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Double tax treaty with Switzerland: New consultation agreement to clarify the application of Article 15 paragraph 4 DTA-Switzerland

The German and Swiss tax authorities have concluded a new consultation agreement regarding the group of persons to whom Article 15 paragraph 4 applies to ensure the uniform application and interpretation of Article 15 paragraph 4 of the double tax agreement between Germany and Switzerland (Federal Ministry of Finance, letter dated 25 April 2023).

Background

In the mutual agreement of 18 September 2008, the tax authorities agreed to apply Article 15, paragraph 4 DTA-Switzerland only to persons whose (1) procuration or (2) function mentioned in (a) Article 15, paragraph 4, sentence 1 DTA-Switzerland and (b) no. 2 letter a), sentence 1 of the mutual agreement of 7 July 1997 is entered in the commercial register.

However, the Supreme Tax Court in its decision of 30 September 2020 (Case No. I R 60/17) held, that the applicability of Article 15, paragraph 4 DTA-Switzerland does not require the taxpayer to be entered in the commercial register. It is sufficient if, from a civil law perspective, the taxpayer occupies a position that is comparable to the persons expressly named in Article 15, paragraph 4 DTA-Switzerland regarding the associated power of management and representation.

More detailed information on the changes to be found in our [**P&O Newsflash - Issue 8, May 2023**](#).

Schlagwörter

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