By PwC Deutschland | 03 May 2012

Swiss treaty enactment procedure starts

The cabinet has resolved a bill to be laid before Parliament in order to enact the recently revised treaty with Switzerland to legalise the position of German tax evaders without revealing their identity.

September 2011 saw the conclusion of an agreement with Switzerland to end that country's deliberate sheltering of German tax evaders. The agreement would have allowed German holders of Swiss bank accounts to legalise their position with a lump sum payment without revealing their identity. Income credited to their accounts from then on would be subject to a withholding tax to be collected on behalf of the German treasury at the same rate as would be levied on investment income within Germany. Those preferring not to take advantage of this amnesty would be given the opportunity to remove their assets to another country of their choice, again without revealing their identity. This treaty was widely criticised as being too generous to tax fraudsters, but vehemently defended as being the best available and certainly much better than no treaty at all. However, the government saw the criticism as sufficiently powerful to force it to reopen negotiations with the Swiss finance ministry. These were concluded with an amending protocol of April 5, 2012 improving slightly on the original terms:

- The lump sum taxation to legalise the past would rise from the range of 19%-34% to one of 21%-41%
- Inheritance tax fraud (not touched upon in the first treaty) could be resolved at the choice of the present account holder by disclosure to the German authorities or by a lump sum payment of 50% of the legacy received (50% is the highest rate of German inheritance tax).
- The maximum number of specific requests for information on account holders – must be based on a founded suspicion – has been increased from 999 to 1,300 over a two year period.
- The deadline by which those not wishing to regularise the past or to tax future income must remove their assets from Switzerland and close their accounts has been shortened by five months to the day the treaty takes effect (proponents of the treaty hope for January 1, 2013).
- Clarification that the provisions now agreed do not impinge on the withholding tax already being levied on the interest income of German resident account holders under an agreement with the EU (the difference between the two agreements is that that with the EU allows Switzerland to retain 25% of the amount collected).

Whether these improvements will be sufficient to silence the – still vocal – opposition to the treaty in many political quarters remains to be seen. At any rate, the cabinet has now started the ratification process with its resolution of April 25 on a bill to be laid before Parliament for the enactment of the treaty into national law. This bill must be passed by both chambers – opposition in the *Bundesrat*, the second chamber, is likely to be more intense than in the *Bundestag*, the first.

Keywords

Swiss, Swiss bank account, Switzerland