



Questions and answers on the amendment of the Tax Administrative Assistance Act (stolen data)

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Why amend the Tax Administrative Assistance Act (TAAA) to allow foreign requests based on stolen data whereas in 2013 the government had to backtrack in the face of widespread opposition during the consultation?

The proposed amendment was abandoned in 2013 so as not to compromise the primary objective of the revision at that time, which was to include an exception regarding the notification of persons affected by an administrative assistance request. This amendment was crucial to allow Switzerland to proceed to phase 2 of the Global Forum peer review.

However, the government had already warned in 2013 that the Swiss practice of rejecting requests based on stolen data would give rise to problems during phase 2 of the Global Forum peer review on the exchange of information.

Although the legislative amendment makes provision for an easing of the practice, Switzerland will still reject requests if the data was actively acquired by a country outside of administrative assistance proceedings.

What has changed since 2011?

The prevailing parameters have changed and the pressure on Switzerland has increased considerably. It has received numerous requests based on stolen data, which was not the case in 2011 during the phase 1 peer review conducted by the Global Forum (review of the regulatory framework). It emerged from the discussions on the Swiss report in February 2015 that the exception as applied in practice by Switzerland is widely disputed. For example, countries such as Luxembourg, which refused to cooperate if requests were based on stolen bank data, have radically changed their legislation and adapted their practices in response to the criticism expressed by the Global Forum.

Moreover, the widespread distribution of the data stolen from HSBC has shed new light on the subject. This disclosure had an additional dimension that made Switzerland's refusal to cooperate even more difficult to justify, as Switzerland could be perceived to be protecting criminals for the simple reason that they were on a list of stolen data.

It can be assumed that the recent publicity given to the HSBC story will increase the number of requests submitted to Switzerland, as the number of countries which have received the list

has been growing. To date, more than 30 countries have received the information from France via their administrative assistance agreements.

In addition, with regard to international cooperation in tax matters, Switzerland accepted the OECD's international standard on the automatic exchange of information in July 2014. With this step towards transparency, data will automatically be available to the tax administrations of partner countries from 2018.

Does the international standard require countries to respond to requests for administrative assistance based on stolen data?

The international standard concerning the exchange of information upon request in tax matters does not comment explicitly on the problem of providing administrative assistance when the request is based on stolen data. However, it emerged from the discussions on the Swiss report in February 2015 that the position of the Global Forum is now clear and that the exception as it is applied in practice by Switzerland is highly controversial.

The partner countries find Switzerland's current practice too restrictive and contrary to this standard. Swiss practice likens a country which is requesting administrative assistance in good faith in accordance with a treaty to a country committing or acting as an accomplice in unlawful acts. The most pertinent illustration is the case of India (HSBC list), but other major G20 and EU partner countries have expressed serious reservations about Switzerland's cooperation in this area.

What is so special about Switzerland's situation?

Switzerland is one of the countries which receives the most requests for administrative assistance globally (more than 1,000 requests received each year). Given that France has forwarded the HSBC list to more than 30 countries to date, the number of requests based on stolen data can be expected to rise significantly in the foreseeable future.

Is Switzerland once again yielding to international pressure?

The Global Forum submits all of its members (127) and some non-member jurisdictions which play an important role in tax matters to an in-depth process of peer reviews. The Global Forum ensures the application of international standards regarding transparency and the exchange of information in tax matters so as to create a level playing field for all in international competition. Switzerland undertook to comply with international tax standards in 2009, and applies this policy consistently. Moreover, it ensures that it has every chance of obtaining a good score in the peer review which will commence this autumn.

What does the amendment propose?

The proposal clarifies the principle of good faith (Art. 7 let. c) in the Tax Administrative Assistance Act (TAAA). Henceforth, Switzerland will accept requests if the data came into the possession of the requesting state within the scope of an administrative assistance procedure or via a publicly accessible source. The proposed amendment does not, however, call into question the principle whereby the theft of bank data is punishable. If a state actively acquires data outside of an administrative assistance procedure, Switzerland will continue to refuse to cooperate.

What will happen if Switzerland does not adapt its legislation?

The number of requests submitted by partner countries which Switzerland will have to reject will continue to rise. This could play a significant role in Switzerland's review by the Global

Forum. The consequences of a bad review must not be underestimated. Firstly, this would provide other countries with the grounds for inflicting economic sanctions. Secondly, numerous international organisations, including development banks, are reducing cooperation with countries which are considered to be deficient by the Global Forum. Finally, a bad mark would diminish Switzerland's credibility in international bodies such as the OECD and would increase the uncertainty hovering over Switzerland as a location for international companies.