Memo to clients

First

Nr. 3 November 2011

The Agreement between Switzerland and the UK of 6 October 2011 as compared to the «Liechtenstein Disclosure Facility»

On the 6th of October 2011, Switzerland and the United Kingdom signed and published an agreement concerning the regularization of old assets and the introduction of a final withholding tax on future income. This agreement will enter into force as soon as the required parliamentary proceedings have been completed in both countries.

Furthermore, an agreement is already in place between the United Kingdom and the Principality of Liechtenstein since August 2009 concerning the regularization of old assets of UK investors taxable in the UK with a Liechtenstein connection.

The so-called «Liechtenstein Disclosure Facility» or LDF regulates old assets of investors taxable in the UK differently to the above mentioned agreement with Switzerland. This memo will briefly describe both the new agreement between Switzerland and the UK on the one hand and the Liechtenstein Disclosure Facility on the other, and then compare the two systems.

A. The agreement between the Switzerland and the UK of 6 October 2011

The main points of the agreement between the UK and Switzerland of 6 October 2011 are the regularization of old assets and the introduction of a withholding tax on future income and capital gains. It can be assumed that the agreement will enter into force no earlier than on 1 January 2013.

Old assets will be regularized by levying a one-time anonymous flat charge. The rate of this one-time charge will be between 19% and 34%. The one-time charge refers to bank accounts that already existed on 31 December 2010 and still exist on 31 May 2013. It will concern all possible forms of bankable assets such as cash, precious metals, securities, options, and structured financial products. However, safe deposit boxes, real estate, and other movable assets are explicitly exempt from the scope of application of the one-time charge. The one-time charge will settle the existing income tax, capital gains tax, inheritance tax, and VAT liabilities of the accounts concerned. Other taxes - such as company tax or stamp duties - will not be subject to the one-time charge. Bank customers will have the option of choosing between having the one-time charge levied and disclosure to Her Majesty's Revenue & Customs. However, the one-time charge does not guarantee immunity from prosecution.

Bank clients who opt for the one-time charge must assure the bank that sufficient funds are available to cover the one-time charge. If funds are found to be insufficient, the banks may grant a term of 8 weeks to their clients to provide the adequate amount. After that term has expired, the banks are permitted to declare the bank account.

In terms of the final tax on future income and capital gains, Swiss banks will be obliged to withhold a tax from all taxable income and capital gains of accounts belonging to investors taxable in the UK, and to pay this tax anonymously. Depending on the type of capital income and/or capital gains, the rate of that withholding tax can be between 27% and 48%. The withholding tax on dividends will be 40%, that on interest and other income 48%. Capital gains will be subject to withholding tax of 27%. Here, too, bank clients will have the option of choosing between having the settlement tax levied and disclosure to the UK tax authorities.

The agreement between the UK and Switzerland of 6 October 2011 will concern all assets directly or indirectly (e.g. through company structures) attributable to investors who are UK tax subjects. Accordingly, it also concerns investors subject to taxation in the UK who are beneficial owners of an offshore company, a foundation, a trust, or any other structure that does not carry out commercial activities or holds assets through an insurance wrapper. However, it seems that discretionary trusts in which beneficial ownership of the trust fund cannot be ascertained will not be subject to the agreement of 6 October 2011.

The EU withholding tax will continue to be levied and will be set off against the new settlement tax. Furthermore, the new

agreement includes special provisions concerning persons who are not resident in the UK but have their primary abode there or who hold a British passport.

Switzerland has further undertaken in the new agreement of 6 October 2011 to inform the UK about the top 10 jurisdictions where assets of UK tax subjects are going that are withdrawn from Switzerland.

Finally, it will be possible for HMRC to inquire with the Swiss authorities whether certain persons do or do not have bank accounts in Switzerland. This option of inquiry is limited to 500 inquiries per year for now (i.e. for the first three years), but can be extended in the future.

The following will be excluded from the regularization of old assets:

- persons against whom HMRC is conducting an investigation as per 31 May 2013;
- persons against whom an investigation was conducted and completed after 31 December 2002 concerning assets in Switzerland, and who have not declared these assets in the course of the investigation concerned;
- persons already convicted for tax offences;
- persons already contacted in the framework of earlier disclosure programmes; or
- persons who have assets in Switzerland that are the proceeds of criminal acts (except for tax offences).

B. The «Liechtenstein Disclosure Facility»

On 11 August 2009, the government of the Principality of Liechtenstein, the government of the United Kingdom, and Her Majesty's Revenue & Customs (HMRC) entered into a tax information exchange agreement (TIEA), an agreement on cooperation in tax matters (MoU), and a Joint Declaration. Among other things, the MoU includes a special opportunity for disclosure, the «Liechtenstein Disclosure Facility» (LDF). The LDF started on 1 September 2009 and will end on 31 March 2015.

The LDF offers a special opportunity of disclosure to investors taxable in the UK with a relation to the Principality of Liechtenstein. Under the LDF, untaxed assets can be regularized at particularly favourable conditions. Participation in the LDF is intended for individuals and legal entities who as investors taxable in the UK have the right of use in relevant and undeclared assets in Liechtenstein. Assets relevant for the LDF include bank accounts or financial (portfolio) accounts, companies, partnerships, foundations, establishments, trusts, business trusts, or other trust structures as well as insurance policies that were or are being created, formed, established, incorporated, managed, or kept in Liechtenstein. Furthermore, relevant assets also include legal entities that hold assets in Liechtenstein or were formed in Liechtenstein, are registered in Liechtenstein, or are managed or controlled from Liechtenstein.

However, it is possible to participate in the LDF even for persons who as yet do not own any assets relevant for the LDF and therefore still have to establish new connections with Liechtenstein financial intermediaries. Therefore, both existing and future customers of financial intermediaries from the Principality of Liechtenstein may benefit from the LDF. What is required is that at the time of disclosure, there is a relevant connection to a Liechtenstein financial intermediary.

Persons who at the time of signature of the MoU were already «the subject of an investigation» by HMRC and persons who receive a notice from a Liechtenstein financial intermediary within the framework of the TACP (Liechtenstein Taxpayer Assistance and Compliance Program) and when receiving that notice know or have to assume that they are already the subject of an investigation by HMRC cannot take part in the LDF. The same applies to investors taxable in the UK without relevant assets in Liechtenstein.

C. Comparison of the agreement between Switzerland and the UK of 6 October 2011 and the LDF

The LDF agreed between Liechtenstein and the UK has the following advantages for investors taxable in the UK:

- The typical fine under the LDF is 10%
- Inheritance tax is also limited to 10% under the LDF.
- Immunity from prosecution.
- Only tax years from April 1999 are taxable.
- In the event of error without negligence, the assessment period for individuals is shortened to six tax years from the time of disclosure.
- No fine in the event of error without negligence.
- With full, correct, and voluntary disclosure, no criminal investigation will take place if it can be ensured that the assets have not been acquired through criminal acts.
- Instead of calculating the individual taxes, there is the option of choosing a composite rate of 40% on the investor's income for every year until April 2009. This option is particularly attractive where several types of taxes are involved, or where there are gaps in documentation.
- HMRC accepts sensible offers for taxation on the basis of estimated tax liability if there is no other possibility to calculate the tax due. Practice so far has shown that taxation in this context is around 20%, and that even offers below 20% have been accepted by HMRC.
- It is possible to have the first contact between the financial intermediary concerned and HMRC anonymously.

- Participants in the LDF are not subject to the «naming and shaming» procedure of HMRC. Confidentiality is ensured.
- The amounts withheld under the EU taxation of savings agreement will be set off when calculating the amount of the tax due.

While the LDF offers full clarification of all tax matters and immunity under criminal law for investors taxable in the UK, the agreement between Switzerland and the UK of 6 October 2011 only offers to regularize old assets by levying an anonymous one-time flat charge of between 19% and 34% and by the subsequent payment of a final withholding tax of between 27% and 48% on capital income and capital gains. The agreement does not apply to assets removed from Switzerland before the record dates given above. As a result of anonymity, the payment of the one-time charge and the final tax will not prevent HMRC - in contrast to participation in the LDF - from carrying out further investigations into the financial matters of a tax subject if he catches their attention.

Furthermore, it is fair to say that participation in the LDF will as a matter of principle be more favourable than paying the one-time charge and the settlement tax under the new agreement between Switzerland and the UK of 6 October 2011.
As has already been mentioned, practice so far has shown that taxation in the course of the LDF is around 20% and can even be less than 20%.

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