

Administrative assistance after 2009

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The adoption of the OECD standard required a new procedural framework. After first applying an ordinance, Switzerland adopted the Federal Act on International Administrative Assistance in Tax Matters, the Tax Administrative Assistance Act, which entered into force on 1 February 2013. The Federal Tax Administration receives requests from foreign tax authorities, obtains the information from banks and other holders, informs the persons concerned and issues a final decision, which can be appealed to the Federal Administrative Court and, in cases of fundamental importance, to the Federal Supreme Court.¹

Two questions dominated the practice of the following years. The first concerned group requests, in which the requesting state does not name individual taxpayers. It describes a group according to a pattern of behaviour, such as clients of a certain bank who had not responded to a request to confirm their tax compliance. After the OECD had accepted such requests in its commentary on Article 26, Switzerland amended its law to permit them for information relating to the period after 1 February 2013. Group requests from the Netherlands and other states concerning clients of UBS who had refused to provide evidence of tax compliance were granted by the courts.²

The second question concerned requests based on stolen data. The Tax Administrative Assistance Act provides that Switzerland does not enter into a request based on information obtained through acts punishable under Swiss law. The courts have interpreted this rule narrowly. In a series of judgments, the Federal Supreme Court held that the rule applies above all where the requesting state has acted in bad faith, for example by actively purchasing stolen data, and that a request is admissible where the state obtained the data through ordinary channels, such as administrative assistance from a third state. On this basis, requests from India and France based on the HSBC data were the subject of extensive litigation.³

The most important case was the French request concerning UBS. In 2016, the French tax administration requested information on a large number of accounts, reportedly around forty thousand, on the basis of lists of account numbers that German authorities had seized in proceedings against UBS employees and passed on to France. The Federal Tax Administration granted the request. The Federal Administrative Court annulled the decision, while the Federal Supreme Court, in a judgment of July 2019, held that the request was admissible. The court relied on assurances given by the French authorities that the information would not be used in the criminal proceedings against UBS in France, which reflected the principle of speciality.⁴

These judgments marked the limits of the protection that remains for foreign clients. Swiss procedural law guarantees them notice of the request and a hearing before the information is transmitted, so that they can contest requests that lack foreseeable relevance or rest on an improper basis. Clients and their advisers have learned, however, that the courts apply these safeguards in a manner consistent with the international standard and that a successful challenge is the exception. The administrative assistance procedure has become a technical field in which the defence focuses on the scope of the information and its use.⁵

1 Notes

1. On the Federal Act of 28 September 2012 on International Administrative Assistance in Tax Matters (Tax Administrative Assistance Act, StAhiG, SR 651.1), in force since 1 February 2013, and the appeal procedure before the Federal Administrative Court and the Federal Supreme Court, see the federal legislation. To be verified. ↩
2. On the admissibility of group requests under the amended Art. 26 OECD commentary (2012) and the amendment of the StAhiG (in force since 1 August 2014), and the decisions of the Federal Supreme Court on group requests (e.g. the Dutch request concerning UBS clients, 2016), see the published decisions. Status to be verified. ↩
3. On Art. 7 lit. c StAhiG (no entry into requests based on information obtained through acts punishable under Swiss law) and its interpretation by the Federal Supreme Court with reference to the principle of good faith (e.g. judgments of 2017 and 2018 on requests based on HSBC data), see the published decisions. Status to be verified. ↩
4. On the French group request of May 2016 concerning about 40,000 UBS accounts based on data seized by German authorities, the decision

of the Federal Administrative Court (2018) and the judgment of the Federal Supreme Court of 26 July 2019 (2C_653/2018) admitting the request subject to the principle of speciality, see the published decisions. Case number and details to be verified. ↩

5. On the procedural rights of the persons concerned in the administrative assistance procedure (notification, right to be heard, appeal) and the restrictive case law on the foreseeable relevance and good faith of requests, see the published case law of the Federal Administrative Court and the Federal Supreme Court. To be verified. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/basel-administrative-assistance-after-2009