

## IRS Submits Treaty Request to Switzerland on Credit Suisse Data

By Kristen A. Parillo — [kparillo@tax.org](mailto:kparillo@tax.org) and  
Marie Sapirie — [msapirie@tax.org](mailto:msapirie@tax.org)

The IRS on July 9 submitted a new, reformulated treaty request to the Swiss Federal Tax Administration (FTA) for information on U.S. taxpayers suspected of hiding undeclared assets and income in Swiss bank Credit Suisse, according to Swiss media reports.

The IRS declined to confirm to Tax Analysts that a request was submitted. The request is a second attempt by the U.S. government to obtain the information. The government was forced to formally withdraw its original request, submitted in September 2011, after the Swiss Federal Administrative Court in April affirmed the appeal of a Credit Suisse client who had objected to the Swiss government decision to turn his bank data over to the IRS. The court held that the request — which didn't specifically identify the names of targeted bank clients but instead sought information on clients who had allegedly concealed U.S. income and assets with the assistance of bank employees — was too vague, was based on search criteria indicating only tax evasion and not tax fraud, and was not sufficient to require cooperation by the Swiss tax authorities under the current Switzerland-U.S. tax treaty. (For prior coverage, see *Tax Notes*, Apr. 16, 2012, p. 262.)

The IRS subsequently reformulated the request by providing a more detailed description of the manner in which the bank and clients concealed U.S. income and assets, according to an August 3 report in the Swiss newspaper *Neue Zürcher Zeitung*. The report says the FTA directed Credit Suisse to inform affected clients by July 31 that their information is subject to disclosure under a treaty request made by U.S. authorities. The new request affects fewer than 100 U.S. clients, the report says.

"What appears to have happened now is that the U.S. seems to have issued a narrower and more detailed request that seeks to overcome the objections on which the Swiss federal court decision was based," Scott D. Michel of Caplin & Drysdale told Tax Analysts. He said clients notified by Credit Suisse will have a right to file an objection with the FTA. If the FTA rejects an objection, the account holder will be able to file an appeal with the Federal Administrative Court. Michel noted that account holders who are U.S. taxpayers should keep in mind the requirement to provide the U.S. attorney general with a copy of their objections.

Michel said the U.S. government will continue to pursue information on Credit Suisse account holders. "It seems evident that the IRS and Justice Department have extensive evidence of a pattern of conduct by account holders at Credit Suisse," he said. Consequently, Credit Suisse account holders can expect the government to try to obtain whatever information it can regarding unreported accounts there.

As for the likelihood that the latest treaty request will survive a court challenge, Michel said it's difficult to predict without seeing the contents of the request. "But if the request is more narrowly focused and supplements the evidence suggesting the fraudulent intention, or a strong inference of that, on the part of the account holders, it would clearly come closer to meeting the older 'tax fraud and the like' standard" required under the current treaty, he said.

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The U.S. and Swiss governments signed a protocol in 2009 to broaden the scope of the current information exchange provisions (which limit disclosure to cases involving tax fraud, as defined by Swiss law) to give the United States the ability to request information that may be relevant to carrying out its domestic laws. The protocol was ratified by the Swiss parliament in June 2010, but it is still awaiting a vote by the Senate. Sen. Rand Paul, R-Ky., in late 2011 placed a hold on the Swiss protocol — as well as a pending protocol to the U.S. treaty with Luxembourg and a new U.S. treaty with Hungary — because of his objection to treaty information sharing provisions. (For prior coverage, see *Tax Notes*, Jan. 16, 2012, p. 276, *Doc 2012-363*, or *2012 TNT 5-8*.)

The Swiss parliament in March passed an addendum to its ratification resolution on the 2009 protocol to explicitly permit nameless, behavioral-pattern-based requests. The addendum, which was put forward by the Swiss federal government in fall 2011, states that such requests were already permitted under the existing treaty and that the new protocol should not change that. However, the addendum provides that behavioral-pattern-based requests will be processed by the FTA only if the U.S. government request states why the information is necessary and relevant; gives a detailed description of the behavior pattern in question; explains the reason for assuming that the taxpayer

identified in the request has failed to meet his legal obligations; and credibly demonstrates active and culpable behavior on the part of the person holding the information or on the part of his employees. (For prior coverage, see *Tax Notes*, Apr. 2, 2012, p. 7, *Doc 2012-6398*, or *2012 TNT 63-1*.) ■