

U.S. Switzerland Anti-Tax Evasion Agreement

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After nearly two-years of negotiations, on Wednesday, May 29, 2013, the Swiss Federal Council (the "Council")—the executive branch of the Swiss government—announced that the country's banks could provide information about hidden U.S. taxpayer accounts to U.S. tax authorities. The Federal Act on Measures to Facilitate the Resolution of the Tax Dispute between Swiss Banks and the United States (the "Act") will be submitted to the Swiss parliament in June. Upon approval, the Act will enter into force immediately, permitting Swiss banks an exemption from Switzerland's strict bank secrecy laws.

Background and United States Government's Increased Focus on Swiss Tax Havens

The global economic crisis and heightened enforcement by taxation authorities has put tax havens under scrutiny, leading to a change in the landscape that traditionally made it a crime for financial institutions to share account information with outside parties. Swiss law, in particular, had been committed to privacy for its financial customers.

Based, in part, on Switzerland's longstanding tradition of bank secrecy, the United States government has attempted to identify potential tax evaders by dedicating significant resources to investigating and prosecuting Swiss banks for concealing information regarding U.S. account holders. For example, in 2009, after a whistleblower reported that billions of dollars had been sheltered in a Swiss bank, the bank paid \$780 million to the United States government through a Deferred Prosecution Agreement and released account information for thousands of clients. In April 2013, a Swiss banking firm pled guilty to conspiracy to conceal assets, and the Department of Justice has identified several other financial organizations that may have helped U.S. account holders shield taxable income.

The Federal Act on Measures to Facilitate the Resolution of the Tax Dispute Between Swiss Banks and the United States

While the Department of Justice has ramped up its investigatory and prosecutorial efforts in connection with Swiss banking firms, it also has engaged the Swiss Government on the diplomatic front. For the last two years, U.S. authorities have negotiated an agreement with Swiss officials regarding the disclosure of data concerning U.S. account holders who may be attempting to use Swiss banks to avoid U.S. taxation. After extensive, and perhaps acrimonious, negotiations, U.S. and Swiss authorities agreed to measures aimed at creating a legal basis under Swiss law to resolve tax evasion disputes.

Pursuant to the Act, Swiss banks would be permitted (if they elect to do so and if a proper request is made) to disclose to the Internal Revenue Service information that would permit U.S. authorities to

identify Americans who may be using Swiss banks to avoid U.S. tax obligations. This may include information regarding business relationships involving U.S. clients and the identities of Swiss banking employees who service American clients, as well as attorneys, trust companies, advisors, and other third parties who facilitate the use of tax shelters. Such cooperation will allow the Swiss banks to cooperate with the IRS without running afoul of Swiss law.

Significantly, the Act permits banks to make the final decision regarding whether to cooperate and release information to U.S. authorities. On the other hand, the failure to comply with an information request could subject Swiss banks to debarment, or worse, prosecution by the U.S. Department of Justice. Furthermore, individual Swiss banks still will be required to negotiate with U.S. authorities to settle claims of abetting tax evasion, the collective fines for which, according to recent estimate, could total nearly 10 billion Swiss francs (US\$10.3 billion).

Agreements with Foreign Governments to Share Financial Account Information

Congress passed the Foreign Account Tax Compliance Act ("FATCA") to target noncompliance by U.S. taxpayers using foreign accounts. The U.S. Treasury Department has been negotiating with more than 50 countries and jurisdictions around the world to improve international tax compliance and implement the information reporting and withholding tax provisions of FATCA.

To date, agreements have been reached between the United States and Denmark, Ireland, Germany, Mexico, Norway, Switzerland, and the United Kingdom that will allow for financial institutions in those countries to share information with the IRS.

In addition, the Treasury Department has announced that it hopes to conclude negotiation for other intergovernmental agreements by year end with the following countries: France, Italy, Spain, Japan, Canada, Finland, Guernsey, Isle of Man, Jersey, and the Netherlands.

Jurisdictions with which the Treasury Department is actively engaged in a dialogue towards concluding an intergovernmental agreement include: Argentina, Australia, Belgium, the Cayman Islands, Cyprus, Estonia, Hungary, Israel, Korea, Liechtenstein, Malaysia, Malta, New Zealand, the Slovak Republic, Singapore, and Sweden.

The jurisdictions with which the Treasury is working to explore options for intergovernmental engagement include: Bermuda, Brazil, the British Virgin Islands, Chile, the Czech Republic, Gibraltar, India, Lebanon, Luxembourg, Romania, Russia, Seychelles, Sint Maarten, Slovenia, and South Africa.



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In short, the Act is a significant new development that furthers the goals of the Internal Revenue Service—to flush out those persons who may have been keeping assets in jurisdictions that were thought to be established tax havens.

For more information regarding the Act or other matters, please contact our professionals in the Tax or White Collar Crime and Regulatory Enforcement groups.

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Los Angeles lawyers:

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