

AGREEMENT

BETWEEN

THE SWISS CONFEDERATION

AND

THE UNITED STATES OF AMERICA

**on the request for information from the Internal Revenue Service of
the United States of America regarding UBS AG, a corporation
established under the laws of the Swiss Confederation**

THE SWISS CONFEDERATION

and

THE UNITED STATES OF AMERICA

hereinafter referred to as "the Contracting Parties",

WHEREAS,

the Contracting Parties seek to reaffirm and strengthen the long-standing and close friendship between their peoples and to continue and enrich the cooperative relationship which exists between the two countries;

the Contracting Parties share a mutual respect for each other's sovereignty and democratic traditions, and for the rule of law;

the Contracting Parties equally share a desire to amicably resolve disputes in a manner consistent with the laws of both nations;

Article 26 of the Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income of October 2, 1996 (the "Tax Treaty"), the Protocol accompanying and forming an integral part of the Tax Treaty (the "Protocol"), and the Mutual Agreement of January 23, 2003 regarding the administration of Article 26 of the Treaty (the "Mutual Agreement"), provide a mutually agreed-upon mechanism pursuant to which competent authorities of the Contracting Parties are able to exchange information, as is necessary for the prevention of "tax fraud or the like";

on July 21, 2008, the Internal Revenue Service ("IRS"), pursuant to its authority under 26 U.S.C. §7602(a), issued a "John Doe Summons" (the "JDS") to UBS AG seeking information concerning client accounts;

on or about the date of the signing of this Agreement, the IRS and UBS AG entered into a separate agreement; and

the Contracting Parties wish to establish understandings that will avoid future disputes regarding requests for information;

NOW, THEREFORE, pursuant to Articles 25 and 26 of the Tax Treaty, the Contracting Parties have agreed as follows:

Article 1 Treaty Request

1. The Swiss Confederation shall process, pursuant to the existing Tax Treaty, a request by the United States for information regarding US clients of UBS AG, incorporating the criteria set forth in the Annex to this Agreement (the "Treaty Request"). Based on the criteria set forth in the Annex, the Contracting Parties estimate and expect that the number of open or closed accounts falling under the Treaty Request is approximately 4'450.¹
2. The Swiss Confederation shall establish a special task force enabling the Swiss Federal Tax Administration ("SFTA") to render its final decisions (as described in Section 4.a., Art. 20j, of the Ordinance of the Swiss Federal Council of June 15, 1998) pursuant to the Treaty Request on an expedited basis according to the following time frames:
 - the first 500 decisions within 90 days from receipt of the Treaty Request; and
 - the remaining decisions on a continuing basis concluding no later than 360 days from receipt of the Treaty Request.
3. The SFTA shall notify UBS AG that it has received the Treaty Request immediately upon receipt of the Treaty Request by the SFTA and shall support the Treaty Request process according to this Article and the criteria set forth in the Annex with the highest priority, and is committed to discuss any issues that might arise in this regard according to the mechanism established in Article 5 of this Agreement.
4. With a view to accelerating the processing of the Treaty Request by the SFTA, the IRS will promptly request all UBS clients who enter into the voluntary disclosure program on or after the signing of this Agreement to give a waiver to UBS AG to provide account documentation to the IRS.
5. The Swiss Confederation is prepared to process additional requests for information by the IRS under Article 26 of the existing Tax Treaty regarding the UBS AG case if a future decision of the Swiss Federal Administrative Court broadens the criteria set forth in the Annex to this Agreement.

¹ For these accounts UBS will provide a notice to account holders under the Treaty Request. They will (i) be subject to a final decision of the SFTA under the treaty process, or (ii) be transmitted to the IRS as a result of the account holder having provided UBS or the SFTA with a waiver to submit such account information directly, or (iii) fall out of the treaty process after the account holders have provided consent to the SFTA to request copies of the taxpayer's FBAR returns from the IRS for the relevant years as described in the Annex under paragraph 2.A.b. and 2.B.b.

Article 2 Revised Tax Treaty

The Contracting Parties are committed to the signing of the new protocol amending Article 26 (and certain other provisions) of the Tax Treaty, initialed on June 18, 2009, as soon as possible, but no later than September 30, 2009, and shall use their best efforts, consistent with their respective constitutional processes, to have the new protocol ratified promptly.

Article 3 Withdrawal of the John Doe Summons

1. Immediately after the signing of this Agreement, the United States and UBS AG shall file a stipulation of dismissal with the United States District Court for the Southern District of Florida with respect to the enforcement action concerning the JDS.
2. Subject to the terms of Article 5 of this Agreement, the United States shall not seek further enforcement of the JDS while this Agreement remains in force.
3. Subject to UBS AG's compliance with Article 4 of this Agreement, the United States shall withdraw the JDS with prejudice no later than December 31, 2009 with respect to accounts not covered by the Treaty Request.
4. The United States shall withdraw the JDS with prejudice with respect to the accounts covered by the Treaty Request on or after January 1, 2010 when it has received all relevant account information, submitted on or after February 18, 2009, concerning 10'000 open or closed undisclosed UBS AG accounts from any source.² The United States shall provide the SFTA with regular updates about the number of such disclosures.
5. Subject to UBS AG's compliance with Article 4 of this Agreement and subject to the terms of Article 5 of this Agreement, the United States shall withdraw the JDS with prejudice with respect to the accounts covered by the Treaty Request no later than 370 days from the signing of this Agreement.

² For purposes of this paragraph, the term "any source" means account information disclosed (i) under the Treaty Request, (ii) under the IRS's voluntary disclosure practice, (iii) as a result of waivers for UBS or the SFTA to submit account information to the IRS, or (iv) under the Deferred Prosecution Agreement between UBS AG and the United States of America, dated February 18, 2009. Furthermore, the IRS shall to the extent feasible, include account information disclosed through FBAR filings made after the signing of this Agreement and for which the IRS has determined that such filings are attributable to the fact that the Contracting Parties entered into this Agreement.

Article 4 Compliance by UBS

1. In the separate agreement with the IRS, UBS AG has committed itself to comply with the SFTA order requesting the information covered by the Treaty Request according to the following time frames:
 - within 60 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA the first 500 cases;
 - within 180 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA the remaining cases referred to in the Annex under paragraphs 2.A.b and 2.B.b, respectively; and
 - within 270 days after UBS AG receives notice from the SFTA that the Treaty Request has been received by the SFTA, UBS shall have submitted to the SFTA all remaining cases.
2. In the separate agreement with the IRS, UBS AG has committed itself to continue its support for the IRS voluntary compliance practice.
3. The Swiss Federal Office of Justice (SFOJ), which shall seek the assistance of the Swiss Financial Market Supervisory Authority (FINMA), shall oversee UBS AG's strict compliance with the commitments.

Article 5 Assessment, Consultations and other Measures

1. The SFTA, the SFOJ, and the IRS shall meet together with UBS on a quarterly basis to assess the progress of the process established in this Agreement, including evaluation of maximum effectiveness of the voluntary compliance of UBS US clients and additional measures that the Contracting Parties can reasonably undertake to promote the legitimate enforcement interest of the IRS.
2. Either Contracting Party may at any time request further consultations on the implementation, interpretation, application, or amendment of this Agreement. Such consultation (through discussion or correspondence) shall take place within a period of 30 days of the date of receipt of such a request, unless otherwise mutually decided.
3. If a Contracting Party fails to fulfill its obligations contained in this Agreement, the other Contracting Party may request immediate consultations in view of taking the appropriate measures to ensure the fulfillment of the Agreement.
4. If 370 days after the signing of this Agreement the actual and anticipated results differ significantly from what can reasonably be expected at that time according to the purpose of this Agreement and if the matter cannot be resolved mutually either (1) by the consultation measures according to paragraphs 2 and 3 of this Article or (2) by an amendment according to Article 9 of this Agreement, then either Contracting Party may take proportionate rebalancing measures to remedy the

effected imbalance between the rights and obligations under this Agreement. However, such measures may not go beyond preserving the legal situation of either Contracting Party, which existed immediately before they were taken.

5. Possible measures taken under this Article shall not impose any financial or new non-financial obligations on UBS AG.

Article 6 Confidentiality

The initial public statements shall be made simultaneously on August 19, 2009 at 9:30 a.m. Eastern Daylight Time. To avoid impairment of tax administration in both the United States and Switzerland, the Contracting Parties agree not to publicly discuss or publish the Annex of this Agreement earlier than 90 days from the date of signing of this Agreement.³ However, nothing in this Agreement shall prevent the SFTA from explaining to a particular accountholder the specific facts upon which a final determination is based. Such individuals will be under the criminally enforceable obligation under Swiss law not to disclose such facts to any third party prior to the date of publication of the Annex.

Article 7 Third Party Rights

This Agreement does not confer any rights or benefits on any third party other than as provided in this Agreement with respect to UBS AG.

Article 8 Entry into Force

This Agreement shall enter into force upon signature.

Article 9 Amendment

This Agreement may be amended by written agreement between the Contracting Parties. Amendments shall enter into force according to Article 8 of the present Agreement.

³ The Annex will be disclosed to UBS AG under the same confidentiality requirements.

Article 10 Duration and Termination

This Agreement shall remain in force until both Contracting Parties have confirmed in writing the fulfillment of their obligations contained under this Agreement.

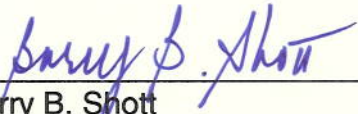
IN WITNESS THEREOF, the undersigned, duly authorized thereto by their respective governments, have signed this Agreement.

Done at Washington, DC this 19th day of August 2009, in duplicate, in English.

For the
Swiss Confederation:

by: 
Guillaume Scheurer
The Charge d'Affaires a.i. of Switzerland

For the
United States of America:

by: 
Barry B. Shott
United States Competent Authority
Deputy Commissioner (International)
Internal Revenue Service
Large & Mid-Size Business

Annex

Criteria for Granting Assistance Pursuant to the Treaty Request

1. It is understood that a request for exchange of information generally requires the clear identification of the person(s) concerned. However, in light of (i) the identified specific wrongful conduct by certain individual US taxpayers who maintained non-W-9 accounts at UBS AG Switzerland (UBS) in their name or in the name of an offshore non-operating company of which they were a beneficial owner, (ii) the specificity of the concerned group of individuals as described in paragraph 4 of the Statement of Facts to the Deferred Prosecution Agreement between the United States of America and UBS of February 18, 2009 (the "DPA"), and (iii) consistent with the conditions set by the judgment of the Swiss Federal Administrative Court on March 5, 2009, the names of the UBS United States clients do not need to be mentioned in this request for information exchange.

Thus, consistent with paragraph 4 of the Statement of Facts to the DPA, the general requirement to identify the persons subject to the request for information exchange is considered to be satisfied for the following individuals:

- A. US domiciled clients of UBS who directly held and beneficially owned "undisclosed (non-W-9) custody accounts" and "banking deposit accounts" in excess of CHF 1 million (at any point in time during the period of years 2001 through 2008) with UBS and for which a reasonable suspicion of "tax fraud or the like" can be demonstrated, or
 - B. US persons (irrespective of their domicile) who beneficially owned "offshore company accounts" that have been established or maintained during the period of years 2001 through 2008 and for which a reasonable suspicion of "tax fraud or the like" can be demonstrated.
2. The agreed-upon criteria for determining "tax fraud or the like" for this request pursuant to the existing Tax Treaty are set forth as follows:
 - A. For "undisclosed (non-W-9) custody accounts" and "banking deposit accounts" (as described in paragraph 1.A of this Annex) where there is a reasonable suspicion that the US domiciled taxpayers engaged in the following:
 - a. Activities presumed to be fraudulent conduct (as described in paragraph 10, subparagraph 2, first sentence of the Protocol) including such activities that led to a concealment of assets and

underreporting of income based on a “scheme of lies”¹ or submission of incorrect and false documents. Where such conduct has been established, persons with accounts of less than CHF 1 million in assets (except those accounts holding assets below CHF 250,000) during the relevant period would also be included in the group of US persons subject to this request; or

- b. Acts of continued and serious tax offense for which the Swiss Confederation may obtain information under its laws and practices (as described in paragraph 10, subparagraph 2, third sentence of the Protocol), which based on the legal interpretation of the Contracting Parties includes cases where (i) the US-domiciled taxpayer has failed to provide a Form W-9² for a period of at least 3 years (including at least 1 year covered by the request) and (ii) the UBS account generated revenues of more than CHF 100,000 on average per annum for any 3-year period that includes at least 1 year covered by the request. For the purpose of this analysis, revenues are defined as gross income (interest and dividends) and capital gains (which for the purpose of assessing the merits of this administrative information request are calculated as 50% of the gross sales proceeds generated by the accounts during the relevant period).

B. For “offshore company accounts” (as described in paragraph 1.B of this Annex) where there is a reasonable suspicion that the US beneficial owners engaged in the following:

- a. Activities presumed to be fraudulent conduct (as described in paragraph 10, subparagraph 2, first sentence of the Protocol) including such activities that led to a concealment of assets and underreporting of income based on a “scheme of lies”³ or

¹ Such “scheme of lies” may exist where, based on the Bank’s records, beneficial owners (i) used false documents; (ii) engaged in a fact pattern that has been set out in the “hypothetical case studies” in the appendix to the Mutual Agreement concerning Art. 26 of the Tax Treaty (for example, by using related entities or persons as conduits or nominees to repatriate or otherwise transfer funds in the offshore accounts); or (iii) used calling cards to disguise the source of trading. These examples are not exhaustive, and depending on the applicable facts and circumstances, certain further activities may be considered by the SFTA as a “scheme of lies”.

² For “banking deposit accounts” based on the Contracting Parties’ legal interpretation a reasonable suspicion for such tax offence would be met if the US persons failed to prove upon notification by the Swiss Federal Tax Administration that they have met their statutory tax reporting requirements in respect of their interests in such accounts (i.e., by providing consent to the SFTA to request copies of the taxpayer’s FBAR returns from the IRS for the relevant years).

³ Such “scheme of lies” may exist where the Bank’s records show that beneficial owners continued to direct and control, in full or in part, the management and disposition of the assets held in the offshore company account or otherwise disregarded the formalities or substance of the purported corporate ownership (i.e., the offshore corporation functioned as nominee, sham entity or alter ego of the US

submission of incorrect or false documents, other than US beneficial owners of offshore company accounts holding assets below CHF 250,000 during the relevant period; or

- b. Acts of continued and serious tax offense for which the Swiss Confederation may obtain information under its laws and practices (as described in paragraph 10, subparagraph 2, third sentence of the Protocol), which based on the legal interpretation of the Contracting Parties includes cases where the US person failed to prove upon notification by the Swiss Federal Tax Administration that the person has met his or her statutory tax reporting requirements in respect of their interests in such offshore company accounts (i.e., by providing consent to the SFTA to request copies of the taxpayer's FBAR returns from the IRS for the relevant years). Absent such confirmation, the Swiss Federal Tax Administration would grant information exchange where (i) the offshore company account has been in existence over a prolonged period of time (i.e., at least 3 years including one year covered by the request), and (ii) generated revenues of more than CHF 100'000 on average per annum for any 3-year period that includes at least 1 year covered by the request. For the purpose of this analysis, revenues are defined as gross income (interest and dividends) and capital gains (which for the purpose of assessing the merits of this administrative information request are calculated as 50% of the gross sales proceeds generated by the accounts during the relevant period).

beneficial owner) by: (i) making investment decisions contrary to the representations made in the account documentation or in respect to the tax forms submitted to the IRS and the Bank; (ii) using calling cards / special mobile phones to disguise the source of trading; (iii) using debit or credit cards to enable them to deceptively repatriate or otherwise transfer funds for the payment of personal expenses or for making routine payments of credit card invoices for personal expenses using assets in the offshore company account; (iv) conducting wire transfer activity or other payments from the offshore company's account to accounts in the United States or elsewhere that were held or controlled by the US beneficial owner or a related party with a view to disguising the true source of the person originating such wire transfer payments; (v) using related entities or persons as conduits or nominees to repatriate or otherwise transfer funds in the offshore company's account; or (vi) obtaining "loans" to the US beneficial owner or a related party directly from, secured by, or paid by assets in the offshore company's account. These examples are not exhaustive, and depending on the applicable facts and circumstances, certain further activities may be considered by the SFTA as a "scheme of lies".

Declarations

The Swiss Confederation
and
the United States of America

have made, at the signing of the Agreement on the request for information from the Internal Revenue Service of the United States of America regarding UBS AG on August 19, 2009 in Washington, DC, the following declarations which form an integral part of the Agreement:

Declaration by the Swiss Confederation

The Swiss Confederation declares that it will be prepared to review and process additional requests for information by the IRS under Article 26 of the existing Tax Treaty if they are based on a pattern of facts and circumstances that are equivalent to those of the UBS AG case.

Declaration by the United States of America

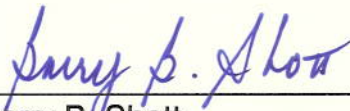
The United States of America declares that in determining what rebalancing measures in Paragraph 4 of Article 5 are proportionate, the United States of America will consider the totality of the circumstances and fully recognize the compliance and cooperation of UBS AG with the terms of this Agreement.

Done at Washington, DC this 19th day of August 2009, in duplicate, in English.

For the Swiss Confederation:

by: 
Guillaume Scheurer
The Charge d'Affaires a.i. of Switzerland

For the United States of America:

by: 
Barry B. Shott
United States Competent Authority
Deputy Commissioner (International)
Internal Revenue Service
Large & Mid-Size Business