



Basic information

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The requirements for administrative assistance in tax matters should be revised

Identifying the taxpayer and the holder of the information is an essential prerequisite for the granting of administrative assistance. In most cases, this is carried out by indicating the name and address. Other means of identification should also be admissible. This basic information paper gives an overview of the administrative assistance policy, double taxation agreements and the next steps.

Administrative assistance in accordance with the OECD standard

On 13 March 2009, the Federal Council decided on the basis of international developments that Switzerland would adopt the OECD standard in accordance with Art. 26 of the OECD Model Convention for administrative assistance in tax matters. Switzerland thus withdrew its reservation concerning this provision. The Federal Council set the following key points for implementing the administrative assistance policy. These will generally remain in place:

- Limitation of administrative assistance to individual cases and thus no fishing expeditions
- Limitation to the exchange of information upon specific and justified request
- Maintenance of procedural protections
- Fair transitional solutions
- Limitation to taxes governed by the agreement
- Principle of subsidiarity in accordance with the OECD Model Convention
- Willingness to eliminate discrimination
- Prohibition of retroactivity

- Level playing field with other financial centres (same conditions for all states and territories)

Implementation of the administrative assistance policy

The administrative assistance policy is implemented within the scope of bilateral double taxation agreements (DTAs). To date, Switzerland has negotiated over 30 DTAs in accordance with the OECD Model Convention. These involve the following agreements:

Agreements in force	Agreements pending before parliament	Signed agreements	Initialled agreements
Denmark	Netherlands	Hong Kong	Ireland
Finland	Turkey	South Korea	Malta
Norway	Japan	Slovakia	Oman
France	Poland		Rumania
United Kingdom	India		Sweden
Qatar	Germany		Singapore
Luxembourg	Kazakhstan		United Arab Emirates
Mexico	Uruguay		
Austria (from 1 March 2011)	Greece		
Spain (most favoured nation clause)	Canada		
United States (approved by parliament, but not yet in force)			

Revision of the requirements for an administrative assistance request

The provisions concerning a DTA with an administrative assistance clause are to be amended in such a way that the requirements for an administrative assistance request should not hinder an effective exchange of information. Consequently, these agreements will be designed so that a foreign request for administrative assistance –

that is not a fishing expedition – will be honoured even if the identity of the person concerned is established by means other than name and address or even if the requesting state does not know the name and address of the holder of the information (with due consideration for the principles of proportionality and practicability). A corresponding provision should be added to all DTAs.

The spontaneous exchange of information between tax authorities and the automatic exchange of information are not up for discussion. It remains information on request in individual cases.

Amendment of agreements

The DTA amendments are at various stages. A provision that is in line with the OECD standard will be included in current and future negotiations on the revision of existing DTAs and the conclusion of new DTAs with foreign states.

In the case of states with which a DTA has already been signed but has not yet been ratified, the provision on administrative assistance can be specified in the DTA via a mutual agreement procedure or a diplomatic exchange of notes. The Federal Council has submitted to the Committee for Economic Affairs and Taxation of the National Council an application for the reopening of negotiations concerning the consultation on the ten pending DTAs (Netherlands, Turkey, Japan, Poland, India, Germany, Kazakhstan, Canada, Uruguay and Greece) as well as an application to incorporate the revised administrative assistance provisions.

In the case of the agreements with Denmark (including the extension to the Faroe Islands), Finland, France, the United Kingdom, Qatar, Luxembourg, Mexico, Norway, Austria and the United States already approved by the National Council and the Council of States, it is also planned to have the amendments to administrative assistance practice approved by parliamentary resolution.

All parliamentary resolutions are subject to an optional referendum.

The Global Forum peer review process

The Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) uses peer reviews to examine compliance with administrative assistance standards in the countries affiliated to it. These reviews take place in two phases. During the first phase, an examination is conducted to check whether the legal foundations for the exchange of information in accordance with the OECD standard are in place. The second phase focuses on checking the effectiveness and efficiency of the exchange of information. The first phase of Switzerland's peer review commenced at the end of October 2010 and will continue until June 2011. If a state fails to introduce the essential elements for the effective exchange of information, it is not allowed to progress to the second phase.

The Global Forum members include the G20 countries, all OECD states as well as all other states that are committed to the OECD standard for administrative assistance.

Legal implementation

The amendment should be implemented as follows from a legal standpoint. In the case of DTAs without any rule for interpretation, such a rule should be introduced in parliament's approval resolution (para. I hereafter). In addition, the new interpretation of the administrative assistance practice should be approved by parliament for all agreements (para. II hereafter).

I. Text on the rules of interpretation

In terms of application, the purpose of referring to information that may be foreseeably relevant is intended to provide for exchange of information in tax matters to the widest possible extent without allowing the contracting states to engage in fishing expeditions or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. Whilst the information to be supplied in the administrative assistance request contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, they need to be interpreted with a view not to frustrate effective exchange of information.

This rule of interpretation is to be found in the agreements with the United States, the Netherlands, Turkey, Poland, India, Germany, Canada, South Korea, Spain and Slovakia.

II. Extended interpretation of administrative assistance practice in the case of all DTAs

The agreements are to be interpreted in such a way that an administrative assistance request is to be complied with if it is shown that it is not a fishing expedition and if the requesting state

- a. identifies the taxpayer, although this identification can ensue in another way other than indicating the name and address, in exceptional cases this can also occur by indicating the account number;*
- b. indicates the name and address of the alleged holder of the information, insofar as this is known to it.*

If the information in accordance with letter b is not available for Switzerland to determine the holder of the information, the principles of proportionality and practicability are to be observed.

As with the rules of interpretation, the revision of the administrative assistance practices requires the approval of parliament.

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