



Medienmitteilung – Communiqué de presse – Comunicato stampa – Press Release

St. Gallen, 21 March 2016

Decision A-8400/2015 of 21 March 2016:

No administrative assistance in response to group requests from the Netherlands

In its decision A-8400/2015 of 21 March 2016, the Swiss Federal Administrative Court ruled that no administrative assistance may be provided in response to the group request submitted by the Dutch tax authorities on 23 July 2015. The protocol to the revised double tax treaty with the Netherlands clearly states that group requests not disclosing any names are not permitted. The appeal by a Dutch client of UBS is thus affirmed and therefore the details of his banking relationship may not be disclosed to the Dutch authorities.

On 23 July 2015, the Dutch tax authorities (“Belastingdienst”) submitted a request for administrative assistance in respect of UBS banking details and on the basis of the double tax treaty of 26 February 2010 between Switzerland and the Kingdom of the Netherlands (the “DTT-NL”). Rather than disclosing any client names in its request, the Belastingdienst merely indicated the criteria for identifying the UBS clients covered by the request.

The protocol to the DTT-NL clearly states that the treaty prohibits group requests that do not disclose any names. This protocol is an integral part of the DTT-NL and it is therefore binding under international law. Furthermore, neither the mutual agreement on the DTT-NL (concluded by the competent Swiss and Dutch authorities) nor the Commentary on the OECD Model Tax Convention can change anything in this regard. As the DTT-NL prohibits group requests that do not disclose any names, the corresponding provisions of the Swiss Tax Administrative Assistance Act of 28 September 2012 and the Swiss Tax Administrative Assistance Ordinance of 20 August 2014 do not apply. Switzerland is therefore not permitted to provide any administrative assistance in tax matters under the revised DTT-NL in response to group requests that do not disclose the names of the persons involved in the examination or investigation. For this reason, the Swiss Federal Tax Administration is not permitted to grant the request for administrative assistance submitted on 23 July 2015. The Swiss Federal Administrative Court has thus affirmed the appeal.

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).

Contact:

Katharina Zürcher, Deputy Head of Communication, Kreuzackerstrasse 12, P.O. Box, CH-9023 St. Gallen, Tel. +41 (0)58 705 26 72 / +41 (0)79 621 53 46, medien@bvger.admin.ch.