

General Communication with Tax Authorities in friendly or unfriendly ways

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National Report of Switzerland

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1. Communication in general

How does the General Communication with the Tax Authorities take place?

- a. Is a direct contact in between the taxpayer and the Tax Authorities possible/common/advisable?

A direct contact between the taxpayer and the Swiss tax authorities at cantonal | communal level as well as at federal level is possible. There is no legal or factual obligation for taxpayers to be represented at any level by a tax counsel or | and attorney-at-law.

However, a direct contact between the taxpayer and the tax authorities is only common with respect to smaller corporate structures and at cantonal | communal level for purposes of direct taxes (tax return, tax assessment, invoices etc.). As regards indirect taxes at federal level such as Swiss withholding tax, stamp and customs duties as well as VAT, a direct contact with the Swiss Federal Tax Administration is only common with regard to practical – and not legal – questions; for any legal questions, corporations generally rely on the advice of an external tax counsel and | or attorney-at-law who also acts as an intermediary for any communication between the Swiss Federal Tax Administration and the taxpayer.

There is no particular interest | advantage for a taxpayer to have a direct contact with tax authorities at any level; from experience, tax officials appreciate to directly discuss with a tax counsel and | or attorney-at-law, in particular with respect to technical and legal issues since they can be treated more efficiently amongst professionals (clear and focused description of facts, knowledge of legal framework and administrative practice etc.)

- b. How can the communication regarding special matters be described?

In Switzerland, special matters are in general managed by an (external) tax counsel and | or attorney-at-law from the very beginning and on behalf of a corporation. Tax authorities at all levels are disposed to provide oral information through telephone conversations on a no-name basis; further, tax professionals are used to touch base – directly and at a rather early stage – with tax authorities in order to clarify special matters in advance, in particular with regard to current administrative practice and (possible) new developments.

As a general rule, it can be said that tax officials at all levels are highly skilled, and many of them are actively involved in scientific discussions through publications and participation in workshops and seminars for tax

professionals; thus, communication with the Swiss tax authorities regarding special matters is efficient and profitable.

- c. Does it take place only in a written form or are meetings possible?

In Switzerland, communication between tax professionals and tax authorities at all levels is rather informal. In practice, it can be observed that tax authorities prefer to orally express their opinion on special matters rather than in writing.

Meetings with one or more tax authorities – if required – are possible, and they are frequent with respect to special matters for which a taxpayer intends to obtain an advance tax ruling (e.g. presentation of a relocation project or an important group restructuring at national | international level).

- d. Can the behaviour of the Tax Authorities in your country be described as all dominant, cooperative, customer-oriented or otherwise?

The overall behaviour of Swiss tax authorities at all levels can be described as cooperative and customer-oriented ('client' approach), which is mainly due to the small size and sufficient staffing of both the cantonal tax authorities and the Swiss Federal Tax Administration. Given the size of the Swiss tax authorities, tax professionals are in a position to establish regular and cooperative exchange with tax officials, which has a positive impact on the general climate between the tax authorities and their 'customers'.

In connection with the Swiss corporate tax reform – which has been initiated due to political pressure mainly from the EU over the last years – it can also be observed that Swiss corporate tax authorities at all levels have developed a particular awareness of the Swiss corporations' importance for Switzerland's future economic success; as a matter of fact, several tax officers – mainly from cantonal corporate income and capital tax authorities – are actively involved in the current legislative process to elaborate favorable tax solutions (license box system, notional interest deduction, step-up of asset base at change of status etc.) to replace the existing special corporate tax regimes.

On the other hand, a rather strict, formalistic and dominant behaviour – which is largely defended by the Swiss Federal Supreme Court – can be observed in recent times with the Swiss Federal Tax Administration in the field of Swiss withholding taxes on dividend payments; notification deadlines (instead of payment of the withholding tax) at national and international level are applied in a strict manner and late interest is levied without exception.

2. Agreements between taxpayers and tax authority

- a. Is there the possibility of a tax ruling and, if so, which costs can be expected?

Advance tax rulings are possible at all levels and for all kinds of direct corporate as well as indirect taxes. Swiss tax authorities do not charge any costs for evaluating | granting an advance tax ruling request regardless of the time and workforce required.

Although the workload for evaluating | granting advance tax rulings has been at a high level in recent years, neither the Swiss Federal Tax Administration nor the cantonal tax authorities are currently planning to introduce a fee system for the services provided in connection with tax rulings.

- b. What is the average time frame to get a tax ruling done?

The average time frame for an advance tax ruling to be processed at federal | cantonal level is about 4–6 weeks. Certain cantonal tax authorities have a rather strict deadline policy (e.g. Geneva: 6 weeks), whereas other cantonal tax authorities (e.g. Zug) are known for their particularly customer-oriented approach with short deadlines.

- c. Are these consultations binding and, if so, which possible remedies do exist?

Consultations of Swiss tax authorities in connection with an advance tax ruling request are – as any confirmation, advice or representation in Swiss public law – binding for the tax authority involved provided the following conditions pursuant to the so-called 'principle of confidence' are fulfilled:

- The tax authority has approved the advance tax ruling request (i) unconditionally, (ii) with regard to specific facts and specific persons and (iii) based on a comprehensive and correct description of the facts (full disclosure);
- The tax authority was competent to approve the advance tax ruling request or the taxpayer had sufficient reasons to believe that the tax authority was in fact competent to approve it;
- Any incorrectness – if applicable – of the approval was not sufficiently detectable for the taxpayer.

As regards the position of the taxpayer to be protected under a tax ruling, the 'principle of confidence' requires that he has – based on his trust in the advice – in good faith taken or omitted to take actions (e.g. relocation | non-relocation of a corporation or execution of a transaction) or incurred expenses which may not be reversed without negative effect.

- d. Once a tax ruling between all the parties concerned has been achieved, can one rely on it?

A taxpayer can rely on a confirmed advance tax ruling with a Swiss tax authority as far as the conditions as outlined above for the 'principle of confidence' are fulfilled. In this regard, the taxpayer has to pay particular attention to the following points:

- An advance tax ruling which is clearly in contradiction to the (unambiguous) wording of the respective Swiss tax laws has to be qualified as an invalid tax agreement.
- If the facts outlined in the advance tax ruling have not been implemented as described, the advance tax ruling does not provide for any protection.

In addition, the taxpayer has to be aware of the following:

- Any advance tax ruling which has been approved by a Swiss tax authority is being granted under the – at least implicit – *caveat* of any future change in the respective statutory laws, i.e. in the change of the 'legal basis'. A tax ruling does not protect a taxpayer from any future change of the 'legal basis'.
- It is disputed in Swiss tax literature whether a change of the 'legal basis' only refers to changes in the respective statutory laws or also to changes in case law or even in legal interpretation (administrative practice) by the tax authority involved. Further, the Swiss Federal Supreme Court seems to have a quite broad understanding with regard to a change of the 'legal basis'¹. However, it seems – at least – to be common understanding that a change of statutory laws leads to an immediate lapse of the binding effect of an advance tax ruling whereas mere changes in administrative practice should only lead to a change | revocation of the advance tax ruling for the future².
- It is important to note that the Swiss Federal Supreme Court has in several recent decisions expressed the view that Swiss tax authorities are only entitled to discuss and agree on 'factual issues' with taxpayers – as e.g. the valuation of real estate – and not on questions relating to the interpretation of tax laws, such interpretation of tax laws being of the

¹ In a decision of November 10, 2006 (2A.471/2005, c. 3.7.), which has been much criticised in Swiss tax literature, the Swiss Federal Supreme Court denied the protection based on the 'principle of confidence' in a case where case law | practice by the tax authorities was changed after a tax ruling but before the final assessment for the respective tax year was legally binding.

² Furthermore, Swiss tax literature confirms that an appropriate transition period should be granted in order to enable the taxpayer to reorganize and undo his 'dispositions', see MORF CATHERINE | MÜLLER ANDREAS | AMSTUTZ THERESE, Schweizer Steuerruling – Erfolgsmodell und Werthaltigkeit, ST 2008, p. 815 s.; WEBER-DÜRLER BEATRICE, Vertrauensschutz, Basle 1983, p. 132 s.

exclusive competence of the Swiss Federal Supreme Court³. However, Swiss tax literature does not share this point of view⁴.

e. What is the exact legal status of a tax ruling?

Swiss tax laws do not provide for a specific description of the legal status of an advance tax ruling. Pursuant to the general principles applicable in Swiss public law, an advance tax ruling does not qualify as a legal decision or a legal agreement in a strict legal sense.

In general, an advance tax ruling can be described as a confirmation from the tax authority that a specific tax qualification by the taxpayer with regard to specific facts is correct. This confirmation entails a so-called 'protection of confidence' according to the 'principle of confidence' in favor of the taxpayer; as a consequence it has – under the conditions as described above and subject to specific factual or legal changes – a binding effect for the tax authority.

f. Is it common in order to get a tax ruling that the taxpayer has to give up certain rights or explicitly agree to e.g. information exchange?

In order to obtain an advance tax ruling from a Swiss tax authority, a taxpayer has not to give up any procedural, formal or material rights, and he has not to agree to any specific administrative | procedural measures against himself in return for an advance tax ruling. According to Swiss tax law, a tax ruling – as outlined above – is not a legal (administrative) agreement; therefore, it does not entail any (contractual) performance from the taxpayer's side.

g. Is a tax ruling a public document or will it be treated confidentially by the tax authority? Does the taxpayer have an obligation to keep it confidential?

In Switzerland, an advance tax ruling is not a public document; due to the tax secrecy applicable both in direct and indirect tax matters, a tax authority which has granted an advance tax ruling to a taxpayer is prohibited to disclose such document to any person outside the tax administration unless explicitly permitted on a (sufficient) legal basis.

On the other hand, the taxpayer himself is free to disclose a tax ruling to any person | Swiss or foreign (tax) authority; there is no legal obligation for the

³ Decisions of Februar 2, 2010 (2C_296/2009, c. 3.3), of January 23, 2004 (2A.52/2003, c. 4.2.), of June 22, 2010 (2C.769/2009, c. 2.2.1 [*obiter dictum*]) and of October 17, 2011 (2C.350/2011, c. 2.3 [*obiter dictum*]).

⁴ See e.g. OESTERHELT STEFAN, Wann wird ein Ruling zum Steuerabkommen? Voraussetzungen an den Vertrauensschutz, ST 2013 | 11, p. 846.

taxpayer at any level and for any direct or indirect tax matters to keep an advance tax ruling confidential.

3. Remedies against decisions of the Tax Authorities

- a. Is it common that one has to litigate if a decision has been made by the Tax Authorities and which remedies do exist?

Since Swiss tax authorities have developed a widely recognized culture for granting advance tax rulings – and thus clarifying specific administrative practices or legal questions in advance – in all direct and indirect tax matters, it is not common that a taxpayer has to litigate. However, once a tax authority has issued a formal decision to the taxpayer for a tax amount being due, the taxpayer has to make use of the specific remedy applicable *ratione materiae* as provided in the respective tax | procedural law.

For corporate income and capital taxes, the taxpayer can file an objection with the assessing tax authority, which will reexamine its own decision (internal administrative procedure). Once this second decision has been taken by the assessing tax authority, the taxpayer can file an appeal with the competent cantonal court. The judgment of the competent cantonal court can be brought before the Swiss Federal Supreme Court (principle of *double instance*).

With regard to indirect taxes (Swiss withholding tax, stamp and customs duties as well as VAT), the taxpayer can file an objection with the Swiss Federal Tax Administration, which will reexamine its own decision (internal administrative procedure). Once this second decision has been taken by the Swiss Federal Tax Administration, the taxpayer can file an appeal with the Swiss Federal Administrative Court. The judgment of the Swiss Federal Administrative Court can also be brought before the Swiss Federal Supreme Court (principle of *double instance*).

- b. Which costs are to be expected in such a case?

The procedural costs (i.e. without any costs for the professional services rendered by an – external – tax counsel and | or attorney-at-law) for a taxpayer to expect in connection with the specific remedies are as follows:

- Objection with the assessing authority: For the reexamination of the decision the assessing tax authority generally does not charge any administrative fees.
- Appeal to a cantonal (administrative) court | Swiss Federal Administrative Court: The amount of court fees charged for an appeal to a

cantonal (administrative) court as well as to the Swiss Federal Administrative Court depends on the amount of disputed taxes, the complexity of a case and the time spent for rendering the respective decision | judgment. As a general rule, court fees amount to about 5–10% of taxes subject to appeal (however decreasing amounts and limited to a maximum fee). Court fees are – in general – only charged to the taxpayer to the extent he loses his case against the respective tax authority.

- Appeal to the Swiss Federal Supreme Court: The amount of court fees to be expected depends on the amount of taxes subject to appeal. As a general rule, the court fee is about 5–10% of the amount of disputed taxes (however decreasing amounts and limited to a maximum fee).

In case a taxpayer wins his case against a tax authority, the specific laws and regulations applicable with the tax administrations and courts involved provide for a – at least partial – refund of the costs for the professional services rendered by an – external – tax counsel and | or attorney-at-law, including travel expenses etc.

- c. Is it compulsory to have a lawyer in case of any remedy?

It is not compulsory for a taxpayer to be represented by a lawyer | tax counsel and | or attorney-at-law in case of any remedy against any Swiss tax authority and with respect to any kind of direct or indirect Swiss taxes.

- d. What timeframe can be expected in case of a remedy/litigation?

As in any other jurisdiction, the timeframe for a remedy | litigation to be processed by the assessing Swiss tax authorities and the Swiss courts involved very much depends on their workload and the complexity of the specific case.

As a general rule, the reexamination of a decision by the assessing tax authority takes about 1–2 months. Remedies with a cantonal (administrative) court take about 3–6 months. With regard to the Swiss Federal Administrative Court, a timeframe of at least 6 months for a judgment is to be expected. Finally, an appeal before the Swiss Federal Supreme Court may take about 1–2 years to be treated.

It is important to note that neither the assessing tax authorities nor any Swiss courts have to comply with a specific legal timeframe for rendering decisions | judgments in connection with a remedy. In general, Swiss courts have only a legal duty to report their 'performance' (i.e. the amount of cases treated during a year and pending cases at year end) to their supervisory body in order for the supervisory body to be able to take organizational measures against any (possible) work overload.

- e. Is it possible to postpone the payment of the tax debt as assessed by the tax authority until the end of a pending litigation with the tax authority? Will the tax authorities require guarantees for the postponement (Bank guarantees, mortgages etc.)?

In Swiss tax law, it is possible to postpone the payment of the tax debt as assessed by the tax authority until the end of a pending litigation. However, there is always a risk for the taxpayer of late interest being due (generally 5% p.a.) on the tax amount postponed if he definitely loses his case against the tax authority.

In case there is a risk for a tax receivable (direct or indirect taxes) not to be covered by reasons of non-enforceability of the final judgment (e.g. because the domicile of the taxpayer is outside Switzerland etc.), the tax authority is entitled to take a decision of seizure against the taxpayer (provision of a cash amount | bank guarantee or marketable securities), which includes the possibility of provisional debt enforcement procedures.

- f. Is it possible that the tax authorities submit a report to the public prosecutor to investigate on possible criminal tax offences and under what circumstances?

In case a tax authority discovers elements of a possible tax fraud committed by a corporation | individuals in connection with corporate income and capital taxes, the respective tax authority is obliged by Swiss tax law to immediately inform the public prosecutor to investigate the case.

As regards other Swiss direct or indirect taxes, there are no obligations for a tax authority to submit a report to the public prosecutor to investigate on possible criminal tax offences, and cases of tax evasion are generally treated by the tax authority itself. Further, there is no established administrative practice in Switzerland according to which a tax authority spontaneously – i.e. without any legal duty – provides the public prosecutor with a report | pieces of information on possible criminal tax offences.

- g. Is it possible to include a clause in an agreement to automatically amend this agreement in accordance with the outcome of a discussion or litigation with the tax authority (e.g. if an “at arms length payment” is not accepted as such by the tax authority or if interests are held to be dividends or a loan is seen to be a gift)?

According to Swiss private law, the interpretation of the terms contained in a contractual clause of an agreement can be specified. Therefore, from a point of view of Swiss private law, it is possible to provide for a clause in an agreement according to which the agreement – and the interpretation of its

terms – is being automatically amended to be in line with the outcome of a discussion or litigation with a tax authority.

4. Sanctions

a. What is the statute of limitations for tax related matters?

In Switzerland, the statute of limitations for tax related matters is as follows:

- Corporate income and capital taxes: The statute of limitations for the assessment of Swiss corporate income and capital taxes is 5 years after expiry of the respective tax period and can be extended by 5 years in specific cases provided in Swiss corporate income and capital tax legislation; the absolute statute of limitations is 15 years. For tax fraud in connection with Swiss corporate income and capital taxes, the statute of limitations is 7 years.
- Withholding taxes on dividend and interest payments: The statute of limitations with respect to withholding tax receivables on dividend and interest payments is 5 years; it can be extended by 5 years in specific cases provided in Swiss withholding tax legislation. The statute of limitations for withholding tax fraud as well as for withholding tax evasion is 7 years.
- Stamp duties: The statute of limitations for the assessment of Swiss stamp duties is 5 years; it can be extended by 5 years in specific cases provided in Swiss tax legislation regarding stamp duties. The statute of limitations for tax fraud as well as for tax evasion in connection with stamp duties is 7 years.
- Value added taxes: The statute of limitations for the assessment of a Swiss VAT receivable (import VAT etc.) is 5 years after expiry of the respective tax period. The absolute statute of limitations is 10 years. The statute of limitations for import VAT evasion and VAT fraud is 7 years.
- Customs duties: The statute of limitations for the assessment of a tax receivable in connection with customs duties is 5 years after expiry of the tax period in which the respective customs duties have become due. This deadline can be extended by 5 years in specific cases as provided in Swiss tax legislation regarding customs duties. The absolute statute of limitations is 15 years. The statute of limitations for tax evasion in connection with customs duties is 5 years.

- b. What is the typical sanction/amount of fines in your jurisdiction? Is there a different fine level for direct or indirect taxes?

According to Swiss tax laws, the typical sanction for tax evasion and tax fraud or any other illegal act committed with respect to direct and indirect taxes is a fine. The typical amount of fines is as follows:

- Corporate income and capital taxes: For tax fraud committed with respect to corporate income and capital taxes at federal and cantonal | communal level the typical fine is an amount of up to CHF 30'000 (imprisonment is also possible, but almost never applied). In cases of tax evasion, the fine is generally equal to the amount of taxes evaded (in severe cases, however, the fine can be up to the triple amount of taxes evaded).
- Withholding taxes on dividend and interest payments: For tax evasion committed in connection with withholding taxes on dividend and interest payments the typical fine is an amount of up to CHF 30'000 or – if higher – up to the triple amount of taxes evaded. For tax fraud committed with respect to withholding taxes on dividend and interest payments the typical fine is an amount of up to CHF 30'000.
- Stamp duties: For tax evasion or tax fraud committed in connection with stamp duties the typical fine is an amount of up to CHF 30'000.
- Value added taxes: For tax evasion consisting in a non-declaration of revenues subject to Swiss VAT | unjustified refund of Swiss VAT the typical fine is an amount of up to CHF 400'000. This amount can be up to CHF 800'000 in case the taxpayer reduces the VAT amount due to the disadvantage of the Swiss Confederation based on an intentional | negligent non-declaration of import of commodities or untrue | incomplete statements in connection with a VAT audit or administrative procedure.
- Customs duties: For any illegal acts committed in connection with customs duties (evasion of customs duties etc.) the typical fine is an amount of up to the quintuple value of the commodities involved. A tax fraud committed in connection with customs duties by a criminal group is subject to a monetary penalty or imprisonment of up to 5 years (however only applied in severe cases).

- c. Is it possible for a taxpayer to prevent tax penalties to be imposed should he/she be able to prove her good faith or reasonable interpretation of the law?

According to Swiss tax law, a taxpayer may prevent tax penalties for direct and indirect Swiss taxes if he is able to prove that he acted without any (even slight) negligence; in practice, however, tax administrations and courts often reduce a tax penalty under these circumstances, but there are only few cases

known in which a taxpayer has been able to prevent a tax penalty in its entirety.

- d. Is it possible to regularize your tax situation with reduced or no fines/sanctions?

Swiss tax laws offer a penalty-free voluntary disclosure to individuals in connection with indirect Swiss federal taxes such as withholding taxes on dividend and interest payments as well as stamp duties and customs duties, but not with regard to Swiss value added tax.

With respect to corporate income and capital taxes, Swiss tax laws do not provide for a penalty-free voluntary disclosure or reduced fines | sanctions. However, a corporation might reduce the overall fine | sanction in connection with a corporate income | capital tax fraud in case of active and full disclosure to the tax authorities or the public prosecutor (which is, however, not frequent in practice).

- e. May tax advisors/tax lawyers be held responsible by the tax authority for their advice to taxpayers?

According to Swiss tax laws, a tax advisor | attorney-at-law may be held responsible by the tax authority | public prosecutor for any – active – assistance to tax evasion and tax fraud committed in connection with direct and indirect taxes. In practice, cases of tax advisors attorneys-at-law being effectively held responsible by a tax authority are, however, not frequent.

5. Tax information exchange

- a. Does a tax information exchange on the EU level or OECD level happen and how does it take place?

Switzerland has – through its comprehensive net of double taxation treaties – established an active tax information exchange system with foreign countries both on the EU and the OECD level, with an increasing number of information exchange requests treated.

At current stage, the Swiss Confederation has entered into 42 double taxation treaties containing an exchange of information clause pursuant to art. 26 of the OECD model convention (information exchange upon request), out of which 36 – status as of January 1, 2014 – entered into force. Further, the Swiss Confederation recently entered into a number of tax information exchange agreements (TIEAs) | multilateral agreements on information exchange with foreign countries and is actively negotiating new | amended

double taxation treaties and TIEAs with other countries. Furthermore, the Swiss Federal Council decided in early February 2014 to accelerate political plans to unilaterally apply art. 26 of the OECD model convention with respect to all Swiss double taxation treaties not yet amended (i.e. exchange of information with all contracting states without formal amendment of the respective double taxation treaties).

The internal procedure for international tax information exchange (administrative assistance) is governed by the Swiss federal act on international exchange of information in tax matters, which entered into force on February 1, 2013 (the **FAEI**). Any international information exchange on tax matters is of the – exclusive – competence of the Swiss Federal Tax Administration, which is in charge of both the treatment of information requests issued by foreign tax authorities and the treatment of requests for information to foreign tax authorities.

According to the FAEI, information requests from a foreign tax authority have to be filed with the Swiss Federal Tax Administration either in one of the official Swiss languages (German | French | Italian) or in English. The following principles apply:

- The Swiss Federal Tax Administration does not treat requests for information that are filed by a contracting state in view of simply gathering information ('fishing expeditions') or based on pieces of information obtained by means of actions that are deemed punishable under Swiss law (e.g. CDs with stolen pieces of information that have been sold to a tax authority of a contracting state).
- If not otherwise agreed in the specific double taxation treaty, the requesting tax authority has to specify the identity of the person (name and address or any other means which help to identify the person) for which tax information is being requested.
- The requested pieces of information as well as their fiscal purpose have to be described. In addition, the information request has to contain a description of the specific reasons leading the tax authority to the conclusion that the requested pieces of information are located in the requested country (either with a tax authority or a third party).
- If available, the requesting tax authority has to specify the name and address of the presumed owner of information, and it also has to confirm that (i) the request is in compliance with the legal prescriptions and the administrative practice of the requesting state, (ii) the pieces of information requested could also be obtained within this legal framework | administrative practice and that (iii) all internal measures for obtaining the requested pieces of information have already been taken.

- b. Does your country enter into tax treaties that oblige to exchange information spontaneously, automatically and/or upon request?

At current stage, the Swiss Confederation only entered into double taxation treaties and TIEAs that oblige the Swiss Federal Tax Administration to exchange information upon request.

There are concrete political plans though to establish an automatic information exchange with several countries inside and outside the European Union. Further, in October 2013, the Swiss Confederation signed the OECD | Council of Europe multilateral convention on mutual administrative assistance in tax matters and is actively involved in all discussions within the OECD regarding the implementation of a worldwide system for automatic exchange of information in tax matters.

- c. Is the taxpayer notified in case information is exchanged with foreign tax authorities?

Once a request for information has been formally approved, the Swiss Federal Tax Administration collects the pieces of information directly with the taxpayer or a third party (e.g. a bank).

Under the current information system as set out in the FAEI, the taxpayer is obviously notified about the information request in all cases in which the Swiss Federal Tax Administration is directly asking him to provide the requested pieces of information; in these cases, the detailed content of the request is, however, only disclosed to the taxpayer (i) as far as required for obtaining the respective pieces of information from the taxpayer himself and (ii) provided the requesting state is not able to prove that considerations of secrecy shall prevail in the specific case.

If the Swiss Federal Tax Administration collects pieces of information from third parties, the taxpayer himself may not be immediately notified about the request for exchange of information, but only in connection with the final decision taken by the Swiss Federal Tax Administration to effectively exchange the requested pieces of information with the foreign tax authority.

The Swiss Federal Parliament is currently in the process of reviewing the FAEI in order to establish an information system according to which – under specific circumstances – the taxpayer would only be notified *ex post* of an information exchange (i.e. notification of the taxpayer after effective supply of the pieces of information to the contracting state). The outcome of these political discussions is expected for the second half of 2014.

d. Can the taxpayer object against an exchange of information?

The currently applicable FAEI obliges the Swiss Federal Tax Administration to issue a final decision to the taxpayer before the requested pieces of information are effectively forwarded to the requesting state. This final decision has to determine, *inter alia*, the elements of information to be exchanged; further, as explicitly stated in the FAEI, the final decision has to provide the legal justifications for the request of information exchange to be processed and the elements of information to be exchanged.

Once this final decision on the exchange of information has been issued, the taxpayer is entitled to file an appeal with the Swiss Federal Administrative Court, which then has to decide whether the internal (Swiss) requirements for the intended exchange of information are fulfilled. This judgment can also be brought before the Swiss Federal Supreme Court as far as the respective case raises a 'legal question of general relevance'.