

Withholding tax agreements: the “Rubik Agreements”

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The Rubik agreements are a set of agreements on withholding taxation concluded by Switzerland with several neighboring countries. After the upset in financial markets created by the 2008 crisis, several States wanted to find an efficient way to act against tax evasion. Switzerland has decided to answer to foreign requests by establishing a withholding tax rather than by signing an automatic tax information exchange agreement. This enables the States to perceive fiscal contributions while protecting their citizens' financial privacy, since the identity of Swiss bank's clients will stay anonymous. These agreements' goal is to ensure that no undeclared foreign asset can be deposited in Switzerland.

The mechanism of the withholding tax works as follow: individuals and legal entities are subjected to a withholding tax, as well as entities with whom they are linked (such as domiciliary companies or trusts)¹. Incomes of operating companies are not affected. The tax is computed on the basis of a fixed rate, independent of the income and the personal wealth of the taxpayer.

At first, Swiss paying agents, mainly banks², withdraw the tax and transfer it to the competent Swiss fiscal authority with a mention of the country of domicile, but without indicating the client's identity. Then, the Swiss fiscal authority transfers the total amount thereby collected to the relevant State. This transaction frees the taxpayer from his fiscal

¹ See the complete list at the art. 2, al. 1, let. h of the Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on cooperation in the area of taxation.

² According to the art. 2, al. 1, let. h of the Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on cooperation in the area of taxation, ““Swiss paying agent” means banks under the Swiss Banking Act of 8 November 1934, securities dealers under the Swiss Stock Exchange Act of 24 March 1995 and natural and legal persons resident or established in Switzerland, partnerships and permanent establishments of foreign companies, which accept, hold, invest or transfer assets of third parties or merely make payments of income or gains for third parties or secure such payments in the normal course of their business. Notwithstanding the foregoing, for the purposes of Part 3, a person is not considered to be a Swiss paying agent solely because that person pays out dividends and interest directly to its shareholders or creditors, provided that the total amount of these payments does not exceed CHF 1 million per year.”

duties because the incomes on which the withholding tax was perceived are no longer to be declared to the foreign fiscal entity.

With regard to the regularization of the past³, the fiscal agreements state that taxpayers of the affected countries can regularize their assets in Switzerland either by paying an anonymous fixed-rate tax or by voluntarily declaring their banking relationship to the Swiss and foreign fiscal authorities. Moreover, future incomes and capital gains will be subjected to the withholding tax. The rate of taxation matches the one applied in the relevant countries.⁴ As a reminder, every bank account in Switzerland is currently subject to a withholding tax of 35% on capital gains. This tax can be reimbursed only if the account is correctly declared to the fiscal authorities.

The taxpayers who oppose the process of regularization (either a voluntary declaration or an anonymous fixed-rate tax) were required to close their accounts or deposits in Switzerland before January the 1st, 2013 for the Austrians and before May the 31st, 2013 for the British.

Even if these fiscal agreements are directly applicable in Switzerland, it was necessary to pass subsequent regulation in order to ensure their enforcement.

The law regulating international withholding taxation (Loi fédérale sur l'imposition internationale à la source, LISint)⁵ has therefore been modified in order to regulate the organization, the procedures and, in the British case, legislations regarding the paying of the advance.⁶

To this day, Switzerland has ratified two agreements that took effect on January the 1st, 2013: one with Austria and the other with the United Kingdom. The agreement signed with Germany was aborted due to the refusal of the German parliament.

The agreements concluded with Austria and the United Kingdom affect every of these two countries' taxpayers who have a bank account or security deposits in Switzerland.

The people affected by this tax can choose:

- either to pay a tax on their undeclared capital in order to regularize the situation, and then pay a withholding tax on future incomes and capital gains. The tax will be withdrawn directly from their account and transferred anonymously to their home country,

³ Art. 5 of the agreement between the Swiss Confederation and the United Kingdom of Great-Britain and Northern Ireland on cooperation in the field of taxation.

⁴ A summary of the rates is available in the table in appendix.

⁵ "Loi fédérale du 15 juin 2012 sur l'imposition internationale à la source" (LISint). Took effect in December 2012. RS 672.4.

⁶ On the advance, see the chapter below regarding the differences between the agreements.

- or to authorize the paying agent (their bank) to transmit their identity and information about their holdings in Switzerland to both the Swiss and foreign fiscal administrations. In this case, the taxpayer will have to regularize his situation directly with his home country.

Agreement on a withholding tax concluded with Austria and the United Kingdom:

These agreements, signed respectively on April the 13th and October the 6th, 2012, took effect on January the 1st, 2013. Essentially, they state that people whose legal domicile is in one of these two countries can regularize their banking relationships in Switzerland either by paying a tax or by declaring their accounts. Beginning on January the 1st, 2013, capital gains of Austrian and British clients are subject to a withholding tax whose product will be anonymously transferred by Switzerland to Austrian and British authorities. Mutual access to markets will also be improved for financial services providers.⁷

Main differences between the agreement concluded with Austria and the one concluded with the United Kingdom:

The first important difference is the tax rate applied for the regularization of the past. While both agreements state that the rate depends on the length of the past banking relationship and on the account's balance, the rate fluctuate between 15 and 38% in the case of the agreement with Austria and between 21 and 41% for the agreement with the United Kingdom.

The second difference is in the advance paid by Swiss paying agents to the United Kingdom. By the end of February 2013, banks had to have forwarded the necessary information about the new regulation to their affected customers. These have until the end of May to announce whether they want to be subjected to the withholding tax or if they want to declare their account to the tax authorities. The United Kingdom has received an advance of 500 millions of Swiss francs in January of 2013.⁸ This advance was paid by banks and will be progressively repaid starting July 2013. The refund will come from the revenues obtained by the subsequent anonymous imposition. The agreement concluded with Austria does not provide that such advance be paid, mainly because Austrian had until January the 1st 2013, to choose how whether they wanted to voluntarily declare their account or to pay the anonymous withholding tax.

The third difference is about the cases of succession. The agreement concluded with the United Kingdom provides that a withholding tax of 40% on successions be paid.⁹ On the

⁷ Relating information to withholding tax agreements published on the website of the Federal Department of Finance: <http://www.sif.admin.ch/00488/index.html?lang=fr&msg-id=44130>.

⁸ Art. 17 of the agreement between Swiss Confederation and the United Kingdom of Great-Britain and Northern Ireland on cooperation in the field of taxation.

⁹ Art. 32 of the agreement between Swiss Confederation and the United Kingdom of Great-Britain and Northern Ireland on cooperation in the field of taxation.

other hand, the agreement concluded with Austria does not provide such regulation because of the absence of inheritance taxation in Austria.

Finally, Switzerland and Austria committed themselves to remove significant barriers to the providing of cross-border financial services and to ease the conditions to obtain banking authorization in Austria. Furthermore, funds distribution in securities will be facilitated.

Withholding tax agreement refused by the German parliament:

The refusal by the German parliament to ratify the agreement on withholding tax concluded between the German government and Switzerland implies that this agreement did not take effect in January of 2013. This rejection prevents the end of the current situation, characterized by the random discovery of fiscal offenses permitted by the fraudulent obtaining of CDs containing banking data.

What future?

According to Swiss authorities, other European countries wish to conclude this kind of agreements. For example, on May 9th, 2012, the Swiss Federal Department of Finance and the Italian Ministry of Economy and Finance met and spoke about different financial and tax topics. They talked about the possibility of a Rubik agreement providing for the regularization of assets held in Switzerland by non-resident Italian taxpayers and introducing a withholding tax for future capital returns. Following this meeting, a steering group in charge of continuing work was set in order to solve the financial and tax matters in abeyance. However, according to the Federal Councillor in charge of the finance department, the possible agreement will not take effect until January 2015.

Finally, on October 27th, 2011, a meeting also took place between the Swiss Secretary of State and the Greek Secretary of State to discuss a possible tax agreement between Switzerland and Greece. They talked about a fiscal agreement similar to the one signed by Switzerland and the United Kingdom, with the aim to regularize assets that Greek taxpayers detain on Swiss bank accounts and to submit future capital gains to a withholding tax. A negotiating mandate was formally adopted on November 7th, 2012.



Withholding tax agreements with the United Kingdom and Austria

Key points and differences at a glance

	United Kingdom	Austria
Regularisation of the past	One-off tax amount of 21% to 34% based on set formula, up to 41% in special cases, or voluntary disclosure	One-off tax amount of 15% to 30% based on set formula, up to 38% in special cases, or voluntary disclosure
Advance payment by paying agents	CHF 500 million; entirely reimbursed when system has generated one-off payments worth CHF 1.3 billion	No advance payment
Destinations of withdrawn funds	Details of the ten states and territories where most assets were transferred, as well as number of people concerned for each	
Withholding tax on investment income	Tax rate depending on investment income: interest 48%, dividends 40%, other investment income 27% – or voluntary disclosure	25% for investment income and capital gains; 35% for interest income in accordance with agreement on taxation of savings income between Switzerland and EU
Withholding tax for inheritance	In case of inheritance, 40% tax or voluntary disclosure	No provisions, as no inheritance tax in Austria
Safeguarding of agreements' purpose	Maximum 500 enquiries with plausible grounds in a year; exchange of information in accordance with double taxation agreement is unaffected	No enquiry possibilities beyond existing administrative assistance possible under double taxation agreement
Reciprocity/ mutuality	Option of reciprocity usable by Switzerland Form: disclosure like for automatic exchange of information	Option of reciprocity usable by Switzerland Form: retention tax in accordance with Savings Tax Directive
Impunity for banks and their employees	Criminal prosecution of banks and their employees involved in financial offences committed before agreement was signed is highly unlikely	Generally no criminal prosecution of banks and their employees involved in financial offences committed before agreement was signed
Equivalence regarding AEI	Acknowledgement by the partner states that the solution set out in the agreements has a long-term impact that is equivalent to the automatic exchange of information (AEI)	
Purchase of stolen data	The purchase of stolen CDs is not permitted	
Improved market access	Processes and rules clarified; legal transparency achieved	Client relationships can now be initiated directly from Switzerland; more advisory activity; fund distribution possible