



---

Medienmitteilung – Communiqué aux médias – Comunicato per la stampa – Media release

---

Bern, 22<sup>nd</sup> april 2010

### **A-1247/2010: Ruling of the Federal Administrative Court in UBS AG Client v. Federal Tax Administration**

**In a leading decision as of April 19, 2010, the Federal Administrative Court refused to consider the complaints for delay of justice resp. for denial of justice filed by a UBS AG client. According to this client, the Federal Tax Administration had previously refused to adopt a final (and challengeable) decision in the current administrative assistance proceedings concerning the transfer of this client's data. The Federal Administrative Court ruled that the client in question was – on the grounds of procedural law – not entitled to challenge a suspension order issued by the Federal Tax Administration. This decision of the Federal Administrative Court is final and may not be appealed.**

On January 28, 2010, the Federal Tax Administration (FTA) informed this client that it had been instructed by the Swiss Federal Council not to adopt – until further notice – any decisions with regard to a certain category (continued and serious tax evasion) defined in the Agreement of August 19, 2009, between the Swiss Confederation and the United States of America (US) on the request for information from the Internal Revenue Service (IRS) of the US regarding UBS AG (UBS Agreement). According to the FTA, this instruction was motivated by the Federal Administrative Court's (FAC) decision A-7789/2009 as of January 21, 2010. Therefore, the client in question filed a complaint for delay of justice resp. denial of justice with the FAC and requested the FAC for a final decision in lieu of the FTA. The FAC qualified the letter of the FTA, dated January 28, 2010, as a suspension order and the client's complaint as an appeal of this suspension order.

With date of April 7, 2010, the Amending Protocol of March 31, 2010, which revises the UBS Agreement, was published in extraordinary proceedings (meanwhile AS 2010 1459). Pursuant to its article 3 section 2, this Amending Protocol is provisionally applicable as of signing and thus as of March 31, 2010. Assuming that the Amending Protocol is applicable for the time being, even by annulling the suspension order and by requesting the FTA to adopt a final decision as soon as possible, the FAC could not repair any more the (possible) prejudice the suspension of the proceedings resp. the recent amendment of the legal basis may have caused to the client in question. Under these circumstances, an appellant is – on the grounds of procedural law – not entitled to challenge a suspension order and, therefore, his complaints may not be considered by the Court.

However, in case the legality of a potential client's data transfer will have to be examined solely in the light of the UBS Agreement and not of the Amending Protocol, it is obvious that the suspension of the current proceedings resp. the recent amendment of the legal basis would have caused no irreparable prejudice to the client in question. Also, under those circumstances, an appellant is – on the grounds of procedural law – not entitled to challenge a suspension order and, therefore, his complaints may not be considered by the Court.

### **The Federal Administrative Court**

The Federal Administrative Court judges complaints against ordinances issued by federal authorities. In certain cases the Court is also responsible for reviewing cantonal decisions, and it also rules on complaints procedures. If the Federal Administrative Court does not rule as the final court of appeal, it is possible to appeal against its decisions in Lausanne and in Lucerne. The Federal Administrative Court, with its locations in Bern and Zollikofen (from 2012 St Gallen), consists of five sections and of a General Secretariat. The Federal Administrative Court has 70 judges and 300 employees and is thus the largest court in Switzerland.

#### Further information:

Andrea Arcidiacono, Media Officer, Schwarztorstrasse 59, Postfach, 3000 Bern,  
Tel: 058 705 29 86; mobile: 079 619 04 83, [andrea.arcidiacono@bvger.admin.ch](mailto:andrea.arcidiacono@bvger.admin.ch)