



Bangalore Chamber of Industry and Commerce

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Report on the Interactive Session on “India – Swiss Double Tax Avoidance Agreement (DTTA) held on November 29, 2011

The Bangalore Chamber of Industry and Commerce (BCIC) in association with Swiss-Indian Chamber of Commerce organized an Interactive Session on the recently signed revised agreement on the Double Tax Avoidance Agreement (DTTA) between India and Switzerland whose thrust has been to strengthen the exchange of information and ensure stricter compliance by individuals and companies to ensure smoother bilateral trade and financial transactions between the two countries.

In his Welcome address, Mr. K R Girish, Past President, BCIC set the tone for the discussion by stating that India needs to increase to tax –to- GDP (Gross Domestic Product) ratio considerably to improve the capital formation in the economy. Alluding to the hotly debated issue of tax avoidance and parking of such surplus money outside the country, was causing a steep dent in the GDP, which stood depressed by 50 per cent at only \$ 1.3 trillion. Lamenting on the poor tax compliance and the need to strengthen the monitoring processes, Mr. Girish said mere statutes and agreements to improve and tax information exchange would not suffice to check tax frauds. It was also important that a proper due diligence of tax administration was made frequently to ensure the efficacy of DTAA. Stating that the new protocol signed in 2010 amending provisions has brought more transparency in the system, Mr. Girish also stressed on the stricter implementation and strategies in tax administration would go a long way in achieving the objectives of DTAA.

In an absorbing session that followed witnessed two legal experts from Switzerland, viz., Mr. Martin Busenhart and Marcus Desax, Partners, Tax Team, Walder Wyss Attorneys, leading law firm presented exhaustive provisions of the Treaty and its implications which are coming into effect from November, 2011. They mentioned that coming in the wake of debate on the Swiss Banking industry’s secrecy policy, the new protocol was sought to be aimed at checking of flow of funds out of India through unofficial channels.

Mr. Martin and Mr. Marcus in their presentations dwelt at length the reasons of the revision of the provisions of DTAA and also explained at length the implication of the new clauses on protecting the mutual interests without compromising on the interest of individual nation’s right to protect their interest and compliance principles.

Touching on the reasons the two experts from Switzerland said Switzerland agreed to renegotiate the DTTA terms to bring in line with the Organization of Economic Cooperation and Development (OECD) standard on exchange of information in tax matters. Under the new Protocol a major outcome was Switzerland agreeing to

withdraw its reservation to Article 26 of OECD Model Convention (on tax information exchange) and accepting to follow OECD standards on international tax administrative assistance in tax matters and provide assistance to other contracting state on a case-to-case basis upon a specific and genuine request. The OECD standard on information exchange stipulated, among other things, Banking secrecy should not come in the way of exchange of information and flow of information should be offered without restraint subject to the frameworks of law of the state from whom (Switzerland). However, information would be provided only on request and it should not be sought for any 'fishing expeditions' or unreasonable objective.

Mr. Martin and Mr. Marcus said the protocol clearly says that the accord will apply specifically for fiscal years after 2011 and will not have retrospective effect. Also, they stated that application of the provisions of the new protocol will be restricted to the stated conditions as agreed upon and would not be binding on any future changes in the Indian tax laws. He said "Information as is foreseeably relevant for carrying out the provisions of this Agreement or the administration or enforcement of the domestic laws covering taxes covered by this agreement".

The Swiss Partners of Walder Wyss while touching on other provisions of the protocol said Switzerland after initial hesitation acceded to India's request to "an anti-conduit provision as already agreed upon with the United Kingdom."

Mr. Tarun Nayyar, Chief Financial Officer of Buhler India Pvt India and Mr. Raja Sujith, Partner, Majmudar & Co (International Lawyers) made presentations on industry and legal perspectives vis-à-vis the provisions of DTAA for businesses operating out of India and those investors with intentions to invest in Switzerland.

Mr. Raguram, President, Swiss-Indian Chamber of Commerce (Southern Region), summed up the proceedings by highlighting the importance of the protocol in strengthening economic ties between Switzerland and India and commended the speakers for their simple analogy and review of such a complex subject.