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Update - Automatic Exchange of Information

Dear Sir or Madam,

After the expiry of the referendum period in April, the automatic exchange of information (AEOI) will come into effect in Switzerland. In our [newsletter from 11 March 2015](#) we had already outlined the essential features and would like to add complementary information.

Tax-relevant data will be collected in 2017 and exchanged with tax authorities from participating contracting states in 2018. First-category contracting states (all EU member states, Australia, Jersey, Guernsey, Isle of Man, Iceland, Japan, Canada and South Korea) are primarily locations important to Switzerland. Other nations will doubtlessly be following, with the BRICS nations probably not enjoying first priority politically; relevant on the one hand are economic and political relationships, on the other hand sufficient opportunities for regularisation. However, this situation could change quite rapidly if there is sufficient political pressure on Switzerland, as the recent past has frequently shown.

Should you or your company domiciled in Switzerland have untaxed assets in one of these countries, or you or your company be domiciled in one of these countries and have untaxed assets in Switzerland, then it would be high time to settle the matter by voluntary disclosure. A voluntary disclosure without penalty will probably only be possible until end of 2016, as a temporary tax amnesty was rejected by parliament in view of the introduction of the automatic information exchange. From 2017 on, conditions for an unpunished voluntary disclosure will no longer be met, as with the current restrictive application it will no longer be regarded as voluntary, but only as avoidance of a fine, because discovery of the evasion by the authorities is certain due to the exchanged information. Qualified evasion can lead to fines of between 33% and 300% of the evaded tax, depending on the evaluation of guilt.

Tax authorities are aware of possible loopholes; for example the Netherlands precautionary submitted a group request regarding persons domiciled in the Netherlands with bank accounts in Switzerland in 2013 and 2014, with balances above €1'500 in that period, including accounts closed in that period.

However, the Federal Supreme Court refused mutual assistance in this specific instance, as group enquiries without names are excluded. Currently over 50 double taxation agreements are in force that basically allow group requests.

Institutes not obliged to report

Specifically mentioned are institutes for occupational benefits provision that are not obliged to report:

- Occupational benefit schemes set up for compulsory insurance based on LPP
- Vested benefit accounts according to Vested Benefits Act (VBA)
- Substitute Occupational Benefit Institution and security fund
- Recognised forms of provision that exclusively serve occupational benefit provision purposes (article 82 LPP)
- Welfare funds, financed by employers, for occupational benefit plans
- Investment foundations for jointly investing and managing pension funds

In addition, not obliged to report are credit card suppliers which ensure that excess payments of more than \$ 50'000 are reimbursed to the customers within 60 days. The same goes for financial institutions that are subject to the Collective Investment Schemes Act (CISA) if they ensure that within two years no bearer instruments are marketable anymore. The Federal Council will also determine the criteria according to which condominium associations are not obliged to report.

BEPS (Base Erosion and Profit Shifting) and Mutual Assistance Agreements

At the same time immense progress towards transparency has been made in the area of corporate tax, whether that is within the framework of BEPS or with Mutual Assistance Agreements, according to which tax authorities are bound to spontaneously report to the other state. This applies particularly to information about advance decisions by the tax office (tax rulings) and other complex issues that could be relevant for tax assessment in the other contracting states. This is all about increasing transparency for international corporations and about international profit allocation as a central element of the BEPS project. In view of international relationships it is recommended to check existing tax rulings with regard to information that should not be disclosed to the other contracting state, so that amendments can still be incorporated before enforcement. For existing rulings other states may ask for ruling information via mutual assistance request as far back as 2010.

The spontaneous information exchange will not only affect companies, but also individuals with cross-border affairs. According to art. 7, paragraph 1 of the mutual administrative assistance in tax matters, this affects all cross-border remunerations, as either company officer or employee, donations and inheritances received from abroad, loans granted abroad and real estate abroad. This will in particular affect people that regarded their foreign assets as irrelevant for taxation in Switzerland. The necessary amendment to the Tax Administrative Assistance Act (TAAA) was passed by parliament on 18 December 2015 and should, with the existence of international treaties come into force in 2017, but at the latest in 2018.

There have been considerable efforts recently on international level to curb tax evasion and illicit flows. The public reaction to the Panama papers suggest that the pressure will not slacken and that the network will become more comprehensive, geographically as well as in depth.

Thanks to our global network Morison KSi we are able to assist you in cross border matters and take advantage of an existing competence centre regarding BEPS matters.

Kind regards

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