

Banking - Switzerland

Banking secrecy: Switzerland and United Kingdom sign cooperation agreement

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[Regularisation of the past](#)

[Withholding tax for the future](#)

[Compliance of agreement with European law](#)

[Comment](#)

On October 6 2011 Switzerland and the United Kingdom signed a cooperation agreement on taxation and financial markets. The agreement aims to regularise untaxed assets while preserving Swiss banking secrecy, and to curb the extent to which information is exchanged in relation to tax matters. The agreement covers assets (eg, bank accounts and securities portfolios) held by clients at banks, brokers, PostFinance and asset managers in Switzerland. However, the agreement mainly concerns banks.

Regularisation of the past

The agreement applies to natural persons resident in the United Kingdom who are the beneficial owners of:

- an account or deposit held with a Swiss bank;
- assets held by a domiciliary company or a foundation with a Swiss bank, or by a nominee; or
- certain financial products (eg, insurance wrappers).

Once the agreement has entered into force (presumably on January 1 2013), all clients will have five months to choose one of the following options:

- anonymous regularisation by way of a one-off, flat-rate tax. Regularisation is subject to a nominal 34% tax rate. However, the actual taxation will vary between 19% and 34%, whereas most relevant persons will be subject to a 20% to 25% tax rate, mainly due to statutes of limitation. The calculation method involves a complicated formula which takes into account the tax rate (34%), the relevant capital, the duration of the bank relationship and a lump-sum rate of return (3%) for the years 2011 and 2012. It applies both to relevant capital and to certain capital increases during the relevant years;
- voluntary disclosure to the UK tax authorities without penalty and voluntary notification to the Swiss Federal Tax Administration (SFTA); or
- voluntary notification to the SFTA (this option is open only to bank clients that were already tax compliant).

In addition, non-UK domiciled individuals will have two more options:

- to disclose all non-UK income and gains which have been remitted to the United Kingdom and all amounts which arose from taxable sources within the United Kingdom between December 31 2002 and August 24 2011 and on which the full amount of UK tax has not been paid (self-assessment method). These assets will be subject to a one-off payment of 34%; or
- to confirm to the bank that none of the previous options is chosen (opt-out method).

Where clients fail to indicate one of the options to the bank, the one-off payment will be levied. Where clients have opted for the one-off payment (or the one-off payment is levied by default) but insufficient funds have been made available, the Swiss bank will give notice to the client and grant a specific extension in order to secure the one-off payment. If the necessary funds to levy the one-off payment are not available on the expiry of the deadline, the bank will disclose the identity of the client to the UK tax authorities.

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Swiss banks will make an upfront payment of Sfr500,000 to the competent Swiss authorities within 25 days of the date of the entry into force of the agreement. The Swiss authorities will then transfer the amount to the UK authorities within one month of the agreement's entry into force. Once the upfront payment and the subsequent one-off payments reach Sfr1.3 million, the Swiss authorities will offset further one-off payments against the upfront payment.

Clients may also decide to withdraw their assets within five months of the entry into force of the agreement; however Switzerland will report to the UK authorities the 10 states or jurisdictions to which clients that closed their accounts or deposits have transferred the largest volume of relevant assets. The report will include the number of relevant persons concerned for each state or jurisdiction. This data will not be made public.

Withholding tax for the future

Within five months of the entry into force of the agreement, bank clients will have to choose one of the following options:

- The bank will deduct an amount annually on an anonymous basis from income from assets equivalent to the UK income tax. The deduction of this withholding tax will have the effect of satisfying any tax liability in the United Kingdom. The tax rate is 40% for dividend income, 48% for interest and other income and 27% for capital gains.
- Bank clients can authorise the bank to notify the SFTA of the income from their assets under management in Switzerland.

The SFTA will then forward this information to the responsible UK authorities.

A non-UK domiciled individual is liable to withholding tax only in respect of income and gains that have a UK source, or where amounts derived from such income and gains that do not have a UK source are remitted to the United Kingdom. If a relevant person declares to the bank that he or she is non-UK domiciled, but fails to support this declaration with an authorised certificate, then he or she will not enjoy non-UK domiciled status. Furthermore, he or she will be subject to increased tax rates – 42.5% for dividend income, 50% for interest and other income and 28% for capital gains.

The UK tax authorities are entitled to monitor the correct implementation of the UK final withholding tax by Switzerland through random queries. The request must indicate the identity of the taxpayer concerned and be justified by plausible grounds. It must also mention the time period for which the information is needed. The maximum number of requests is set by a joint commission and cannot exceed 500 per year for the first three years after the entry into force of the agreement. So-called 'fishing expeditions' are excluded. Should the UK authorities wish to obtain further information regarding the reported bank accounts, they must submit a normal request for administrative assistance pursuant to Article 26 of the Organisation for Economic Cooperation and Development's Model Tax Convention on Income and Capital.

Compliance of agreement with European law

The question whether the agreement complies with European law has already been raised by EU institutions. The European Commission expressed a critical view on whether it complies with the distribution of competence between the European Union and member states, the provisions of the EU Savings Tax Directive (2003/48/CE) and the Swiss-EU agreement on the taxation of savings.

In October 2011 the European Commission answered a question from a member of the European Parliament on this matter and criticised the agreement. The European Commission favours the automatic exchange of information with Switzerland and considers that bilateral agreements may undermine this ambition. However, there seems to be less concern with the UK agreement than with the German agreement, as its withholding tax rates are higher than in the Swiss-EU agreement (for further details please see "[Banking secrecy: Switzerland and Germany sign cooperation agreement](#)"). On the other hand, the commission stated that the scope of the agreement may cover areas of exclusive EU competence, which may lead to the initiation of an infringement procedure against the United Kingdom.

Comment

The EU Danish presidency, in place since January 2012, has set its focus on reopening negotiations with Switzerland on taxation issues. Denmark pointed out that as part of agreements with Germany and the United Kingdom, Switzerland has made "significant specific concessions", the benefits of which should be extended to all member states of the European Union.

However, the Swiss government refuses to discuss the matter if the European

Commission does not waive its objections against the entry into force of the agreements with Germany and the United Kingdom.

The Danish proposal is expected to be discussed during the Economic and Financial Affairs Council meeting of March 13 2012.

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