Exchange of Information between Swiss and Foreign Tax Authorities and the new Role of the Swiss Banking Secrecy

Over the last few months, Switzerland has renegotiated double taxation treaties with several countries and continues to do so. In fact, we mainly talk about amendments and additions to existing treaties. The countries in questions are, among others, the United States, Luxembourg, Norway, Denmark, France, Great Britain, Katar, Mexico, Finland, Italy and Germany.[1]

The most important amendment refers to the exchange of information between tax authorities. So far, all Swiss double taxation treaties already include exchange of information, but they were restricted to judicial assistance with a focus on tax fraud.

Now, however things will change. The amended tax treaties will provide for administrative assistance. Administrative assistance means mutual furnishing of information between tax authorities based on official requests. This will allow Swiss and foreign tax authorities to obtain information not only regarding assumed offences of tax laws – however to be defined – but also to obtain any information necessary for assessment activities in general. The Model Tax Convention of the OECD mentions as information to be exchanged any "forseeably relevant for carrying out the provisions of this Convention or the administration or enforcement of the domestic laws concerning taxes of any kind…"[2]. So, in future, foreign tax authorities will be allowed to request detailed information from Swiss authorities concerning individuals taxable in their country. An automatic exchange of information, however, is not planned and is out of question at the moment. In any case, a dramatic change regarding the exchange of information in tax matters is now at stake.

The change goes back to a decision made by the Federal Council of Switzerland dated 13 March 2009. Then, the Swiss government decided to adopt on unlimited basis the standard according to Art. 26 of the OECD model tax convention on income and capital. This, again, was based on the declared policy to not allow any form of international tax dodging.

What about banking secrecy? For Swiss citizens the banking secrecy will remain. Swiss tax authorities will not be able to obtain tax information on individuals from banks, except in cases of assumed tax fraud. The situation, however, is different for foreign tax authorities. Based on formal request, Swiss banks in future will have to reveal if a foreign individual has an account with the bank. According to federal tax authorities the request will have to contain, for instance, the reason for the request, details about the individual in question, the tax period referred to etc.

The described changes have not yet entered into force. They still must pass both chambers of our federal parliament and will be subject to a facultative referendum. So, from the present view, it is not clear, if, and at which time, a change in the policy of exchange of information in tax matters will take place. However there is a high likelihood that the change will come: at the very earliest, this could be in October this year.

For further information, please contact:

Kurt U. Blickenstorfer
kurt.blickenstorfer@bratschi-law.ch

Eric Jucker
eric.jucker@bratschi-law.ch

bratschi wiederkehr & buob
Tel. +41 58 258 1000
www.bratschi-law.ch

[1] *Except for Italy and Germany all renegotiations have taken place.*

[2] *OECD Model Tax Convention article 26 par. 1*