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Federal Act on International Administrative Assistance in Tax Matters (Tax Administrative Assistance Act, TAAA)

of 28 September 2012 (Status as of 1 August 2014)

The Federal Assembly of the Swiss Confederation,

based on Article 173 paragraph 2 of the Federal Constitution¹, and
having considered the Federal Council Dispatch dated 6 July 2011²,
decrees:

Section 1: General Provisions

Art. 1 Subject matter and scope of application

¹ This Act governs the execution of administrative assistance:

- a. in accordance with agreements for the avoidance of double taxation;
- b. in accordance with other international agreements that provide for the exchange of information regarding tax matters.

² It is subject to the derogations of individual applicable agreements.

Art. 2 Competent authority

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

Art. 3 Definitions

For the purposes of this Act:

- a. the *person concerned* is the person about whom an administrative assistance request for information is made;
- b. the *information holder* is the person in Switzerland who is in possession of the requested information.

AS 2013 231

¹ SR 101

² BBl 2011 6193

- c.³ *group requests* are administrative assistance requests for information on two or more people with identical behaviour patterns who are identifiable by means of precise details

Art. 4 Principles

- ¹ Administrative assistance is granted only if requested.
² The administrative assistance procedure is carried out swiftly.
³ It is forbidden to provide information on persons not concerned by the request.

Art. 5 Applicable procedural law

- ¹ Unless otherwise specified in this Act, the Federal Act of 20 December 1968 on Administrative Procedure⁴ (APA) applies.
² Article 22a paragraph 1 of the APA on statutory or official periods does not apply.

Section 2: Administrative Assistance Requests by Foreign States

Art. 6 Requests

- ¹ Requests from a foreign state must be made in writing in one of the official languages of Switzerland or in English and include the information required by the applicable agreement.
² If the applicable agreement does not specify any requirements for the content of a request, and unless otherwise apparent from the agreement, the request must include the following information:
- a. the identity of the person concerned, whereby the person may be identified by means other than his name and address;
 - b. a description of the information requested and the form in which the requesting state wishes to receive this information;
 - c. the tax purpose for which the information is requested;
 - d. the grounds for presuming that the information requested is in the requested state or is in the possession of or under the control of an information holder resident in the requested state;
 - e. the name and address of the presumed information holder, if known;
 - f. a declaration that the request complies with the legal and regulatory requirements and the administrative practices of the requesting state, such that the requesting authority would be entitled to receive the information in

³ Inserted by No I of the Federal Act of 21 March 2014, in force since 1 Aug. 2014 (AS 2014 2309; BBl 2013 8369).

⁴ SR 172.021

application of its law or within the scope of its normal administrative practices if the information was under its jurisdiction;

- g. a declaration that the requesting state has exhausted all regular sources of information available under its domestic tax procedure.

^{2bis} The Federal Council determines the required content of a group request.⁵

³ If the requirements under paragraphs 1 and 2 are not met, the FTA shall notify the requesting authority of this in writing, and give it the opportunity to supplement its request in writing.⁶

Art. 7 Non-consideration

The request will not be considered if:

- a. it constitutes a fishing expedition;
- b. it requests information not covered by the administrative assistance provisions of the applicable agreement; or
- c. it violates the principle of good faith, particularly if it is based on information obtained through a criminal offence under Swiss law.

Section 3: Procurement of Information

Art. 8 Principles

¹ For the purpose of procuring information, only measures which are in accordance with Swiss law for the assessment and enforcement of the tax claims referred to in the request may be taken.

² Information that is in the possession of a bank, another financial institution, a mandated or authorised person or a fiduciary, or information concerning a participation in a legal entity may be requested if the applicable agreement provides for the transfer of such.

³ For the procurement of the requested information, the FTA shall contact the persons and authorities mentioned in Articles 9 to 12 who can be assumed to have such information.

⁴ The requesting authority is not entitled to inspect files or be present during proceedings in Switzerland.

⁵ Information procurement costs are not reimbursed.

⁶ Lawyers who are authorised to represent parties before judicial authorities in Switzerland under the Lawyers Act of 23 June 2000⁷ (LawA) may refuse to

⁵ Inserted by No I of the Federal Act of 21 March 2014, in force since 1 Aug. 2014 (AS 2014 2309; BBl 2013 8369).

⁶ Amended by No I of the Federal Act of 21 March 2014, in force since 1 Aug. 2014 (AS 2014 2309; BBl 2013 8369).

⁷ SR 935.61

surrender documents and information protected under the provisions on professional secrecy for lawyers.

Art. 9 Procurement of information from the person concerned

¹ If the person concerned has limited or unlimited tax liability in Switzerland, the FTA shall ask him to produce the information in his possession that is likely to be necessary to respond to the request for administrative assistance. It shall prescribe a deadline for this.

² It shall inform the person concerned of the content of the request insofar as this is necessary for procurement of the information.

³ The person concerned must produce all relevant information that is in his possession or under his control.

⁴ The FTA shall undertake administrative measures such as audits or inspections insofar as this is necessary to respond to the request for administrative assistance. It shall inform the cantonal tax administration responsible for assessing the person concerned of the measures envisaged and allow it to participate in their execution.

⁵ If the person concerned wilfully fails to comply with an enforceable order to produce information issued by the FTA that gives notice of the penalties under this provision, he shall be liable to a fine not exceeding 10,000 francs.

Art. 10 Procurement of information from the information holder

¹ The FTA shall request the information holder to produce the information that is likely to be necessary to respond to the request for administrative assistance. It prescribes a deadline for this.

² It shall inform the information holder of the content of the request insofar as this is necessary for procurement of the information.

³ The information holder must produce all relevant information that is in its possession or under its control.

⁴ If the information holder wilfully fails to comply with an enforceable order to produce the information issued by the FTA that gives notice of the penalties under this provision, it shall be liable to a fine not exceeding 10,000 francs.

Art. 11 Procurement of information in the possession of the cantonal tax administrations

¹ The FTA shall request the competent cantonal tax administrations to transmit the information that is likely to be necessary to respond to the request for administrative assistance. If necessary, the FTA may request trans of the complete tax file.

² It shall transmit the entire content of the request to the cantonal tax administrations and prescribe a deadline for transmission of the information.

Art. 12 Procurement of information in the possession of other Swiss authorities

¹ The FTA shall request the federal, cantonal and communal authorities to transfer the information that is likely to be necessary to respond to the request for administrative assistance.

² It shall inform the authorities of the main content of the request and prescribe a deadline for transmission of the information.

Art. 13 Compulsory measures

¹ Compulsory measures may be ordered:

- a. if carrying out compulsory measures is provided for under Swiss law; or
- b. to request information in accordance with Article 8 paragraph 2.

² The FTA may use only the following compulsory measures to obtain information:

- a. the search of rooms or of objects, documents and records in written form or on image and data carriers;
- b. the seizure of objects, documents and records in written form or on image and data carriers;
- c. the enforced appearance of duly summoned witnesses.

³ Compulsory measures are ordered by the Director of the FTA or his authorised representative.

⁴ If there is a risk in delay and if a compulsory measure cannot be ordered in time, the person entrusted with procuring information may undertake a compulsory measure on his own initiative. This compulsory measure is valid only if it is approved by the Director of the FTA or his authorised representative within three business days.

⁵ The cantonal and communal police forces and other authorities assist the FTA in the execution of compulsory measures.

⁶ The cantonal tax administrations concerned may participate in the execution of compulsory measures.

⁷ Furthermore, Articles 42 and 45 to 50 paragraphs 1 and 2 of the Federal Act of 22 March 1974⁸ on Administrative Criminal Law apply.

Art. 14 Notification of persons entitled to appeal

¹ The FTA shall notify the person concerned about the main parts of the request.⁹

² It shall notify the other persons whom it must assume on the basis of the files are entitled to appeal under Article 19 paragraph 2 about the administrative assistance procedure.¹⁰

⁸ SR 313.0

⁹ Amended by No I of the Federal Act of 21 March 2014, in force since 1 Aug. 2014 (AS 2014 2309; BBl 2013 8369).

³ If a person under paragraph 1 or 2 (person entitled to appeal) is resident abroad, the FTA shall request the information holder to ask this person to designate a person in Switzerland who is authorised to accept service. It prescribes a deadline for this.

⁴ The FTA may directly inform a person entitled to appeal who is resident abroad provided that the requesting authority expressly consents to this procedure in the case at hand.

⁵ If a person entitled to appeal cannot be reached, the FTA shall notify him by way of the requesting authority or by means of a publication in the Federal Gazette on the request. It shall request the person to designate a person in Switzerland who is authorised to accept service. It prescribes a deadline for this.

Art. 14a¹¹ Notification in the case of group requests

¹ At the request of the FTA, the information holder must identify the persons concerned by a group request.

² The FTA shall notify persons entitled to appeal who are resident or domiciled in Switzerland about the request.

³ It shall ask the information holder to notify persons entitled to appeal who are resident or domiciled abroad about the request and at the same time to invite them to designate a person authorised to accept service in Switzerland.

⁴ It shall further notify persons concerned by the group request anonymously via a publication in the Federal Gazette:

- a. about the receipt and content of the request;
- b. about their obligation to give the FTA their address in Switzerland if they are resident or domiciled there or to designate a person authorised to accept service in Switzerland if they are resident or domiciled abroad;
- c. about the simplified procedure in accordance with Article 16; and
- d. that a conclusive decree will be issued for each person entitled to appeal who has not consented to the simplified procedure.

⁵ The period allowed for providing an address in Switzerland or a person authorised to accept service is 20 days; it commences on the day following the Federal Gazette publication.

⁶ If the FTA is unable to deliver a conclusive decree to persons entitled to appeal, it shall notify them of such decree anonymously via a publication in the Federal Gazette. The period allowed for filing an appeal commences on the day following notification in the Federal Gazette

¹⁰ Amended by No 1 of the Federal Act of 21 March 2014, in force since 1 Aug. 2014 (AS 2014 2309; BBl 2013 8369).

¹¹ Inserted by No 1 of the Federal Act of 21 March 2014, in force since 1 Aug. 2014 (AS 2014 2309; BBl 2013 8369).

Art. 15 Right to participate and to inspect files

¹ The persons entitled to appeal may participate in the procedure and inspect the files.

² If the foreign authority demonstrates grounds for secrecy regarding certain case documents, the FTA may refuse to allow a person entitled to appeal to inspect the corresponding files in accordance with Article 27 of the APA^{12,13}

Section 4: Transmission of Information**Art. 16** Simplified procedure

¹ If the persons entitled to appeal consent to transmission of the information to the requesting authority, they shall notify the FTA of this in writing. This consent is irrevocable.

² The FTA concludes the procedure by transmitting the information to the requesting authority, making reference to the consent of the persons entitled to appeal.

³ If the consent covers only some of the information, the ordinary procedure is conducted for the remaining part.

Art. 17 Ordinary procedure

¹ The FTA shall serve each person entitled to appeal with the final decree stating why administrative assistance is being provided and specifying the extent of the information to be transmitted.

² Information that is likely to be immaterial may not be transmitted. The FTA shall remove or redact such information.

³ If a person entitled to appeal is resident abroad, the FTA shall notify him of the final decree by sending it to the person authorised to accept service. If no such person has been designated, it shall give notice of the decree by means of a publication in the Federal Gazette.

⁴ At the same time, the FTA shall inform the cantonal tax administrations concerned of the issue and content of the final decree.

Art. 18 Costs

¹ Requests for administrative assistance are executed free of charge.

² The FTA may charge the person concerned or the information holder for some or all of the costs it incurs in connection with the exchange of information if:

- a. the costs are extraordinarily high; and

¹² SR 172.021

¹³ Amended by No I of the Federal Act of 21 March 2014, in force since 1 Aug. 2014 (AS 2014 2309; BBl 2013 8369).

- b. the person concerned or the information holder contributed substantially to the costs generated through their inappropriate behaviour.

³ The Federal Council shall specify the circumstances relevant to paragraph 2 and rule on the details.

Art. 19 Appeals

¹ Any order preceding the final decree, including an order concerning compulsory measures, may be enforced immediately and may be contested only together with the final decree.

² The person concerned and other persons as specified in Article 48 of the APA¹⁴ are entitled to appeal.

³ The appeal has suspensive effect. Article 55 paragraphs 2 to 4 of the APA apply.

⁴ In principle, only one exchange of written submissions takes place.

⁵ For all other matters, the general provisions on federal justice apply.

Art. 20 Conclusion of the procedure

¹ When the final decree or appeal decision has become fully enforceable, the FTA shall transmit the information to be exchanged to the requesting authority.

² The FTA shall notify the requesting authority of the restrictions on the usability of the transmitted information and of the confidentiality obligations under the administrative assistance provisions of the applicable agreement.

³ If the agreement stipulates that the information obtained through administrative assistance may also be used for purposes other than tax matters if the competent authority of the requested state consents to such use, the FTA shall give its consent after examining the situation. If the information obtained is to be forwarded to criminal authorities, the FTA shall give its consent in consultation with the Federal Office of Justice.

Art. 21 Use of the information for enforcement of Swiss tax law

¹ Only the information transmitted to the requesting authority may be used for the purpose of enforcing Swiss tax law.

² Bank information may be further used only if such information could have been obtained under Swiss law.

³ If the information was obtained on the basis of a person's duty to cooperate, it may be used in criminal proceedings against that person only if the person consents to this or if such information could also have been obtained without his cooperation.

¹⁴ SR 172.021

Section 4a:¹⁵**Procedure with Deferred Notification of Persons entitled to Appeal****Art. 21a**

¹ Exceptionally, the FTA shall notify persons entitled to appeal about a request by means of a decree after the information has been transmitted if the requesting authority demonstrates that the purpose of the administrative assistance would be defeated and the success of its investigation would be thwarted by prior notification.

² If an appeal is filed against the decree, only a declaration of unlawfulness can be requested.

³ The FTA shall inform the information holders and authorities who were made aware of the request about the deferred notification. These persons and authorities may not inform persons entitled to appeal about the request until after their deferred notification.

⁴ Any person who wilfully or negligently violates the notification ban shall be liable to a fine not exceeding 10,000 francs.

⁵ The prosecuting authority and the authority passing judgment is the FTA. Article 7 paragraph 1 of the Federal Act of 22 March 1974¹⁶ on Administrative Criminal Law applies.

Section 5: Swiss Requests for Administrative Assistance**Art. 22**

¹ The interested tax authorities shall address their request for international administrative assistance to the FTA.

² The FTA examines the request and decides whether the requirements under the administrative assistance provisions in the applicable agreement are met. If the requirements are not met, the FTA shall notify the requesting authority of this in writing, and give it the opportunity to supplement its request in writing.

³ The FTA shall transmit the request to the competent foreign authority and monitor the administrative assistance procedure until its conclusion.

⁴ Decisions on Swiss requests for international administrative assistance may not be challenged by way of appeal.

⁵ The FTA shall transmit the information received from abroad to the interested tax authorities and at the same time notify them of the restrictions on the use of the transmitted information and of the confidentiality obligation under the administrative assistance provisions of the applicable agreement.

¹⁵ Inserted by No I of the Federal Act of 21 March 2014, in force since 1 Aug. 2014 (AS 2014 2309; BBl 2013 8369).

¹⁶ SR 313.0

⁶ Administrative assistance concerning bank information may be requested only if such information could be obtained under Swiss law.

Section 6: Final Provisions

Art. 23 Amendment of existing legislation

Amendments to existing legislation are set out in the Annex.

Art. 24 Transitional provision

Implementing provisions that are based on the Federal Decree of 22 June 1951¹⁷ on the Implementation of Intergovernmental Federal Conventions on the Avoidance of Double Taxation continue to apply for administrative assistance requests that have already been submitted when this Act comes into force.

Art. 24a¹⁸ Transitional provisions to the amendment of 21 March 2014

1 Article 6 paragraph 2bis and Article 14a apply to group requests submitted after 1 February 2013.

2 Article 14 paragraphs 1 and 2, Article 15 paragraph 2 and Article 21a of this Act as amended on 21 March 2014 also apply to administrative assistance requests already submitted by the time of entry into force of the amendment of 21 March 2014

Art. 25 Commencement

¹ This Act is subject to an optional referendum.

² The Federal Council will determine the commencement date.

Commencement date: 1 February 2013¹⁹

¹⁷ SR 672.2

¹⁸ Inserted by No I of the Federal Act of 21 March 2014, in force since 1 Aug. 2014 (AS 2014 2309; BBl 2013 8369).

¹⁹ Federal Council Decree of 16 Jan. 2013

Annex
(Art. 23)

Amendment of existing legislation

The enactments below are amended as follows:

...²⁰

²⁰ The amendments may be consulted under AS 2013 231.

