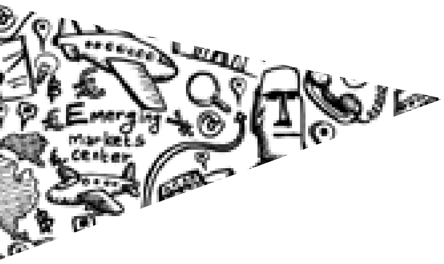

Italy and Switzerland sign agreement regarding tax and financial matters

Executive summary

On 23 February 2015, Italy and Switzerland signed an amending protocol to their double tax treaty as well as a roadmap for the continued dialogue in tax and financial matters. The agreement is considered a major milestone after a long controversy in the area of finance and taxation between the two countries and entails, among others, the following two key enhancements:

- With immediate effect, Italian taxpayers with undeclared assets and funds in Switzerland are allowed to take part in the Italian Voluntary Disclosure Program (VDP) under the same beneficial conditions as those with undeclared deposits in Italy or other countries that are not blacklisted.
- Once the amending protocol is effective, Switzerland will be removed from the Italian blacklist of foreign suppliers (Ministerial decree of 23 January 2002), for which Italian buyers are subject to an increased burden of proof for the deduction of the acquisition costs, and added to the Italian white list (Ministerial decree of 4 September 1996) allowing qualified Swiss recipients a domestic tax exemption of certain Italian financial income.

Detailed discussion

Amending protocol to the double tax treaty between Italy and Switzerland
The double tax treaty between Italy and Switzerland dated 9 March 1976 will be supplemented by the amending protocol, which was initialed on 19 December 2014 and provides for an "exchange of information upon request" in accordance with Article 26 of the Organisation for Economic Co-operation and Development Model Tax Convention (OECD standard). The entry into force of the amending protocol is subject to ratification by both countries. Once ratified, the amending protocol will

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retroactively allow the two countries to request information for facts and circumstances occurred as of 23 February 2015 (date of the signature).

As a result of the agreed exchange of information in accordance with the OECD standard, considerable relief in administrative and fiscal matters for residents in Italy or Switzerland will follow.

Voluntary Disclosure Program
As an immediate effect of the signature of the amending protocol, Italian taxpayers with undeclared assets and funds in Switzerland can regularize the past by participating in the Italian VDP ("programma di collaborazione volontaria"),[1] which entered into force on 1 January 2015, under the same conditions as for undeclared deposits held in non-blacklisted countries. The Italian VDP provides reduced administrative sanctions if the Italian taxpayer authorizes the foreign financial institution to disclose his identity and specific financial information to the Italian authorities. Taxpayers may in particular benefit from reduced penalties, a simplified assessment procedure and a reduction of the statute of limitation. In addition, financial institutions and their employees will principally not be held responsible for the tax offences of their clients.

Removal from the blacklist
Italian companies, which buy services and goods from certain Swiss counterparties, will benefit from a substantial administrative relief in relation to deductible costs and expense limitations. In fact, Article 110(10)(11) of the Italian Income Tax Code requires an additional burden of proof to allow Italian entities the deduction of costs incurred in transactions with companies located in blacklisted countries and benefiting from certain tax advantages. According to the 2015 Budget Law, a decree will be issued in Italy to introduce a new blacklist which excludes those countries having an adequate level of exchange of information with Italy (such as Switzerland after the entry into force of the amending protocol). As a consequence, Article 110(10)(11) will no longer apply to Italian companies doing business with Swiss suppliers, irrespective of their effective level of taxation.

The amending protocol should also have an indirect effect on the Italian blacklist provided for the Italian controlled foreign company (CFC) legislation because the lack of an exchange of information is one of the parameters for inclusion in the blacklist, together with an adequate level of taxation.[2] Therefore, one may expect that Switzerland will be removed also from the CFC blacklist once the amending protocol is in force and the special taxation regimes for Swiss corporations are abolished and/or brought into conformity with international standards in the course of the forthcoming Swiss Corporate Tax Reform.[3]

Inclusion in the white list
Swiss individuals and companies will be allowed to benefit from Italian tax law provisions specifically applicable to domestic persons or persons resident in a country included in the Italian white list. As a consequence, interest on bonds and capital gains derived from the disposal of certain financial assets realized by Swiss beneficial owners or other qualified investors can benefit from a domestic exemption from Italian taxation.

Roadmap for continued dialogue on tax and financial matters
In addition to the amending protocol to the double tax treaty, Switzerland and Italy also concluded a roadmap with a political commitment to several matters in the bilateral relations between the two countries. The main content of the roadmap in the area of taxation and finance can be summarized as follows:

Automatic exchange of information (AEOI)
Italy and Switzerland agreed to ultimately introduce the new global standard for the "automatic exchange of information" in tax matters. For this purpose, Switzerland is currently in negotiations with the European Commission to reach an agreement on the introduction of the AEOI with the EU member states (including Italy). The implementation will be in accordance with the new global standard recently adopted by the OECD and in full respect of the national legislative processes. Following the internationally agreed timeframe,[4] it is expected that the AEOI with Switzerland will be implemented on the 2018 timeline (i.e., collection of data from 2017 and first information exchanges by September 2018). During the transitional period until the

introduction of the AEOI, Italy and Switzerland will be able to use all the instruments at their disposal, including group requests, going back to the date of signing the amending protocol (23 February 2015) to combat tax fraud and evasion in the cross-border context. The OECD standard will apply in this respect whereas fishing expeditions remain prohibited.

Further amendment of the double tax treaty

In a subsequent phase, the double tax treaty between Italy and Switzerland shall be further amended to reduce the residual tax rates on dividends and interest, update the anti-abuse provision, add a treaty residence status for pension funds with mandatory contributions and include an arbitration clause.

Taxation of cross-border commuters

Italy and Switzerland agreed to finalize a new cross-border commuters agreement by mid-2015. In the future, cross-border commuters shall be subject to reduced taxation in the state of work (maximal 70% of the total source tax) and regular taxation in the state of residency. The latter will thereby avoid double taxation with respect to the taxes withheld in the other state.

Financial market access

Both countries confirmed their intention to strengthen the administrative cooperation and initiate conversations on enhanced market access for financial institutions.

Implications

The signed agreements form a solid basis for enhanced bilateral relations between Italy and Switzerland. As an immediate consequence, the participation to the Italian VDP will considerably increase legal certainty for Italian taxpayers with deposits in Switzerland. Going forward, the removal of Switzerland from the Italian blacklists will provide substantial relief from administrative burden for corporations engaged in cross-border transactions between Italy and Switzerland. Future Alerts will report on any further development.

Endnotes

1. See EY HR and Tax Alert, *Italian Parliament approves Voluntary Disclosure Program*, dated 6 January 2015.
2. The Italian Budget Law for 2015 amends the CFC rule by implying a revision of the current blacklist by considering countries on the basis of the lack of exchange of information (already included under the previous version of the rule) and standard level of taxation lower than 50% (previously 70%) of the Italian corporate income tax. In addition, another blacklist will be issued, which includes special regimes (applied by countries with an acceptable standard level of taxation) that result in less than 50% level of taxation in comparison with Italy.
3. See EY Global Tax Alert, *Swiss Federal Council initiates the consultation phase for Corporate Tax Reform III*, dated 23 September 2014.
4. See Global Tax Alert, *Significant developments in the global automatic exchange of information*, dated 31 October 2014.

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