

顺应国际形势 瑞士提高税收透明度

Switzerland: enhanced tax transparency according to international standards



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2009年3月瑞士联邦议会作出决议，对与瑞士签订了避免双重征税协议或税收信息交换协议的国家所提出的特定请求，瑞士将提供税务方面的行政协助。

多边协议

迄今为止，包括所有二十国集团国家及瑞士在内的69国政府已经签署了《多边税收行政互助公约》。

2014年7月，经济合作与发展组织（“经合组织”）发布了“税收信息自动交换”的全球标准。截至2014年10月，已有51个国家签署了《多边主管当局协议》，以支持该“税收信息自动交换”制度。

《多边主管当局协议》的签署国不仅包括欧盟国家，还包括百慕大、英属维尔京群岛、毛里求斯等其他国家。在来自国际各国推行新全球标准的压力下，瑞士联邦议会于2014年11月也签署了《多边主管当局协议》。为适用《多边税收行政互助公约》以及《多边主管当局协议》，瑞士联邦议会已于2015年1月14日公布了相应国内立法的草案。

鉴于瑞士相当复杂和耗时的立法程序，前述提到的现行行政协助法规的修正案预期不会在2018年前生效。不过，预期的变化仍然值得密切关注。

全球标准

从根本上说，瑞士已同意采纳的全球标准将不仅涉及到“税收信息自动交换”，还将涉及到所谓的“自发行政协助”。

何谓“自发行政协助”？对于瑞士来说

这是一种新型的行政协助。根据最新的立法草案，瑞士在以下情况下应向其他签约国传递信息：涉嫌偷逃税的案件、纳税人在一签约国享受税收优惠或者有其他税收优惠安排但是会增加其他缔约国税收负担的情况、如果一方签约国的税务机关收到了某纳税人的税收信息并且此税收信息可能对其他国家分析此纳税人的税务情况有帮助的，那么相关的税收信息可以发送给其他签约国。

信息共享

换句话说，无论税务机关何时收到可能有助于其他国家准确评估纳税人的税收信息，税务机关都有权与其他税务机关共享此信息。

目前很难预测每年适用自发行政协助案件的案件量。不过可以肯定的是，未来每位纳税人，尤其是跨国公司，都需要特别注意，其向“税收信息自动交换”全球标准的签约国的税务机关披露的所有信息都可能会被告知其他成员国。

这些税收信息自动交换对纳税人来说不一定存在负面影响，但是仍然需要谨记于心，特别是跨国公司。

比如，当一家跨国集团公司在某国设立总部并另在他国设有有限职能甚至其他职能的分公司，该集团公司应当注意，为确保总部和分公司如实缴税，其总部住所地的税务机关可能会相应地通知其分公司所在国的税务机关。

更明确的说，跨国集团公司应确保其在本司法辖区的税收与“价值创造”和进行实质经济活动的地点相匹配。

未来的税收信息交换需要特别考虑瑞

士的税收裁定实践。在许多情况下，法人和自然人都将收到瑞士税务机关的税收裁定，以就转移定价、重组计划、融资安排、集团和分公司架构等事宜获得事先批准。

详细信息

由于税收裁定的效力基础是税务机关收到相关的完整准确的事实，因此瑞士税务机关能获得许多有关特定纳税人及其公司的详细信息和文件。在不久的将来，瑞士税务机关将有权跟其他相关税务机关分享这些信息。

虽然如此前所述，规定“税收信息自动交换”的修订草案很难于2018年之前生效，但是跨国集团公司应从现在开始审视其跨国架构安排并确保此安排从本质和功能上保持一致。

经合组织的应对

包括经合组织就应对税基侵蚀和利润转移而提出的税收信息交换措施，这些具有更多功能的新式行政协助，都有明确而且毋庸置疑的目标，即在跨国集团公司从事有效经济活动的地域对其利润征税。

从这个角度来看，虽然上述的税收信息交换可能因为保密性和税务隐私受到批评，但对于跨国集团公司而言，这确是审视并改善其国际税务筹划策略的一次机遇。■

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Based on a general decision taken by Switzerland's Federal Council in March 2009, Switzerland provides for administrative assistance in tax matters upon specific request only, and exclusively for those jurisdictions with which a respective double taxation agreement, or an agreement on exchange of information, has been concluded.

However, until today, the governments of 69 countries, including all G20 states and including Switzerland, have signed the Convention on Mutual Administrative Assistance in Tax Matters. In July 2014, the Organisation for Economic Co-operation and Development (OECD) council defined an enhanced global standard for automatic exchange of information. As of October 2014, 51 countries had already signed the Multilateral Competent Authority Agreement (MCAA) in order to support this automatic exchange of information.

Swiss sign up

Since not only the countries of the EU, but also jurisdictions such as the Bermudas, British Virgin Islands, Mauritius and many more are among the signatory countries, and considering the international pressure put on Switzerland to follow the new global standard, the Swiss Federal Council signed the MCAA in November 2014, too. On 14 January 2015, the draft legislation in order to adopt the convention, as well as the MCAA, was published.

Given the rather complex and time consuming legislation process in Switzerland, the respective amendments of the existing administrative assistance rules will most probably not be effective prior to 2018. Nevertheless, it might be worthwhile having a closer look at the expected changes.

Global standard

Basically, the new global standard to which Switzerland has agreed will not only allow for the automatic exchange of information, but also for so-called spontaneous administrative assistance.

What does "spontaneous administrative assistance" mean? This type of administrative assistance is new for Switzerland. According to the draft legislation that has recently been proposed, information can, among other things, be sent to the other contractual state: in cases

of suspected tax evasion; if a taxpayer receives a tax benefit or other preferential tax solution which is supposed to increase the tax burden in the other state; or if the tax authorities of one contracting state have received information that may also be useful to the other state in order to complete the relevant fact pattern on a particular taxpayer.

Knowledge sharing

In other words, whenever a tax authority receives information that it holds potentially useful for the other jurisdiction in order to ensure the accurate assessment of a taxpayer, the authority will be entitled to share its knowledge with the other tax administration.

It is hard to predict whether there will be a handful of cases of spontaneous information annually, or whether there will be hundreds, or even thousands, of cases. However, in the future, every taxpayer, in particular international companies, needs to be aware that any information it discloses to a tax administration in a jurisdiction which is a party to the global standard for automatic exchange of information in tax matters might be notified to any other jurisdiction that is a contractual party of the respective convention.

Such an exchange of information would not necessarily be negative for the taxpayer, but must still be kept in mind, in particular in multinational organisations. As an example, a company which has established its headquarters in one jurisdiction, and is claiming certain branches with limited or even extended competences and functions in other jurisdictions, should be aware that the tax authority of the legal domicile might inform the branch jurisdictions accordingly, with the purpose of ensuring adequate taxation in both the headquarters and branch domiciles.

Strengthen HQ

Or to express it a bit more positively – a company claiming not only its legal domicile but also the relevant risks and functions in a (lower tax) jurisdiction should consequently strengthen its headquarters respectively, while at the same time limiting the activities of its branches in higher tax jurisdictions to the extent absolutely necessary.

The potential future exchange of information needs particularly to be considered in light of the Swiss ruling practice. In

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numerous cases legal entities, but also individuals, have obtained tax rulings from the Swiss tax authorities in order to get pre-clearance with regards to transfer pricing, planned restructurings, financing arrangements, group and branch structures, and others.

Detailed information

Since a tax ruling is only valid if the relevant, complete fact pattern was presented to the tax authority accurately, the Swiss tax authorities receive a lot of detailed information and documents related to a taxpayer and its business. All this information will in the future potentially be shared with any other interested tax authority, upon discretion of the competent Swiss tax administration.

Although the amended legislation providing for the spontaneous exchange of information is, as already mentioned, unlikely to become effective prior to 2018, it is time for any multinational company to review its international structures and align them properly in terms of substance and functions.

OECD's battle

The new types of extended administration assistance, including the exchange of information, fit in the OECD's battle against Base Erosion and Profit Shifting with the clear, and at the end of the day unquestionable, purpose of taxing the profits of a company where they economically are effectively generated.

From this perspective, although the described exchange of information may be subject to criticism in light of confidentiality and tax secrecy, it might at the same time be a chance to review and improve the international tax planning strategies of a company. ■

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