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By PwC Deutschland | 17. Mai 2023

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).

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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

double tax treaty, mutual agreement