Association de
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Association of Swiss Private Banks

Automatic exchange of information: mastering the new reality

The OECD and the G20 have endorsed automatic exchange of information to fight against tax evasion worldwide. On 6 May 2014, the Swiss Federal Council announced that it intends to adopt the new standard, along with 65 other countries. Its implementation in Switzerland must steer clear from excessive naiveté.

The content of automatic exchange of information was defined by the OECD this summer. The main question is which countries it will be implemented with. The Swiss Federal Council has already announced that it plans to negotiate automatic exchange of information with three groups of countries: the United States, the EU and other nations.

For the US, the idea is to transition from the current 'Model 2' FATCA agreement to a 'Model 1' arrangement. Financial information would be transmitted directly to the IRS by the Swiss tax authorities rather than by the banks. Adopting this new model would mean that Swiss banks would report to their own government rather than a foreign tax authority, which is preferable by far. Moreover, this solution is the one that most other countries have opted for, and is endorsed by the OECD. In the long run, however, the US will be expected to sign agreements that comply fully with the OECD standard, so as to offer the reciprocity that is still largely lacking under FATCA.

Regarding the EU, the plan is to replace the current Agreement on the Taxation of Savings with the OECD standard. Negotiations with the EU should allow Switzerland to satisfy all member states without having to negotiate 28 different agreements simultaneously. That said, an important condition will be that Switzerland is allowed to treat UK 'resident non-domiciled' individuals in the same way as the UK does with respect to its dependent territories, several of which are relatively large financial centres.

As for other countries, the Federal Council has suggested granting automatic exchange of information to countries that meet the following three criteria: i) they have close economic or political ties with Switzerland, ii) they offer ways for their citizens to regularise their tax situation, and iii) they present business opportunities for the Swiss financial sector.

These criteria are fair, but a fourth condition should be added: international coordination. It makes no sense for Switzerland to implement automatic exchange of information with a country unless all the large financial centres, especially the US and the UK, do so as well. Not only is the concept of the 'level playing field' at the heart of all international cooperation, but the fact that other states consider a country unsuitable for automatic exchange should be taken as a clear

sign that it has been found deficient in terms of security. In this regard, Switzerland should distinguish itself by its prudence rather than by its laxness.

That said, when faced with pressure from governments eager to reap the benefits of automatic exchange, will the Federal Council feel free to refuse? If need be, the Swiss Parliament may be called upon to ensure that Switzerland coordinates its position with other major financial centres. In addition to this type of cooperation, it bears mentioning that exchange of information on request (including group requests) will remain available to countries that have a double taxation agreement or similar treaty with Switzerland.

Furthermore, adopting these measures should condemn to irrelevance the due diligence rules pertaining to tax compliance that the Federal Department of Finance has again slipped into article 11 of the draft law on financial institutions, in spite of the negative feedback received in consultation a year and a half ago.

Article 11 requires banks (but not insurance companies, which curiously do not fall under the scope of the proposed new law!) to ensure that all their clients are tax compliant. Banks would in essence become tax enforcement agents, although that is not their role. No other country in the world places similar demands on its financial intermediaries. Such intrusive and uniquely stringent verifications would likely turn away honest clients. Meanwhile, competing financial centres would be only too happy to see Switzerland handicap itself by adopting such dissuasive measures.

In this second area too, a 'level playing field' is essential: no further requirements should be added to the international standards we have already accepted.

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