



Swiss Association
of Trust Companies

Federal Department of Finance FDF
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Zug, 21 April 2015

Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters

Dear Dr Chammartin,

We refer to the invitation of 14 January 2015 to draw up a considered response to the Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters. We thank you for the consultation relating to this very important dossier. We are pleased to respond to the issues raised, and submit our concerns to you in the following.

Summary

The Swiss Association of Trust Companies (SATC) is of the opinion that Switzerland should ratify the Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters ("the Convention"). By joining the Convention, Switzerland will increase the number of partner states with which it can exchange information in a standard-compliant manner. In addition to bilateral treaties, the Convention is designed to establish a legal basis for the automatic exchange of information.

We agree with the reservations and declarations proposed by the Federal Council.

In the case of the spontaneous exchange of information, however, we are of the opinion that the amended provisions of the Federal Act on International Mutual Assistance in Tax Matters [Bundesgesetz über die internationale Amtshilfe in Steuersachen ("StAhiG")] proposed by the

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Federal Council need to be redrafted in order not to restrict the notification of persons who are entitled to file complaints, and to regulate the use of bank information, as in the case of mutual assistance upon request.

Certain proposed amended StAhiG provisions go further than necessary for the implementation of the Convention. However, the SATC is also able to support these.

General

The SATC welcomes the fact that Switzerland's accession to the Convention, which is the subject of the present opinion, will facilitate the exchange of information in tax matters in line with the OECD standard with a significant number of states and territories. On the one hand, this justifies the widely proposed shelving of the submission of the Federal Act on the Unilateral Application of the OECD Standard concerning the Exchange of Information [Bundesgesetz über die einseitige Anwendung des OECD-Standards zum Informationsaustausch (GASI)], while on the other hand enabling Switzerland to comply with the current standard for international cooperation in tax matters. The Convention moreover represents the basis for introducing the AIA as the new global standard for cooperation in tax matters.

It is positive to note in this conjunction that the Federal Council has used the opportunity to limit the Convention's extensive scope of application with reservations. For this reason, SATC supports the reservations relating to the taxes covered by the Convention, the exclusion of mutual assistance in relation to execution, as well as the limit on the length of time that this is applicable for cases of wilful acts.

Furthermore, the SATC welcomes the fact that the direct postal forwarding of written communications by foreign authorities will be possible in Switzerland, and vice versa. Direct postal forwarding by Swiss authorities to persons resident abroad will simplify matters in particular for the banks concerned. This is because the obligation to require such persons to appoint an authorised representative in Switzerland can therefore be dropped.

Spontaneous exchange of information

The SATC views the spontaneous exchange of information as a measure that goes further. However, it also accepts that in the present day and age, in the tax field, there is an interest in spontaneous mutual assistance.

Concerning Art. 22b Informing the persons entitled to file complaints, Paragraph 2

We are of the view that in cases of spontaneous exchange of information, the person entitled to file complaints should always be informed before the exchange takes place. As the exchange is spontaneous, it is not clear how a Swiss tax authority is supposed to be able to judge the success of an investigation abroad (in the absence of a request from abroad). § 14.1 of the OECD commentary on Article 26 merely declares: "Notification procedures should not, however, be applied in a manner that, in the particular circumstances of the request, would frustrate the efforts of the requesting State." When it comes to spontaneous mutual assistance, there is no urgency and no ongoing investigation would be known to the Swiss authorities (in the absence of a request). **For this reason, we propose deleting Art. 22b Para. 2 without substitution.**

Concerning Art. 22e Information received spontaneously from abroad, Para. 2

The use of information that cannot be obtained in accordance with Swiss law should be regulated as in cases of mutual assistance upon request (Art. 21 Para. 2). The new Art. 22e of the StAhiG should be extended to include an additional Para. 3 as follows:

Bank information or otherwise privileged information may be used only to the extent that it could have been obtained in accordance with Swiss law.

We thank you in advance for the favourable assessment of our considered opinion on this important dossier. If you have any questions in this conjunction, please do not hesitate to contact us at any time.

Yours sincerely

Swiss Association of Trust Companies

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President

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