

RECENT CASE LAW: SWITZERLAND

**THOMAS STADELMANN,
JUSTICE AT THE SWISS SUPREME COURT**

2C_276/2016, PUBLIC DELIBERATION ON 12TH OF SEPTEMBER 2016 FACTS

- **Request for administrative assistance by NL Belastingdienst:**
 - Group request, name of taxpayers unknown
 - Criteria for transmission of information:
 - a) Person was the holder of one or several bank accounts at UBS Switzerland AG
 - b) According to the documents of the bank the holder of the account(s) had domicile address in the NL
 - c) UBS had sent a letter to the holder of the account(s), asking him/her to return a form „EU-Taxation of Interest – authorization for voluntary disclosure“ or to prove his/her compliance with taxes
 - d) Holder of the account didn't provide sufficient evidence on compliance with taxes

2C_276/2016, PROBLEMS: 1) ORDER OF EXAMINATION

- **Request admissible according to:**
 - Domestic law
i.e. „Tax Administrative Assistance Act“, TAAA, of 28
September 2012

or
- Double Tax Convention CH-NL, of 9 November 2010
(DTC CH-NL)

2C_276/2016, PROBLEMS: 2) TAAA

- **Autonomous applicability or an implementing law**
- **Admissible group request or inadmissible fishing expedition**
(cf. Tax Administrative Assistance Decree, TAAD, of 20 August 2014, art. 2)
- **Letter of UBS was sent as „retained correspondence“**
implications

2C_276/2016,

PROBLEMS:

3) DOUBLE TAX CONVENTION CH-NL

- **Art. 26 DTC CH-NL**
(equivalent to art. 26 OECD-MC)
=> no details about required content of a request
- **Protocol to the Convention XVI, b (i)**
necessity of mentioning the name
- **Mutual agreement**
significance and implications

2C_893/2015, DECISION XX/XX/2016 FACTS

- **Request for administrative assistance by French Tax Administration:**
 - based on information that the French tax authorities had received from French prosecuting authorities

2C_893/2015, PROBLEMS: DOUBLE TAX CONVENTION CH-F: 1) RESERVATION

- **Reservation by Switzerland**

no administrative assistance if request is based on illegally obtained information

- admissibility of reservation in the framework of a bilateral treaty
- requirements for effectiveness
- meaning of reservation

2C_893/2015, PROBLEMS: DOUBLE TAX CONVENTION CH-F: 2) GOOD FAITH

- **Illegally obtained information**

illegality according to french domestic law

- relevance

SOURCES

- **Decisions of the Swiss Supreme Court:**
<http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/jurisdiction-recht/jurisdiction-recht-urteile2000.htm>
- **Decisions of the Swiss Federal Administrative Court:**
<http://www.bvger.ch/publiws/?lang=de>
- **Laws:**
<https://www.admin.ch/gov/de/start/bundesrecht/systematische-sammlung.html>