Switzerland Proposes Rubik Agreement With Belgium

Posted on Sep. 12, 2012

Belgian Foreign Office Minister Didier Reynders and Swiss Finance Minister and acting President Eveline Widmer-Schlumpf on September 4 discussed a Swiss proposal for a bilateral withholding tax agreement to deal with undeclared assets held in Swiss banks by Belgians and to settle long-standing tax issues.

Under the so-called Rubik agreement, taxpayers would pay a percentage of the value of their undeclared assets in lieu of back taxes and continue to deposit assets anonymously but legally in Swiss bank accounts. In the future, they would pay taxes equivalent to what they would pay if the assets were declared, with the banks acting as go-betweens to preserve the taxpayers' privacy. At the same time, the agreement would grant easier access to the banking market of the other signatory state.

Germany and the United Kingdom signed Rubik agreements with Switzerland in the fall of 2011, and Austria followed suit in April. Switzerland is also negotiating Rubik agreements with Greece and Italy.

The Agreement With Germany

The Germany-Switzerland withholding tax agreement, signed on August 10, 2011, provides for a regularization for German taxpayers who hold an account in a Swiss bank on both December 31, 2010, and January 1, 2013 (ensuring that the taxpayer did not move his money to Switzerland after December 31, 2010). (For prior coverage, see *Doc 2011-17332* or *2011 WTD 155-1*.) The taxpayers can either declare their assets directly or indirectly to German tax authorities or make an anonymous payment for back taxes at a rate ranging from 21 percent to 34 percent (and 41 percent in special cases) of their assets. To guarantee the payment of those amounts, the Swiss banks will make an advance payment of CHF 2 billion to Germany in January 2013.

German taxpayers who held an account in a Swiss bank when the Rubik agreement with Switzerland was signed may transfer their assets out of Switzerland before the agreement enters into force. Switzerland will, however, inform Germany of the 10 countries to which the taxpayers transfer the most assets.

After the initial regularization, German taxpayers may pay tax on their Swiss account anonymously. The tax, which will be withheld by the Swiss banks, will correspond with the amount the account holders would pay if they declared their assets in Germany. It will be a final tax and will discharge them fully of any tax liability for the tax year. For German taxpayers, the rate will be 26.375 percent for investment income and capital gains (a 25 percent tax plus a solidarity surcharge), and 35 percent for interest income in accordance with the agreement on taxation of savings income between Switzerland and the EU.

If an account holder dies, the heirs will have the choice of declaring the account and paying inheritance tax, or arranging for the respective bank to pay an amount corresponding to 50 percent of the value of the assets anonymously.

The agreement preserves Swiss banking secrecy. Banks and their employees who were involved in financial offenses committed before the agreement was signed are protected against criminal prosecution, and the purchase of stolen data is not permitted. Switzerland will monitor the banks' compliance with the agreement, and Germany will have the right to submit a limited number of information requests, under a facilitated procedure, to ensure that the agreement is being respected.

German tax authorities estimate that the regularization is likely to generate around €50 billion, and Swiss banks will gain easier access to Germany's domestic market.

Other Agreements

The agreement with the U.K. is similar. (For prior coverage, see *Doc 2011-18159* or *2011 WTD 165-1*.) The cutoff date is April 30, 2013; the rates vary between 21 percent and 34 percent (and 41 percent in special cases). The withholding tax rates are 48 percent for interest, 40 percent for dividends, and 27 percent for other investment income; the inheritance tax rate is 40 percent. The U.K. will receive an advance of CHF 500 million.

The agreement with Austria has lower rates for back taxes: 15 percent to 30 percent (and 38 percent in special cases). The withholding tax rate is 25 percent for investment income and 35 percent for interest income in accordance with the EU agreement on the taxation of savings income. Austria has no inheritance tax.

Romanian authorities also may be interested in entering into a Rubik agreement with Switzerland rather than pursuing a European solution in which negotiations are kept confidential and are rarely discussed.

Reaction in Belgium

Reynders reported the proposal and suggested that the Parliament give it serious consideration. He said his Swiss counterparts had calculated that Belgian taxpayers have €30 billion stashed in secret Swiss bank accounts and that a Rubik agreement could result in a windfall of about €10 billion for Belgium.

However, the proposal was not favorably received by most of Reynders's government partners. The Socialist Party did not close the door definitively, but John Crombez, secretary of state for the fight against social and tax fraud, did. He said the aforementioned amounts would actually be in Swiss francs, not euros, and that under a Rubik agreement, Belgium would abandon ambitions of ever auditing the secret bank accounts. Moreover, foundations, discretionary trusts, and insurance contracts are outside the ambit of the agreement, as are royalties, real property income and remuneration, and assets in the Singapore branch of a Swiss bank.

Crombez said he has more faith in the U.S. Foreign Account Tax Compliance Act and the intergovernmental agreements negotiated by the U.S. with France, Germany, Italy, Spain, and the U.K. to implement FATCA. The next step would be for the other EU member states to follow suit; that would be the beginning of automatic exchange of information in a large part of the world, he said. Crombez said no government of which he was a member would sign a Rubik agreement.

"Pity," Reynders responded wryly, "he was a good colleague."