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No more protection for tax evaders from abroad

Under extreme international pressure, Switzerland has further relaxed its stance on banking confidentiality. It will now provide tax authorities abroad with information in cases where there are grounds for suspicion of tax evasion. The issue of historical liabilities - untaxed funds which have been sitting in Swiss accounts for many years - is yet to be resolved. By René Lenzin

The global economic and financial crisis has resulted in greater pressure and coordinated action against so-called tax havens. The major industrial countries and emerging economies that make up the G20, and the Organisation for Economic Cooperation and Development (OECD), have been at the forefront of these efforts. Based on a G20 resolution, the OECD has threatened to blacklist any country that does not adhere to a common standard for the exchange of bank data. Other nations can impose economic sanctions, such as trade restrictions, against those countries on the blacklist.

To prevent this from happening, the countries designated as tax havens - including financial centres such as Switzerland, Liechtenstein and Singapore - have to conclude 12 bilateral double taxation agreements which meet OECD requirements. The main criterion is that administrative and legal assistance has to be provided in cases where there are grounds to suspect not only tax fraud but also tax evasion.

Switzerland met this demand by the deadline set by the OECD. At the time of going to press, the Federal Council had in fact negotiated 20 such revised double taxation agreements. In the spring session, the Council of States became the first chamber of Parliament to approve the first five agreements by a clear majority. The parties to the agreement are Denmark, France, UK, Mexico and the USA. They must now also be approved by the National Council and, of course, also by the Swiss people, as these are international treaties subject to referendum.

No information in the case of data theft

By concluding these agreements, Switzerland has taken another step towards a more relative interpretation of banking confidentiality. After tightening money laundering legislation and agreeing with the EU to combat fraud and to tax inter-

est on foreign bank accounts, it is now abolishing the differentiation previously made between tax fraud and tax evasion for foreigners. "Banking confidentiality is not being abolished, but Switzerland is softening its stance", said State Councillor Eugen David, chair of the committee responsible.

Switzerland will only provide administrative assistance under certain conditions. A request from another country must contain the name of the customer under suspicion and enable clear identification of the bank concerned. This rules out so-called fishing expeditions or the transfer of lists of names or accounts in the hope that they might reveal tax evaders. The Council of States has called upon the Federal Council to establish framework legislation to ensure that the same administrative assistance criteria apply to all countries. The Council of States also wants this legislation to prevent Switzerland from providing administrative assistance if the request is based on illegally obtained customer data. This comes in response to incidents of stolen Swiss bank data which has been offered for sale to the German and French tax authorities.

Switzerland faces sustained pressure

Switzerland has avoided being put on the OECD blacklist, but it is not yet off the hook. The USA and the European Union are already pushing for further measures. The EU has resolved, in principle, to proceed with the automatic exchange of bank data. This means banks automatically passing their customers' account details to the tax authorities, which, in turn, hand them over to other countries. However, the EU can only fully implement this system internally if major financial centres outside the EU also cooperate. As a result, Brussels will keep up the pressure on Berne.

Switzerland's relations with its main partner countries will only return to normal if the issue of historical liabilities with

regard to banking confidentiality is resolved. In other words, this means finding a way of legalising the billions in untaxed funds transferred from abroad to Swiss bank accounts in the past. Politicians and the bankers' association are currently discussing various scenarios examining how foreign account holders can come clean with the tax authorities in their countries without being forced to remove their assets from Switzerland.

The way forward might be a tax amnesty like the one implemented by Italy. In return for self-denunciation with impunity, the banks could undertake only to accept funds taxed in the country of origin in future. They could extend the current system of tax on interest to a comprehensive withholding tax on all asset income. This would ensure that the state in question could obtain revenue from its citizens' assets abroad without having to relinquish banking confidentiality completely. However, the reaction abroad to such proposals has ranged from muted to sceptical.

Controversy in Switzerland, too

In addition to the controversy raging among the international community, banking confidentiality has also become a domestic political issue. There are growing calls in Switzerland as well for the legal differentiation between tax fraud and tax evasion to be abolished. The Swiss tax authorities would otherwise be placed at a disadvantage compared to their international counterparts. It is doubtful whether such proposals would win majority support. The controversy surrounding Switzerland as a financial centre is unlikely to abate any time soon, either at home or abroad.