

Joint Statement from the United States and Switzerland Regarding a Framework for Cooperation to Facilitate the Implementation of FATCA

I. General Considerations:

- A. The United States and Switzerland, building on their existing relationship with respect to mutual assistance in tax matters, seek to strengthen and improve their cooperation in combating international tax evasion.
- B. On 18 March 2010, the United States enacted provisions commonly referred to as the Foreign Account Tax Compliance Act (FATCA), which introduce reporting requirements for foreign financial institutions (FFIs) with respect to certain accounts. Because of certain legal or contractual restrictions in Switzerland, however, financial institutions in Switzerland may not be able to comply directly with all the reporting, withholding, and account closure requirements of FATCA.
- C. Intergovernmental cooperation to facilitate FATCA implementation would address these legal or contractual impediments to compliance, simplify practical implementation, and reduce FFI costs.
- D. In furtherance of the policy objectives of FATCA, the United States is open to adopting with interested countries, either an intergovernmental approach to implement FATCA (which would involve reporting by FFIs to their own governments followed by the automatic exchange of this information with the United States), or a framework for intergovernmental cooperation to facilitate FATCA implementation (which would provide for reporting directly between the FFIs and the United States according to the FATCA rules, supplemented by exchange of information on request).
- E. In the expectation of contributing to a solid basis for an enhanced co-operation in tax matters with the United States, Switzerland is supportive of negotiating a bilateral framework agreement to facilitate the implementation of FATCA.
- F. In light of these considerations, Switzerland and the United States declare their intent to negotiate an agreement providing a framework for cooperation to ensure the effective, efficient, and proper implementation of FATCA by financial institutions located in Switzerland.

II. Key Elements of the Framework:

- A. The United States and Switzerland would enter into an agreement (the “Cooperation Agreement”) pursuant to which, subject to certain terms and conditions, Switzerland would agree to:
 - 1. Direct all Swiss financial institutions, not otherwise exempt or deemed compliant pursuant to the Cooperation Agreement, to conclude an FFI Agreement with the U.S. Internal Revenue Service (IRS).
 - 2. Enable these Swiss financial institutions to comply with the obligations prescribed by the FATCA rules and set forth in such FFI Agreements, in particular regarding

the reporting of information with respect to U.S. accounts to the IRS, by granting an exception from Article 271 of the Swiss Criminal Code.

3. Accept and promptly honor, as foreseeably relevant without regard to any other condition, a group request by the U.S. competent authority for additional information about U.S. accounts identified as recalcitrant and reported by Swiss financial institutions on an aggregate basis, pursuant to Article 3 of the Protocol signed on September 23, 2009.

B. In consideration of the foregoing, the United States would agree to:

1. Identify in the Cooperation Agreement, specific categories of Swiss FFIs or schemes (in particular certain small, local FFIs and institutions/schemes in the field of the Swiss pension system) that would be treated as deemed compliant or exempt;
2. Eliminate U.S. withholding under FATCA on payments to Swiss financial institutions (i.e., by identifying all Swiss financial institutions as participating FFIs or deemed-compliant FFIs, as appropriate); and
3. Agree to certain other appropriate measures to reduce burdens and simplify the implementation of FATCA.

C. In addition, as a result of the Cooperation Agreement, Swiss financial institutions would not be required to:

1. Terminate the account of a recalcitrant account holder;
2. Impose foreign passthru payment withholding on payments to recalcitrant account holders, or to other financial institutions in Switzerland, or in another jurisdiction with which the United States has in effect either an agreement for an intergovernmental approach to FATCA implementation, or an agreement for intergovernmental cooperation to facilitate FATCA implementation.

D. A model Cooperation Agreement implementing this framework for intergovernmental cooperation to facilitate FATCA implementation will be developed and the terms and conditions established in the model agreement will be applied to Switzerland and other interested countries on an equivalent basis.

E. The United States and Switzerland agree to work swiftly and constructively to negotiate and conclude a Cooperation Agreement.