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THE EU- SWITZERLAND TAX AGREEMENT FOR THE AUTOMATIC EXCHANGE OF INFORMATION

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As part of the strategic planning and mutual administrative assistance adopted by governments worldwide in order to deal with tax evasion, tax avoidance and aggressive tax planning, transnational agreements are coming into force aiming at the mutual and automatic exchange of information. The information exchanged is related to various categories of income or assets, and is obtained from the source of income country, and is then transmitted to the country of tax residence of the taxpayer. The information provided is relevant to the contents of bank accounts, interests, dividends, returns from insurance policies, asset sales and the transmitting bodies are mainly financial institutions, insurance companies, mutual funds, etc.

The automatic exchange of information for tax purposes has been introduced lately at both European and global level. At a global level, many countries have signed the OECD global standard for the automatic exchange of financial account information. The early adopters of the OECD's standard (the Member States of the EU except Austria, Argentina, Colombia, Dominican Republic, India , Korea, Liechtenstein, Gibraltar, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Iceland, Greenland, South Africa, Mauritius, Montserrat, Seychelles, Turks & Caicos) are committed to exchange tax information from 2017 (for data concerning 2016), while other signatory countries from 2018 (Switzerland, Monaco, Panama, Albania, Australia, New Zealand, Chile, Brazil, Canada, China, Macau, Hong Kong, Singapore, Japan, Israel, Russia, Turkey, Saudi Arabia, Qatar, United Arab Emirates, Costa Rica, Indonesia, Malaysia, Grenada, Bahamas, Belize, the Marshall Islands, Uruguay, Austria) (for 2017 data).

At European level, the EU Directive 2014/107 significantly expands the scope of the automatic exchange of information for tax purposes between EU Member States. The exchange of tax information concerns taxpayers, both individuals and legal entities. According to the Directive, the information to be exchanged include, in general, bank account numbers, account balance, any payments on account, including any income from assets and investments, stocks, insurance funds and the gross revenue from sales of assets or acquisition of financial products.

In Greece, in late March 2016 a bill regarding the full exchange of information on foreign deposits and income from financial instruments according to the OECD Information Exchange Model (Common Reporting Standard) was filed for voting in the Greek Parliament. In practice, this bill will form the legal background so as the Greek tax authorities begin to receive and provide information on deposits and income from financial products. Being among the "early adopters", Greece will carry out the exchange of information starting in 2017 and will focus on the data from 2016, i.e. deposits and general financial investments held this year.

In the context of the EU strategy for negotiation and modification of bilateral agreements with countries such as Switzerland, Andorra, Liechtenstein, Monaco and San Marino, on 27 May 2015, Switzerland signed an agreement with the European Union to meet the OECD global standard for the automatic exchange of financial account information.

The agreement should come into force on 1 January 2017 and the first exchange of financial account data between Switzerland and the EU member states should occur in 2018. The data exchange will be automatic, i.e. without having to submit a prior request and the tax administrations of the Member States and Switzerland will be allowed to identify those subject to tax and apply the tax laws in cross-border situations, identifying cases of tax evasion. Thus, from January 1, 2017, financial institutions in Switzerland will apply the procedures established by the new agreement to identify their customers (individuals or legal entities) whose data will be subject to exchange. The data to be exchanged will relate to the beneficiary (name, home address, national tax ID, date and place of birth) and the account (account number, account balance and currency, interest, dividends, income from the sale of financial assets). These data will be transferred from financial institutions to the national competent authorities (as far as Greece is concerned, the competent authority is the Minister of Economy and Finance or any delegated person), which will then exchange data automatically on an annual basis.

It should however be noted that despite the fact that the exchange is automatic and immediate, Swiss financial institutions are obliged to inform their foreign customers about the impending transmission and exchange of data, so as to ensure both their effective information and the protection of their personal data.

In the field of data protection, it should be noted that the provisions contained in Article 6 of the Agreement, were deemed to be insufficient by the European Data Privacy Supervisor, who recommended that a) the exchange of information should take place only in connection with a real risk of tax evasion, b) the use of data should be limited only in relation to one target and therefore the use for other purposes should be prevented, c) the taxpayers under investigation should be timely informed thereof, d) data protection security standards should be explicitly defined for public and private authorities collecting and exchanging data, and e) an explicit retention period of tax information should be defined, after the completion of which, the data collected should be deleted.

Finally, it should be noted that due to developments at EU level, the announced bilateral Greece-Switzerland agreement on the taxation of savings, now seems to be inappropriate and pointless.

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