

Changing Markets Private Banking Germany Offshore

Situation

Last year the German legislature rejected the tax cooperation agreement (“Steuerabkommen”) with Switzerland. Today this appears as a turning point in the international treatment of offshore banking. Luxembourg will start automated disclosure by 2015, the G5 has started promoting for global disclosure, while the EU will discuss enhancements of the savings tax directive during the upcoming summit talks. Meanwhile the press publishes news regarding new tax data records bought by German tax authorities and „offshore leaks“.

While the tax cooperation agreement was rejected, other and new parts of Swiss-German double taxation rules have come into effect. Especially the law on administrative cooperation for taxation (“Steueramtshilfegesetz”) binds Switzerland to answer German authorities’ „Gruppenanfragen“ (request for identifying data not based on individual suspicion but on membership in randomly defined clusters). So even if there are no individual reasons for having to fear uncovering, any unwanted disclosure should no longer be a surprise.

Consequences

Managing of undeclared assets becomes more and more risky for both the investor and his bank. Therefore some Swiss Banks have already announced to not only reject new assets in case of „suspicious“ origin, but even to get rid of all customers who cannot proof the full disclosure of their assets to their tax authorities. These developments and the Swiss „Weissgeldstrategie“ indicate that these banks will rather be trendsetters than laggards.

Spheres of activity for banks

1. Strengthen Compliance

The planned new law on AML (in consultation) will for the first time ever be used to enforce taxation in the domicile countries of the investors – by obliging the banks to check and reject in case of suspicious assets. Already now banks should reject new assets in cases where their origin may be undeclared. Bank’s duties concerning existing customers and existing assets should be further investigated.

2. Settlement of the past

To retain customers and assets, finally each bank should advise investors to ponder the possibility of amended tax returns. This kind of self-declaration leads to exemption from punishment – but under special conditions, only. Any mistake could lead to harsh reactions of German tax authorities. Therefore banks should try to convince customers as early as possible, prepare all information for the investors’ tax counselor. The banks must be prepared for these customers requiring more communication during this period – and the client advisors will need to obtain in-depth knowledge of German tax laws.

3. Future strategy

While settlement is running, the future strategy for this market should be developed. In doing so, all issues on regulations and taxation will get high priority, e.g.:

- Which client segments are attractive in the future?
- What are opportunities to win new customers in Germany under new regulations?
- How to define product offering taking into consideration the impact of taxes on the rate of return?
- How can the services for products be sourced?
- What is the critical size of products and customer segments?

4. Implementation of the “Settlement of the past”

To ensure a smooth settlement, banks must focus on several topics, for example:

- IT/Operations: How to gather the required information for customers’ voluntary disclosure? How to present this information in order to enable smooth processing for tax counsels?
- Advisory: Where can suitable resources be found, how will they be trained to ensure the best possible guidance of the client during this critical period of time? How can external consulting/counselor capacities be secured?

5. Implementation of the future strategy

Both advisory and investment processes should be analyzed regarding various criteria, e.g.:

- Selection of products, how to ensure that only compliant and tax efficient products are held by customers?
- Individual investment situation, how to ensure that customers’ specific situation (e.g. loss pots or historical dates of buying) is used in a tax-efficient way?
- Implementation of tax reporting to better facilitate tax declarations for customers and their tax counsels.

The involved staff has to be trained to the task and both IT and processes must be analyzed and adopted. Control instruments must be implemented in order to ensure that the implementation of the strategy can be monitored and adjusted if required.

Summary

It becomes apparent that the current events increase the trend to declared assets in the well-established private banking countries („Weissgeldstrategie“). This strategy is supported by Swiss politics and will be further enforced especially by the major banks. Banks managing assets from customers domiciled in affected countries should settle the past in order to enable future business. We have used German clients as an example, because for them there is no option of an anonymous settlement. It can be assumed that the situation with other countries will be the same.

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