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SWISS TAXPAYERS AND REQUESTS OF INFORMATION BY THE SWISS TAX ADMINISTRATION - THE RATIFIED DOUBLE TAXATION AGREEMENT AS IN FORCE BETWEEN SWITZERLAND AND THE USA

In September 2019, the Protocol amending the Double Taxation Agreement (DTA) between the Swiss Confederation and the United States (signed in 1996) entered into force and introduces the exchange of information on request including "group requests" in tax matters that make no distinction between tax evasion and tax fraud.

Both countries may now exchange, as of September 2019, information of fiscal interest that may be relevant for the application of the convention provisions themselves as well as their respective national tax laws, on all taxes, provided that taxation is not contrary to the convention itself.

This is in accordance with international standard for the exchange of information on request, which Switzerland already applies with about one hundred countries and territories (according to Art. 26 of the OECD Model). The reciprocity affirmed by the treaty is an important new step in tax relations between the two countries that has seen Switzerland succumb to countless unilateral US requests in the past.

The entry into force of the Protocol is retroactive to September 23, 2009: for facts dating back to that date at the latest, the **United States** may activate requests for individual information and for facts dating back to June 30, 2014 at the latest for group requests under the Fatca agreement. In 2014, Switzerland had already concluded the FATCA (Foreign Account Tax Compliance Act) agreement with the USA, which provides for the *automatic one-way transmission of information exclusively from Switzerland* (in accordance with Model 2 of the unilateral Fatca exchange). Now, thanks to the Protocol amending the DTA, the USA will be able to activate group requests for US clients of Swiss banks who have not consented to their bank transmitting their data to the USA or for clients qualified as "leavers".

On the Swiss side, the Federal and Cantonal Tax Administrations can now submit requests for information for tax purposes to the U.S. administration for Swiss taxpayers with allegedly undeclared assets and financial income in the U.S. for facts dating back to September 23, 2009.

This can be done either for requests with identification of the Swiss taxpayer or in accordance with group requests whose essential criterion is not the identification of the taxpayer, but the pattern of behaviour used by Swiss taxpayers, clients of a financial institution based in the U.S.

For many years, the Swiss tax administration has been the subject of multiple (individual and "group") tax relevant information request procedures on the US side and the renewed DTA, as ratified between the two states, will now, for the first time, allow the Swiss authority to obtain tax-relevant information on financial assets and income therefrom, deposited in the US and concealed from the Swiss administration by Swiss taxpayers.

Negotiations are underway with the United States in order to obtain, within the framework of the FATCA agreement, an effective reciprocity of *automatic exchange of information* (now unilateral) in accordance with Model 2 but it is not known to the writer when this agreement can be concluded.

We are of the opinion that our federal and cantonal tax administrations, while expecting reciprocity of automatic exchange under Model 1 FATCA, will make good use of their right to request the United States to exchange information, either individually or as group requests. A Swiss taxpayer, whether individual or corporate, who has so far failed to comply with its Swiss tax obligations with respect to financial assets held in the United States (and their income) will be well advised to engage in the voluntary disclosure procedure without penalty.

For further information on the above, please do not hesitate to contact us

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