



## Basic information

Date: 30 August 2013

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# Signing of joint statement on tax dispute between Switzerland and United States

The solution to the tax dispute between Swiss banks and the US authorities is made up of three components: a joint statement from both governments, a unilateral US section (US Department of Justice programme) and a unilateral Swiss section (parameters in the form of a model authorisation for Swiss banks to take part in the US programme).

### Joint statement

In the joint statement signed by Switzerland and the United States on 29 August 2013, both governments undertook to take the necessary steps to end the tax dispute between Swiss banks and the US authorities.

- The US Department of Justice will make a programme available to Swiss banks which are not yet the target of a criminal investigation by the Department of Justice. The programme will enable banks to resolve legacy issues with untaxed assets within an orderly framework. The United States will submit requests for client data by way of ordinary administrative assistance based on the double taxation agreement (DTA) of 1996 and – as soon as it has been ratified – the DTA of September 2009.
- Switzerland welcomes the efforts of the Department of Justice to provide the programme and intends to draw the attention of Swiss banks to the terms of the programme and encourages them to consider participating therein. Switzerland is ensuring that Swiss banks can participate in the US programme in an effective manner within the scope of existing legislation. Moreover, Swiss banks are to make their US clients expressly aware of the voluntary self-declaration programme of the Internal Revenue Service (US tax authority). Switzerland intends to deal quickly with US requests for administrative assistance based on the double taxation agreement of 1996 and – as soon as it has been ratified by the United States – the double taxation agreement of 2009 and will allocate extra staff for that purpose.

The text of the joint statement is available on the FDF website: [www.efd.admin.ch](http://www.efd.admin.ch).

## **Federal Council's parameters for Swiss banks' cooperation with the US authorities (model authorisation)**

On 3 July 2013, the Federal Council set out the parameters for Swiss banks' cooperation with the US authorities to resolve the tax dispute within the scope of existing Swiss law, particularly data protection and employment law provisions, for example. On the basis of these parameters, banks have the option of applying for individual authorisation based on Article 271 of the Criminal Code.

The personal rights of potentially affected employees and third parties are to be taken into account by means of the obligation to provide information and the right to information. For current and former employees, provision has also been made for more extensive welfare obligations and adequate protection against discrimination as conditions for approval. Client data is not covered by authorisation in accordance with Article 271 of the Criminal Code. Such data may be supplied only by way of ordinary administrative assistance within the scope of the existing double taxation agreements with the United States.

All of the banks against which criminal proceedings have already been initiated are reliant on authorisation in the first instance. The Federal Council has already issued corresponding authorisations to a number of these banks. In addition, banks that participate in the newly launched US programme will require authorisation within the framework of this model authorisation. In order to dispel existing misunderstandings on the US side, the Federal Department of Finance has prepared binding guidance together with the Federal Department of Foreign Affairs and the Federal Department of Justice and Police.

Greater legal certainty would have been created with a legal basis, as the issue of public interest would have been clear in that case. However, such a law was rejected by parliament in June 2013. The law would also have provided better protection for third parties (fiduciaries, lawyers).

The text of the model authorisation and guidance is available on the FDF website: [www.efd.admin.ch](http://www.efd.admin.ch).

**US programme**

<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>	<b>Category 4</b>
Banks against which the DoJ has initiated a criminal investigation as of 29 August 2013 (date of programme publication)	Banks against which the DoJ has not initiated a criminal investigation but have reasons to believe that they have violated US tax law in their dealings with clients	Banks that have no reason to believe that they have not violated US tax law in their dealings with clients and that can have this demonstrated by an independent third party	Banks whose business is local in accordance with the FATCA definition
Delivery of individually requested information (particularly leaver statistics <u>without</u> client names)	Delivery of information on cross-border business with US clients, name and function of the employees and third parties concerned, anonymised data on terminated client relationships (incl. leaver statistics)	Data on total US assets under management and confirmation of an effective compliance programme in force	Certification of FATCA status; no further information
Conditions	No conditions	No conditions	No conditions
Fines: on an individual basis	Fines: on a flat-rate basis. Set scale of fine rates (%) applied to the untaxed US assets of the bank in question. <ul style="list-style-type: none"> <li>- Existing accounts on 01.08.2008: 20%</li> <li>- New accounts opened between 01.08.2008 and 28.02.2009: 30%</li> <li>- New accounts after 28.02.2009: 50%</li> </ul>	No fines	No fines
Generally, Deferred Prosecution Agreement (DPA)	Non-Prosecution Agreement (NPA)	Non-Target Letter	Non-Target Letter

- Outside of the US programme  
 Within the US programme

**Further details:**

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