

## US and Switzerland agree to new tax treaty



US and Swiss authorities have reached a deal on double-taxation (Keystone)

**Switzerland and the United States have agreed in principle to a revised double-taxation accord, designed to meet international standards on the exchange of bank data.**

The Swiss finance ministry announced on Friday afternoon that the two sides had come to an understanding, although the specifics of the agreement were not released.

The accord will be made public once it has been signed at the ministerial level in both countries. It will also need the backing of the Swiss cantons.

Once approved, Switzerland will cooperate with US tax authorities in investigating suspected cases of tax evasion. Under the earlier agreement, Switzerland only cooperated in cases of fraud.

The Swiss Bankers Association (SBA) welcomed the news, even though how the accord will play out remains murky.

It is also unclear how the proposed pact will affect the outcome of a lawsuit levied by the US Internal Revenue Service against Swiss bank UBS seeking the disclosure of account details on some 52,000 clients. UBS says providing that information would violate Swiss law.

"We assume that the revised treaty balances the interests of the US and Switzerland in a fair way," SBA spokesman James Nason told swissinfo.ch, adding he hoped the agreement would help resolve the lawsuit.

Switzerland and the US held two rounds of negotiations on both sides of the Atlantic before reaching an agreement in principle. Parliament will have to approve the accord before it enters into force.

### Political solution

Some believe parliamentary approval could be problematic if no political solution is found to the UBS court case, which is scheduled to go to trial in US District Court in Florida next month.

Swiss Finance Minister Hans-Rudolf Merz had suggested as much to US Treasury Secretary Timothy Geithner when the two met in March in Washington, DC.

Scott Michel, president of Caplin and Drysdale, a prominent tax-litigation firm in the US capital says that without a political solution UBS is "facing a likely defeat".

"At a very narrow level, UBS is in an extremely difficult position," he said in a phone interview.

While authorities say it was never Switzerland's intent to bundle the US tax-treaty negotiations with the UBS case, Nason says the agreement still serves as an indication of Switzerland's willingness to work with the international community.

The Organisation for Co-operation and Development (OECD) had threatened to put Switzerland on a blacklist of so-called tax havens if it did not loosen its banking secrecy laws. That would have hamstrung businesses in Switzerland with onerous audits and other competitive disadvantages.

On March 13, 2009, the Swiss government agreed to relax banking secrecy laws and re-negotiate double-taxation accords. Switzerland took some immediate steps, avoiding blacklisting, but the OECD said it did not go far enough and placed it on a "grey list" at a G-20 meeting.

The country must sign at least 12 double-taxation accords that meet international standards before it can be taken off the list.

The US is the sixth country that has reached a new agreement with Switzerland, at least in principle. Others include Denmark, Mexico, France and Norway. Officials are not naming the sixth country, although Swiss media reports say it is Luxembourg.

## No details

Although specifics of the treaty are not available, in order for them to meet OECD standards, Switzerland must provide administrative assistance to countries seeking accountholder information in suspected cases of tax evasion.

The new treaty with the US, in general terms, would "permit an exchange of information on tax matters in individual cases where a specific and justified request has been made", the finance ministry said in a statement.

That raises eyebrows at the Swiss Private Bankers Association. That group has demanded that new treaties exclude a retroactive application of the terms and that investigators be blocked from going on unwarranted "fishing expeditions" through bank files.

"That would resemble treason," Konrad Hummler, president of the association said in a Swiss news agency report. "The consequences of the ensuing loss of confidence would extend well beyond the financial centre."

Tim Neville and Justin Häne, swissinfo.ch

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### BANKING SECRECY UNDER FIRE



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### US REACTION

The Swiss finance ministry announced its double-taxation agreement with the United States on Friday in modest terms, stressing that the accord had been negotiated in "accordance with the key points agreed by the Federal Council".

The tone was decidedly more victorious on the other side of the Atlantic, where US Treasury officials hailed the agreement as the result of "aggressive efforts" to do away with offshore tax evasion.

"This Administration is committed to reducing offshore tax evasion to help ensure that all US taxpayers are playing by the same rules," US Treasurer Timothy Geithner said in a statement. "This treaty will increase our ability to enforce our tax laws and will help bring an end to an era of offshore accounts and investments being used for tax evasion."

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### ARTICLE 26

The fulcrum under double-taxation negotiations is Article 26 of the Organisation for Economic Co-operation and Development Model Tax Convention on Income and Capital.

In layman's terms, the document sets the framework for when investigators can ask a foreign state for information when building a case against suspected tax cheats. The article requires that investigators "demonstrate the foreseeable relevance of the requested information".

Article 26 was updated in July 2005 to say a state cannot refuse to provide information because it is held by a bank. Although its authors say the document is not incompatible with banking secrecy laws, Switzerland expressed reservations in July 2008.

In March 2009, Switzerland withdrew its objections when faced with being blacklisted by the OECD.

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### LINKS

- Swiss finance ministry - banking secrecy (<http://www.efd.admin.ch/themen/00796/01377/index.html?lang=en>)
- Department of Justice Tax Division (<http://www.usdoj.gov/tax/>)

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