

Audit of the mutual agreement procedure management

State Secretariat for International Finance

Key facts

The State Secretariat for International Finance (SIF) is the responsible authority for negotiating mutual agreement procedures with partner states on the issues of double taxation of natural persons and legal entities. Mutual agreement procedures based on double taxation agreements are intended to avoid or eliminate taxation which is contrary to an agreement. A request must be initiated by the taxpayer. At present, pending proceedings amounting to around CHF 8 billion in tax base (assessment basis on which the tax is determined) remain open to negotiation. An analysis of completed procedures shows that around a quarter of this goes to the partner state. The number of mutual agreement procedures has been increasing for years due to fiscal and political activities in Switzerland and abroad.

Organisational, technical and social conditions are decisive in order to ensure mutual agreement procedures are efficiently managed. The Swiss Federal Audit Office (SFAO) found that these were present at SIF. In a current peer review on implementing its standards for mutual agreement procedures, the Organisation for Economic Co-operation and Development (OECD) gave Switzerland good marks.

Increase in mutual agreement procedures leads to organisational adjustments

Two sections are responsible for processing and negotiating procedures. In total, around eight FTEs are employed in these sections. One section (Bilateral Tax Issues and Double Taxation) mostly deals with mutual agreement procedures of natural persons. The other section (Transfer Pricing) only negotiates those concerned with businesses' transfer pricing.

SIF responded to the increase in procedures with adjustments in the organisational structure and procedures. In 2017, it initiated and implemented various projects to formalise internal processes. The issued directives now need to be standardised in a suitable manner.

SIF employees negotiate large financial volumes internationally. It is therefore important that they receive regular training and are made aware of potential negotiating risks. Furthermore, they should sign a declaration of independence each year.

Reducing the number of pending items a major challenge for SIF

The increase in mutual agreement procedures has led to a constant increase in the number of pending items. When processing the procedures, SIF concentrates primarily on new cases. As the DTAs do not contain any rules on duration or agreement, a mutual agreement procedure can be pending for a considerable time. This means that currently a third of procedures remain open for longer than two years. There is no cross-sectoral strategy for these cases.

Certain countries charge a fee for APA settlements

Companies have the possibility to pre-agree tax-related matters with partner states through SIF (so-called APAs). In 2017, 80 such procedures were submitted, exclusively by multinational corporations. These time consuming APAs can involve several hundred million Swiss francs and provide corporations with valuable planning and legal certainty.

The service offered by SIF is provided free of charge, unlike in certain other countries. Fees for this in other countries are between CHF 20,000 and CHF 50,000 per procedure. SIF does not charge a fee as it concerns a service which benefits the local economy.

Original text in German