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By PwC Deutschland | 28. September 2011

Withholding tax treaty with Switzerland signed

The finance ministry has published the text of a treaty signed with Switzerland to ensure German level withholding tax on investment income, whilst protecting those who choose to move their undeclared funds to a third country. Germany continues to broadly accept Swiss banking secrecy.

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Germany and Switzerland have signed a treaty for the deduction at source of 26.375% withholding tax (equivalent to the German level and to be adjusted if that level changes) from the investment income of German resident account holders with Swiss banks. Investment income includes capital gains. These are to be taken at 30% of the proceeds if the cost of the investment cannot be determined. As it stands, the treaty is one-sided in that there are no corresponding obligations on German banks in respect of Swiss account holders; however, Germany is committed to reciprocal treatment on Swiss demand. The deduction is to be paid over in full by the Swiss authorities to their German colleagues in full and final settlement of the German liability of each account holder. The account holder is to be given a receipt documenting this fact, but is not to be routinely named outside the bank. The account holder can request inclusion of 9% church tax in the amount withheld, again in final settlement of his German obligation.

The past is to be satisfied by a one-off payment on the account balance held six months after the entry into force of the treaty. The rate varies between 19% and 34% depending on the account movement since January 1, 2003. The payment is anonymous, although the account holder is to be given a receipt identifying his person and showing the details of the calculation. This payment absolves him from prosecution for past tax evasion in Germany unless he "knew of or should reasonably have assumed" moves by the authorities to investigate his affairs. The Swiss banks are to form an association to make an advance payment of SFr 2 bn to Germany on entry into force of the treaty on account of amounts to be collected from account holders.

An account holder may request the bank to pass his account information to the German authorities as an alternative to the withholding tax. In this case the income is paid gross, subject to the withholding taxes under the double tax treaty.

There is no payment to be made in respect of account holders withdrawing their balances from Switzerland before the end of the 5th month following the entry into force of the treaty. However the Swiss authorities have undertaken to collate such movements following the date of signature of the agreement and to give summarised information to Germany in the form of a schedule showing the ten most popular countries of destination (by amount) and the number of transfers made to each one.

For the future, Germany may request specific information on named persons, provided the German authorities have specific grounds for suspicion. Random requests are not allowed. The overall number of requests is to be limited to a specific figure to be fixed by a joint commission for each year but to lie within the range of 750-999 over a two year period. Information passed may be used for tax purposes only. These can include prosecution for tax evasion, but not for other offences, even if these are more serious. The agreement also provides for an amnesty from criminal prosecution for those involved in the German acquisition of Swiss bank data on account holders. However, employees of Swiss banks are not eligible for amnesty.

The treaty was signed on September 21, 2011 and is to enter into force on the January 1 following ratification in both countries. Ratification in Switzerland could be subject to referendum, especially as negotiation of similar treaties with other countries is underway or has recently been concluded.

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Schlagwörter

Switzerland, treaty, withholding tax