HM Revenue & Customs

Tax Agreement Between the United Kingdom and Switzerland

Who is likely to be affected?

Individuals with financial assets held directly or indirectly in Switzerland.

General description of the measure

The measure will give effect in the United Kingdom to the Agreement dated 6 October 2011 between the governments of the UK and Switzerland and contain further provisions. The Agreement itself has three main effects.

First, it provides for a one-off levy to be applied to accounts in Switzerland held directly or indirectly by individuals who are resident in the UK unless the individual authorises disclosure of those accounts. Compliant individuals should authorise disclosure and so avoid the levy.

Secondly, it applies a withholding tax to income and gains arising on those Swiss accounts from 1 January 2013. Compliant individuals may authorise disclosure and avoid the withholding tax.

Thirdly, it provides for enhanced exchange of information between the tax authorities of the two countries.

The measure also provides that the fact that arrangements with a territory contain significant protection for UK tax revenue may be taken into account in classifying a territory for the purposes of the offshore penalty legislation.

Policy objective

The objective is to provide for bilateral co-operation between the UK and Switzerland to ensure effective taxation in the UK of individuals with financial assets in Switzerland. The effect will be equivalent to that achieved through an agreement to exchange information about such individuals on an automatic basis.

Background to the measure

The intention to explore whether an agreement could be reached was announced in October 2010. The Agreement was initialled in August 2011 and signed and published on the HM Revenue & Customs (HMRC) website on 6 October 2011. The measure gives effect to the Agreement.

Detailed proposal

Operative date

Subject to ratification both in the UK and Switzerland, the Agreement will apply on and after 1 January 2013.

Current law

The body of law about the UK taxation of income and gains arising in the UK (and deposited abroad) or arising abroad continues to apply, subject to the new provisions affecting assets in Switzerland.

The existing double taxation agreement between the United Kingdom and Switzerland provides for exchange of information on request, consistent with the OECD standard for such requests.

Proposed revisions

Legislation will be introduced in Finance Bill 2012 in three parts:

Regularisation of the past. The agreement provides for a one-off levy to be applied on financial assets held in Switzerland which are identified as being beneficially owned by a UK resident individual unless authority is given to disclose those assets to HMRC. Subject to certain exclusions and limitations, the individual will cease to be liable to UK income tax, capital gains tax, inheritance tax and value added tax in respect of the assets to which the levy is applied.

New withholding tax for periods from 1 January 2013. A levy will be applied to income and gains arising on the financial assets in Switzerland unless disclosure is made. The levy will satisfy liability to UK income tax and capital gains tax on those income and gains.

Enhanced exchange of information. For a certain number of cases each year HMRC may require information about accounts held in Switzerland by individuals who are identified to the Swiss tax authorities.

The legislation will also add to the list of factors that may be taken into account in classifying a territory for the purposes of the offshore penalty legislation, so that the fact arrangements with a territory contain significant protection for UK tax revenue may be taken into account.

Summary of impacts

Exchequer Impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	This measure is expected to yield between £4 to £7 billion. The final costing will be subject to scrutiny by the Office for Budget Responsibility (OBR). The OBR has noted the uncertainties around this measure in their Economic and Fiscal Outlook published alongside the Autumn Statement.				
Economic impact	This measure is not expected to have any significant economic impacts.				
Impact on individuals and households	This agreement applies to individuals resident in the UK who are beneficial owners of funds held in Switzerland. Compliant individuals are expected to disclose and will not be liable to the one-off levy. It is expected that the majority of the impact will fall on those that are non-compliant. Tax compliant individuals may suffer negligible administration costs, involving familiarisation with the terms of the agreement and the cost of proving that they are already compliant.				
Equalities impacts	Equality has been carefully considered and it has been concluded that there are no adverse impacts from this change on groups with different protected characteristics.				
Impact on business including civil society organisations	This Agreement applies to UK individuals only and not businesses, but it may have an impact on individuals who are taxed on their self-employment income. Those that are compliant will not be liable to the one-off levy and it is expected that the majority of impact will fall on those that are non-compliant.				

	It is expected that there may be negligible administration costs for compliant businesses in the self-employed sector, involving the cost of familiarisation or proving existing compliance. There are around 320 banks in Switzerland that are likely to be affected by this measure. These banks will incur the one-off cost of implementing the appropriate information technology changes to apply this agreement.
Operational impact (£m) (HMRC or other)	Negligible. Any non-compliance issues will be dealt with through the offshore co-ordination unit.
Other impacts	Privacy impact: HMRC will be allowed to request account details where they suspect tax evasion, whether the individual authorises their bank to provide the information or not. To do so, HMRC will have to present the Swiss authorities with grounds based on strict procedures that are in place to demonstrate that the interference with privacy is proportional and justified, and thus lawful. Competition assessment: The measure specifies that the certification of status of non-domiciled persons can only be authorised by agents who are members of relevant professional bodies.

Monitoring and evaluation

The impact of this measure will be assessed through monitoring receipts, information collected on tax returns, and data collected through the joint commission set up under the terms of the Agreement and enhanced exchange of information received under the Agreement.

Further advice

If you have any questions about this change, please contact Richard Davey on 020 7147 2391 or send via email to powers.review-of-hmrc@hmrc.gsi.gov.uk.

1 UK/Switzerland agreement

(1) Schedule 1 contains provision giving effect to an agreement signed on 6 October 2011 between the United Kingdom and the Swiss Confederation on co-operation in the area of taxation.

(2) That Schedule comes into force on the day on which the agreement enters into force.

(3) In section 23 of the Constitutional Reform and Governance Act 2010, after subsection (2A) insert—

"(2B) Section 20 does not apply to the treaty referred to in section 1(1) of the Finance Act 2012."

SCHEDULE 1

Section 1

AGREEMENT BETWEEN UK AND SWITZERLAND

PART 1

INTRODUCTION

The Agreement

1 In this Schedule—
(a) "the Agreement" means the agreement signed on 6 October 2011 between the United Kingdom and the Swiss Confederation on co-operation in the area of taxation,
(b) "the start date" is the date on which the Agreement enters into force in accordance with its terms (see Article 43), and
(c) references to a numbered Article are to the Article of that number in the Agreement.

PART 2

THE PAST

Taxes affected

2 (1) The taxes affected by this Part are—
(a) income tax,
(b) capital gains tax,
(c) inheritance tax, and
(d) VAT.

(2) Accordingly, this Part affects—
(a) amounts of income on which income tax is charged,
(b) chargeable gains,
(c) the value transferred by chargeable transfers, and
(d) the value of supplies on which VAT is charged.

(3) An amount falling within one (or more) of those descriptions is referred to as a "taxable amount" and, in relation to such an amount, "tax" means whichever of the taxes mentioned in sub-paragraph (1) is (or are) charged on it.

Application of this Part

3 (1) This Part applies if—
(a) a one-off payment is levied in accordance with Part 2 of the Agreement,

(b) a certificate is issued under Article 9(4) to a person (“P”) in respect of that payment, and
(c) the certificate is approved by P or considered approved by virtue of that Article.

(2) The certificate is referred to in this Part as “the Part 2 certificate”.

Qualifying amounts

4 (1) The Part 2 certificate applies to taxable amounts in respect of which the conditions in sub-paragraph (2) are met.

(2) The conditions are—
(a) P is liable to tax on the amount,
(b) the amount is untaxed,
(c) the taxable event took place before the start date, and
(d) the necessary link with the certificate can be demonstrated.

(3) The necessary link is—
(a) in a case falling within Article 9(3) (non-UK domiciled individuals opting for self-assessment method), that the amount is included in the omitted taxable base by reference to which the one-off payment was calculated, and
(b) in any other case, that the amount forms part of or is represented by the assets comprised in the relevant capital by reference to which the one-off payment was calculated (referred to in the Agreement as C_r).

(4) For the purposes of sub-paragraph (3)(b), amounts are assumed to be attributed to assets in the way that produces the most beneficial outcome for P.

(5) Paragraph 11 makes further provision about the interpretation of sub-paragraph (2).

(6) Amounts to which the Part 2 certificate applies in accordance with this paragraph are referred to in this Part as “qualifying amounts”.

Eligibility for clearance

5 (1) The effect of the Part 2 certificate depends on whether P is eligible for clearance.

(2) P is “eligible for clearance” if—
(a) none of the circumstances listed in Article 9(13)(a) to (e) apply (tax investigations etc), and
(b) Article 12(1) does not apply (wrongful behaviour in relation to non-UK domiciled status).

(3) Otherwise, P is “not eligible for clearance”.

Effect if P eligible for clearance

6 (1) This paragraph sets out the effect of the Part 2 certificate if P is eligible for clearance.

(2) P ceases to be liable to tax on qualifying amounts.

(3) Sub-paragraph (2) does not apply to a qualifying amount if—
  (a) the amount was held in the United Kingdom,
  (b) at some point during the period beginning with 6 October 2011 and ending immediately before the start date, it ceased to be held in the United Kingdom, and
  (c) after that point (but before the start date) it began to be held in Switzerland.

(4) Instead, such part of the one-off payment as is attributable (on a just and reasonable basis) to the qualifying amount is to be treated as if it were a credit allowable against the tax due from P taking account of that amount.

(5) The form in which a qualifying amount was held in the United Kingdom is irrelevant (so references in sub-paragraph (3) to the amount include an asset representing the amount).

(6) The total qualifying amounts to which sub-paragraphs (2) and (4) can apply as a result of the Part 2 certificate is limited to X.

(7) If the total exceeds X, the particular qualifying amounts to which those sub-paragraphs apply are assumed to be those that would produce the most beneficial outcome for P.

(8) X is—
  (a) in a case falling within Article 9(3), the value of the omitted taxable base by reference to which the one-off payment was calculated, and
  (b) in any other case, the value shown in the Part 2 certificate as the value of the relevant capital (C_r).

Ceasing to be liable to tax

7 (1) The result of "ceasing to be liable" to tax on a qualifying amount depends on the tax (or taxes) in respect of which the amount is untaxed.

(2) For income tax or capital gains tax, the result is that the amount is no longer liable to be brought into account in assessing the income tax or capital gains tax due from P for the tax year in which the amount would otherwise be liable to be brought into account.

(3) For inheritance tax, the result is that any inheritance tax due from P on the amount is no longer due from P.

(4) For VAT, the result is that P is no longer required to account for output tax on the amount in determining the VAT payable by P for the prescribed accounting period in which P would otherwise be required to account for output tax on the amount.

(5) But—
  (a) ceasing to be liable to tax on a qualifying amount does not affect P's liability to tax on any other amount, and
  (b) P's liability to tax on any other amount remains what it would have been, had the qualifying amount been brought into account in calculating that liability.

(6) Accordingly, if the qualifying amount were ever to be brought into account and it were found that the tax assessed on any other amount should have

been higher as a result, P would remain liable for the extra tax due on that other amount and for any associated ancillary charge.

(7) For the purposes of sub-paragraphs (5) and (6), the qualifying amount is assumed to form the top slice of the total sum on which P is liable to tax.

Effect if P not eligible for clearance

8 (1) This paragraph sets out the effect of the Part 2 certificate if P is not eligible for clearance.

(2) The one-off payment is to be treated as if it were a credit allowable against the tax due from P taking account of qualifying amounts.

(3) The one-off payment is to be applied for the purposes of sub-paragraph (2)—

(a) in the order specified in sub-paragraph (4), and

(b) subject to that, in the way that produces the most beneficial outcome for P.

(4) The order is—

(a) first, for VAT,

(b) then, for income tax,

(c) then, for capital gains tax, and

(d) finally, for inheritance tax.

Interest, penalties etc

9 (1) Where, by virtue of this Part, P ceases to be liable to tax on a qualifying amount, P also ceases to be liable to any ancillary charge directly connected with that amount.

(2) Where, by virtue of this Part, all or part of a one-off payment is treated as if it were a credit allowable against the tax due from P taking account of a qualifying amount, the credit may also be used to offset any ancillary charge directly connected with that amount.

(3) Sub-paragraph (4) applies in the case of a qualifying amount that is part only of—

(a) an amount of income on which income tax is charged,

(b) a chargeable gain,

(c) the value transferred by a chargeable transfer, or

(d) the value of a supply on which VAT is charged.

(4) The amount of any ancillary charge directly connected with that qualifying amount is determined by apportioning the ancillary charge directly connected with the income, gain or value on a just and reasonable basis.

Repayments

10 Nothing in this Part entitles any person to a repayment or refund of tax, save for any repayment or refund to which P may be entitled by virtue of paragraph 6(4) or 8(2) if the credit allowable under that paragraph exceeds the total amount of tax against which the credit is allowable.

Paragraph 4: supplementary provision

11 (1) This paragraph explains how paragraph 4(2) is to be read for each description of taxable amount.

(2) For income and chargeable gains—

(a) the reference to P being "liable to tax" includes a case where P would be so liable if the income or gain were to be remitted to the United Kingdom,

(b) "the taxable event" takes place when the income arises or the gain accrues (whether or not, in a remittance basis case, it is remitted to the United Kingdom), and

(c) the income or gain is "untaxed" if it has not been brought into account in an assessment to income tax or, as the case may be, capital gains tax for the tax year in which it is required to be brought into account.

(3) For the value transferred by chargeable transfers—

(a) "the taxable event" takes place when the chargeable transfer is made (or, in the case of a potentially exempt transfer, when death occurs), and

(b) the value transferred is "untaxed" if the inheritance tax due on it has not been paid.

(4) For the value of supplies on which VAT is charged—

(a) "the taxable event" takes place when P makes the supply, and

(b) the value of the supply is "untaxed" if output tax on the supply has not been accounted for in determining the VAT payable by P for the prescribed accounting period in which P is required to account for output tax on the supply.

(5) Paragraph 4(2)(a) is not satisfied in a case where P is liable to tax only because the liability has been transferred to P as a result of action taken by HMRC (for example, as a result of a notice given under section 77A of VATA 1994 or a direction given under regulation 81 of the Income Tax (PAYE) Regulations 2003 (S.I. 2003/2682)).

Refund of one-off payment

12 If a one-off payment is refunded by HMRC in accordance with Article 15(3), this Part ceases to apply with respect to that payment.

PART 3

THE FUTURE

Taxes affected

13 The taxes affected by this Part are—

(a) income tax, and

(b) capital gains tax.

Application of this Part

14 (1) This Part applies if—

(a) amounts are levied under Article 19 on income or gains of a person ("P"), and

(b) a certificate is issued to P under Article 30(1) in respect of the levying of those amounts.

(2) The certificate is referred to in this Part as "the Part 3 certificate".

(3) The income and gains on which those amounts are levied are referred to as "the cleared income and gains".

Effect of Part 3 certificate

15 (1) P ceases to be liable to income tax and capital gains tax on the cleared income and gains.

(2) Sub-paragraph (1) is to be read in accordance with paragraph 7.

(3) Where P ceases to be liable to tax on the cleared income and gains, P also ceases to be liable to any ancillary charge directly connected with them.

Election

16 (1) This paragraph applies if the cleared income and gains are included in full in a return or amended return made by P under Part 2 of TMA 1970 (returns of income and gains) for the tax year in which they should be brought into account.

(2) P may elect to disapply paragraph 15.

(3) An election under this paragraph must be made in the return or amended return in which the cleared income and gains are included.

(4) An election may only be made under this paragraph if it is accompanied by the Part 3 certificate.

(5) If an election is made under this paragraph—

(a) paragraph 15 does not apply to the cleared income and gains, and

(b) the amounts levied under Article 19 are instead to be treated as if they were credits allowable against the income tax or, as the case may be, capital gains tax due from P for the tax year in question.

(6) Nothing in this Part entitles any person to a repayment or refund of tax, save for any repayment to which P may be entitled as a result of an election under this paragraph if the credits allowable exceed the income tax or, as the case may be, capital gains tax due from P for the tax year in question.

PART 4

GENERAL PROVISIONS

Information exchange

17 No obligation of secrecy (whether imposed by statute or otherwise) prevents HMRC from disclosing information pursuant to a request made by virtue of Article 35 (reciprocity measures of the United Kingdom).

Amounts recoverable as if they were VAT

18 (1) Part 2 of this Schedule applies to amounts otherwise recoverable under paragraph 5(3) of Schedule 11 to VATA 1994 as a debt due to the Crown (amounts shown on invoices as VAT etc) in the same way as it applies to VAT.

(2) But in the application of Part 2 to such amounts—

(a) a reference to the value of a supply on which VAT is charged is a reference to the value of the supply shown in the invoice mentioned in paragraph 5(2) of that Schedule,

(b) "the taxable event" takes place when the invoice is issued,

(c) the value of the supply shown in the invoice is "untaxed" if the amount otherwise recoverable under paragraph 5(3) of that Schedule has not been recovered, and

(d) "ceasing to be liable" to tax on the value of that supply means that the amount otherwise recoverable is no longer recoverable.

General interpretation

19 (1) In this Schedule—

"ancillary charge" means any interest, penalty, surcharge or other ancillary charge;

"assessment", in relation to a tax, includes a determination and also includes an amended assessment or determination (and "assess" is to be read accordingly);

"chargeable gain" means a gain that is a chargeable gain for the purposes of TCGA 1992;

"chargeable transfer" has the meaning given in section 2 of IHTA 1984;

"HMRC" means Her Majesty's Revenue and Customs;

"qualifying amount" is defined in paragraph 4;

"remitted to the United Kingdom" means remitted to the United Kingdom within the meaning of Chapter A1 of Part 14 of ITA 2007;

"the value transferred", in relation to a chargeable transfer, has the meaning given in section 3 of IHTA 1984;

"taxable amount" is defined in paragraph 2;

"VAT" means value added tax charged in accordance with VATA 1994.

(2) An expression used in relation to a tax has the same meaning as in enactments relating to that tax.

(3) A reference to a person being "liable" includes being liable jointly with others.

(4) A reference to the most beneficial outcome for P is a reference to the most beneficial outcome for P with respect to P's liability to tax.

(5) A reference to the tax due "taking account of" a qualifying amount is—

(a) if the amount is an amount of income or a chargeable gain, a reference to the income tax or capital gains tax due for the tax year in which the amount is required to be brought into account (calculated with that amount brought into account),

(b) if the amount is the value transferred by a chargeable transfer, a reference to the inheritance tax due on that amount,

(c) if the amount is the value of a supply on which VAT is charged, a reference to the VAT payable for the prescribed accounting period in which output tax on the supply is required to be brought into account (calculated with that output tax brought into account), and

(d) if the amount is the value of a supply to which Part 2 applies by virtue of paragraph 18, a reference to the amount otherwise recoverable under paragraph 5(3) of Schedule 11 to VATA 1994 in respect of that supply.

EXPLANATORY NOTE

AGREEMENT BETWEEN UK AND SWITZERLAND

SUMMARY

1. This clause and Schedule give effect to the agreement signed on 6 October 2011 between the UK and the Swiss Confederation on co-operation in tax matters. The agreement provides for a one-off levy on financial assets in Switzerland and for a withholding tax to be deducted from income and gains arising in Switzerland. The Schedule makes clear which UK tax liabilities are satisfied on payment of the one-off levy and sets out the effect of the withholding tax on UK liability for the future.

2. The agreement also provides for enhanced exchange of information.

DETAILS OF THE CLAUSE

3. Subsection (1) is the enabling provision for the UK/Switzerland agreement signed on 6 October 2011.

4. Subsection (2) provides that the Schedule comes into force when the agreement enters into force. The agreement will enter into force on 1 January following the exchange of diplomatic notes confirming that the appropriate legal procedures in both countries have been completed. It is assumed for the purposes of these explanatory notes that the agreement will take effect on 1 January 2013. The clause itself will take effect on Royal Assent to this Bill.

5. Subsection (3), in common with the approach for other international tax measures, disapplies the normal procedure for laying treaties before Parliament as part of the ratification process set out in section 20 of the Constitutional Reform and Governance Act 2010. Instead, the agreement will receive scrutiny as part of the Finance Bill process.

DETAILS OF THE SCHEDULE

Part 1: Introduction

6. Paragraph 1 contains introductory material.

Part 2: The Past

7. Paragraph 2 sets out the four UK taxes with which this Part of the Schedule is concerned. They are the same four taxes for which the liability for periods up to 31 December 2012 on funds in Switzerland is affected (and may be extinguished) by the payment of the one-off levy under Part 2 of the agreement.

8. The paragraph explains what is meant in the Schedule by the term 'taxable amount' in relation to each of the four taxes.

9. Paragraph 3 explains that this Part of the Schedule sets out the effect on the liability of a person to whom a certificate is given by a Swiss paying agent evidencing that the one-off levy has been applied to the funds in that person's account. That person, who under the agreement must be the beneficial owner of the funds, is called 'P' and the certificate is called a 'Part 2 certificate'. The certificate is used as the basis for determining whether and to what extent UK tax liability on untaxed monies in Switzerland is affected by the payment of the levy.

10. Paragraph 4 sets out whether a taxable amount is a 'qualifying amount' the tax liability on which may be affected by the production of a Part 2 certificate. A qualifying amount is a taxable amount on which P has not paid tax and for which a necessary link with the certificate can be demonstrated.

11. In a case where P is domiciled in the UK or is non-domiciled but has opted for the levy to be calculated using the capital method set out in the agreement, the necessary link is that the taxable amount – for example the amount of income or gain – can be regarded as forming part of the capital by reference to which the levy was applied. This is the amount of cleared capital calculated under Article 9(12) of the agreement and depends on the balance or value of the account at 31 December 2010 and 31 December 2012. It is given the label C_r.

12. To be a qualifying amount it is important that the taxable amount can properly be regarded as being part of C_r. In practice, with movements on accounts, this may not be clear. So paragraph 4 contains a rule that taxable amounts are attributed to assets in the way that produces the most beneficial outcome for P.

13. In a case where P is not domiciled in the UK and has opted for the levy to be calculated using the self-assessment method set out in the agreement, the necessary link is that the taxable amount is included in the omitted taxable base by reference to which the levy was calculated.

14. Further provisions about the interpretation of the conditions for a taxable amount to be a qualifying amount are in paragraph 11.

15. Paragraph 5 explains that a Part 2 certificate is only eligible to give tax clearance to P in a case where none of the exclusions set out in Article 9(13) and Article 12(1) of the agreement applies. If so eligible then paragraph 6 applies. If not so eligible then paragraph 8 applies with the levy being a credit against UK liabilities.

16. Paragraph 6 explains the effect on UK liabilities where P is eligible for clearance on qualifying amounts. In the normal case P gets full tax clearance – ‘ceasing to be liable to tax’ – (in respect of the four taxes to which the agreement applies) on qualifying amounts. But in a case where funds have directly or indirectly moved from the UK to Switzerland between 6 October 2011 and 31 December 2012 and form part of C_r then the tax liability on qualifying amounts relating to those funds remains in place and instead the appropriate part of the levy is a credit against that liability. The phrase ‘the tax due taking account of that amount’ is used to indicate all the tax liabilities in respect of a qualifying amount as set out in paragraph 19. Furthermore, as explained in paragraph 9 the phrase also includes associated liabilities to interest and penalties etc.

17. Sub-paragraphs (6) to (8) of paragraph 6 contain a cap on the total qualifying amounts that are wholly or partially relieved under this paragraph. Where the levy is calculated on C_r the cap is the value of C_r. Where the levy is calculated on the non-domiciled self assessment basis, it is the value of the omitted taxable base. The cap is necessary because there is no direct link between a qualifying amount that has been paid into an account and the capital sum by reference to which the levy is applied. If the cap applies then the qualifying amounts are relieved in the order which is most beneficial to P.

18. Paragraph 7 clarifies what is meant by P ceasing to be liable to tax on a qualifying amount in relation to each of the four taxes covered by this Part.

19. Sub-paragraphs (5) to (7) of paragraph 7 recognise that qualifying amounts (which are, by definition, previously untaxed) should have been returned and that the failure to do so may have resulted in too little tax being paid on items that were returned. The provisions ensure that despite the qualifying amounts being cleared, the liability on other items is what it would have been had the qualifying amounts been properly taken into account. To avoid having to recalculate settled liabilities as far as possible, the qualifying amounts are treated as the top slice of income, gains etc of the relevant period. But where there is additional tax to pay there is also liability to associated interest and penalties.

20. Paragraph 8 explains the treatment of the levy, on production of a Part 2 certificate, in a case where P is not eligible for clearance because one or more of the exclusions set out in Article 9(13) or

Article 12(1) apply. The tax liabilities on all qualifying amounts remain in place and instead the levy is a credit against those liabilities, including interest, penalties etc. The credit is applied first to tax in the order set out in sub-paragraph (4), but subject to that, in the way that minimises P's overall liability.

21. Paragraph 9 provides that clearance for tax liabilities or credit against tax liabilities includes clearance for or credit against associated ancillary charges to interest, penalties etc. Where a qualifying amount is part only of a larger taxable amount subject to ancillary charges, then an appropriate apportionment of those charges is made.

22. Paragraph 10 ensures that a repayment of tax previously paid is only due in the limited circumstances where any part of the levy is treated as a payment on account under the terms of the agreement. This provision is about repayment of tax, not about repayment of the levy (with which Article 15 of the agreement is concerned).

23. Paragraph 11 explains the meaning of terms used in paragraph 4 in determining whether an amount liable to tax is a qualifying amount potentially eligible for clearance. Sub-paragraph (2) defines terms for income tax and capital gains tax, sub-paragraph (3) for inheritance tax and sub-paragraph (4) for VAT.

24. Sub-paragraph (5) of paragraph 11 makes explicit that tax clearance for P does not apply to liabilities that are in substance tax liabilities of another person but which have been transferred to P by HM Revenue & Customs (HMRC) under a specific statutory authority.

25. Paragraph 12 provides that if any part of a levy is repaid under Article 15(3) (by HMRC refunding the Swiss authorities) then to the extent that a certificate evidences initial payment of the amount repaid it is disregarded.

Part 3: The Future

26. Paragraph 13 sets out the two UK taxes with which this Part of the Schedule is concerned. They are the same two taxes for which the liability for periods from 1 January 2013 on income and gains arising in Switzerland is extinguished by the payment of the withholding tax under Part 3 of the agreement.

27. Paragraph 14 explains that this Part of the Schedule sets out the effect on the liability of a person to whom a certificate is given by a Swiss paying agent evidencing that withholding tax has been applied. That person, who under the agreement must be the beneficial owner of the income or gains, is called 'P' and the certificate is called a 'Part 3 certificate'. The certificate is used as the basis for demonstrating that UK tax liability on income and gains arising in Switzerland is

extinguished by the withholding tax. If withholding tax is applied, the income and gains are called ‘cleared income and gains’.

28. Paragraph 15 provides that a person to whom a Part 3 certificate is issued ceases to be liable to tax on the income and gains to which withholding is applied together with any associated interest and penalties. The withholding tax satisfies the UK liability on the cleared income and gains.

29. Sub-paragraph (2) of paragraph 15 attracts the rules in paragraph 7 to the extent that they relate to income tax and capital gains tax. A failure to include items taxed under Part 3 of the agreement in a return may result in too little tax being paid on items that are returned. Attracting those rules ensures that the liability on other items is what it would have been had the cleared income and gains been properly taken into account. To avoid having to recalculate settled liabilities as far as possible, the cleared income and gains are treated as the top slice of income and gains of the relevant period.

30. Paragraph 16 gives effect to Article 23 of the agreement. It provides that P may elect that the withholding tax that has been applied is not treated as final if all the items subject to the withholding tax are included in a return or amended return. This allows P the option to calculate tax liability on the normal basis with the withholding tax as a credit against that liability. An election must be made in the return or amended return and accompanied by the Part 3 certificate.

31. Sub-paragraph (6) of paragraph 16 makes it explicit that the only circumstance in which the provision of a Part 3 certificate to HMRC entitles P to a repayment of any tax paid is as a result of an election under this paragraph.

Part 4: General provisions

32. Paragraph 17 ensures that there is no impediment to the passing of information to the Swiss authorities under Article 35 of the agreement. There is a similar provision in section 173(4) of Finance Act 2006 in relation to other international tax arrangements.

33. Paragraph 18 explains that references to VAT include amounts invoiced as if they were VAT, recoverable as a debt due to the Crown under paragraph 5(2) and (3) of Schedule 11 to VATA 1994.

34. Paragraph 19 defines the meaning of various terms in this Schedule.

BACKGROUND NOTE

35. The UK and Swiss governments signed an agreement on 6 October 2011 providing for co-operation in tax matters. This clause and Schedule give effect to that agreement for UK tax purposes. It is expected that the agreement will take effect on 1 January 2013, but that is subject to the passing of enabling legislation and ratification of the agreement in Switzerland.

36. The agreement provides for a one-off levy on financial assets in Switzerland and for a withholding tax to be deducted from income and gains arising in Switzerland. The Schedule makes clear which UK tax liabilities are satisfied on payment of the one-off levy and sets out the effect of the withholding tax for the future.

37. The agreement also provides for enhanced exchange of information by the Swiss authorities to the UK and allows the Swiss authorities to request that a further agreement is made for the provision of information by the UK to Switzerland on similar lines to the approach adopted by the UK with other territories.

38. If you have any questions about this change or comments on the legislation contact Richard Davey on 020 7147 2391 or send via email to powers.review-of-hmrc@hmrc.gsi.gov.uk.

1 Penalties: offshore income etc

In paragraph 21A of Schedule 24 to FA 2007 (classification of territories), in sub-paragraph (4)—

(a) omit "and" at the end of paragraph (b), and

(b) at the end of paragraph (c) insert—

"(d) the existence of any other arrangements between the UK and that territory for co-operation in the area of taxation, and

(e) the quality of any such other arrangements (in particular, the extent to which the co-operation provided for in them assists or is likely to assist in the protection of revenue raised from taxation in the UK)."

EXPLANATORY NOTE

PENALTIES: OFFSHORE INCOME ETC

SUMMARY

1. This clause adds to the list of factors in paragraph 21A of Schedule 24 to FA 2007 that the Treasury must have regard to in classifying a territory into one of the three categories set out in that provision. The classification of the territory determines the range within which a penalty falls in respect of under-declaration, failure to notify or late return of income and gains relating to that territory.

DETAILS OF THE CLAUSE

2. This clause inserts two new sub-paragraphs (d) and (e) into paragraph 21A(4) of Schedule 24. In classifying a territory they require the Treasury to have regard to the existence and quality of arrangements between the UK and that territory that provide for co-operation in the area of taxation.

BACKGROUND NOTE

3. The extension to the range of factors recognises that agreements are being reached which, while not offering automatic exchange of information, deliver an outcome for the UK that is much better than that which can be delivered through exchange on request. In particular, they enable HMRC to regularise the tax position of UK taxpayers with accounts in those territories. Such agreements, if fully implemented, justify inclusion of territories in category 1, alongside territories that do exchange information automatically.

4. If you have any questions about this change, or comments on the legislation please contact Richard Davey on 020 7147 2391 or (email: powers.review-of-hmrc@hmrc.gsi.gov.uk)