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UK - Swiss Tax Agreement

Following the Tax Agreement between the UK and Switzerland signed on the 6 October 2011 it is important for holders of accounts in Switzerland not to overlook any action that needs to be taken. Notification to the bank authorising disclosures to avoid the levy and withholding tax should be made in good time.

The Agreement between the UK and Swiss tax authorities is part of a continuing effort by HMRC and their European counterparts to increase the level of information sharing within the Europe and with 'tax havens'.

The UK-Swiss agreement is scheduled to come into force on 1 January 2013 and contains 3 key features:

1. The one-off levy targeted on non-disclosed accounts held by UK residents to be treated as payment of tax due.
2. The introduction of a withholding tax on interest and gains held in non-disclosed accounts.
3. A limited information sharing agreement.

The treaty will have consequences for all accounts held in Switzerland by UK residents.

Past tax and penalty levy

There is a provision for a one-off payment from the accounts of UK resident individuals in respect of past taxes and penalties. This 'anonymous regularisation' will be of an amount between 19 and 34% of the account balance on 31 December 2010 depending on a range of factors, including the age of the account and its recent activity. This levy will be treated as the full tax liability on the account with no further liability in respect of past taxes. Importantly however this is not the case if there is a current HMRC investigation underway or if the account holder has previously taken part in a disclosure opportunity, and will only be treated as a payment on account.

To avoid the levy it is advised that: UK residents holding accounts in Switzerland should notify their bank to disclose the account details to HMRC, one of two routes will then be followed;

1. If the account is UK tax compliant there will be nothing to pay.
2. If tax is due then tax and penalties will be payable but no prosecution will be pursued.

Future Withholding tax

From 2013 a withholding tax is being introduced on interest earned and gains on Swiss accounts. The default position will be that withholding tax will be applied to accounts at rates nominally below UK tax rates, in return for a certificate of tax paid from the bank.

Under a declared account, the declared income and gains will go onto the tax return or through a disclosure facility. The bank needs to be authorised to disclose account information to HMRC in return for an annual certificate of amounts disclosed.

Swiss/UK information sharing

With secrecy and discretion being key features of Swiss banking, a critical aspect of the treaty for the Swiss banks was the retention of the principle of anonymity. Although the banks will not tell HMRC who has suffered the withholding tax there is still a provision for HMRC to request each year the account details of 500 individuals they suspect of evading taxes.

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This agreement comes soon after a similar deal between the German and Swiss tax authorities and represents a continued shift as Switzerland seeks to enter the more transparent European financial markets.

For those seeking to move their funds out of Switzerland, there is a requirement that the Swiss authorities notify HMRC of the ‘aggregated data’ on the destination of funds. There are bound to be further treaties made with territories with low tax rates. Avoiding disclosure is a risky gambit leaving open the possibility of being discovered by HMRC and receiving significant fines.

Disclosure routes

The disclosure option through the Swiss scheme offers a number of important differences to the Lichtenstein Disclosure Facility which will still be the preferred route for many seeking to disclose tax liabilities to HMRC.

The Lichtenstein facility is charged only on income or gains arising, unlike Swiss accounts where there will be a flat rate charge on everything, including non-taxable funds. Importantly the LDF does not tax offshore income and gains made before 6 April 1999 and can be used to disclose all worldwide assets, including those outside Lichtenstein. If full disclosure is given; then immunity is granted from tax fraud investigations.

The one off Swiss levy will effectively make the account UK-tax compliant. The bank will issue a certificate of tax paid under the scheme, whilst retaining the client anonymity key to Swiss banking. If looking to disclose accounts the Swiss scheme is only applicable to accounts held in Switzerland and will not be open to other assets held worldwide.

Neither disclosure facility can be used if the account holder is subject to one of the increasing HMRC investigations which seek to clamp down on tax fraud and evasion.