



Practical questions of cooperation: The role of Switzerland

* Informal translation



The fundamental legal basis: Today

Administrative assistance

- Additional protocol of 9 June 1997 to the free trade agreement between Switzerland and the EU of 22 July 1972 about mutual administrative assistance in the area of customs (SR 0.632.401.02)
- Agreement of 20 May 1987 between the EC and Switzerland about a common transit procedure (SR 0.631.242.04).

Legal Assistance

- European agreement of 20 April 1959 about mutual legal assistance in criminal matters (SR 0.351.1)
- Federal Act on International Mutual Assistance in Criminal Matters (SR 351.1)



The fundamental legal basis : New regulations

Additional legal basis

- Schengen Convention of 19 June 1990 (ABI. L 239 of 22.9.2000, S. 19), entry into force in Switzerland most likely on 1 November 2008
- Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to counter fraud and all other illegal activities affecting their financial interests of 26 October 2004 (Agreement to combat fraud, so far ratified by 14 states; BBI 2004, 6503)



The role of Switzerland today

Administrative assistance

Joint actions with foreign customs administrations

- Inspection of all exportations ascertained by the British customs administration
- Notification of all ascertained Re-exportations
- Observation in the context of administrative assistance
- Verification of truckage companies
- Spontaneous administrative assistance
- Successfully concluded administrative assistance:
„Carousel“ VAT fraud in Great Britain drastically reduced

Legal assistance

- Hearing of witnesses
- Searches
- Confiscation of documents



Number of new cases per year

Administrative assistance

- Checking personal data 93
- Checking customs clearance 623
- Investigation of concerned persons 160
- Others 338

Cases of admin assistance in 2007: 1214

Legal assistance

Legal assistance in fiscal matters approx. 30



Future role of Switzerland

After entry into force of agreement on combating fraud

Area of application

- Indirect taxes
- Cross border and domestic cases
- Inclusion of services
- Generally: „financial interests“ of the Allgemein: „finanzielle Interessen“ der signatory states (inkl. subsidies)
- No petty offences (> 25'000 Euro)
- Never: Direct taxes
- Coercive measures also for tax evasion, if search warrant exists (same treatment as for Swiss citizens)



Future role of Switzerland

Money laundering

- Money laundering included when predicate offence can be punished with more than six months imprisonment (= tax fraud according to Swiss law), i.e.:
- Switzerland provides admin. and legal assistance for tax fraud
Further use in money laundering action abroad possible

Monitoring of bank accounts

- Information on bank accounts already possible now (in the case of tax fraud)
- In serious cases continuous monitoring of bank accounts though limited in time (Discretionary provision / according to Swiss procedural law)



Future Role of Switzerland

„Right to be present“ for foreign officials

- Authorised by requested state
- New: concerned person does not have to give permission
- Lead in investigation with requested state
- Access to localities and documents
- Information may not be taken away/used before final legally binding court order
- Editing of documents by Federal Customs Administration usually in writing



Forecast

- After entry into force of the Schengen/Dublin association agreement between Switzerland and the EU, and of the agreement on combating fraud, the necessary preconditions are given for a closer cooperation between administration, police and the judiciary
- A close cooperation between Switzerland and the EU and its member states in particular in the area of cross-border movement of goods is of great practical and economic importance. Amongst others, it creates the precondition for reducing the waiting times at border crossings and the provision of securities