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## **Federal Act on International Withholding Tax (IwTA)**

of 15 June 2012 (Status as of 1 January 2016)

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*The Federal Assembly of the Swiss Confederation,  
based on Article 173 paragraph 2 of the Federal Constitution<sup>1</sup>,  
and having examined the Federal Council Dispatch of 18 April 2012<sup>2</sup>,  
decrees:*

### **Section 1      General Provisions**

#### **Art. 1              Subject matter**

<sup>1</sup> This Act governs the implementation of agreements on cooperation in the area of taxation, in particular:

- a. the tax regularisation of relevant assets held with Swiss paying agents;
- b. the levying of a final withholding tax on capital income and disclosure of such capital income;
- c. the levying of a final withholding tax on inheritances and disclosure of such inheritances;
- d. measures to safeguard the agreement's purpose;
- e. penalties for failure to comply with the applicable agreement and with this Act;
- f. procedures.

<sup>2</sup> It applies to the agreements set out in the Annex. Switzerland may enter into agreements with any country, particularly those with which it has signed an investment protection agreement.

<sup>3</sup> It is subject to the derogations of individual applicable agreements.

AS 2013 27

<sup>1</sup> SR 101

<sup>2</sup> BBl 2012 4943

**Art. 2** Definitions

<sup>1</sup> For the purposes of this Act:

- a. *capital income* is income and gains on movable capital assets that are taxable under the applicable agreement;
- b. the *partner state* is the contracting state with which Switzerland has entered into an agreement;
- c. a *one-off payment* is one of two options available for tax regularisation of an existing business relationship with a Swiss paying agent, consisting of a one-off lump-sum tax levy;
- d. the *contracting party* is the holder of an account or deposit with a Swiss paying agent containing relevant assets that fall under the scope of the applicable agreement and of which a relevant person is the beneficial owner;
- e. an *authorised person* is a person under the applicable agreement who is entitled to choose between final withholding tax or disclosure in the case of an inheritance, or a person who is legally or contractually authorised to represent that person;
- f. a *tax finality payment* is a supplementary amount levied under the applicable agreement in addition to the retention under the Agreement on the Taxation of Savings between Switzerland and the EU<sup>3</sup> («Agreement on the Taxation of Savings»).

<sup>2</sup> The terms used in this Act are to be understood in accordance with the respective applicable agreement. This concerns in particular the following terms:

- a. Swiss paying agent;
- b. relevant person;
- c. appointed date;
- d. competent authority;
- e. relevant assets;
- f. account or deposit.

**Art. 3** Registration and de-registration as a Swiss paying agent

<sup>1</sup> Those who qualify as a Swiss paying agent under an agreement and hold relevant assets of a relevant person shall register of their own accord with the Swiss Federal Tax Administration (FTA).

<sup>2</sup> The registration of Swiss paying agents shall include:

- a. their name (company name) and place of domicile or residence. Legal entities or companies without legal personality that are based abroad according to

<sup>3</sup> Agreement of 26 October 2004 between the Swiss Confederation and the European Community providing for measures equivalent to those laid down in Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments (SR **0.641.926.81**).

their articles and sole proprietors resident abroad shall state their name (company name), their principal place of business and the address of their managers in Switzerland;

- b. the nature of their business;
- c. the date of commencement of business.

<sup>3</sup> Any person who no longer qualifies as a Swiss paying agent shall inform the FTA for de-registration.

## **Section 2      Tax Regularisation of Relevant Assets**

### **Art. 4              One-off payments**

<sup>1</sup> Swiss paying agents shall levy one-off payments in accordance with the applicable agreement.

<sup>2</sup> Where a relevant person has established a business relationship with a Swiss paying agent between appointed date 2 and appointed date 3 and opted for the one-off payment, the Swiss paying agent levies the one-off payment in accordance with the applicable agreement on appointed date 4 at the earliest but no later than 12 months after appointed date 3. Where the previous paying agent fails to submit the required information within 12 months following appointed date 3 and where the relevant person or other contracting party has not initiated civil proceedings against the previous paying agent, the new Swiss paying agent shall proceed in the same manner as if the relevant person had not complied with his or her duties.

<sup>3</sup> The relevant person or other contracting party may object in writing to the certificate produced by the Swiss paying agent regarding the one-off payment within 30 days of notification. The Swiss paying agent and the relevant person or other contracting party shall endeavour to come to a mutually acceptable solution within the terms of the applicable agreement. Within 60 days of the written objection being submitted, the Swiss paying agent shall either produce a new certificate or confirm the validity of the original certificate.

<sup>4</sup> A certificate is considered approved if the relevant person or other contracting party does not apply in writing to the FTA for a ruling within 30 days of notification of the new certificate or confirmation of validity of the original certificate. An appeal against the FTA's ruling is governed by the general provisions on the administration of federal justice.

### **Art. 5              Transfer to the FTA**

<sup>1</sup> Swiss paying agents shall transfer the one-off payments levied to the FTA by the deadlines set out in the applicable agreement.

<sup>2</sup> They shall submit the final statement to the FTA no later than 14 months after appointed date 3.

**Art. 6** Disclosure

<sup>1</sup> Where a relevant person or other contracting party has given his or her express authorisation, the Swiss paying agent shall disclose the information set out in the applicable agreement to the FTA by the deadlines set out in the agreement.

<sup>2</sup> Such disclosure shall be made without authorisation if so provided for in the applicable agreement.

<sup>3</sup> Where a relevant person has established a business relationship with a Swiss paying agent between appointed date 2 and appointed date 3 and opted for voluntary disclosure, the Swiss paying agent shall disclose the information in accordance with the applicable agreement on appointed date 4 at the earliest but no later than 12 months after appointed date 3. Where the previous paying agent fails to submit the required information within 12 months of appointed date 3 and where the relevant person or other contracting party has not initiated civil proceedings against the previous paying agent, the new Swiss paying agent shall proceed in the same manner as if the relevant person had not complied with his or her duties.

**Art. 7** Transfer to partner states

The FTA shall transfer the one-off payments received and report the disclosures to the competent authorities of the partner states by the deadlines set out in the applicable agreement.

**Art. 8** Statutory limitation

<sup>1</sup> The right to require the Swiss paying agent to transfer a one-off payment or report a disclosure shall expire five years after the end of the calendar year in which the one-off payment was to be transferred or the disclosure reported.

<sup>2</sup> The statutory limitation period shall be interrupted whenever a Swiss paying agent is notified of any official action pertaining to the enforceability of the one-off payment or disclosure. Once a statutory limitation period has been interrupted, a new limitation period shall begin to run.

<sup>3</sup> The statutory limitation period shall expire no later than 15 years after the end of the calendar year in which the one-off payment was to be transferred or the disclosure reported.

**Art. 9** Subsequent identification of a relevant person

<sup>1</sup> Where a relevant person is subsequently identified as such by the Swiss paying agent, the Swiss paying agent shall immediately notify this person or other contracting party in writing.

<sup>2</sup> The relevant person or other contracting party may send the FTA a written request for tax regularisation of the relevant person's relevant assets in accordance with the applicable agreement within three months of such notification being made.

<sup>3</sup> The request shall include:

- a. the option chosen for tax regularisation in accordance with the agreement;
- b. details on the availability of information needed for tax regularisation.

**Art. 10** Swiss paying agents' duty to cooperate

Where the competent authority of the partner state has submitted a request to the FTA, the Swiss paying agent shall:

- a. cooperate in verifying the authenticity of a certificate;
- b. provide the FTA with further information for the identification of a relevant person who has been reported to the competent authority of the partner state.

**Art. 11** Refund of expense allowance

<sup>1</sup> Where the relevant person obtains a refund for a wrongly levied one-off payment from the competent authority of the partner state, the relevant person is entitled to claim a refund of the expense allowance deducted where such has been agreed with the partner state and the competent authority of the partner state has not refunded this to the relevant person.

<sup>2</sup> Requests for a refund of the expense allowance shall be submitted to the FTA in writing within six months after the refund decision by the partner state.

**Section 3** Levying of Final Withholding Tax

**Art. 12** Principles

<sup>1</sup> Swiss paying agents levy a final withholding tax on capital income in accordance with the applicable agreement.

<sup>2</sup> Where a Swiss paying agent becomes aware of the death of a relevant person, it shall freeze the relevant assets of which the relevant person was the beneficial owner and levy a final withholding tax in accordance with the applicable agreement.

**Art. 13** Freezing of relevant assets in inheritance cases

<sup>1</sup> The authorised person or other person with a legitimate interest may object in writing to the Swiss paying agent's decision to freeze the relevant assets. The Swiss paying agent and the authorised person or other person shall endeavour to come to a mutually acceptable solution within the terms of the applicable agreement. Within 60 days of this written objection being submitted, the Swiss paying agent shall contact the authorised person or other person in writing to either confirm the freezing of the relevant assets or inform him or her of the cancellation of the freezing.

<sup>2</sup> The authorised person or other person may apply in writing to the FTA for a ruling within 30 days of the freezing of relevant assets being confirmed. An appeal against

the FTA's ruling is governed by the general provisions on the administration of federal justice.

#### **Art. 14**      Levying of tax

<sup>1</sup> Within 30 days of notification, the relevant person, authorised person or other contracting party may object in writing to the relevant receipt regarding the final withholding tax produced by the Swiss paying agent. The Swiss paying agent and the relevant person, authorised person or other contracting party shall endeavour to come to a mutually acceptable solution within the terms of the applicable agreement. Within 60 days of the written objection being submitted, the Swiss paying agent shall either produce a new receipt or confirm the validity of the original receipt.

<sup>2</sup> A receipt is considered approved if the relevant person, authorised person or other contracting party does not apply in writing to the FTA for a ruling within 30 days of notification of the new receipt or confirmation of validity of the original receipt. An appeal against the FTA's ruling is governed by the general provisions on the administration of federal justice.

<sup>3</sup> A tax that has been wrongly levied may be rectified by the Swiss paying agent within five years if it is ensured that neither a tax credit nor a refund has been or will be claimed in the partner state in respect of the corresponding capital income or inheritance case.

#### **Art. 15**      Transfer to the FTA

<sup>1</sup> Swiss paying agents shall transfer the tax levied on capital income to the FTA within 30 days of the end of each quarter.

<sup>2</sup> With the transfer, they shall declare how the tax is to be allocated to the different categories of capital income in accordance with the applicable agreement.

<sup>3</sup> In an inheritance case, they shall transfer the tax levied to the FTA by the deadlines set out in the applicable agreement. At the same time, they shall send the FTA the information set out in the applicable agreement.

#### **Art. 16**      Disclosure

<sup>1</sup> Where a relevant person, authorised person or other contracting party has given his or her express authorisation, the Swiss paying agent shall disclose the information set out in the applicable agreement to the FTA by the deadlines set out in the agreement.

<sup>2</sup> Such disclosure shall be made without authorisation if so provided for in the applicable agreement.

<sup>3</sup> Authorisation for disclosure of capital income may be revoked by:

- a. the relevant person or his or her legal successors;
- b. the other contracting party or his or her legal successors.

<sup>4</sup> Such authorisation shall remain valid until the Swiss paying agent receives express revocation thereof. Revocation shall only be valid if the person issuing such revocation assures the Swiss paying agent of payment of the tax due in place of disclosure.

<sup>5</sup> Authorisation for disclosure in an inheritance case is irrevocable.

<sup>6</sup> The Swiss paying agent may revoke a disclosure already made until the deadline set out in the applicable agreement for the disclosure of information to the FTA. If a tax has to be levied in this case, the Swiss paying agent shall transfer this immediately to the FTA.

#### **Art. 17**            Transfer to partner states

The FTA shall transfer the tax received and the disclosures and other information to the competent authorities of the partner states by the deadlines set out in the applicable agreement.

#### **Art. 18**            Statutory limitation

<sup>1</sup> The right to require the Swiss paying agent to transfer the tax or report a disclosure shall expire five years after the end of the calendar year in which the tax was to be transferred or the disclosure reported.

<sup>2</sup> The statutory limitation period shall be interrupted whenever a Swiss paying agent is notified of any official action pertaining to the enforceability of the tax or disclosure. Once a statutory limitation period has been interrupted, a new limitation period shall begin to run.

<sup>3</sup> The statutory limitation period shall expire no later than 15 years after the end of the calendar year in which the tax was to be transferred or the disclosure reported.

#### **Art. 19**            Amendment of tax rates

<sup>1</sup> The tasks arising from the agreements concerning the amendment of tax rates shall be performed by the State Secretariat for International Financial Matters (SIF).

<sup>2</sup> Amendments of the tax rates set out in the agreements shall be submitted to the Federal Council for approval.

<sup>3</sup> The FTA shall publish all tax rate amendments without delay in cooperation with SIF and ensure that all registered Swiss paying agents are informed of these amendments.

### **Section 4      Tax Finality Payment**

#### **Art. 20**

<sup>1</sup> Where the applicable agreement provides for a tax finality payment, the Swiss paying agent shall deduct a tax finality payment on the basis of assessment used for the

retention under the Agreement on the Taxation of Savings<sup>4</sup>. It shall correspond to the difference between the tax rate set out in the agreement and the rate of the retention.

<sup>2</sup> The tax finality payment shall be calculated and deducted in Swiss francs. Where the interest payment is paid in another currency, it shall be converted using the rate applicable on the date of client settlement.

<sup>3</sup> Swiss paying agents shall transfer the tax finality payments levied to the FTA annually no later than 31 March of the year following the interest payment.

<sup>4</sup> The FTA shall transfer the tax finality payments received to the competent authorities of the partner states annually no later than six months after the end of the Swiss tax year.

<sup>5</sup> Articles 14 and 18 apply *mutatis mutandis*.

## Section 5

### Common Provisions for Tax Regularisation, Levying of Final Withholding Tax and Tax Finality Payment

#### Art. 21 Organisation and procedure

<sup>1</sup> The FTA shall ensure the correct application of the provisions of the agreements and of this Act, unless otherwise specified herein.

<sup>2</sup> It shall issue all rulings and take all decisions necessary for the application of these provisions.

<sup>3</sup> It may prescribe the use of certain forms in hardcopy or electronic format and issue directives.

<sup>4</sup> Outside the federal financial statements, the following shall be entered in balance-sheet accounts:

- a. the transfers made by the Swiss paying agents and the implementation vehicle to the FTA, unless these are expense allowances (Art. 11) or interest on late payments (Art. 24);
- b. the transfers by the FTA to the competent authority of the partner states.<sup>5</sup>

#### Art. 22 Statistics

<sup>1</sup> The FTA shall compile the statistics required for fulfilling its legal obligations.

<sup>2</sup> It shall publish a summary of its statistics.

<sup>4</sup> SR 0.641.926.81

<sup>5</sup> Inserted by Annex No 2 of the Federal Act of 19 June 2015 (Optimisation of New Accounting Model), in force since 1 Jan. 2016 (AS 2015 4009; BBl 2014 9329).



**Art. 23**           Obligation to provide information

Swiss paying agents shall inform the FTA of all facts of relevance for the implementation of the agreements and of this Act.

**Art. 24**           Interest on late payments

<sup>1</sup> One-off payments, final withholding taxes and tax finality payments that are transferred late to the FTA shall incur default interest without a reminder, calculated from the date of expiry of the deadlines set out in this Act up to the date of receipt.

<sup>2</sup> The Federal Department of Finance (FDF) shall determine the rate of interest.

**Section 6      Relationship to Other Taxes****Art. 25**

<sup>1</sup> The Swiss paying agent shall be entitled to a refund of the anticipatory tax on capital income from which a final withholding tax has been deducted in accordance with the applicable agreement. An exception shall be made for the non-recoverable anticipatory tax (residual tax) in accordance with the double taxation agreement between Switzerland and the country of residence of the relevant person. The Swiss paying agent shall claim a refund of the anticipatory tax from the FTA in its own name and on the account of the relevant person. It may not issue to the relevant person a certificate regarding the deduction of the anticipatory tax.

<sup>2</sup> The Swiss paying agent may claim a refund from the FTA of the anticipatory tax on a monthly basis after expiry of the calendar month in which the claim for the anticipatory tax arose.

<sup>3</sup> The FTA may set shorter settlement deadlines for anticipatory tax refunds.

**Section 7      Upfront Payment by Swiss Paying Agents****Art. 26**           Execution of upfront payment

<sup>1</sup> Where the applicable agreement provides for an upfront payment, Swiss paying agents shall arrange for the formation of an implementation vehicle which shall manage on their behalf all rights and administrative obligations arising in conjunction with the execution of the upfront payment.

<sup>2</sup> The implementation vehicle shall not be liable for obligations under the applicable agreement and this Section, subject to the provisions of paragraph 3. It shall inform the FTA of all facts of relevance to the implementation of this Section.

<sup>3</sup> The Federal Council shall specify the date on which the upfront payment to the FTA becomes due. It shall also specify the deadline by which the implementation vehicle shall issue an irrevocable loan commitment to the FTA. Where the amount of the irrevocable loan commitment is lower than the upfront payment set out in the applicable

agreement, the implementation vehicle shall inform the FTA, before expiry of this deadline, which Swiss paying agents have participated and how much they have contributed to the upfront payment.

<sup>4</sup> Where the upfront payment set out in the applicable agreement has not been paid in full by the deadline set by the Federal Council, the FTA shall issue the payment orders necessary for timely execution of the upfront payment.

<sup>5</sup> It shall issue payment orders to Swiss paying agents accounting for more than 0.5% of the retention levied under the Agreement on the Taxation of Savings<sup>6</sup> in relation to the partner state. The share determined on the basis of the last statistics furnished by paying agents to the FTA prior to the applicable agreement being signed is decisive. The upfront payment shall be divided among these paying agents based on their respective share.

<sup>6</sup> The FTA shall not issue any payment orders to those paying agents participating in the implementation vehicle if the contribution made by the implementation vehicle fully covers the total contributions payable by such paying agents to the upfront payment. Otherwise, the FTA shall deduct the contribution already paid by a paying agent from the corresponding payment order, provided that it has reliable knowledge that the contribution has been paid.

<sup>7</sup> The FTA shall transfer to the Swiss paying agents or the implementation vehicle the amount of the one-off payments offset against the upfront payment in proportion to their share in the upfront payment.

#### **Art. 27** Sureties and procedural rules

<sup>1</sup> Where the contribution is deemed to be at risk, the FTA may require security for the upfront payment or part thereof even before it becomes due. It shall specify in the security order the amount to be secured and the office with which the security is to be deposited.

<sup>2</sup> The office receiving the security shall be authorised to release it only if so directed by a legally binding court order or if the Swiss paying agent in question and the FTA jointly submit a written declaration to this effect.

<sup>3</sup> An appeal against security orders from the FTA may be filed with the Federal Administrative Court. The appeal shall not have any suspensive effect.

#### **Art. 28** Shortfall

<sup>1</sup> Where the executed upfront payment cannot be fully offset against one-off payments, the FTA shall issue the necessary payment orders. These shall be addressed to Swiss paying agents accounting for more than 0.01% of the retention levied under the Agreement on the Taxation of Savings<sup>7</sup> in relation to the partner state. The share determined on the basis of the last statistics furnished by paying agents to the FTA prior to the applicable agreement being signed is decisive.

<sup>6</sup> SR 0.641.926.81

<sup>7</sup> SR 0.641.926.81

<sup>2</sup> The part of the upfront payment that is not offset shall be divided among these paying agents based on their respective share. Where a paying agent has contributed to the upfront payment, the difference between this contribution and the amounts transferred in accordance with Article 26 paragraph 7 shall be deducted from this share.

<sup>3</sup> The FTA shall transfer the amounts collected to the paying agents such that they cover the shortfall in accordance with their shares under paragraph 1.

<sup>4</sup> Article 38 applies mutatis mutandis.

## **Section 8 Relevant Assets Withdrawn from Switzerland**

### **Art. 29 Competent authority of Switzerland**

The tasks arising from the agreement concerning relevant assets withdrawn from Switzerland shall be performed by SIF.

### **Art. 30 Data collection regarding destinations**

<sup>1</sup> Where the applicable agreement provides for the partner state to be informed of the destination states or jurisdictions of withdrawn relevant assets, Swiss paying agents shall provide SIF with the following statistical information no later than nine months after appointed date 3:

- a. the number of relevant persons who closed their account or deposit between the date of signature of the applicable agreement and appointed date 3, broken down by destination state or jurisdiction to which the relevant assets were transferred;
- b. the volume of relevant assets transferred by relevant persons who closed their account or deposit between the date of signature of the applicable agreement and appointed date 3, broken down by destination state or jurisdiction to which the relevant assets were transferred.

<sup>2</sup> Where a relevant person transfers the relevant assets held in his or her account or deposit at the date of signature to several states or jurisdictions, then:

- a. for the purposes of counting the number of relevant persons, they are assigned to the state or jurisdiction to which they transferred the highest amount;
- b. for the purposes of counting the volume, the transferred relevant assets are assigned to the states and jurisdictions to which they were transferred.

<sup>3</sup> Swiss paying agents shall compile this data on the basis of the value of the relevant assets on appointed date 2.

## **Section 9 Measures to Safeguard the Agreement's Purpose**

### **Art. 31 Requests for information**

<sup>1</sup> Requests from a partner state shall be made in writing in one of the official languages of Switzerland or in English and include the details specified in the applicable agreement.

<sup>2</sup> The FTA shall inform the competent authority of the partner state in writing if these requirements are not met, and give it the opportunity to supplement its request in writing.

### **Art. 32 Procurement of information**

<sup>1</sup> The FTA shall require banks and other Swiss paying agents registered with the FTA to disclose the details specified in the applicable agreement. It shall prescribe a deadline for this purpose.

<sup>2</sup> Banks and other Swiss paying agents registered with the FTA shall inform the FTA of whether the person named in the request is the beneficial owner of an account or deposit. They shall transmit all relevant information that is in their possession or under their control.

<sup>3</sup> The competent authority of the partner state shall not be entitled to inspect files or be present during proceedings in Switzerland. Specifically, it may not conduct onsite audits by itself at banks or other Swiss paying agents registered with the FTA.

<sup>4</sup> Information procurement costs shall not be reimbursed.

### **Art. 33 Notification of persons entitled to appeal**

Where the existence of an account or deposit must be disclosed under the applicable agreement, the person named in the request and other persons assumed on the basis of the files to be entitled to appeal under Article 48 of the Administrative Procedure Act of 20 December 1968<sup>8</sup> (APA) shall be informed about the request for information by the FTA.

### **Art. 34 Information to determine the number of admissible requests**

<sup>1</sup> The FTA shall compile the statistics required for fulfilling its legal obligations in relation to safeguarding the agreement's purpose.

<sup>2</sup> There shall be no right to access this information.

### **Art. 35 Applicable procedural law**

Unless otherwise specified in this Section, the tax administrative assistance legislation applies *mutatis mutandis*.

<sup>8</sup> SR 172.021

## Section 10 Audits and Procedural Rules

### Art. 36 Audits

<sup>1</sup> The FTA shall carry out audits to assess whether Swiss paying agents fulfil their obligations under the agreements.

<sup>2</sup> For the purpose of clarifying the facts, it may:

- a. inspect the books, receipts and other documents of Swiss paying agents on site or order the surrender thereof;
- b. obtain information in writing and verbally;
- c. summon representatives of Swiss paying agents for questioning.

<sup>3</sup> Where the FTA determines that a Swiss paying agent has not or has inadequately fulfilled its obligations, it shall give it an opportunity to comment on the deficiencies found.

<sup>4</sup> Where the Swiss paying agent and the FTA cannot reach an agreement, the FTA shall issue a ruling.

<sup>5</sup> On request, the FTA shall issue a declaratory ruling on:

- a. the status of paying agent;
- b. the basis for levying the one-off payments, the final withholding tax or the tax finality payment;
- c. the content of the disclosures in accordance with Article 6 or 16;
- d. the content of certificates.

<sup>6</sup> The FTA shall draw up an annual summary report outlining the main findings of the audits performed during the previous calendar year. It shall formulate the report such that the individual Swiss paying agents cannot be identified. SIF shall forward the report to the competent authority of the partner state and publish a summary of this report.

### Art. 37 Applicable procedural law

Unless otherwise specified in this Act, the APA<sup>9</sup> applies.

### Art. 38 Legal remedies

<sup>1</sup> Appeals against rulings issued by the FTA in accordance with this Section may be filed in writing within 30 days of such ruling being issued.

<sup>2</sup> The appeal shall include the motions and set out the grounds on which it is based.

<sup>3</sup> Where an appeal has been validly filed, the FTA shall examine the ruling without being bound by the motions submitted and issue a substantiated appeal decision.

<sup>9</sup> SR 172.021

<sup>4</sup> A complaint against the FTA's appeal decision is governed by the general provisions on the administration of federal justice.

#### **Art. 39** Confidentiality obligation

<sup>1</sup> Any person entrusted with the enforcement of the provisions of agreements and this Act or who is involved in their enforcement shall remain silent towards authorities and private individuals about the findings of which they become aware in the course of their official work and shall refuse access to official files.

<sup>2</sup> The FTA is not obliged to maintain confidentiality when:

- a. reporting disclosures to partner states;
- b. providing information in the context of the measures to safeguard the agreement's purpose.

<sup>3</sup> Furthermore, there is no confidentiality obligation:

- a. with respect to judicial and administrative bodies that have been authorised in a specific case by the FDF to obtain official information from the authorities entrusted with the enforcement of this Act;
- b. where violations of federal or cantonal administrative laws or the Swiss Criminal Code<sup>10</sup> (SCC) have been established, if the FDF grants authorisation to report;
- c. where a legal basis therefor exists in federal legislation.

<sup>4</sup> Findings relating to third parties made in the course of an audit of a Swiss paying agent in accordance with Article 36 paragraph 2 may be used only for the implementation of the applicable agreement.

<sup>5</sup> Bank client confidentiality and other client and professional confidentiality protected by law shall be maintained.

### **Section 11 Criminal Law Provisions**

#### **Art. 40** Evasion, breach of disclosure obligation

<sup>1</sup> Unless Articles 14 to 16 of the Federal Act of 22 March 1974<sup>11</sup> on Administrative Criminal Law (ACLA) apply, a fine not exceeding 250,000 francs shall be imposed on any person who wilfully, for their own benefit or the benefit of another person:

- a. commits tax evasion by:
  1. failing to fulfil their obligation to levy the one-off payment, final withholding tax or tax finality payment, or
  2. failing to transfer the one-off payments, final withholding taxes or tax finality payments to the FTA;

<sup>10</sup> SR 311.0

<sup>11</sup> SR 313.0

- b. breaches their disclosure obligations in accordance with Article 6 or 16.

<sup>2</sup> Where such an offence is committed through negligence, a fine not exceeding 100,000 francs shall be imposed.

**Art. 41**            Endangerment of the one-off payment, final withholding tax or tax finality payment and disclosure

A fine not exceeding 20,000 francs shall be imposed on any person who wilfully or through negligence endangers the implementation of the applicable agreement and this Act by:

- a. failing to fulfil the obligation to register in accordance with Article 3;
- b. failing to fulfil the obligation to submit lists and accounts, provide information and present receipts in the process for levying the one-off payment, the final withholding tax or the tax finality payment or for reporting disclosures;
- c. drawing up incorrect accounts or providing incorrect information as the person obliged to levy the one-off payment, final withholding tax or tax finality payment or to report disclosures;
- d. failing to fulfil the obligation to keep proper accounts and preserve business records and receipts; the right to prosecute under Article 166 SCC<sup>12</sup> is reserved;
- e. impeding, hindering or preventing the orderly performance of an audit or other official inspection; the right to prosecute under Articles 285 and 286 of the SCC is reserved;
- f. failing to meet the requirements in relation to the transfer of the one-off payment, the final withholding tax, the tax finality payment or reporting disclosures.

**Art. 42**            Administrative offences

A fine not exceeding 5,000 francs shall be imposed on any person who wilfully or through negligence:

- a. contravenes the applicable agreement, this Act, an implementing ordinance or general directives;
- b. violates an official order issued to him or her referring to the penalties under this Article.

**Art. 43**            Procurement of information to safeguard the agreement's purpose

Where a bank or other Swiss paying agent registered with the FTA wilfully fails to comply with an enforceable order to transmit information issued by the FTA referring to the penalties under this provision, it shall be liable to a fine not exceeding 10,000 francs.

<sup>12</sup> SR 311.0

**Art. 44** Procedure

Unless otherwise stated in this Act, ACLA<sup>13</sup> applies to violations of the criminal law provisions of this Act. The prosecuting authority and the authority passing judgment is the FTA.

**Section 12 Final Provisions****Art. 45** Implementing provisions

The Federal Council shall issue the implementing provisions.

**Art. 46** Amendment of existing legislation

...<sup>14</sup>

**Art. 47<sup>15</sup>****Art. 48** Referendum and commencement

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council shall determine the commencement date.

Commencement date: 20 December 2012<sup>16</sup>

<sup>13</sup> SR **313.0**

<sup>14</sup> The amendment can be consulted under AS **2013** 27.

<sup>15</sup> This art. is now obsolete.

<sup>16</sup> BRB of 30 November 2012.



*Annex*  
(Art. 1 para. 2)

## Agreements to which this Act applies

- 1.<sup>17</sup> ...
2. Agreement of 6 October 2011<sup>18</sup> between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on cooperation in the area of taxation.
3. Agreement of 13 April 2012<sup>19</sup> between the Swiss Confederation and the Republic of Austria on cooperation in the areas of taxation and the financial market.

<sup>17</sup> This point is now obsolete. The agreement of 21 September 2011 between the Swiss Confederation and the Federal Republic of Germany on cooperation in the areas of taxation and the financial market (BB1 **2012** 5039) has not entered into force.

<sup>18</sup> SR **0.672.936.74**

<sup>19</sup> SR **0.672.916.33**

