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Judgment A-4974/2016 of 25 October 2016

UBS granted party status in administrative assistance procedure initiated by French tax authorities

UBS has been granted party status in the ongoing administrative assistance procedures initiated by the French tax authorities. The Federal Administrative Court has granted UBS party status in light of the special circumstances in this case. As a result, the Federal Tax Administration must allow UBS to inspect the files and serve it with all final decisions.

On 11 May 2016, the French tax authorities, *Direction Générale des Finances Publiques (DGFP)*, submitted a request for administrative assistance to the Swiss Federal Tax Administration (FTA), requiring the transmission of data in relation to a five-digit quantity of client numbers including the domicile code for France. The French authorities had received the list of client numbers from German investigating authorities.

Generally speaking, the role of banks or fiduciaries in administrative assistance procedures – as so called information holders – is merely to provide the FTA with the requested client information. They do not have the right to take part in the procedure as a party. The Federal Administrative Court (FAC) has now concluded on the basis of three key points, that UBS – with view to the special circumstances of the case at hand – is directly affected and therefore has its own interest in having the FTA decisions cancelled. First, the compilation of the requested five-digit number of data sets creates an incomparably high workload to UBS. Second, the unusually high number of clients concerned by the request for administrative assistance could leave one with the impression that UBS systematically helped clients to evade taxes. Finally, there could also be the possibility that the data might be used in criminal proceedings already launched against UBS in France. Based on these three points, UBS has been granted party status so that it may itself assert its rights in the proceedings. The FTA must therefore allow UBS to inspect the files pertaining to the administrative assistance proceedings and serve it with all final decisions. However, UBS may only challenge the respective final decisions, not already the delivery order. The FAC has not dealt with the question whether the request for administrative assistance itself is admissible.

The decision can be appealed before the Swiss Federal Court within the restrictions of Art. 84a of the Swiss Federal Court Act of 17 June 2005 (i.e. if the legal question at stake is of fundamental importance or if the case is particularly significant for other reasons, a decision to be made by

the Swiss Federal Court).

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