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Media relations  
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## Media Release

regarding landmark judgment A-4889/2024 of 16 September 2025

### Personal dimension of the principle of specialty upheld

**The information obtained through international administrative assistance in tax matters may only be used in respect of the person concerned.**

The French tax authorities requested administrative assistance regarding a French national who claims to be resident in Switzerland. They suspect that he actually lives in France and has not declared all his bank accounts opened abroad, in Switzerland in particular. On 3 July 2024, the Federal Tax Administration (FTA) issued decision granting France administrative assistance. A third party whose name appeared on the documents to be communicated, appealed to the Federal Administrative Court (FAC) against this decision. He argued that, given the recent update to the Commentary on Article 26 of the OECD Model Tax Convention (OECD MC), there was a risk that the French authorities might not respect the personal dimension of the principle of specialty. In other words, the French authorities might also use the information received in relation to him.

#### Amendment to the OECD MC Commentary

On 19 February 2024, the OECD published a new version of its Commentary on the OECD MC stating that information received by a State through administrative assistance may be used not only in respect of the person against whom the request is made but also in respect of other persons. Since the provisions on the exchange of information between Switzerland and France are aligned with the OECD MC, the question arises about the impact of the recent update to the Commentary on the interpretation of the agreement between Switzerland and France.

To resolve this issue, the FAC relies on a recent judgment of the Federal Supreme Court<sup>1</sup> specifying that, in principle, the version of the Commentary in force when the agreement was concluded is authoritative. In its reasoning, the FAC points out that the principle of specialty in its personal dimension is part of the fundamental rules of administrative assistance. This principle is not an open term liable to evolve over time. Moreover, the new version of the Commentary does not reflect the practice of the Contracting States after the agreement was signed. Nor can this amendment be deemed a mere clarification. In this context, the new version of the Commentary cannot be relied upon in interpreting the

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<sup>1</sup> Federal Supreme Court decision [149 II 400](#)

agreement. The FAC thus upholds the personal dimension of the principle of specialty and partially accepts the appeal. The information received may only be used in respect of the person concerned and the FTA must inform the requesting State about the scope of this restriction in its decision.

This judgment may be appealed to the Federal Supreme Court within the restrictions of Article 84a of the Swiss Federal Supreme Court Act of 17 June 2005, that is, 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 Federal Supreme Court.

#### **Legal framework**

Administrative assistance in tax matters between Switzerland and France is based on Article 28 of the double taxation agreement between Switzerland and France and on Chapter XI of the addendum to that agreement. These provisions are aligned with the OECD Model Tax Convention on Income and Capital (OECD MC); the latter is accompanied by an article-by-article Commentary which is regularly updated.

When submitting an application for assistance, a State must indicate the identity of the person subject to a tax audit and may only use the information received in respect of that person. It may not use the information in respect of a third party unless such use is consistent with the law of the two States and provided the FTA authorizes it. This is the personal dimension of the principle of specialty which the Federal Supreme Court has reiterated in several recent judgments.<sup>2</sup>

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#### **About the Federal Administrative Court**

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 395 employees (334 FTE) and its 78 judges (70 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal administrative authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 6,500 judgments every year.

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<sup>2</sup> See Federal Supreme Court decisions [147 II 13](#) and [146 I 172](#)