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Federal Department of Justice and Police

Amending Protocol to Treaty Request Agreement UBS-USA Signed

Provisional Application Allows Obligations Under International Law to be Fulfilled

Press Release, FDJP, 31.03.2010

Bern. On Wednesday the Federal Council approved the amending protocol which revises the UBS Agreement. The protocol was signed the same day in Washington. The provisional application of the revised UBS Agreement creates the necessary legal basis for the Swiss Federal Tax Administration (SFTA) to issue final decisions even in cases of continued and serious tax evasion, and permits Switzerland to fulfill the obligations under international law that it entered into with the original Agreement.

The amending protocol raises the treaty request agreement of August 19, 2009, to the same level as the bilateral double taxation convention. In accordance with the general rules of interpretation, the UBS Agreement now takes precedence over the older and more general convention, and permits Switzerland to provide treaty assistance in cases not only of tax fraud, but also of continued and serious tax evasion. The amending protocol remedies the shortcomings pointed out in the Federal Administrative Court's judgment of January 21, 2010, and ensures that Switzerland is able to fulfill its obligations under international law.

Formal Changes

The amending protocol states clearly that the UBS Agreement is not simply a competent authority interpretation, but constitutes an international agreement. Furthermore, a conflict of laws regulation determines that the UBS Agreement takes precedence over the bilateral double taxation convention and the attendant protocol in the event of any clash. Finally, the amending protocol lays down regulations for the provisional application of the revised Agreement.

Both Conditions Met

In cases of particular urgency and in order to safeguard important Swiss interests, under the terms of governmental and administrative organization law, the Federal Council may apply a treaty provisionally from the date on which it is signed. As the present case fulfills both the particular urgency and important interests conditions, the Federal Council feels that there are compelling reasons to exercise this authority.

- By signing the UBS Agreement of August 19, 2009, Switzerland undertook to process the US request for treaty assistance – i.e. that the SFTA would issue around 4,450 final decisions – within a year. Since the judgment of the Federal Administrative Court blocked the implementation of the original Agreement, the SFTA may issue final decisions in around 4,200 cases of suspected continued and serious tax evasion only on the basis of the legal foundation created by the amending protocol. Legal hearings, the examination of the corresponding statements and the sheer dimensions of the process mean that it would be impossible to complete all cases in parallel before the one-year deadline if application were delayed until after the June session of parliament.
- Should Switzerland fail to fulfill its obligations under international law, there would be a risk that the legal and sovereignty conflict with the USA – with its detrimental impact on Switzerland's financial center and economy – would flare up again.

Positive Parliamentary Decision Not Taken For Granted

The provisional application of the revised treaty request agreement does not take the Swiss parliament's decision for granted. Rather, it guarantees that the agreement that is submitted to parliament can actually be implemented after its approval. The Federal Council will issue its dispatch on the acceptance of the revised treaty request agreement to parliament in April. Parliament is entirely free in its decision. To ensure that this is the case, the Federal Council has instructed the SFTA not to hand over any client data to the USA until the UBS Agreement has been passed by parliament. Exceptions are made in those cases in which the person concerned has given express consent to the data transfer, or has reported to the US tax authority, the IRS, under the latter's voluntary disclosure program.

For more information

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