



Taxing assets held via Swiss accounts

The UK/Swiss agreement and its application to non-UK domiciliaries

HM Revenue and Customs (HMRC) is concerned that there is a great deal of untaxed wealth held in Switzerland by UK residents.

This concern has led to an agreement between the UK and Swiss authorities which, at its heart, will place obligations on Swiss institutions ('paying agents') to collect and pay over tax to HMRC, via withholding, or disclose information about investors/clients that will allow HMRC to pursue taxation. The agreement applies to both past wealth and future accretions of wealth.

The agreement, which is expected to come into force on 1 January 2013, applies to all individuals who appear to be UK tax resident, without exclusion.

This alert focuses on tax compliant non-UK domiciled individuals and the impact of the agreement to them. Such individuals need to:

- ▶ Decide which option to choose in relation to past wealth
- ▶ Understand how the future withholding tax regime will apply
- ▶ Understand the certifications and deadlines they and their advisers will need to comply with, and
- ▶ Understand to what extent their own and family trust/company assets are within the scope of the agreement.

What happens if no action is taken?

Withholding tax will be levied, in the same way as for UK domiciled individuals, on both past wealth and future income and gains irrespective of the source of the funds and that no remittances may have been made, i.e. that the non-domiciliary has paid the correct amount of tax in the past.

What assets are caught?

A wide range of financial assets booked or deposited with Swiss paying agents such as stocks, shares, options, structured products are within the agreement, whether held directly by the individual or by entities, such as trusts, foundations, partnerships, companies, where beneficial ownership can be attributed to the UK resident under the agreement.

How are non-UK domiciled individuals treated?

In relation to the past, non-UK domiciliaries have a number of options (see further below) including a complete opt out. However, it is vital that the chosen option is notified to the Swiss paying agent by the due date to avoid the one off withholding tax of up to 34% applying to account balances as at 31 December 2010 (subject to certain adjustments) by default.

In relation to the future, there are special provisions which are designed to ensure that withholding tax only applies to UK source income and gains and foreign income and gains remitted to the UK if certain declarations are made, otherwise all income and gains are taxed.

In both cases, to avoid automatic disclosure, the non-UK domiciled individual should confirm to the Swiss paying agents that they will make up any shortfall if there are insufficient funds to finance the withholding tax.

How is domicile position confirmed?

Swiss paying agents can accept an individual is non-UK domiciled if a professional adviser provides a declaration confirming that:

- ▶ the individual has claimed to be non-UK domiciled on the return
- ▶ has claimed the remittance basis for the relevant year(s), and
- ▶ the domicile status is not being disputed by a UK authority.

In relation to the past, a one off certification is required which includes that the remittance basis has been claimed for 2010/2011 and/or 2011/2012.

In relation to future income and gains, a certificate must be provided by 31 March after the relevant tax year. A statement of intent must also be provided by 31 March before the start of the tax year.

What are the options for non-UK domiciliaries?

In relation to the past, having provided the relevant certification a non-UK domiciled individual can:

- ▶ Opt to have the withholding tax applied to the full amount in the account on the relevant dates
- ▶ Authorise the Swiss paying agent to make full disclosure
- ▶ Opt for the self-assessment, whereby they disclose to the Swiss paying agent the amounts on which UK tax is due and have the withholding tax applied to this amount, or
- ▶ Opt out completely.

The above provide different levels of protection depending on the option chosen.

In relation to the future, a non-UK domiciled individual can:

- ▶ Opt for disclosure, or
- ▶ Allow ongoing withholding tax.

In both cases, if the domicile certificate is provided, it only applies to UK source income and foreign income and gains to the extent they are remitted to the UK. Remitted for these purposes means amounts paid to a UK payee.

Why should action be taken now?

All non-UK domiciliaries need to consider their position now so they are clear how the Swiss paying agent will apply the agreement to their personal situation. As it is drafted so widely, much of the agreement depends on how it is interpreted and implemented by Swiss paying agents.

In relation to the past, for example, non-UK domiciliaries should ensure that all remittances and UK source income have been disclosed before simply opting out. HMRC has made it clear 'no tax means no clearance' and it will not tolerate abuse of the special provisions relating to non-domiciled individuals.

In relation to the future, the individual will need to understand how the Swiss paying agent will apply the agreement in particular:

- ▶ Will there be a standard form for the certification and what processes will be put in place to ensure deadlines are not missed?
- ▶ Will it consider the individual to be the beneficial owner in relation to assets held by trusts, companies, partnerships, etc? What about assets held via collectives, including funds and partnerships where, under the agreement, beneficial ownership of other owners can be attributed to UK resident individuals?
- ▶ How will remittances from a 'mixed' account with multiple sources of income and gains and transactions to both overseas payees and UK payees be dealt with?
- ▶ How will UK payee be defined, will it be based on where the bank account is or the address of the payee?
- ▶ If tax is withheld from overseas income and gains, will this cause a remittance as these monies are then paid to HMRC in the UK? Can this be avoided with all withholdings from UK source income and gains? What if there is no UK source income and gains?
- ▶ Will relief for capital losses be given even if the individual has not made a capital loss election in the UK and if so does this have any implications?

It is important to try to avoid excessive withholding as recovery of the excess via self-assessment effectively negates both the anonymity of the agreement and the 'clearance' that all UK taxes have effectively been paid.

Given the practical implications of this agreement, individuals may consider moving their accounts to other jurisdictions but this too needs consideration (e.g. what jurisdiction, does the EU Savings Directive apply and if so how, etc).

How Ernst & Young can help

- ▶ We have extensive experience advising non-UK domiciliaries, have already had a number of discussions with HMRC in relation to the agreement, and raised some of the more complex areas as they relate to non-UK domiciliaries. We are, therefore, well placed to assist non-UK domiciliaries reviewing their options in light of the agreement.
- ▶ We can clearly assist with providing the necessary certifications for non-UK domiciliaries to their Swiss paying agents.
- ▶ We can also assist with discussions with Swiss paying agents:
 - ▶ so they understand the intricacies of the UK tax system as it relates to non-UK domiciliaries, and
 - ▶ understand what the non-UK domiciliaries will be requiring of them.
- ▶ Finally, if, for practical reasons, individuals are considering other jurisdictions, with our international focus we can provide advice on local withholding tax considerations, the application of the EU savings directive, etc.

We are, therefore, well positioned to provide insights, analyses and support to enable informed decision making on what action should be taken.

Further information

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