



Press Release – Communiqué de presse – Medienmitteilung – Comunicato stampa

St. Gallen, January 8, 2014

Julius Baer: IRS request for administrative assistance not sufficient for the disclosure of client data

Decision A-5390/2013 of January 6, 2014:

The Swiss Federal Tax Administration has unlawfully granted the request for administrative assistance submitted on April 17, 2013, by the IRS concerning the disclosure of bank account data of clients of Julius Baer. The facts, as set out in the IRS request for administrative assistance, do not meet the level of detail which is required for the demarcation between group requests, for which administrative assistance can be granted, and forbidden 'fishing expeditions'. Therefore, in its decision of January 6, 2014, the Federal Administrative Court affirmed the appeal of a Julius Baer client. As a consequence his bank account data must not be disclosed to the IRS.

On April 17, 2013, based on the Double Tax Agreement between Switzerland and the USA of 2 October 1996 (DTA Switzerland-USA 96), the IRS submitted a request for administrative assistance, in which it accused Julius Baer of having had employees that actively assisted their clients, subject to US tax law, in concealing their income and assets from the US tax authority. In the request, the IRS abstractly describes the alleged conduct of the Julius Baer clients. Furthermore, the request gives a concrete example: a married couple used debit cards linked to an account of a company which is domiciled in a country outside the US (domiciliary company).

According to the decision of the Federal Administrative Court, the above mentioned conduct and the example given in the request do not provide sufficient evidence that they are covered by the term 'tax fraud or the like' in article 26 of the DTA Switzerland-USA. In the example given, the IRS does neither state that the married couple has not respected the company's separate legal existence ('they have not played the game of the legal entity') nor that the withdrawal of cash served private purposes. Furthermore, the enclosed indictment against employees of Julius Baer ('Casadei Indictment') does not set forth any conduct that could be considered as 'tax fraud or the like'. Hence, the IRS request of April 17, 2013, does not give enough indication of 'tax fraud or the like'. Therefore, the appeal of the Julius Baer client has to be granted.

The Court reaffirms its case law that, under the DTA Switzerland-USA 96, administrative assistance shall not be granted for presumed tax evasion, even if high amounts are at stake. It also confirms that the mere failure to declare a bank account may be qualified - at the utmost - as a tax evasion, which is not subject to administrative assistance.

In a further proceeding (**A-5540/2013**), the Federal Administrative Court did not enter into the substance of an appeal by a Julius Baer client because the deadline for submission of the appeal against the final decision of the Swiss Federal Tax Administration (SFTA) had not been complied with. The Court states that the SFTA had rightfully sent its final decision to the authorised recipients which were mentioned in the official federal publication ('Bundesblatt'). The point in time at which the final decision was received by the authorised recipients is decisive for the issue of the final decision and marks the beginning of the period for the appeal. Since the Court did not enter into substance of the appeal, the bank account data of the appellant may be transferred to the US.

According to article 84a of the Federal Act of 17 June 2005 on the Swiss Federal Supreme Court (BGG), decisions of the Federal Administrative Court in the field of international administrative assistance in tax matters can be referred to the Federal Supreme Court within 10 days, if the legal question at stake is of fundamental importance or if certain circumstances outlined in article 84 paragraph 2 BGG which imply that the case is of special importance are present. The Federal Supreme Court will decide if that is the case or not. Within these restrictions, both described decisions of the Federal Administrative Court can be referred to the Federal Supreme Court.

The Swiss Federal Administrative Court

The Federal Administrative Court renders judgment in cases of appeal against decrees issued by Swiss federal authorities. In certain matters the court is also authorized to examine decisions rendered by cantonal authorities and issue judgments on complaints filed against cantonal decisions. Where the Federal Administrative Court is lower instance court, its judgments can be appealed before the Federal Supreme Court. Based in St. Gallen, the Federal Administrative Court accommodates five divisions and a General Secretariat. Approximately 75 judges and 320 members of staff constitute the largest Swiss federal court.

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