



**Direct federal tax
Withholding tax
Stamp duty**

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Working paper

Direct postal service of documents under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters

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1 Overview

In accordance with Article 17 paragraph 3 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC; SR 0.652.1), which was ratified by Switzerland on 26 September 2016 and entered into force for that country on 1 January 2017, a contracting party may effect service of official documents directly through the post on a person within the territory of another contracting party. The granting of direct postal service rights by a partner State is deemed to be assisted service and hence a form of international administrative assistance¹. Therefore, the MAC's provisions on administrative assistance which refer to tax periods (cf. Art. 28 para. 6 and 7 of the MAC) and reservations (cf. Art. 30 of the MAC) are also applicable to direct postal service². As a general rule, the principle of reciprocity is to be observed³, under which the direct postal service of documents is permissible only to the extent allowed by the country of service in its own jurisdiction. Direct postal service of documents is thus permissible only given reciprocal authorisation and only for the bilaterally applicable material and temporal scope (see the following explanations).

The appendix to this working paper contains an overview of the direct postal service options under the MAC in relation with selected partner States and taxes. Partner States can make changes at any time by adjusting the reservations. This appendix will therefore be updated as necessary and made available on the Federal Tax Administration (FTA) homepage.

2 Responsibility

In general, the FTA is responsible for the implementation of international administrative assistance in tax matters⁴. In order to ensure that other Swiss authorities can apply Article 17 paragraph 3 of the MAC or other DTA provisions, and can themselves engage in direct postal service to a partner State, the Swiss legislator has subsequently instituted a statutory delegation norm⁵. Swiss courts and the responsible tax authorities under cantonal or communal law are now entitled to effect service of documents directly by post to persons in a foreign State, if the applicable agreement allows this⁶.

3 Applicability of direct postal service under the MAC

The applicability of direct postal service under the MAC shall undergo the following three-stage check.

3.1 Has the partner State declared a general reservation?

The direct postal service of documents is not part of the mandatory provisions of the MAC and can be excluded using a reservation under Article 30 paragraph 1 letter e of the MAC. It should therefore be checked whether the partner State has made such a reservation and excluded direct

¹ BBI 2011 6204; BBI 2019 309 No. 2.4.1 and BBI 2019 329 No. 4.3.

² BBI 2019 329 No. 4.3.

³ Art. 30 para. 5 of the MAC; see also Federal Department of Foreign Affairs, ABC of diplomacy, at https://www.eda.admin.ch/dam/eda/en/documents/publications/GlossarezurAussenpolitik/ABC-Diplomatie_en.pdf [last visited on 15 June 2020].

⁴ Art. 2 para. 1 of the Federal Act on International Administrative Assistance in Tax Matters of 28 September 2012 (TAAA, SR 651.1).

⁵ Art. 2 para. 2 of the TAAA.

⁶ BBI 2019 309 No. 2.4.1 and BBI 2019 329 No. 4.3.

postal service in its jurisdiction⁷. Switzerland has not made any reservation that would exclude a reciprocal right.

3.2 Material scope of application

3.2.1 Is there a document for which the direct postal service is applicable?

Unless there is a general reservation against direct postal service, further checks should be performed on whether the MAC applies to the specific document in question. As a general rule, all official documents, particularly those relating to tax assessment and collection as well as to administrative criminal or appeal proceedings, fall within the material scope of application of the MAC⁸. Documents relating to assessment and collection proceedings include, in particular, conventional tax bills (e.g. instalment or penalty invoices, or final balance statements). However, owing to a reservation made by Switzerland under Article 30 paragraph 1 letter b of the MAC, official documents relating to the enforcement of tax claims (e.g. payment summons, continuation requests, seizure notices and recovery requests) and fines are excluded. Thus, the direct postal service of such documents is not permitted for any type of tax.

3.2.2 Does the document refer to a tax for which the direct postal service is applicable?

In addition, it should be checked whether the MAC applies to the tax mentioned in the document. For Switzerland, the material scope of application of the MAC covers the income and profit taxes levied by the Confederation, cantons and communes, the wealth tax levied by the cantons and communes, and the tax levied by the Confederation, cantons and communes on the proceeds from asset sales, which is levied separately from income and profit taxes⁹.

Moreover, Switzerland has excluded the following "tax categories" from the material scope of application of the MAC¹⁰:

- *compulsory social security contributions payable to general government or to social security institutions established under public law;*
- *taxes in other categories imposed on behalf of a Party, namely:*
 - *estate, inheritance or gift taxes;*
 - *taxes on immovable property;*
 - *general consumption taxes, such as value added or sales taxes;*
 - *specific taxes on goods and services such as excise taxes;*
 - *taxes on the use or ownership of motor vehicles;*
 - *taxes on the use or ownership of movable property other than motor vehicles;*
 - *any other taxes;*
- *taxes under the above category "taxes in other categories", which are imposed on behalf of political subdivisions or local authorities of a Party.*

For taxes falling within the excluded tax categories, direct postal service is not permitted. If the document does not relate to any excluded tax, it should be checked whether the partner State concerned has made any further reservations¹¹. However, such reservations are not relevant if taxes which by definition fall into an excluded category have been included in Appendix A of the MAC by a partner State¹².

⁷ The reservations are available at: <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/127/declarations> [last visited on 15 June 2020].

⁸ Art. 17 para. 1 of the MAC; BBI 2015 5611; Art. 22 para. 2 of the MAC; OECD commentary on Art. 1 para. 1 of the MAC, modified by the 2010 Protocol, margin no. 9f.

⁹ Art. 2 para. 1 lit. a Nos. i-iii of the MAC; Art. 2 para. 1 lit. b No. i of the MAC.

¹⁰ Art. 2 para. 1 lit. a Nos. ii-iv of the MAC; see also Art. 30 para. 1 lit. a of the MAC; AS 2016 5059.

¹¹ See footnote 7 for information on how to consult the reservations under Art. 30 para. 1 lit. a of the MAC.

¹² Art. 30 para. 1 lit. a of the MAC. The partner States' Appendix A documents are available at: <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/127/declarations> [last visited on 15

3.3 Temporal scope

Finally, the direct postal service of documents can only take place if these documents refer to tax periods covered by the MAC. Under Article 28 paragraph 6 of the MAC, for Switzerland the MAC applies in principle to tax periods beginning on 1 January 2018 or later. However, the principle of reciprocity requires that the MAC should also be applicable in the partner State for the specific tax periods.

Thus, for the purposes of checking the tax period in question, a distinction needs to be made between two groups of partner States.

3.3.1 Partner States for which the MAC entered into force before 1 January 2018¹³

For this group of partner States, documents can in principle be serviced directly by post for tax periods beginning on 1 January 2018 or later.

Exception in accordance with Article 28 paragraph 7 of the MAC: For documents on tax matters involving intentional conduct, which is liable to prosecution under Swiss criminal law, direct postal service is already permitted for tax periods beginning on 1 January 2014 or later¹⁴.

3.3.2 Partner States for which the MAC entered into force after 1 January 2018¹⁵

For this group of partner States, documents can in principle be serviced directly by post for tax periods beginning on 1 January of the year following the entry into force of the MAC for the partner State or later.

Exception in accordance with Article 28 paragraph 7 of the MAC: For documents on tax matters involving intentional conduct, which is liable to prosecution under Swiss criminal law, direct postal service is already permitted for tax periods beginning on 1 January 2014 or later¹⁶. As regards limitations, however, it should be checked whether the partner State has also declared a time-related reservation¹⁷ which might further reduce the retroactive application period or even eliminate it completely.

4 Contact

Questions can be sent by email to sei@estv.admin.ch or by post to the following address:

Federal Tax Administration
Division for Exchange of Information in Tax Matters
Eigerstrasse 65
CH-3003 Bern

June 2020].

¹³ The date of entry into force of the MAC for the relevant partner State is available at http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf [last visited on 15 June 2020].

¹⁴ Switzerland has declared a reservation under Art. 30 para. 1 lit. f of the MAC, limiting retroactive application under Art. 28 para. 7 of the MAC to three years before the entry into force of the MAC for Switzerland (AS 2016 5060).

¹⁵ See footnote 13.

¹⁶ See footnote 14.

¹⁷ See footnote 7 for information on how to consult the reservations under Art. 30 para. 1 lit. f of the MAC.