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Framework Conditions

1. For a Competitive Legal and Regulatory Framework



■ Differentiated regulation

Sixty-seven banks are taking part in the pilot phase launched by FINMA at the “*Kleinbankensymposium*” (Small Banks Symposium) in October 2017 to test the less stringent provisions from which category 4 and 5 establishments might benefit. The pilot phase will probably last until the end of 2019, giving time to prepare the necessary ordinances and circulars.

■ New ordinance implementing the Financial Markets Act

On May 1, 2019, the Federal Council initiated a consultation procedure on the new ordinance relating to the Financial Market Supervision Act (FINMASA). The draft ordinance follows the adoption of the Landolt motion by the Federal Parliament.

The text defines the tasks of FINMA in three specific areas:

- FINMA's sphere of competence
- principles and process of regulation
- collaboration between FINMA and the Federal Department of Finance (FDF)

The time limit for stating a position will expire on August 7, 2019 with a view to the subsequent entry into force of the ordinance on January 1, 2020.

■ Deposit guarantee

On March 8, 2019, the Federal Council launched a consultation on a partial revision of the Banking Act (LB). It proposes a review of the rules that apply to the restructuring of banks, a stronger deposit guarantee and new provisions governing the segregation of intermediated securities. The time limit for stating a position expires on June 14, 2019.

Concerning the deposit guarantee, the time limit set for esisuisse to pay funds out to the liquidator will be reduced

from 20 to seven days. A further seven-day time limit will apply to payment of the guaranteed sum by the liquidator. Moreover, the banks will no longer be required to hold additional liquidity to guarantee the contributions payable. Instead of these sums, they will be required to deposit securities or cash in Swiss francs with a reliable depository or grant loans in cash to the guarantee agency.

■ Self-regulation of residential investment properties

In March 2019, following intense discussions with the authorities (State Secretariat for International Affairs and FINMA) and the Swiss National Bank (SNB), the Swiss Bankers Association (SBA) instructed a working group to analyse the assumptions made by the authorities and, if necessary, devise measures to adapt self-regulation in relation to mortgages. This refers to the SBA directives concerning the minimum requirements for mortgage financing. Emphasis should be placed on a reduction of the redemption period and a lower mortgage rate. The results of these considerations are due to be announced in the second quarter of 2019.

■ Regulations and technological change



The Swiss banking sector must have access to regulatory framework conditions adapted to future technological developments.

FinTech authorization

Following the consultation that ended on September 21, 2018, the Federal Council amended the Banking Ordinance and adopted implementing provisions governing the new FinTech authorization. In addition, FINMA published a practical guide to the authorization. These new provisions entered into force on January 1, 2019.

Legal framework and practical guide for blockchains

On December 14, 2018, the Federal Council published a report on the legal framework governing blockchain and distributed ledger technology (DLT) in the financial sector. The report states that Swiss legislation is well suited to the use of new technologies, including blockchain, and that there is no need to regulate the technology as such.

SBA's practical guide

On September 21, 2018, the SBA published a practical guide to opening business accounts by blockchain companies, which it had compiled in cooperation with the Federal Department of Finance (FDF), FINMA and the Crypto Valley Association. This guide addresses due diligence and internal organization when accounts are opened for blockchain companies domiciled in Switzerland.

Electronic authenticated documents and legalization

On January 30, 2019, the Federal Council initiated a consultation procedure on a preliminary draft Federal Act on drafting electronic authenticated documents and electronic legalization (LAAE) and also on a preliminary draft amendment of the land register ordinance (ORF). The aim of these new rules is to enable fully electronic authenticated documents to be drafted.

Law on electronic identity

On June 1, 2018, the Federal Council adopted the Communication concerning the Federal Act on Electronic Identification Services. The purpose of this text is to enable web users to browse in complete safety and retain control of their data using an electronic means of identification, or e-ID, recognized by the State. The draft text stipulates that the State will verify and confirm the identity of the holder of an e-ID and require private service providers responsible for its application to undergo a recognition procedure and verifications. On March 20, 2019, the National Council approved the draft law which is due to enter into force in 2020.

Video and online identification

On July 17, 2018, FINMA published the partially revised version of its "Identification by video and online" circular and in particular, adapted the due diligence for the conclusion of new business relationships through digital channels in order to keep pace with technological advances. The revised circular entered into force on August 1, 2018, with a transitional period ending on January 1, 2020 to adapt the relevant processes.

Cloud banking

In March 2019, the SBA published a guide containing non-binding recommendations intended to make cloud banking more secure.

■ Measures implemented following the mutual evaluation report by the FATF

As a reminder, the Financial Action Task Force (FATF) published its 4th Mutual Evaluation Report on Switzerland in December 2016. Our country obtained a good overall result, better than the average for the countries that had been assessed previously.

Revision of the Anti-Money Laundering Act (AMLA)

The evaluation report has led to a number of actions in the area of regulation and self-regulation with, in particular, a preliminary draft revision of the AMLA. The consultation procedure ended on September 21, 2018.

Revision of the FINMA Anti-Money Laundering Ordinance

FINMA published a partial revision of its Anti-Money Laundering Ordinance (AMLO-FINMA) on July 18, 2018. The salient points are as follows:

- Article 6 AMLO-FINMA requires every financial intermediary that has branches abroad or directs a financial group with foreign companies to manage all the legal and reputational risks associated with money laundering and the financing of terrorism.
- The new Article 9a AMLO-FINMA requires the reasons for which domiciliary companies are used to be clarified.

Revision of the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB)

At the same time, the SBA revised its Swiss banks' code of conduct with regard to the exercise of due diligence (CDB) and the new version was published on July 18, 2018. The main changes are as follows:

- Cash transactions: the co-contracting party must be identified when the value of the transaction is CHF 15,000 or more, instead of the present figure of CHF 25,000.
- The CDB will refer to the FINMA circular on video and online identification.
- If documents are missing when an account is opened, the time limit for presenting these documents to the bank will be reduced from 90 to 30 days. Beyond that time limit, a stop must be placed on transactions into and out of the account and the account itself must be closed if the missing documents cannot be obtained.
- Like AMLO-FINMA, the revised CDB will take effect on January 1, 2020.

Combating terrorism

On September 14, 2018, the Federal Council published its Communication concerning, firstly, a Federal decree approving and implementing the Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol and, secondly, the strengthening of criminal sanctions against terrorism and organized crime.

In essence, the draft proposes a new provision in criminal law which will punish recruitment, training and travel with intent to commit a terrorist act, as well as the accompanying financing activities. The Federal Council likewise intends to improve international cooperation in this area and, in particular, to strengthen cooperation between financial information units. The draft is now before Parliament.



Framework Conditions

2. For an Attractive Tax System

In Switzerland

Corporate taxation

Corporate tax reform (from FP17 to RFFA)

Federal component

On May 19, 2019, the Swiss people approved the Federal Act on Tax Reform and OASI Funding (RFFA). The federal corporate tax reform with additional financing for the OASI pension scheme was approved by 66.4% of the votes cast. As a reminder, this compromise stipulates that each franc of tax lost by the Confederation, cantons and communes through corporate tax will effectively be offset by one franc allocated to the OASI scheme, totalling around CHF 2 billion francs each year. This will involve an increase of 0.15% in the joint contribution rate.

Dividend tax rates will be set at 70% at national level, subject to a minimum of 50% at cantonal level. This leaves the cantons some room for manoeuvre.

Concerning capital contributions, listed companies will not be allowed to adopt this practice unless they distribute an equivalent amount in taxable dividends.

The notional interest deduction (NID) is making a comeback through the back door. This deduction for self-financing will be optional in the cantons and may only be applied under very strict conditions which only the Canton of Zurich satisfies at present; the Canton of Vaud does not.

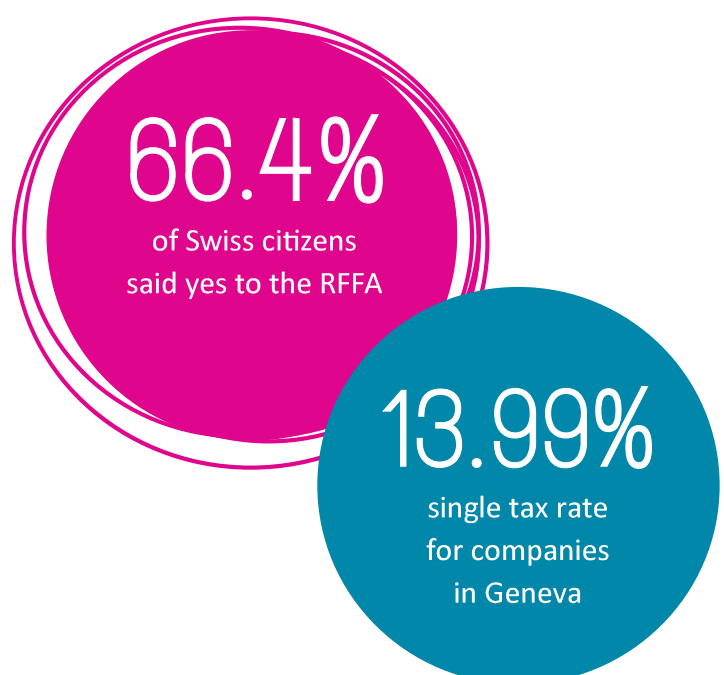
Cantonal component

Also on May 19, 2019, the citizens of Geneva adopted the Geneva component of the corporate tax reform by a large majority of 58.22%. The main points of the reform are as follows:

- The tax rate for corporate profits is set at 13.99%.
- The allocation of the profit tax to capital tax is being introduced gradually during the first five years following the entry into force of the law.
- The Cantons may determine the tax rate for dividends, but the allowance must not exceed 50%. In Geneva, the allowance is currently 50% for business assets (taxed at 50%) and 40% for private wealth (taxed at 60%). Cantonal legislation stipulates a maximum allowance of 40% (taxation at 60%) or 30% (taxation at 70%) for dividend tax.

- The draft introduces a support measure for childcare facilities and childminders, financed by employers through a 0.07% deduction from the payroll with no imposed ceiling (the 0.07% rate corresponds to the 0.22% deduction initially planned, from which the 0.15% of additional OASI contributions introduced at Federal level would be deducted).
- The control of the deficit is suspended for eight years.
- The communal share of the federal direct tax burden will increase from 13% to 20%.

This result is to be welcomed as it is synonymous with legal certainty and tax predictability, both conditions being essential to the economic prosperity of our country and canton.



Federal Act on the treatment of financial sanctions for tax purposes

On December 18, 2015, the Federal Council initiated a consultation procedure on the Federal Act on the treatment of financial sanctions for tax purposes.

The majority of members of the Committee for the Economy and Licence Fees of the National Council (CER-N) accepted a proposal which stipulates the following main provisions:

- Secret commissions paid to public or private agents are not deductible.
- Fines and other financial penalties imposed in Switzerland are not deductible insofar as they are penal in nature.
- Foreign penal financial sanctions are not deductible if:
 - they do not breach Swiss public policy;

- the offence is also punishable in Switzerland;
- the amount of the penalty does not exceed the figure specified in Switzerland.

This position was confirmed at the plenary session of the National Council on September 18, 2018.

The Council of States has not yet indicated its position on this compromise. In March 2019, it referred to its appropriate committee a variation which would stipulate as a condition the fact that the action that resulted in the sanction had been undertaken in good faith. This requirement remains to be clarified and must be the subject of consultation with the cantons and the Federal Office of Justice.

Individual taxation

Abolition of rental value

On April 5, 2019, the Committee for the Economy and Licence Fees of the National Council (CER-N) initiated a consultation procedure on the abolition of rental value; this procedure will be concluded on July 12, 2019. In essence, the plan is for rental value and deductions of the costs incurred in generating the income to be abolished at federal and cantonal levels in the case of owner-occupied accommodation. However, they remain applicable to second homes for personal use. Deductions relating to investments designed to save energy and protect the environment and to the costs occasioned by work to restore historic monuments as well as demolition expenses are abolished at federal level. However, the cantons that wish to do so may maintain these deductions. With regard to the deductibility of private interest payments, it will clearly be restricted and five options are proposed for this purpose. Lastly, the bill introduces a deduction for first-time homebuyers.

The SBA signalled that there was some leeway for further discussion while evaluating the impact of the chosen variants.

At international level

Introduction in Switzerland of the international standard for the Automatic Exchange of Information

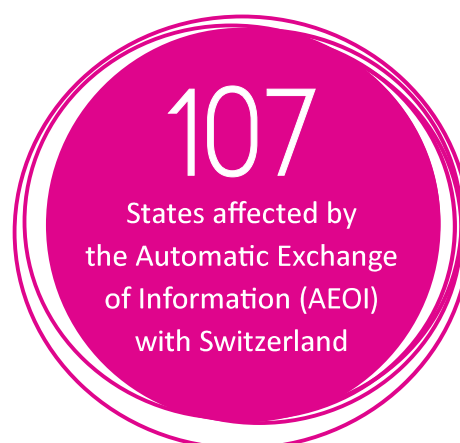
In September 2018, information was initially sent to 36 countries, including the EU Member States - but nothing was presented to Cyprus or Romania because the OECD took the view that the confidentiality rules were not being observed there. In September 2019, Switzerland is expected to send banking data to at least 25 further countries followed by three more one year later. In reality, Switzerland will then have activated the AEOI with 87 jurisdictions, but some do not wish to receive information and others have not yet established the necessary legal framework for this purpose. Lastly, the introduction of the AEOI in a fourth wave of 18 countries was the subject of a consultation which ended on March 20, 2019.

In other words, Switzerland has made provision to activate the AEOI with the other 107 countries that have undertaken to apply the OECD standard and fixed a date for that purpose.

The financial center was not opposed to the broadening of the AEOI. However, it did request that precautions be taken to avoid potential misuse. The Federal Council accepted these concerns and issued an order setting out a verification mechanism, which stipulates the criteria that

the administration must verify before the first data are forwarded in 2019.

The Global Forum has begun to verify implementation of the OECD standard. In Switzerland, the confidentiality rules were judged to be good but in its view, the law and ordinance on AEI are defective in some ways. A consultation on corrective measures was concluded on June 12, 2019. Parliament is expected to examine these changes in the spring of 2020, thereby permitting their entry into force in 2021.



Framework Conditions

3. For the Continuation of Bilateral Relations with the EU

Institutional Agreement

In December 2018, the Federal Council launched a consultation procedure on the Institutional Agreement concluded with the EU. The government emphasized that the purpose of this Agreement is to consolidate the bilateral approach and in particular, access to the internal market.

For the Swiss financial center, this concept of bilateral relations is particularly important since its activity is heavily concentrated on an international clientele. Nearly half the assets under management in our country originate abroad. A large part of these assets comes from the EU and a figure of CHF 1,000 billion has been cited.

However, the financial center is confronted with growing protectionism in the EU Member States, which are erecting barriers seeking to restrict cross-border relations between banks situated in third countries (including Switzerland) and

their own residents. This situation generates legal uncertainty that is extremely detrimental to the economy.

That is why the GFC, acting in concert with the SBA and *economiesuisse*, supports the Institutional Agreement negotiated with Brussels. The agreement has the advantage of forging a credible path for the continuation of bilateral relations between Switzerland and the EU. In any event, it is an essential preliminary to opening negotiations on an agreement granting future access to the market for Swiss banks and other financial intermediaries.

The consultation procedure for interested parties was concluded in late March 2019. Following the consultation procedure, the Federal Council will be required to report and make a formal decision on the matter. The timetable is still uncertain.

Stock-market equivalence

In an unexpected move, in December 2017 the European Commission only granted temporary recognition of equivalence to Swiss stock-market legislation until the end of 2018. The EU intends to make the renewal of this recognition conditional on the progress of negotiations on the Institutional Agreement referred to above.

On June 8, 2018, the Federal Council adopted a potential measure seeking to protect the infrastructure of the Swiss stock market. To put its intention into effect, on November 30, 2018 the Swiss Government adopted an ordinance that stipulates an obligation to secure recognition for foreign platforms that permit trading in shares in Swiss companies, should the need arise. Therefore, if the EU fails to extend stock-market equivalence for Switzerland, the Federal Council will refuse to grant its authorization to European stock markets to conduct Swiss equity transactions.

On December 17, 2018, the EU announced the extension of stock-market equivalence for a six-month period until June 2019. For Brussels, this time limit is to allow Switzerland to decide what action it proposes to take on the Institutional Framework Agreement.

Grey and black lists

The European Commission has decided to compile a list that names and shames States and jurisdictions which, in its view, fail to observe the international standards of good governance in tax matters.

Applying the second criterion, Switzerland is still on the EU's "grey list" of countries that have not yet observed their tax obligations. In October 2014, as part of its corporate tax reform (RFFA), Switzerland in fact agreed to abolish five regimes that were deemed to be prejudicial. The favourable vote taken on May 19, 2019 should enable our country to be removed from the grey list.

Consequences of Brexit for Switzerland

Faced with the many uncertainties surrounding the Brexit issue, the Confederation has managed to enter into several agreements with the United Kingdom in the areas of trade, citizens' rights and insurance, as well as road and air transport. For financial services, the decisions on equivalence granted by the EU to Switzerland will be transposed into English law, the Automatic Exchange of Information will continue on the basis of the OECD conventions and the deepening of financial relations will be discussed further on the basis of the concept of mutual recognition. The aim is to secure mutual market access, so enabling cross-border services to be offered without any barriers.