



Background information

Date 26 March 2010

Current bilateral tax issues between Germany and Switzerland

Brief summary

Federal Councillor Hans-Rudolf Merz and the German Finance Minister, Wolfgang Schäuble, met in Berlin on 26 March 2010 to discuss bilateral tax issues. The revised double taxation agreement (DTA) was initialled on the fringes of the meeting. The two ministers appointed a joint working group to clarify the unresolved financial and tax issues.

Double taxation agreement between Switzerland and Germany

On 11 August 1971, the Swiss Confederation and the Federal Republic of Germany concluded a convention for the avoidance of double taxation with respect to taxes on income and assets. This DTA has been in force since 29 December 1972, and was revised thereafter in 1989, 1992 und 2002.

Since the decision of the Federal Council on 13 March 2009 to withdraw its reservations to Art. 26 of the OECD Model Convention, Switzerland provides international administrative assistance also in cases of tax evasion. New DTAs will be negotiated accordingly and existing ones may be revised. The adoption of Art. 26 of the OECD Model Convention in the DTA between Switzerland and Germany is the key element of the DTA initialled on 26 March 2010.

The agreement with Germany is the twenty-third with an administrative assistance clause in accordance with Art. 26 of the OECD Model Convention. Along with extending administrative assistance in tax matters, Switzerland has also been able to negotiate various benefits for the economy in the negotiations with these 23 countries, such as reductions in withholding tax on dividends, interest and royalty

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payments, as well as the introduction of an arbitration clause. The avoidance of tax discrimination has also been achieved. This policy will be pursued and further negotiations are already envisaged with important countries.

Timeline: Germany and Switzerland on the way to a new DTA

- 13 March 2009 In accordance with the statement from the Federal Council, Art. 26 of the OECD Model Convention is to be adopted in renegotiated double taxation agreements. Existing DTAs will be revised accordingly from time to time.
- 22 June 2009 President Hans-Rudolf Merz and the German Finance Minister Peer Steinbrück agree in their meeting in Berlin to revise the double taxation agreement.
- 8 - 10 September 2009 Switzerland and Germany hold negotiations in Bern on the revision of the DTA.
- 15 - 18 December 2009 Switzerland and Germany continue the negotiations on the revision of the DTA in Berlin.
- 14 February 2010 Switzerland takes part in the meeting between the German-speaking finance ministers in Luxembourg, and uses the meeting for an informal exchange with the German Finance Minister Wolfgang Schäuble.
- 16 - 18 March 2010 Switzerland and Germany conduct negotiations on the revision of the DTA in Bern.
- 26 March 2010 Switzerland and Germany initial the revised double taxation agreement.

Implementing Art. 26 of the OECD Model Convention

The administrative assistance clause in the initialled Protocol of Amendment to the DTA between Switzerland and Germany is in line with the parameters decided by the Federal Council. These parameters are as follows:

- Information exchange in accordance with Switzerland's new administrative assistance policy makes provision for an exchange of information in individual cases upon specific and substantiated request. This excludes the exchange of information on an automatic or a spontaneous basis.
- To enable an effective exchange of information in future, this also requires that the taxpayer concerned be clearly identified.
- The amended provision on the exchange of information will be applied in accordance with the specification of the Federal Council exclusively to future matters.

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- The current regulations in the double taxation agreement between Switzerland and Germany apply to the exchange of information in connection with matters in the past. In this way, the exchange of information is restricted to those requests to do with fraud.

Similar to the agreement revised up to now, the publication of the text of the agreement will occur only after the Protocol of Amendment has been signed by the Federal Council.

No talks took place on the conclusion of a separate agreement on the exchange of information in tax matters.

Initialling and ensuing stages before entry into force

Initialling is defined as the approval of a contractual text by appending initials. Negotiators can in this way provisionally draw up the negotiated contractual text of DTAs (and other agreements based on international law). The initialled text is at first confidential. The cantons and the business associations concerned are notified of the content in a brief report and invited to submit their comments.

The agreement is then submitted to the Federal Council, which gives authorisation for it to be signed. Once it has been signed, the agreement is published. Subsequently, the Federal Council approves a dispatch for the attention of parliament, which is responsible for approving the DTA. Once the partner state has provided its approval of the agreement, then the agreement can be ratified. This is the requirement for entry into force, although the point in time of entry into force depends upon the agreement reached.

Bilateral working group for clarifying unresolved issues

Federal Councillor Hans-Rudolf Merz and Finance Minister Wolfgang Schäuble have appointed a joint working group to clarify the unresolved financial and tax issues. They have charged State Secretaries Hans Bernhard Beus and Michael Ambühl with coordinating the efforts of a joint working group for developing possible solutions. The working group will be comprised of high-ranking officials from both countries' finance ministries.

The working group has the task of clarifying the views and technical understanding in the following areas, as well as developing possible solutions:

- Possibilities for arranging the taxation of German residents' untaxed assets that are invested in Swiss financial institutions;
- Ensuring the taxation – in the form of a final withholding tax – of the ongoing investment income from assets that are invested in Swiss financial institutions by German residents, as well as the transfer of such assets, particularly by way of inheritance or endowment;
- Market access; based on the solutions proposed by the relevant supervisory authorities, examining extended market access for Swiss banks in Germany;

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- Accompanying work associated with the signature of the Protocol of Amendment to the bilateral double taxation agreement, including matters regarding the handling of the purchase of bank data and comprehensive information for Switzerland on this issue.

Regarding the purchased bank data, Germany acknowledged during the ministerial meeting in Berlin that Switzerland will not provide administrative assistance on the basis of purchased bank data.

Germany and Switzerland as trading partners

Germany is an important trading partner for Switzerland, as is evidenced by last year's trade overview. Once again, Germany was Switzerland's most important trading partner worldwide in 2009. On the import side, German deliveries, at CHF 53,828 million, were greater than those from Italy (2nd), France (3rd), the United States (4th) and the Netherlands (5th) combined. On the export side, deliveries to Germany amounted to CHF 35,104 million, bringing them close to the combined figure for the United States (2nd) and Italy (3rd). The trade volume (imports and exports) amounted to approximately CHF 88.9 billion. Traditionally, Switzerland has a high trade deficit with Germany, and in 2009 it was CHF 18 billion. Both exports and imports declined significantly in 2009 versus 2008 (Swiss exports 2009: -16%; imports from Germany 2009: -16.9%).¹

¹ Source: State Secretariat for Economic Affairs (SECO), Germany country information.
<http://www.seco.admin.ch/themen/00513/00561/00564/index.html?lang=en> (status as at 22.02.2010)