

Service for Exchange of Information in Tax Matters (SEI)

International administrative assistance

STEP Conference
Lausanne, 8 September 2015



Programme

- Organisation of the SEI
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Organisation SEI



International administrative assistance Organisation

The Federal Tax Administration (FTA) is the competent authority that provides assistance based on requests by foreign states and submits Swiss requests for administrative assistance.

Service for Exchange of Information in Tax Matters (SEI)

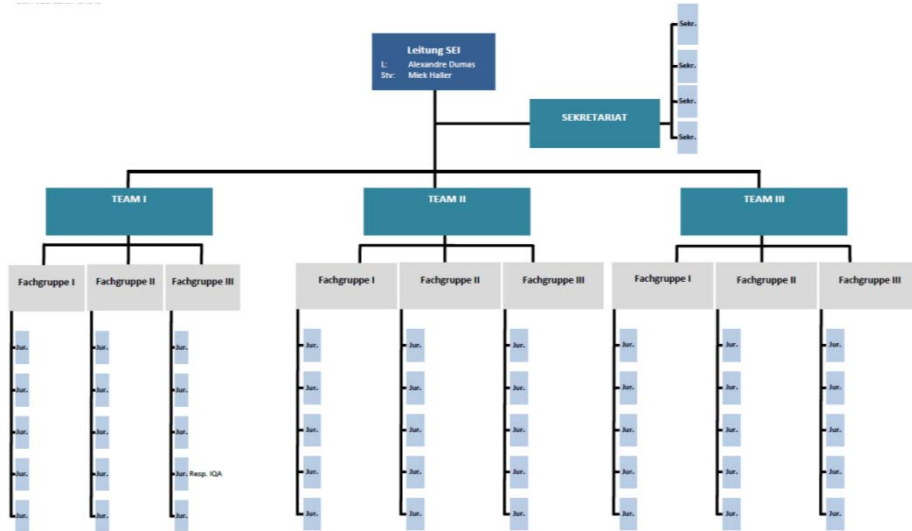
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Founded: 1 October 2010
Director: Mr Alexandre Dumas
Vice-Director: Mrs Miek Haller



International administrative assistance Organisation



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Legal framework

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International administrative assistance International and domestic legal framework I



Double Tax Agreement (DTA);
Tax Information Exchange Agreement (TIEA); etc.



Federal Act of 28 September 2012 on International Administrative Assistance in Tax Matters

(Tax Administrative Assistance Act, TAAA)

- TAAA entered into force on 1 February 2013
- Regulates the enforcement of administrative assistance in accordance with the DTAs and other international agreements which deal with the exchange of information in tax matters (for example the TIEAs).



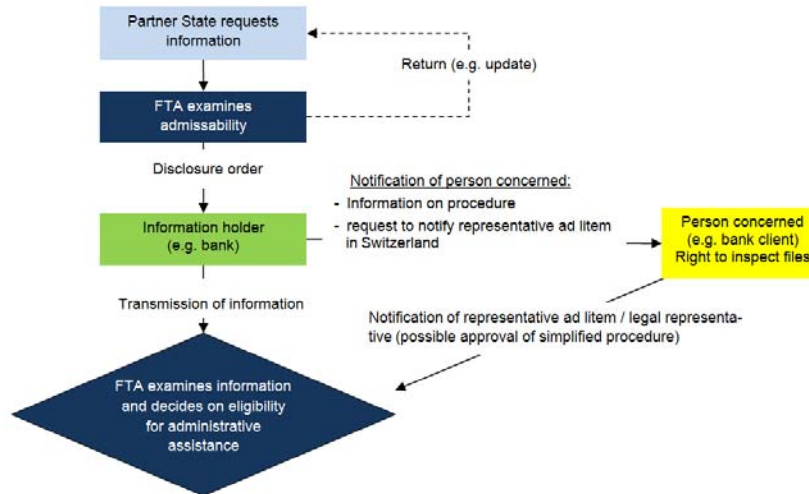
(Federal Act of 20 December 1968 on Administrative Procedure
[Administrative Procedure Act, APA])



Procedure



International administrative assistance Procedure



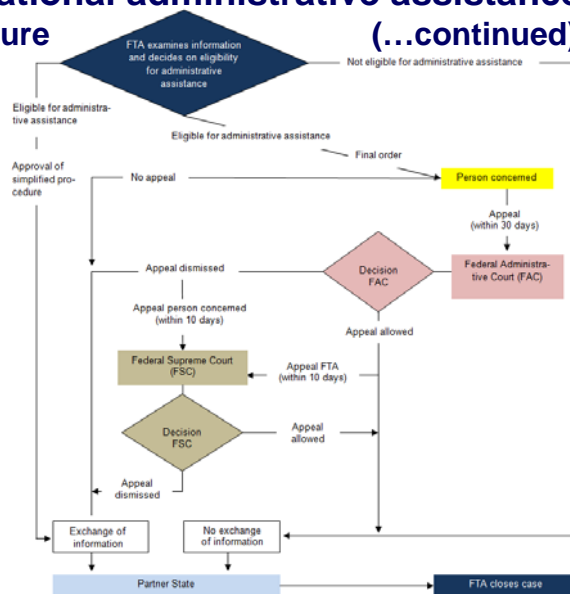
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International administrative assistance Procedure (...continued)



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Swiss requests



International administrative assistance Swiss requests

Art. 22 TAAA

- FTA is the competent authority to submit Swiss requests
- The Swiss authorities shall address their request for international administrative assistance to the FTA
- FTA examines the request and decides whether the requirements are met
- FTA transmits the request to the competent foreign authority and monitors the administrative assistance procedure until its conclusion.



International administrative assistance Statistics

Conventions and agreements signed by Switzerland	117
DTA with OECD standard	51 (41 in force)
DTA without OECD standard	57
Tax Information Exchange Agreement (TIEA)	9 (3 in force)



International administrative assistance Statistics

International administrative assistance 2011	Requests received in total: 370 Requests sent out by Switzerland: 1
International administrative assistance 2012	Requests received in total: 1'499 Requests sent out by Switzerland: 2
International administrative assistance 2013	Requests received in total: 1'386 Requests sent out by Switzerland: 6
International administrative assistance 2014	Requests received in total: 2'791 Requests sent out by Switzerland: 2



New developments



International administrative assistance New developments

New provisions of the TAAA entered into force the 1st August 2014.

Main changes in TAAA : introduction of provisions concerning

- 1. Exception to the notification**
- 2. Group requests**



International administrative assistance New developments - Exception to the Notification

Principle : Information of person/s concerned (Art. 14 TAAA)



- At the request of the FTA, the **information holder** informs the person abroad and asks him/her to designate a person in Switzerland who is authorized to accept service ; or
if not possible
- The FTA contacts the person concerned **directly** if the requesting authority expressly consents; or
if not possible
- If the person cannot be contacted, the FTA notifies the interested parties by publication in the Federal Gazette.



International administrative assistance New developments - Exception to the Notification

Exception to the notification / Procedure with subsequent notification
(partial revision of the TAAA; August 2014)

Exceptional situations, i.e. when:

the requesting State can **credibly show** that the purpose of the administrative assistance and the success of its investigation would be **compromised** through prior notification (e.g. risk of **destruction of evidence**)

If these conditions are met:



- Transmission of information to foreign country
- Subsequently, notification of a final decree to persons entitled to appeal
- Appeal against the final decree (art. 21a par. 2 TAAA)



International administrative assistance New developments - Exception to the Notification

Challenges:

- Exceptional cases
- Requesting state must « credibly show »
- No general motivation
- FTA informs the information holder about the deferred notification. Information holder may not inform the concerned person (fine up to CHF 10'000 in case of violation)



International administrative assistance New developments – Group request

- Definition of a group request (art. 3 lit. c TAAA) : *Group requests* are administrative assistance requests for information on two or more people with identical behavior patterns who are identifiable by means of precise details.
- New art. 6 para. 2^{bis} TAAA → the Federal Council determines the required content of group requests → Ordinance of 20 August 2014 (SR 651.11).
- Art. 14a TAAA → Provision concerning a special notification procedure applicable to a group request.



International administrative assistance New developments of the TAAA – Group request

Procedure (art. 14a TAAA):

- Information holder must **identify** the persons concerned (art. 14 par. 1 TAAA)
- The FTA asks the information holder 1) to notify persons entitled to appeal who are resident or domiciled abroad about the request and 2) to invite them to designate a person authorised to accept service in Switzerland.
- Further, the FTA **informs** the concerned persons of the group request through publication in the **Swiss Federal Gazette** anonymously.
- Notification of the **final decree** via publication in the Swiss Federal Gazette anonymously



2./2.3 Group Requests

Challenges:

- The daily «threat» of receiving a group request
- Examination of the requirements to open a procedure
→ «fishing expedition»
- Resources (personnel / material / preparation of templates)
- Keeping up with the regular administrative assistance
- Political weight and public (media) interest



Example



Example - Facts presented in the request (1/2)

The fiscal situation of **Mr and Mrs X** is actually under investigation by the tax authorities of the requesting state. Tax years concerned are : **2010 to 2013**.

Mr and Mrs X were residents in the requesting state for the concerned period. From the investigations it appears

- that Mr and Mrs X were the **settlers of the «X Trust»** in which they transferred some assets ;
- that Mr X **transferred an amount of 100'000 €** to a Swiss bank account (BANK SA), n° 12345

Mr and Mrs X **did not declare** being settlers of «X Trust». They did not declare the account n° 12345.

Requesting state **suspect** that Mr and Mrs X are not only the settlers but also the beneficiary of the «X Trust» and that they did not declare all of their taxable income and wealth to the competent authority.



Example - Solution

Requested information for the concerned period (2010 – 2013).

- a) Bank documents (statements, A Form) of the **above mentioned** account
- b) Bank documents (statements, T Form) of the accounts held **through the «X trust»** in BANK CH.
- c) Bank documents (statements, A Form) of any other accounts held **directly** by Mr and Mrs X in BANK CH, or accounts they are **beneficiaries** of.



Example - Solution

The DTA between the requesting state and Switzerland is built on Art. 26 of the Model Tax Convention :

*The competent authorities of the Contracting States shall exchange such information as is **foreseeably relevant** for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.*

The standard of «foreseeably relevance» is intended to provide for exchange of information **to the widest possible extent**. **Limit** : *fishing expeditions* i.e. speculative requests that have no apparent nexus to an open inquiry or investigation (see Commentary to art. 26 of the OECD Model, para. 5).



Example - Solution

- From the collected information it appears that :
 - Mrs and Mrs X are the beneficiaries of the «X Trust»
 - An account in BANK CH is held through the «X Trust»
 - Mrs and Mrs X hold an account directly and through a company in Panama.
- Can the foreseeable relevance be excluded with no doubt ?
- If no, the requested information is **foreseeably relevant for the purpose** of the request (here : taxation of the income and wealth of Mr and Mrs X for the period 2010 to 2013)



Example - Solution

Special issue : Transmission of accounts held indirectly ?

- **FAC : accounts held indirectly are not transmissible**
 - Art. 8 par. 1 TAAA : only measures that are in accordance with Swiss law for the assessment and enforcement of the tax claims may be taken.
 - Art. 127 Swiss federal law on direct tax (FLD) dated 14 December 1990
 - Exception of art. 8 par. 2 TAAA and 26 par. 5 DTA : only possible when the account is held directly (taxpayer is the holder of the account)
- **FTA : accounts held indirectly are transmissible**
 - In accordance with art. 8 par. 2 TAAA and 26 par. 5 DTA : information about direct and indirect holding of the account must be transmitted.
 - Art. 127 FLD not applicable in this case.
- **Supreme Federal Court ?**



International administrative assistance

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