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## **VOLUNTARY (FISCAL) DISCLOSURE OF OWNED PROPERTIES IN EU MEMBER STATES AND FINANCIAL ASSETS HELD IN THE USA**

This is to draw the attention of unlimited Swiss taxpayers who own real estate properties abroad, in particular in countries of the European Union to the opportunity of activating the provisions of the penalty-free self-declaration (voluntary disclosure) or the simplified heir disclosure for assets and income not previously declared by the deceased.

This also applies to financial assets deposited in banks operating in the United States, for which to date the automatic exchange of tax-relevant information is not reciprocal, but unilateral and only concerns banking relationships held in Switzerland by persons qualified as US taxpayers.

It should be noted that a penalty-free self-declaration to be accepted as such requires the spontaneity of the taxpayer and the submission to the tax administration of new assets and/or income, i.e., not previously known by the tax administration.

### **Exchange of information concerning real estate properties (and income therefrom) between EU member states: will Switzerland adhere to such automatic exchange?**

The automatic exchange of tax-relevant information between EU States in relation to properties located in EU member States held by EU tax residents is already in force since more than a decade. In fact, the EU Directive 2011/16/EU (which has been amended over time) has introduced the automatic and mutual exchange of information between EU States concerning real estate properties and related income that allows the tax administrations of EU countries to carry out automatic cross-checks.

It is specified that the application of the mentioned EU Directive is confined for the time being to EU States. The automatic exchange of tax-relevant information between states involving Switzerland (SAI) at bilateral or multilateral level, which came into force on 1.1.2017, only concerns movable assets (as for example bankable assets) and the respective income deposited with financial intermediaries, but not real estate properties. However, it cannot be ruled out that new agreements with the EU will also include properties in an automatic exchange of information, and not at the unilateral request of one of the tax administrations.

Thus, in the more or less distant future, the Swiss federal tax administration could come into possession of information on properties located in EU states owned by Swiss resident taxpayers who have omitted to comply with Swiss tax disclosure obligations.

### **Status of the renegotiation between Switzerland and the United States in connection with the transition from the current unilateral to a reciprocal exchange of information.**

Another critical tax issue relates to the failure of Swiss taxpayers to declare in their annual tax return financial assets deposited in banks operating in the United States, with which an automatic exchange of information from the United States to the Swiss tax authorities is to date not in force (but only on request).

In fact the 2014 FATCA (Foreign Account Tax Compliance Act) agreement between the two countries is not reciprocal but unilateral, under Model 2 of the agreement.

On 13.12.2022, a delegation of the two countries met in Washington to consider an update of the memorandum of understanding on the FATCA agreement in order to achieve a reciprocal exchange of information, given the Swiss administration's interest in also receiving an automatic flow of tax-relevant information from the United States.

Even the implementation of an automatic exchange of tax-relevant information between the two states now appears to be imminent. On 13 November 2023, the respective delegations of the two states concluded the negotiations for the implementation of the mutual automatic exchange according to the Fatca 1 model.

Switzerland and the United States signed a new FATCA agreement in Bern on 27 June 2024 focused to change the unilateral exchange FATCA 2 model to a bilateral model 1 system as Switzerland currently provides financial account data to the United States on a unilateral basis. In the future, it will also receive corresponding information from the United States within the framework of a model 1 automatic exchange of information. The change of model is expected to apply from 2027. ([see article Februar 2025](#))

The entry into force of the reciprocity of the agreement has not been established yet, but it could certainly lead to tax evasion or even to tax fraud procedures for non-compliant Swiss taxpayers.

### **How to avoid a tax evasion procedure in Switzerland by activating a penalty-free spontaneous self-declaration or a simplified disclosure of heirs.**

The provisions of the Ticino Tax Law and the Federal Act on Direct Taxation respectively regulate: the simplified disclosure by the heirs of assets and/or income which the deceased taxpayer has omitted to declare to the tax authorities during his lifetime as well as the penalty-free self-disclosure of previously undeclared assets and/or income by the taxpayer.

Self-declaration with disclosure of assets and income requires the spontaneity of the action, the full cooperation of the taxpayer with the tax authority, but also an element of 'novelty', which would be lacking if the Swiss administration were to receive an automatic (or on request) exchange of tax relevant information from other countries.

Thus, the taxpayer who is currently not tax compliant may have a strong interest in considering now implementing a penalty-free self-disclosure in relation to these assets and income (if any) , with recovery by the tax administration of the subtracted tax (and related interest on arrears) for 10 years, but exempting him from tax evasion fines or criminal tax proceedings.

Similarly, the heirs of a non-tax compliant deceased would do well, when compiling the inheritance inventory, to disclose under the simplified procedure the undeclared assets and /or income by the deceased. In such a case, the recovery of tax and interest on arrears would be limited to the three years preceding the year of death.

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

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