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January 16, 2021

VIA ELECTRONIC DELIVERY

Mr. Oliver Oppliger
Federal Tax Administration
Eigerstrasse 65
3003 Bern, Switzerland
oliver.oppliger@estv.admin.ch

Re: Withholding tax procedure considerations for the reduction of requests for further information for non-resident reclaim submissions with the Swiss Federal Tax Administration.

Dear Mr. Oppliger,

The Tax Committee of the Association of Global Custodians (“AGC”)¹ serves as a non-partisan advocacy organization representing our members’ common interests on regulatory and market structure through interaction with legislative and regulatory authorities and financial industry organizations. The AGC is committed to working on behalf of its member organizations to identify opportunities to overcome challenges in the pursuit of equitable tax services to its clients and to ensure its members are meeting the requirements of the local tax authorities.

In recent committee meetings, our members have highlighted a significant increase over the previous 24 months in Requests for Further Information (“RFIs”) issued by the Swiss Federal Tax Administration (“SFTA”) for non-resident investors. These requests include a standard set of questions and require investors to provide answers/supporting

¹ The Association is an informal group of 12 member banks that provide securities safekeeping and asset servicing functions to cross-border institutional investors worldwide, including investment funds. In providing global custody services, AGC members routinely seek appropriate withholding tax relief on behalf of custody clients by processing millions of such claims in the aggregate each year, affecting substantial amounts of cross-border portfolio investment flows in and out of countries worldwide.

document(s) within a specified time-frame in order to further assist the SFTA in assessing the application for withholding tax relief.

We appreciate this opportunity to provide the SFTA a framework of operational solutions to reduce the volume of RFIs and develop streamlined processes in order to create efficiencies for all stakeholders, including the SFTA.

Requests for Information

Claims to refund Swiss anticipatory tax pursuant to a double taxation treaty (“DTT”) for non-resident investors are lodged with the SFTA via the use of SFTA-published declarations.² Authorised agents and custodians acting on behalf of non-resident investors may sign and file the declarations on behalf of their clients, provided they obtain details up-front from the investor in order to complete the declarations accurately.

In our analysis of the declarations, we have found that the questions included on these will vary depending on residency of the non-resident investor and the declaration used. Declarations such as the 82E for residents of the United States (“U.S.”) request information on transactions undertaken, typically focusing on the legal claim to the Swiss income, ownership of the shares, and securities lending or borrowing. The questions appear to conform to the OECD standards of beneficial ownership³ and are mandatory tests to prove entitlement to the DTT claim.

Other declarations however, do not always include these questions. Declarations such as the 82R for U.S. regulated investment companies (“RICs”) focus solely on the percentage holding of U.S. resident investors in the RIC claimant. Whilst focus on underlying investor percentages is appropriate for this entity type,⁴ the omission to request information on beneficial ownership up-front will often lead to an RFI from the SFTA after the claim has been lodged.

AGC Tax Committee members have noted a significant increase in RFIs for non-resident investors over the past two years. Since early 2019, our members estimate that the total Swiss Franc (CHF) value of withholding tax reclaims that have come within the scope of an SFTA-issued RFI to our members exceeded CHF 800 million. For some members, these RFIs represented almost 50% of all reclaims filed during this period.

² <https://www.estv.admin.ch/estv/en/home/verrechnungssteuer/verrechnungssteuer/dienstleistungen/ausland.html>

³ https://read.oecd-ilibrary.org/taxation/model-tax-convention-on-income-and-on-capital-2017-full-version_8dc818b1-en#page1 - see Commentary on Article 10 of the OECD Model Tax Convention, paragraphs 12-12.6.

⁴ Pursuant to clauses contained in Article 22 (Limitation on Benefits) of the Switzerland - United States Income Tax Treaty (1996) (as amended through 2009).

An RFI, similar to a declaration, usually includes a standard set of questions and requires investors to provide responses/supporting document(s) within a specified period in order to assist the SFTA in assessing the application for relief. The RFI questions usually include, but are not restricted to, the following:

- a) Requests for detailed account statements (i.e. transaction reports detailing dates and amounts of share purchases and sales).
- b) Balance sheet and audited profit and loss accounts.
- c) Reasons behind the acquisition and ownership of the stocks with which the claim is associated.
- d) Details of any hedging transactions.
- e) Information on short-sale transactions.
- f) Confirmation of stock lending and borrowing.
- g) Information on collateral arrangements (i.e. obligations to pass dividends on to third parties).

We categorize an RFI as an “ad-hoc” request for information that is beyond the scope of the initial steps of the administrative procedures for withholding tax relief. Ad-hoc requests can spike in volume at unpredictable times. As a result, an authorised agent or custodian cannot anticipate the upcoming volume of requests and efficiently mobilize resources periodically to handle processing of these requests on a bulk-volume basis. Instead, RFIs require immediate attention and dedication of resources to effectively coordinate the key stakeholders in order to solicit the information and tax documentation to substantiate the claim for withholding tax relief, and to provide a timely response to the SFTA within the RFI deadline (typically 30-60 days).

Our members recognise that RFIs are a necessary part of withholding tax relief to deter fraudulent claims or target specific investors that may be required to substantiate their eligibility to withholding tax relief. As a standard market practice, our members are equipped to handle RFIs from multiple tax authorities and continue to work with both their clients and the competent authority to ensure that claims for withholding tax refunds are filed diligently and accurately.

However, with the significant increase in the issuance of RFIs by the SFTA, there is a greater demand on the resources of our members to co-ordinate compliance with the requests. In a high volume, multi-market operations environment, a large volume of RFIs with deadlines between 30-60 days is highly challenging when you consider the need to engage all the parties in the custody chain (Swiss and global custodians, authorized agents, the non-resident investors) to satisfy all requests. The result of this can be a failure to meet the deadline. The consequence of this is an increase of

SFTA-issued cancellation notices.⁵ This subsequently requires a re-filing of the withholding tax claim, which is permitted within a five-year period from the date of the original RFI. Cancellation notices both increase delays in refunds to non-resident investors and extend the period in which the reclaim can be re-filed beyond the intended three-year statute of limitation. This leads to an increase in processing volume, which can adversely affect all stakeholders including the SFTA who have to re-assess the same claim upon a second filing.

In our industry group discussions, we noted that a large percentage of the RFIs received are for declarations that do not consider or include questions relating to beneficial owner entitlement.

Members fully recognize that the SFTA are entitled to request more information on beneficial ownership and it is not our intention to discourage this. However, in light of the fact this information is requested on a frequent basis, we would respectfully request that the SFTA consider a solution whereby some or all of the information is provided up-front in order to streamline the process and create efficiencies for all stakeholders.

Recommendations

The AGC members respectfully recommend the following:

1. The publication of an annual supplementary declaration, with simple “Yes/No” questions that will proactively provide responses to questions regularly raised in the RFI.

These declarations can be provided to our clients to complete, sign, and attach to the reclaim forms for the SFTA’s review. We have provided example questions as taken from an official SFTA issued RFI:

Example RFI questions:

With respect to the income within the calendar year Y20XX, in which the refund of Swiss anticipatory tax pursuant to a double taxation treaty (“DTT”) is requested:

- a. Have there been any hedging transactions with shares or derivative financial instruments (e.g. call or put options, equity swaps, share certificates, or similar transactions) in respect of the shares in question? If yes, please explain the financial transactions, provide the names of the

⁵ Pursuant to the SFTA Procedural Code (Article 48, paragraph 2 WHTL).

- counterparties, and show their flows (dividends / interest / shares / derivatives / spreads / fees).
- b. Did you engage in short sale transactions?
 - c. Have the shares in question (or parts thereof) been the subject of securities lending or borrowing transactions? If yes, please give further details.
 - d. Have the dividends on the shares in question been transferred or are they intended to be transferred to third parties? If yes, to whom? Please list exact amounts.
2. Retain the below listed requests as ad-hoc requests (RFIs) and restrict these to individual reclaims above the value of CHF 250,000. In addition, provide a mandatory window of no less than 60 days to produce these supporting documents as and when required:
- a. Requests for detailed account statements (i.e. transaction reports detailing dates and amounts of share purchases and sales).
 - b. Balance sheet and audited profit and loss accounts.

If the above recommendations are adopted, we believe this will benefit all stakeholders by offering a streamlined and efficient procedure to enable the SFTA to receive all relevant information at the time of filing. This will result in fewer RFIs needing to be issued and reduce the time the SFTA will need to spend on each claim.

Additional Considerations

In addition to the above two recommendations, we would also like to use this opportunity for the SFTA to consider the below broader solution to the withholding tax relief process.

As asset servicing providers, our members have an objective to provide efficient withholding tax relief services as well as ensuring absolute accuracy when representing the details and tax values of a claimant to a tax authority. Technology-based workflows are the foundations on which these tax services are supported. These systematic solutions allow our members to complete high volumes of global tax refund forms with precision-based accuracy through automated scalable solutions.

However, where tax claim forms require data/information beyond the scope of what a custodian would be expected to retain, these scalable solutions become fragmented and require manual intervention between custodian and client to complete forms, often outside of a controlled custody system. Generally, custodians will hold data relating to claimant details (i.e. name, address) and transactional values. Data/information on

client side-agreements, obligations to pass on dividends, and other contractual arrangements typically fall out-of-scope.

The declarations issued by the SFTA today serve to both outline the reclaim values and determine the non-resident investor's eligibility to the claims, the latter through questions included on the document. In order for custodians to complete these forms, the responses are usually solicited from non-resident investors through the use of paper-based forms at year-end. This paper-based data then must be transferred to the official declarations published by the SFTA. The transfer of data from custodian form to an official declaration is rarely managed digitally and will often require an administrator to physically complete this by hand for each non-resident claim. In contrast, completion of the claimant details and transactions, which is handled securely and accurately through custody systems, eliminates paper processing and assures a higher accuracy rate.

3. Our final recommendation would therefore be to consider a revised version of all Swiss withholding tax refund declarations and separate out the questions from the existing declarations into their own "beneficial owner questionnaire". The questionnaire should continue to include all the questions that exist today,⁶ and in addition, those included in our recommendations under point 1 above. The questionnaire can be provided to non-resident investors as a standard market document on an annual basis to complete and sign. The custodian would complete the reclaim forms with claimant and transactions details on tax refunds and collect the beneficial owner questionnaires attaching them accordingly to the reclaim forms.

This method would refine the existing procedures, with a focus on streamlining the production of reclaim forms, whilst continuing to solicit the required information to substantiate eligibility to DTT entitlement through beneficial owner questionnaires signed directly by the non-resident investor.

In making the above recommendations, the AGC does not wish to cause any delay in the SFTA's development and implementation of more streamlined withholding tax relief procedures, which we understand has been an initiative you have been working on for some time. In particular, we do not wish to delay any actions the SFTA may be contemplating to address issues raised by ICI Global in their letter to your office of December 21, 2018. Nevertheless, we do believe our recommendations above could be adopted in the near term to address in a more streamlined way these beneficial

⁶ For example, "Were you engaged in a trade or business in Switzerland through a permanent establishment situated in Switzerland?" "Were you a member of a partnership created or organised under Swiss law?"

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ownership questions without interfering with the separate aspects specifically relevant to the treaty entitlement of U.S. mutual funds.

The AGC appreciates any efforts that can be made to solve the problems outlined above, and we would be happy to meet with appropriate officials or respond to any questions you may have about our recommendations.

Sincerely yours on behalf of the Association,

A handwritten signature in black ink that reads "Mary C. Bennett". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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