**UK Switzerland tax agreement**

The new arrangements relating to Swiss accounts are highly complex and involve matters that present significant risks to clients as well as reputational risks for advisers. They also raise several professional standards and ethical issues and unless a member is experienced in complex investigation issues they should seek qualified help.

The rules are now contained in FA 2012 Schedule 36 and members should, where appropriate, be familiar with these rules and the supporting agreement and protocols. All of the relevant documents can be found on the HM Revenue & Customs (HMRC) website.

It is clear based upon emerging HMRC practice that there is a greatly increased risk of criminal prosecution for those individuals who continue to conceal Swiss assets and in turn fail to disclose all of their UK tax liabilities. **Members should note in particular that clients who opt for the ‘one-off payment’ or Swiss withholding tax rather than making a full disclosure to HMRC are not protected from possible prosecution.**

**New clients**

1. Members can only accept a new client who has past tax irregularities on the basis that they will make full disclosure to the member and propose to regularise their tax affairs completely. (Section 4.2 [Professional Rules and Practice Guidelines](http://www.tax.org.uk/Resources/CIOT/Documents/2011/03/PRPG%20-%20March%202011.pdf).) Members who are aware or become aware that the client has previously undeclared Swiss funds should therefore enquire into the source of the funds in any Swiss account and the existence of other under declarations unrelated to any Swiss account. This is both an ethical and reputational matter for the member and in the best interests of the client, who otherwise remains exposed to HMRC enquiry, higher penalties and, in the worst case, criminal prosecution. Note that a member would have to refuse to act for a new or existing client who was determined to wait until May 2013 before disclosure to HMRC.

**Existing clients**

1. Where a member is asked to advise an existing client on an undeclared account, then in addition to the points in paragraph 1 above, the member should consider whether the relationship of trust between the member and the client has broken down and whether the member should continue to act.

**Swiss Bank Certificates**

1. In the period running up to the UK/Swiss agreement coming into force, Swiss banks have been issuing certificates to their clients. These certificates are very important and determine whether the client will suffer a one off payment and future withholding tax. Where a client asserts that they are UK tax compliant, the certificate must be signed by a qualified person. In general each Swiss bank has designed its own certificates and whilst it is expected that banks will accept certificates signed by a CTA the wording of the certificate may leave some room for doubt, in which case the position should be confirmed with the bank. It should be noted that the certification process is more complex where the client asserts that he or she is not domiciled in any part of the UK.

**Professional and ethical considerations**

1. A member should only advise within the scope of his own professional competence (Section 5.2 [Professional Rules and Practice Guidelines](http://www.tax.org.uk/Resources/CIOT/Documents/2011/03/PRPG%20-%20March%202011.pdf)), so should only accept engagements to advise on undeclared income or gains where he/she has sufficient relevant knowledge and experience.
2. The member's advice would normally set out the alternatives available to the client. The client making a traditional voluntary disclosure to HMRC or of using the Liechtenstein Disclosure Facility (LDF) are clearly valid options that will correct the past non-disclosure. However, as matters stand it is clear that the option of paying the Swiss one off payment (OP) anonymously will not on its own correct any past non-disclosure and similarly the future Withholding Tax (WHT) on its own does not mean that the client is UK tax compliant. See also points 6 and 7 below.
3. The OP route does not regularise funds which have passed through the Swiss bank account but been withdrawn before the reference date. Equally the OP and the WHT routes also do not, of course, regularise any matter unrelated to the Swiss bank accounts. Hence the OP/WHT route still leaves such a client with undeclared income or gains at risk of HMRC investigation.
4. In such cases the member must advise the client to make a disclosure to HMRC and regularise all their tax affairs and cannot recommend the OP/WHT route as a complete solution to the regularisation of their tax affairs.
5. A member cannot currently advise a client to take no action until May 2013 when the OP/WHT arrangements will apply, since advising a client to wait for these options implies advising them to submit another fraudulent tax return (the return due by 31 January 2013). It would also leave the client exposed to an HMRC investigation and potential action (up to criminal prosecution in the worst case) for a considerable period of time. Where the client has already informed his Swiss bank that he wishes to use the OP/WHT route, it should be possible to reverse that decision, before the Swiss agreement enters into force.

**Anti money laundering (AML) considerations**

1. For new clients, the member must undertake the usual money laundering identification checks before accepting the client. The profile of these engagements suggests that these individuals are at higher risk than usual of being involved in money laundering, so extra checks may be needed (Regs 7 and 14 [The Money Laundering Regulations 2007](http://www.legislation.gov.uk/uksi/2007/2157/contents/made) and Section 4 [CCAB AML guidance](http://www.tax.org.uk/NR/rdonlyres/204C9F2A-C6BF-4BBB-89BB-F70F9DB0C38C/0/CCABguidanc202008826.pdf) [with Tax Sector appendix](http://www.tax.org.uk/NR/rdonlyres/204C9F2A-C6BF-4BBB-89BB-F70F9DB0C38C/0/CCABguidanc202008826.pdf)). Both the need for particular care over money laundering identification and the need to ensure that the prospective client genuinely intends to regularise his/her tax affairs suggest that an initial face to face meeting would usually be appropriate.
2. It is possible that criminals may use regularisation of their tax affairs as a method to bring illegally acquired funds back into the regular economy. The member would need to be satisfied as to the suitability of the client and the account given as to the source of the funds. If the member became concerned that the client may be using regularisation of their tax affairs as a method to bring illegally acquired funds back into the regular economy during the course of the engagement, the member should consider the need to obtain consent from the Serious Organised Crime Agency (SOCA) to proceed with the engagement (Sections 335-336 Proceeds of Crime Act 2002 and Section 8 CCAB AML guidance with Tax Sector appendix).
3. Members must comply with the anti-money laundering reporting requirements during the engagement. The privilege exemption would apply in many situations but not in all circumstances, so members should be alert to their reporting obligations throughout the engagement, particularly given the high risk profile of these engagements (Section 330 [Proceeds of Crime Act 2002](http://www.legislation.gov.uk/ukpga/2002/29/contents) and [Statutory Instrument 2006 No 308](http://www.legislation.gov.uk/uksi/2006/308/pdfs/uksi_20060308_en.pdf); Sections 6 and 7.26 -7.46 of [CCAB AML guidance with Tax Sector appendix](http://www.tax.org.uk/NR/rdonlyres/204C9F2A-C6BF-4BBB-89BB-F70F9DB0C38C/0/CCABguidanc202008826.pdf) and Section 12 of the appendix). Examples of instances where reports to SOCA would be necessary would include situations where the member knows or suspects (or has reasonable grounds to know or suspect) that the funds were generated from wider criminal activities or that the client's tax frauds are more extensive than the client has disclosed to the member in order to obtain professional advice.

**Liechtenstein Disclosure Facility**

1. Members may wish to consider advising clients on the possibility of using the LDF as part of a package of measures to regularise their tax affairs. The timing of doing this would be important since the LDF is only available if the client is not already under investigation, so if HMRC have issued a letter under Code of Practice 9 to the client in the meantime, it could leave the member open to accusations of negligence as LDF access would be denied. In addition, the member will need to consider whether this method is being used to bring illegally acquired funds back into the regular economy, requiring the necessary consent to proceed from SOCA.
2. If you have any queries relating to this briefing note please contact Heather Brehcist at hbrehcist@ciot.org.uk.

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