

# Roadmap on the Way Forward in Fiscal and Financial Issues

between

## Italy and Switzerland

Taking note of the recent developments in the area of international taxation, in particular: the commitment of the G20 to improve tax compliance, counter tax erosion and aggressive tax planning, enhance transparency through the adoption of automatic exchange of information as a global standard; the terms of the mandate of the European Council to the EU Commission (May 2013) to negotiate with Switzerland, Liechtenstein, Monaco, Andorra and San Marino an agreement consistent with the revision of the directive on the taxation of savings (approved in April 2014) as well as the mandates of the Swiss Federal Council to negotiate the automatic exchange of information (October 2014); the commitments to the automatic exchange of information contained in the OECD Ministerial Declaration adopted on 6 May 2014; the signature by the Italian and Swiss governments of the OECD multilateral agreement on the automatic exchange of information in autumn 2014; the adoption by the EU Council of the revised Directive on Administrative Cooperation (December 2014);

Taking note of the progress in upgrading Swiss and Italian anti money laundering legislations, to bring them in line with current international standards;

Taking note of the progress achieved in the intense work carried out since 2012 on bilateral issues;

Italy and Switzerland agree on the following way forward:

### **1. Automatic exchange of information**

1.1 Italy and Switzerland agree that ultimately the automatic exchange of information in tax matters will be introduced. The implementation of this solution will be in accordance with the OECD international standard recently adopted and in the timeframe agreed internationally as well as in full respect of EU competences and national legislative processes.

### **2. Regularization of the past and exchange of information on request on cross border assets**

#### **2.1 Exchange of information under art. 26 of the OECD Model Tax Convention**

Switzerland and Italy sign within 60 days as from the entry into force of the Italian Voluntary Disclosure Program (VDP) a Protocol amending their Double Taxation Treaty including an article fully compliant with the OECD standard on exchange of information, including the revision of the OECD Model Convention commentary allowing for group requests (amending Protocol).

This article will allow each Contracting State to make requests on or after the date of entry into force of the amending Protocol for information that relates to any date beginning on or after the date of signature of the amending Protocol. The automatic exchange of information referred to in section 1 will be addressed in a separate legal instrument.

#### **2.2 Regularization of the past**

2.2.1 Italy and Switzerland are committed to the principle that taxpayers holding assets deposited with their financial institutions fully comply with their tax obligations in both

countries. Therefore, they encourage their financial institutions to promote the regularization mechanisms available to their clients and support their clients who decide to participate.

2.2.2 Italian taxpayers have the possibility to regularize their tax position on undeclared assets held with foreign financial institutions, relating to all tax years still assessable, through a domestic voluntary disclosure program (VDP), available as from 2015. Participants in the Italian VDP shall not be liable to certain criminal and administrative sanctions under the conditions provided for and to the extent granted by the Italian VDP law and shall remain free to book their assets in any State or jurisdiction. The VDP law provides for the non-liability for some criminal sanctions regardless of where the undeclared assets are deposited.

2.2.3 In connection with the timely signature of the amending Protocol provided for in section 2.1, according to Art. 1 of the Italian VDP law, Switzerland is considered as not included in the relevant Italian black lists for the purpose of determining administrative sanctions.

2.2.4 When participating in the Italian VDP, the Italian taxpayer is responsible for providing all necessary information to the Italian authorities. In order to benefit of a reduction of administrative sanctions, the Italian VDP provides for the possibility of the Italian taxpayer to authorize his/her foreign financial institution to disclose upon request his/her identity and specific financial information to the Italian authorities. With the individual authorization of their clients, Swiss financial institutions will be allowed to disclose on request the identity of and specific financial information about these clients to the Italian authorities, in order for the Italian authorities to check the correctness and completeness of the information provided by the Italian taxpayer. As long as Swiss financial institutions only disclose information for which they have received an authorization from the client, they do not violate Art. 271 of the Swiss penal code and consequently do not require an authorization pursuant to this article. The Italian authorities, in line with the principle of proportionality, will make use of the possibility to request information based on the authorization in certain cases where there are elements of risk and reasons to believe, based on facts, that the information provided by the taxpayer is wrong or incomplete.

2.2.5 According to Swiss law Swiss taxpayers have the possibility to make a once in a lifetime voluntary disclosure to regularize their tax affairs, if they comply with specific requirements. Essentially this results in the levy of all taxes and interest due, but the taxpayer remains unpunished.

2.2.6 Both parties note that, based on Italian or Swiss law, respectively, banks, financial institutions as well as consultants and their employees are responsible for their own tax infringements. In principle, they are not liable to penalties for tax infringements of their clients. Pursuant to Italian or Swiss law, respectively, their cooperative attitude in the regularization of the past will be positively taken into consideration in the evaluation of their behavior, whenever it will be necessary. Their behavior will be considered cooperative if, for example, they have contacted their clients who are Swiss or Italian taxpayers to encourage them to use the regularization mechanism available, if appropriate, or if they spontaneously ask their Italian or Swiss clients whether the assets deposited are duly taxed in Italy or Switzerland.

## **2.3 Transitional period**

2.3.1 Until automatic exchange of information between Italy and Switzerland will be implemented, Italy and Switzerland may use all the instruments at their disposal, including group requests in conformity with the OECD standard going back to the date of signature of the amending Protocol provided for in section 2.1, to combat tax fraud and evasion in a

cross-border context, in particular with the aim of identifying taxpayers with open tax liabilities who try to avoid regularizing their tax situation by moving assets away or not participating in the voluntary disclosure options available in their country of residence.

2.3.2 A group request based on the pattern of behavior of clients suspected of evading their tax obligations and deciding to close their financial position with the Swiss or Italian financial institutions after the date of the signature of the amending Protocol, or not closing their financial position, but substantially emptying their accounts, can be used, in conformity with the OECD standard, to identify such clients.<sup>1</sup>

2.3.3 Furthermore a group request based on the pattern of behavior of clients suspected of evading their tax obligations who have been asked by their Swiss or Italian financial institution whether the assets deposited are duly taxed and who gave a negative answer or refused to answer, can be used, in conformity with the OECD standard, to identify such clients (*see footnote 1*). It is understood that Swiss and Italian financial institutions have no legal obligation to contact their clients about the due taxation of the deposited assets.

2.3.4 The competent authorities of the two Parties will agree on how the above mentioned group requests will be operationalized.

2.3.5 The Italian VDP provides that a taxpayer can benefit from reduced administrative sanctions if he/she authorizes his/her foreign financial institution to disclose upon request his/her identity and specific financial information to the Italian authorities (see above 2.2.4). If the taxpayer changes financial institution, he/she has to present an authorization to his/her new foreign financial institution in order for him/her to maintain such reduction in sanction. With the individual authorization of their clients, Swiss financial institutions will be allowed to disclose on request the identity of and specific financial information about these clients to the Italian authorities. In this respect, Swiss financial institutions do not violate Art. 271 of the Swiss penal code and consequently do not require an authorization pursuant to this article. The Italian authorities, in line with the principle of proportionality, will make use of the possibility to request information based on the authorization in certain cases where there are elements of risk and reasons to believe, based on facts, that the information provided by the taxpayer is wrong or incomplete.

2.3.6 Solutions will not overlap with current EU legislation. There will be no interference with the ongoing negotiations between Switzerland and the European Commission on the introduction of the automatic exchange of information. In the meantime, the existing Swiss

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<sup>1</sup> See Commentary on Article 26 of the OECD Model Tax Convention, in particular point 5.2 relating to paragraph 1:

«The standard of “foreseeable relevance” can be met both in cases dealing with one taxpayer (whether identified by name or otherwise) or several taxpayers (whether identified by name or otherwise). Where a Contracting State undertakes an investigation into a particular group of taxpayers in accordance with its laws, any request related to the investigation will typically serve “the administration or enforcement” of its domestic tax laws and thus comply with the requirements of paragraph 1, provided it meets the standard of “foreseeable relevance”. However, where the request relates to a group of taxpayers not individually identified, it will often be more difficult to establish that the request is not a fishing expedition, as the requesting State cannot point to an ongoing investigation into the affairs of a particular taxpayer which in most cases would by itself dispel the notion of the request being random or speculative. In such cases it is therefore necessary that the requesting State provide a detailed description of the group and the specific facts and circumstances that have led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers in the group for whom information is requested have been non-compliant with that law supported by a clear factual basis. It further requires a showing that the requested information would assist in determining compliance by the taxpayers in the group. As illustrated in example (h) of paragraph 8, in the case of a group request a third party will usually, although not necessarily, have actively contributed to the non-compliance of the taxpayers in the group, in which case such circumstance should also be described in the request. Furthermore, and as illustrated in the example in subparagraph a) of paragraph 8.1, a group request that merely describes the provision of financial services to non-residents and mentions the possibility of non-compliance by the non-resident customers does not meet the standard of foreseeable relevance. »

– EU Agreement on the Taxation of Savings will continue to apply.

### **3. Double Taxation Treaty – other issues**

3.1 In a second phase a separate protocol amending the Double Taxation Treaty will be negotiated.

3.2 The two parties will aim at finding a comprehensive agreement on the following issues:

- Reduction of residual tax rates for dividends and interest;
- Treaty residence status for pension funds with mandatory contributions;
- Updating the anti abuse provision and;
- The inclusion of an arbitration provision.

### **4. Taxation of frontier workers**

4.1 The taxation of frontier workers will be reviewed based on the current economical and mobility framework.

4.2 The revised agreement should be based on the principle of reciprocity.

4.3 The objective is a fair share of tax resulting from frontier workers between both countries, in conformity with the principle that the burden to provide public services - and the connected right to levy or receive taxes - is on both the State of residence of the frontier worker and the State of source of dependent income.

4.4 This could be achieved by a solution where frontier workers are taxed on their employment income both in the State where the work is performed and in the State of residence. The tax levied in the source State (Switzerland/Italy) on the employment income of frontier workers shall not be higher than 70% of the tax resulting from the application of the ordinary Swiss/Italian personal income taxes, including local personal income taxes at the rates applied in the place where employment is performed<sup>2</sup>. The State of residence (Italy/Switzerland) will apply its personal income taxes and shall avoid double taxation regarding the taxes levied in the other State. Reimbursements to municipalities (if applicable) will fall under the responsibility of the State to which they belong. Initially, the total tax on labor income of Italian frontier workers will not be less nor higher than today; Italy as the State of residence will adjust gradually its level of taxation, in light of its constitutional principles.

4.5 An electronic periodic exchange of information shall be implemented in order to allow the State of residence to receive and process in due time all data concerning the incomes earned by the frontier workers in the State of source.

4.6 The definition of frontier workers will be spelled out based on the 1974 Agreement<sup>3</sup> and measures for close and effective administrative cooperation between the two states will be worked out.

4.7 If, following the Swiss popular vote on the initiative of February 9<sup>th</sup> 2014, Switzerland adopts a legislation which is not compatible with the Swiss-EU treaty on free movement

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<sup>2</sup> The implementation of this solution is based on the ordinary national and local taxation on foreign workers: national tax, as well as regional and municipal "addizionali" in Italy; federal, cantonal and municipal (at the average municipal multiplier of a given canton) personal income taxes in Switzerland.

<sup>3</sup> Key elements of the definition would make reference to salaried employees working in frontier Cantons and Regions and resident in municipalities of the other country falling totally or partially within 20 km from the border, who in principle return on a daily basis to their domicile in the State of residence.

of persons, the agreement on frontier workers reached under the terms of this Non Paper shall immediately cease its effects and the provisions of the agreement signed in Rome on 3 October 1974 shall again apply, unless the agreement is terminated or a new agreement is signed.

4.8 Both parties take note that in the event of termination or non-renewal of the Swiss-EU treaty on free movement of persons rights acquired by individuals according to the current rules on social security, which are based on EU regulations in application of the aforementioned Treaty, shall not be affected and the Contracting Parties shall settle by mutual agreement what action is to be taken in respect of rights in the process of being acquired (Art. 23 of the Agreement of 21 June 1999 between the European Community and Switzerland on Free Movement of persons). The Agreement will cease to apply six months after notification of the termination or non-renewal (Art. 25 of the aforementioned Agreement).

In the event of termination or non-renewal of the current Swiss-EU Treaty on free movement of persons and in the absence of a new Agreement between Switzerland and the EU, Italy and Switzerland will immediately start to negotiate a new bilateral Agreement on social security matters, taking as reference the terminated (or non-renewed) regulations, in order to achieve swiftly solutions that maintain the coordination of the social security schemes of both countries, with particular attention to the rights of individuals not yet acquired. In the context of the negotiations the two parties are committed to give priority, if necessary, to temporary solutions aimed at preventing any legal vacancy or uncertainty.

## **5. Black lists**

5.1. The amending Protocol of the Double Tax Treaty referred to in section 2.1 will provide for an exchange of information provision up to the OECD standard. Switzerland is also ready to immediately apply the Anti-Fraud Agreement between the EU and Switzerland with Italy.

5.2. In light of the above progress, Italy will delete Switzerland from its black lists/ include Switzerland in its white lists which are based only on the lack of an effective exchange of information at the date of the entry into force of the amending protocol on exchange of information in accordance with the OECD standard (article 26 of the OECD Model Tax Convention).

5.3. Furthermore, based on the recent progress in the discussions with the EU Commission on the Swiss corporate tax system (Code of Conduct), the Swiss government intends to abolish its specific cantonal tax regimes listed in the Swiss-EU declaration.

5.4 In this connection, the presence of Switzerland on the other black lists will be favorably reviewed in light of progress achieved by Switzerland in the area of company taxation in the context of the dialogue with the EU and the work of the OECD. Such progress is considered achieved when the Swiss regimes under review by the OECD and the EU: a) have been repealed; or b) have been definitively considered not harmful by OECD and the EU; or c) have been amended in such a way that according to the OECD and the EU criteria they are considered not harmful. Under such conditions, the countermeasures expressly targeted at such regimes will be removed. Both countries reserve the right to take appropriate countermeasures on new regimes that fall under the harmful tax competition criteria.

## **6. Campione d'Italia**

6.1 The belonging of Campione d'Italia to a particular customs zone is a long-standing and controversial issue. Due to the fact that Campione is an Italian ex-clave in Swiss territory, other non-fiscal issues are also pending.

6.2 The economic entities of Campione are "de facto" subject to Swiss VAT, without right to refund. In the short term, Administrations will seek pragmatic solutions on indirect tax issues.

6.3 Switzerland and Italy are committed to negotiate a more comprehensive solution for Campione's fiscal and non-fiscal issues, including circulation of goods, as under the Free Trade Agreement between EU and Switzerland.

## **7. Modalities**

7.1 The two sides will make their best efforts to progress swiftly on the negotiation and rapidly achieve results on the whole package under negotiation. As for the previous round of negotiations, the work will be coordinated by a Steering Group (Gruppo di Pilotaggio) supported, if needed, by technical groups providing the input for the various issues under negotiation.

## **Ongoing dialogue**

In addition to the above, Switzerland and Italy agree on regular exchanges on further issues of mutual interests. These exchanges will in a first phase concentrate on the following issues:

### **Financial Transaction Tax**

In 2012 Italy has introduced a financial transaction tax. At the European level, a draft European Directive on Financial Transaction Tax is currently under discussion. Regarding the Italian financial transaction tax, the two sides will keep an open dialogue on implementation issues and specific points such as effects triggered by black lists. Proper attention will be given to the request for clarifications raised by financial institutions.

### **Cross-border financial services**

Reciprocal improved provision of cross-border financial services is based on a strengthened cooperation between the respective financial markets supervisory authorities. Switzerland is ready to consider to provide better administrative assistance and improved information to Consob and Banca d'Italia.

Swiss and Italian authorities will continue to investigate possible solutions to improve reciprocal provision of cross-border financial services in light of developments of EU legislation and of the evolution in the agreements between the EU and Switzerland, including the issue of the compatibility of the legislation that Switzerland will adopt after the popular vote on the initiative of February 9<sup>th</sup> with the Swiss-EU treaty on free movement of persons, and also in light of bilateral agreements concluded between Switzerland and other EU member states.

### **Tax competition**

The two sides will keep an open dialogue on new possible tax regimes aimed at attracting new business in Switzerland. Italy will inform Switzerland on countermeasures that could be adopted, as well as, if it is the case, on new tax regimes aimed at attracting business in Italy.