

Switzerland Gets Busy With Information Exchange

by Thierry Boitelle and Aliasghar Kanani

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HIGHLIGHTS

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The Swiss government on May 26 announced that the negotiators in charge of implementing a treaty article 26 (administrative assistance in tax matters) that fully complies with the OECD model tax convention have initialed the first three treaties that have a new, extended information exchange clause. (For related coverage, see *Tax Notes Int'l*, Mar. 30, 2009, p. 1189, *Doc 2009-6153*, or *2009 WTD 59-2*.)

The first new treaties have been initialed with Norway and Denmark, as formally announced by the two states. (For prior coverage, see *Tax Notes Int'l*, June 8, 2009, p. 835, *Doc 2009-11992*, or *2009 WTD 101-4*.) The name of the third state has not been announced, but sources say it is probably Luxembourg. If so, Switzerland and Luxembourg, often close allies in tax matters, have helped each other get closer to the minimum of 12 exchange of information agreements that must be in place with OECD member states before year-end under G-20 requirements to be moved from the OECD's G-20 gray list to the white list. Because of the ratification procedures in both contracting states, it is unlikely that 12 new agreements will enter into force by 2010, but Switzerland hopes that by agreeing to and initialing at least 12 agreements before year-end, it is showing sufficient good faith to be removed from the gray list.

After signing the first three agreements, Switzerland will give priority to negotiations with Poland, Japan, the Netherlands, and the United States. It particularly wants to initial an information exchange agreement with the U.S. in order to alleviate some of the tensions that have developed as a result of the UBS scandal as well as the Stop Tax Haven Abuse Act and other U.S. tax proposals. (For prior coverage of efforts to revive the Switzerland-U.S. treaty, see *Tax Notes Int'l*, Apr. 13, 2009, p. 104, *Doc 2009-7944*, or *2009 WTD 65-1*.)

Twenty-three OECD member states have already announced interest in revising their double tax treaties with Switzerland to include the new information ex-

change provisions. Switzerland wants to demonstrate that it is quick to meet its commitments and that it does not intend to drag out discussions. However, it will also occasionally use the negotiations to address outstanding issues, and particularly to try to remove discriminatory provisions in existing treaties that exist because Switzerland did not accept a full information exchange clause. States whose officials have created an unfavorable negotiation climate, such as Germany, will not be a high priority for Swiss negotiators, if only because of the domestic political risk involved. (For prior coverage of tensions between Germany and Switzerland, see *Tax Notes Int'l*, Mar. 30, 2009, p. 1146, *Doc 2009-6108*, or *2009 WTD 52-3*.)

The texts of the first three agreements will now be submitted to the Swiss government and to cantonal authorities, as well as to the Swiss business community for comments and approval. The Swiss government will likely approve the texts and submit them to parliament for ratification.

The first renegotiated treaty will also be subject to an optional referendum by the Swiss voters should the Swiss parliament require it, as is likely, or if at least 50,000 people request a public vote by referendum.

In practice, the Swiss government requires only the first treaty introducing a major change in policy to be subject to the optional referendum. However, only parliament has the power to make that decision, and some MPs are requesting that each renegotiated tax treaty be subject to an optional referendum.

Finally, in an effort to create consistent policy based on the concessions made, the Swiss government announced May 29 that international judiciary assistance will now be extended to cases of tax evasion. The current legal provisions limit that judiciary assistance to cases of tax fraud. As soon as the first round of bilateral double tax treaties has been renegotiated, the Swiss government will start negotiating international judiciary assistance treaties and later will adapt relevant Swiss federal law accordingly. ◆

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