

KPMG's Private Client update

UK Swiss Tax Agreement – Impact on Non-Doms

On 6 October 2011 the UK and Swiss Governments signed a bilateral agreement to ensure the effective taxation of UK residents with accounts held in Switzerland. The agreement should come into force from 1 January 2013 onwards. Most assets managed or deposited with a Swiss bank will be caught by the scope of this agreement which introduces a new withholding tax. Swiss banks can collect and pay the taxes to HMRC anonymously on behalf of their customers.

Who does the agreement apply to?

Swiss banks have to identify and notify their relevant clients by 28 February 2013. Parties potentially caught are:

- UK resident individuals
- Individuals that hold a British passport and do not provide evidence to the bank of tax residence outside the UK
- Non-UK trust and company structures with UK resident beneficiaries/shareholders. The agreement does not state clearly how these clients should be identified. Discretionary trusts could be outside the scope of the agreement.

Certification

Non-Doms who do not disclose their details to HMRC will have to provide evidence to the Swiss bank to show that they are non-UK domiciled and are claiming the remittance basis of taxation.

If a Non-Dom advises their banker they are a Non-Dom and then fails to provide the required evidence within the prescribed timescale, different tax rates apply to their investments.

Historic liabilities

A one –off payment will be levied on UK residents to cover all historic UK tax liabilities (income tax, capital gains tax, inheritance tax and VAT are included) on undisclosed Swiss accounts. The charge will be based on the balance of the Swiss account as at 31 December 2010. The rate of the one-off charge will be between 19% and 34%, depending on how long the account has been held and the activity on the account since 2003.

Non-Doms have the following options:

1. Pay the one-off tax on the balance of the account as at 31 December 2010
2. Voluntarily disclose their details to HMRC if there are undisclosed historic tax liabilities
3. Disclose details of non-UK source income/gains remitted and UK source income/gains where tax has not been paid and pay the one-off payment on this undisclosed amount
4. Confirm to the Swiss bank that 1,2 and 3 above are not applicable and opt-out of this part of the agreement

WHT on future income/capital gains if no disclosure to HMRC is made

From 1 January 2013, a withholding tax at source will be applied at the following rates:

Certification provided - rate		No certification provided –rate
48%	Interest and other income	50%
40%	Divided income	42.5%
27%	Capital gains	28%

If the top rate of income tax of 50% is abolished, the WHT rates will decrease accordingly.

This tax is clearly unfair on Non-Doms who claim the remittance basis so the agreement states the future WHT will mirror the remittance basis. If Non-Doms do not opt to disclose details to HMRC, WHT at source will only be withheld from UK source income and gains and non-UK source income and gains directly transferred to a payee in the UK.

The WHT should satisfy all UK tax liabilities. This may mean that no disclosure of the income/gains from which tax is withheld is required on the Non-Dom's tax return.

Levying this tax presents a number of potentially complex issues such as:

- Swiss banks will need to be able to identify which assets produce income gains and capital gains
- The agreement appears to apply the 27% WHT to net capital gains, i.e. losses must be calculated and offset before the tax is withheld
- Identifying the amounts remitted to the UK in order to apply the WHT could be complex where, for example, a remittance is made from a mixed account

What needs to be done?

The agreement has not yet become law, but Non-Doms (and trustees of non-UK resident trusts with UK resident beneficiaries) need to consider now the possible implications of suffering WHT at source on their Swiss accounts going forwards or exchanging information with HMRC.

Non-Doms who have historic undisclosed UK tax liabilities need to consider carefully how to proceed. KPMG can help them decide whether making a disclosure under the UK/Swiss agreement or whether the existing Liechtenstein Disclosure Facility is more beneficial. An important distinction is that the LDF is a worldwide disclosure facility, whilst this agreement only applies to assets held with Swiss banks.

KPMG in the UK and Switzerland are working closely in order to assist Swiss financial institutions with the practical implications of this agreement.

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