities.

The Swiss parliament rejected the Lex USA in June, so the council chose instead to provide individual banks, under article 271 of the Swiss Criminal Code, with special immunity from criminal prosecution in Switzerland.

This enabled the two governments to sign an accord offering a non-prosecution deal for co-operating Swiss banks. The agreement with the US mentions four categories for the banks. Most banks will belong to group two, who will be required to pay a penalty for legacy assets under management to avoid US prosecution. The applicable percentage depends on the date. Assets that existed already before 1 August 2008 will be taxed at 20% while assets taken on after 28 February 2009 will be taxed at 50%. This settlement may cost the banks up to CHF10 billion.

Other legislation

Measures aimed at tightening the "lump sum" regime for wealthy foreigners living in Switzerland came into force under the tax harmonisation law (StHG) on 1 January 2014. The Swiss cantons have two years in which to comply. Some 5,000 foreign residents currently benefit from the tax regime.

From 2016 the tax base for calculating direct federal tax and cantonal tax will be at least seven times the rental value or annual rent of the Swiss residence. In addition, as regards direct federal tax, a minimum taxable income of CHF400,000 will apply. The Swiss cantons will be required to determine their own minimum. The current law will continue to apply for a further five years for existing taxpayers. A federal referendum is also to be held in 2014/15 to vote on whether to scrap the regime entirely.

There is another popular referendum initiative in respect of introducing a federal gift and inheritance tax to replace the cantonal regimes. The applicable flat rate would be 20% but tax exemptions would apply to donations to spouses or registered partners, or for amounts below CHF2 million in case of inheritance and CHF20,000 in case of donation. The tax would apply as of 1 January 2012.

Conclusion

Switzerland is currently in a transition period. The Swiss banks will adopt the OECD guidelines, have a strong Tier 1 ratio, and at the same time enjoy and capitalise on the solid reputation of the country, its banking know-how and all its auxiliary services. The legacy problem must be solved as soon as possible. This should concern all countries with financial institutions holding non-tax compliant money. Rubik agreements will no longer be the solution. It is hoped that the relevant governments adopt a fair and pragmatic attitude to find a solution.