Ordinance
on the Administrative Assistance according to Double Taxation Conventions
(OAADTC)

of 1 September 2010

The Swiss Federal Council,
based on Article 1 of the Federal Decree of 22 June 1951[1] on the Implementation of International Conventions for the Avoidance of Double Taxation,
ordains:

Chapter 1: General Provisions

Art. 1   Subject matter and scope of application

[1] This ordinance regulates the implementation of the administrative assistance provided for in the new or revised conventions for the avoidance of double taxation entering into force after the entry into force of this ordinance.

[2] Deviating provisions in the applicable convention remain reserved.

[3] Administrative Assistance under these conventions shall be granted exclusively upon request.

Art. 2   Competence

The Federal Tax Administration (FTA) shall carry out administrative assistance based on the requests by foreign States and shall submit the Swiss requests for administrative assistance.

Art. 3   Definitions

In this ordinance:

  a. *the person concerned* is the person about whom an administrative assistance request for information is being made;

  b. *the information holder* is the person who is in possession of the requested information in Switzerland; Swiss administrative authorities under Article 7 and 8 are not information holders within the meaning of the ordinance.

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[1]   SR **672.2**

Chapter 2:
Administrative Assistance Requests by Foreign States
Section 1:
Administrative Assistance to Implement Convention Provisions

Art. 4

[1] The FTA shall transmit to the requesting authority the information obtainable under Swiss law, which is necessary to implement the conventions. Such information may not be obtained through the execution of coercive measures. Article 6 paragraphs 2, 4 and 5 and Articles 7 and 8 shall apply analogously.

[2] The FTA shall in advance and in writing inform the person concerned as well as any person who is entitled to appeal according to Article 48 of the Federal Act on Administrative Proceedings of 20 December 1968[2] about the nature and the extent of the information to be transmitted.

[3] If the persons entitled to appeal consent in writing to the transmission of the information or fail to respond within 30 days after the receipt of the FTA notice, the FTA shall transmit the information immediately after receipt of consent or upon expiration of the time period.

[4] In all other cases, the FTA shall render a decision by way of an order.

[5] The decision of the FTA is subject to appeal in accordance with the general provisions on the administration of justice at the federal level.

Section 2:
Administrative Assistance for the Purpose of Implementing
Domestic Fiscal Law of the Contracting States

Art. 5   Preliminary examination

[1] The FTA shall conduct a preliminary examination of the request for administrative assistance for the purpose of implementing domestic tax law of the Contracting States.

[2] The request shall be declined if:

   a.   the granting of the administrative assistance is not compatible with the fundamental values of Swiss law (ordre public) or the vital interests of Switzerland;

   b.   it is contrary to the principle of good faith; or

   c.   it is based on information obtained or transmitted through criminal acts according to Swiss law.

[2]   SR **172.021**

[3] The FTA shall initiate the administrative assistance procedure if:

    a.   the requesting authority has the competence to submit the request;

    b.   the request was submitted in written form in one of the official languages or in English and includes the following information:

        1.   information on the applicable legal basis,

        2.   the unequivocal identification of the concerned person,

        3.   the unequivocal identification of the information holder,

        4.   a description of the information sought including its nature and the form in which the requesting State wishes to receive the information,

        5.   the tax purpose and the reasons why the requested information is considered as foreseeably relevant for the tax purpose mentioned,

        6.   the reasons for assuming that the requested information is in possession of the information holder,

        7.   the tax period (commencing and ending date) and, if different, the period of time (commencing and ending date) for which the information is requested, and

        8.   a statement that the requesting State has exhausted the regular sources of information available under the domestic taxation procedure;

    c.   the request does not constitute a prohibited fishing expedition; and

    d.   only information covered by the administrative assistance provisions of the applicable convention is being requested.

[4] The FTA shall inform the requesting authority in writing if the prerequisites set out in paragraph 3 are not met. The requesting authority may supplement its request in writing.

Art. 6   Information in possession of the person concerned or of the information holder

[1] If the preliminary examination shows that the administrative assistance procedure can be initiated, the FTA shall request the person concerned or the information holder to produce the requested information. The FTA shall prescribe a period of time for this purpose.

[2] For the purpose of collecting the information only measures may be taken which are in accordance with Swiss law or whose application is explicitly permitted under the applicable convention.

[3] If, according to the administrative assistance provisions of the applicable convention or with the provisions of Swiss law, the conditions for the execution of coercive measures are fulfilled, the FTA may execute such measures in accordance with Article 9.

[4] Representatives of the foreign authorities are not entitled to participate in the procedural acts carried out in the territory of Switzerland.

[5] The costs incurred from the collection of the information shall not be reimbursed.

Art. 7   Information in possession of the cantonal tax administrations

[1] The FTA shall request the competent cantonal tax administrations to transmit information in their possession that may be necessary to answer the request for administrative assistance. The FTA can request the transmission of the complete tax file.

[2] The FTA shall disclose to the requested cantonal tax administrations the complete request for administrative assistance and it shall prescribe a period of time for the transmission of the requested information.

[3] The requested cantonal tax administrations may participate in the execution of the measures according to Article 6.

Art. 8   Information in possession of other Swiss administrative authorities

[1] The FTA shall request the federal, the cantonal and the communal administrative authorities to transmit any information in their possession that may be necessary to answer the request for administrative assistance.

[2] It shall inform the requested administrative authorities about the essential content of the administrative assistance request and shall prescribe a period of time for the transmission of the information.

[3] The requested administrative authorities shall transmit the information to the extent that such transmission is permissible under Swiss law.

Art. 9   Coercive measures

[1] Only the following coercive measures may be ordered:

   a.   the search of rooms or of objects, documents and records in written form or on image and data carriers;

   b.   the seizure of objects, documents and records in written form or on image and data carriers;

   c.   the police escort of duly summoned witnesses in cases of tax fraud and in cases of continued evasion of substantive tax amounts according to paragraph 2 of Article 190 of the Federal Act on the Direct Federal Tax of 14 December 1990[3].

[2] The enforcement measures shall be ordered by the Director of the FTA or his authorised representative.

[3] In case of imminent danger and if a coercive measure cannot be ordered in time, the person in charge with the collecting of information may carry out a coercive measure of his own initiative. This coercive measure shall only be valid, if it is approved by the Director of the FTA or his authorised representative within three days.

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[3]   SR **642.11**

[4] The sealing procedure in accordance with paragraph 3 of Article 50 of the Federal Act on the Administrative Penal Law of 22 March 1974[4] shall not apply.

[5] The cantonal and communal police force and other authorities shall assist the FTA in the execution of the coercive measures.

[6] Furthermore, articles 45 to 50 of the Federal Act on the Administrative Penal Law shall apply.

Art. 10   Safeguarding the right to be heard

[1] If the person concerned is resident abroad, the FTA shall request the information holder to ask the person concerned to designate a person in Switzerland authorised to receive notifications. The FTA shall prescribe a period of time for this purpose.

[2] If the person concerned has not designated a person authorised to receive notifications, the FTA shall inform this person about the pending administrative assistance procedure through the requesting authority. Simultaneously, the FTA shall set a period of time for the person concerned to designate a person authorised to receive notifications. The FTA may inform the concerned person directly provided that the requesting authority expressly consents to this procedure in that case.

[3] The persons entitled to appeal according to paragraph 2 of Article 13 may participate in the procedure and inspect the files.

[4] Exceptions from the inspection of the files according to Article 27 of the Federal Act on Administrative Proceedings[5] remain reserved.

Art. 11   Simplified procedure

[1] If the persons entitled to appeal according to paragraph 2 of Article 13 consent to the delivery of the information to the competent foreign authority, they shall notify this to the FTA in writing. Such consent is irrevocable.

[2] The FTA shall close the procedure by transmitting the information to the competent foreign authority, making reference to the consent of the persons entitled to appeal.

[3] If the consent covers only part of the information, the regular procedure shall be conducted for the remaining information.

Art. 12   Final order

[1] The FTA shall notify the final order to the person concerned; in the final order, it shall substantiate the provision of the administrative assistance and decide on the extent of the information to be transmitted.

[2] The FTA shall notify the final order to the concerned person resident abroad by sending it to the person authorised to receive notifications. If no such person has

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[4]   SR **313.0**
[5]   SR **172.021**

been designated, the notification shall be made according to Article 36 of the Federal Act on Administrative Proceedings of 20 December 1968[6].

3 The FTA shall simultaneously inform particularly affected third parties, the interested cantonal tax authorities and the information holder about the issuance of the final order.

Art. 13   Legal remedies

1 Any order preceding the final order, including an order concerning coercive measures, shall be immediately enforceable and may only be challenged together with the final order.

2 The person concerned, the information holder and the particularly affected third parties under the conditions of Article 48 of the Federal Act on Administrative Proceedings of 20 December 1968[7] shall be entitled to appeal.

3 The appeal against the final order shall have suspensive effect.

4 Furthermore, the general provisions on the administration of justice at federal level shall apply.

Art. 14   Closing of the procedure

1 If the final order enters into force or is partially or fully confirmed by an appeal decision, the FTA shall transmit the information to be exchanged to the requesting authority.

2 The FTA shall point out to the requesting authority the restrictions on the use of the transmitted information as well as the secrecy obligation according to the administrative assistance provisions in the applicable convention.

3 Information which is not foreseeably relevant shall not be transmitted. The FTA shall remove such information or make it unrecognizable.

Art. 15   Use of the information for the purpose of enforcing Swiss tax law

1 After the entry into force of the final order, the information transmitted to the competent foreign authority may be used for the purpose of enforcing Swiss tax law.

2 The use of further information obtained during the administrative assistance procedure is not permissible.

3 Bank information may only be used further when such information could have been obtained under Swiss law.

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[6]   SR **172.021**
[7]   SR **172.021**

Chapter 3: Swiss Requests for Administrative Assistance

Art. 16

[1] The interested tax authorities shall address their request for international administrative assistance to the FTA.

[2] The FTA shall examine the request and decide whether the requirements according to the provisions on administrative assistance in the applicable convention are met. If the requirements are not met, the FTA shall notify this in writing to the requesting authority. The requesting authority may supplement its request in writing.

[3] The FTA shall transmit the request to the competent foreign authority and shall follow the administrative assistance procedure until its conclusion.

[4] The FTA shall transmit the information received from abroad to the interested tax authority and at the same time shall make it aware of the restrictions on the use of the transmitted information as well as the secrecy obligation according to the administrative assistance provisions in the applicable convention.

[5] Administrative assistance concerning bank information may only be requested when such information could be obtained under Swiss law.

Chapter 4: Final Provisions

Art. 17   Transitional provisions

Foreign administrative assistance requests that relate to a period of time for which administrative assistance provisions of the conventions that enter into force after the 30 September 2010 are not applicable shall be treated under the conventions and their implementing provisions that were in force on the 30 September 2010.

Art. 18   Entry into force

This Ordinance enters into force on 1 October 2010.