Switzerland and the EU sign agreement regarding automatic exchange of information

Executive summary
On 27 May 2015, Switzerland signed an agreement with the European Union (EU) to meet the Organisation for Economic Co-operation and Development's (OECD) global standard for the automatic exchange of financial account information. The agreement should come into force on 1 January 2017 and the first exchange of financial account data between Switzerland and the EU member states should occur in 2018. This agreement marks a major step forward in Switzerland's contribution to the prevention of tax evasion and the increase of tax transparency.

Detailed discussion
Switzerland first committed itself to incorporating the OECD’s Common Reporting Standard (CRS) by signing a respective declaration at the OECD’s annual Ministerial Council meeting in May 2014. Since that time approximately 100 countries, including all major financial centers, have committed themselves to introducing the CRS. The newly signed agreement with the EU marks a major step forward in Switzerland’s contribution to prevent tax evasion and increase transparency in international tax matters. It is the firm intention of Switzerland to also reach agreements for the implementation of the CRS with countries outside the EU, including the US. A first agreement has already been signed with Australia, others are expected to follow in the near future.

The EU has implemented the OECD CRS among its member states through a revision of the Directive on Administrative Cooperation (2011/16/UE, DAC).
The new agreement signed by Switzerland and the EU on 27 May 2015 will replace the current agreement on the taxation of savings that entered into force in 2005. Based on the current agreement, Switzerland is required to remit to the EU countries 75% of the taxes withheld on interest on savings of EU resident individuals. Alternatively, the client could ask the bank to report the interest income to the client’s home country tax office rather than to withhold.

The new agreement will directly apply for all 28 EU member states and consists mainly of the following three elements:

- Reciprocal automatic exchange of financial account information in accordance with the OECD CRS
- Exchange of information on request in accordance with Article 26 of the OECD Model Convention
- Full withholding tax exemption of cross-border dividends, interest and royalties between related entities

The CRS has been included in full in the new agreement and Switzerland and the EU member states will automatically exchange information on the full range of financial account information, i.e., the taxpayer’s home country tax office will be informed in detail on any assets and income in the other countries. The information to be exchanged includes the taxpayer’s name, address, date and place of birth (in the case of an individual), account number, account balance or value as well as information on income, such as interest, dividends and proceeds from the sale or redemption of assets, and in certain cases the gross proceeds received in the account. To alleviate matching the taxpayer’s information with the information received from financial institutions under the CRS, the taxpayer’s identification number (TIN) also needs to be reported.

In addition to the automatic exchange of financial account information, the new agreement also provides for a standard exchange of information on request (Article 5), whenever such information is potentially relevant for carrying out the agreement or to the administration and enforcement of the domestic laws concerning taxes of every kind. This exchange of information on request is fully in line with the international OECD standard set out in Article 26 of the OECD Model Convention.

The current taxation of savings agreement between Switzerland and the EU exempts intercompany payments of dividends, interest and royalties from any withholding tax in the source state (Article 15). This withholding tax exemption has been adopted in the new agreement (Article 9) without any changes, i.e., dividend, interest and royalty payments from EU member states to Switzerland and vice versa will continue to be exempt from withholding taxation in the source state if the respective requirements are met.

In an incidental press briefing, EU Commissioner Pierre Moscovici stated that the EU Commission is also concluding negotiations for similar agreements with Andorra, Liechtenstein, Monaco, and San Marino. These agreements are expected to be signed before the end of this year.

Next steps

The Swiss Federal Council already initiated a consultation procedure for the new agreement, providing interested parties including the cantons an opportunity to comment thereon until 17 September 2015. Thereafter, the agreement will be submitted to Parliament for approval. The parliamentary approval will be subject to an optional public referendum. The agreement is expected to enter into force on 1 January 2017 provided the approval process is duly completed in Switzerland and the EU. Switzerland and the EU member states are committed to collect financial account information in 2017 and exchange it for the first time in September 2018.

With this new agreement on the automatic exchange of financial account information, the withholding tax agreements that Switzerland signed with Austria and the UK and which entered into force on 1 January 2013 will become obsolete. Switzerland intends to bilaterally agree with Austria and the UK on how to terminate those agreements and to ensure a smooth transition to the new CRS.
The EU Commission presented a tax transparency package in March 2015 with the intention to further increase tax transparency and collaboration within the EU by providing, among others, the automatic exchange of tax rulings between EU member states.\(^3\) The package is currently subject to consultation and approval within the EU legislative procedure and has not been considered in the agreement with Switzerland. However, it is expected that the EU would be interested to extend such increased tax transparency measures to other countries, including Switzerland, after the package has been approved and implemented within the EU.

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Endnotes


2. See EY Global Tax Alert, *Australia and Switzerland agree to automatically exchange financial institution account information*, dated 6 March 2015.

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