CENTRE DE DROIT BANCAIRE ET FINANCIER

Administrative Assistance in Tax Matters

Confidentiality of the requesting authority's contact information

Par Adrien Pasquarello le 16 September 2026

Having already had its case dismissed in 2015, the FTA is attempting to secure a change in practice. Can the contact information of the requesting authority and its staff be systematically kept confidential from the taxpayer ? This is the legal question of principle submitted to the Federal Supreme Court, to which the Court responded in the negative (2C_157/2024).

In the context of a tax administrative assistance proceeding initiated by Germany, the taxpayer in question objects to the disclosure of information planned by the FTA. He contends that certain documents in the file were improperly redacted. The FTA clarified that the redacted information consisted of the contact details of the *Bundeszentralamt für Steuern* and its staff, which should not affect the taxpayer's procedural rights. The Federal Administrative Court ruled against the FTA. The FTA appealed to the Federal Supreme Court.

The admissibility of such an appeal is contingent upon the existence of a legal question of principle. In this case, the Federal Supreme Court considered that it was justified to revisit this issue of confidentiality due to developments at the international level since its 2015 ruling (see 2C_112/2015).

In support of its appeal, the FTA relies, on the one hand, on the recent update to the Commentary on Article 26 of the OECD Model Tax Convention, which now provides that access to the file must be limited to information relevant to the outcome of the tax case. Second, it argues that Swiss practice regarding access to case files has been criticized within the OECD and that continuing this practice could harm international relations. For these reasons, it maintains that the contact information of the requesting authority, as well as the names and contact information of its staff members, must be systematically redacted.

First, the Federal Supreme Court, in accordance with the Vienna Convention, acknowledges the relevance of the most recent version of the OECD Commentary for interpreting provisions agreed upon prior to that version.

The Court then identifies the applicable law. The decisive provisions are Art. 27(2) of the CH-DE DTA and para. 3(f) of the former version of the CH-DE DTA Protocol (corresponding to para. 11(f) of the current version). The Protocol refers to the domestic administrative procedural law of the requested State, provided that it guarantees the taxpayer due process without compromising the execution of administrative assistance. In this context, Art. 29(2) of the

Constitution (right to be heard) and Arts. 26–28 of the Administrative Procedure Act (access to documents) are also relevant.

The Federal Supreme Court holds that neither Article 26 of the OECD Model Convention nor its counterpart, Article 27(2) of the CH-DE DTA, is intended to conceal information from the taxpayer. On the contrary, these provisions aim to protect the taxpayer's informational self-determination (*informationelle Selbstbestimmung*) regarding the confidentiality of tax proceedings. It thus notes that the confidentiality provided for in the CH-DE DTA is enforceable against the taxpayer only to the extent that administrative assistance might be compromised.

Under Swiss domestic law, to which the Protocol refers, the right to be heard and, more specifically, the right of access to the case file may be restricted. It is recalled that the case law of the Federal Supreme Court does indeed recognize that the preservation of good international relations may constitute an important public interest within the meaning of Art. 27(1)(a) of the Administrative Procedure Act, capable of justifying a restriction on access to the case file.

Building on this framework, the Court turns to the main issue of the decision : whether it is justified to recognize, as a matter of principle, the confidentiality of the requesting authority's contact information, as well as the names of its staff members, regardless of any specific circumstances.

The Federal Supreme Court rejected the FTA's attempt to alter the interpretation that had been followed until then. It denied that automatic confidentiality (i.e., regardless of the circumstances of the case), based on the recent update to the Commentary, could be inferred from the CH-DE DTA. Furthermore, it clarifies that such an interpretation would be contrary to the right to be heard, as guaranteed by the Constitution, and that a public interest in non-disclosure cannot be automatically recognized.

The ruling does not preclude the possibility that, under specific circumstances, the disclosure of contact information could jeopardize the implementation of administrative assistance. In such a case, confidentiality would be justified and could be based directly on the CH-DE DTA as well as on the Protocol. In this instance, the FTA has demonstrated neither the existence of such circumstances nor that of a sufficiently plausible harm to international relations.

All things considered, since the recent update to the OECD Commentary does not, on its own, allow contact information to be considered confidential, the Federal Supreme Court refuses to change current practice.

As with any ruling on administrative assistance in tax matters, it is necessary to consider whether the conclusions reached can be applied to treaties concluded by Switzerland with other states. In this ruling, the Federal Supreme Court leaves open the question of whether the revisions to the OECD Commentary, in and of themselves, require the redaction of the requesting authority's contact information. In this way, it suggests *a priori* that the scope of this ruling would be limited to the specific German case, in light of the CH-DE DTA, its Protocol, and the reference to domestic law provided for therein.

It should be noted, however, that many DTAs concluded by Switzerland include, particularly in their Protocols, such a reference to domestic procedural law (see, for example, the DTAs concluded with France, Italy, Spain, Brazil, and South Korea). The scope of this ruling thus extends well beyond the framework of relations between Switzerland and Germany.