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Framework Conditions

1. For a Competitive Legal and Regulatory Framework

"Sovereign money" initiative

The aim of the "Sovereign money" initiative is to adopt a monetary system in Switzerland that gives the National Bank absolute and direct control over the money supply; commercial banks would therefore be barred from creating money by granting loans. Only loans fully covered by savings deposits could then be made.

The text also provides for the direct distribution of newly created money by the SNB to the public authorities and citizens. This would be a radical reform of the existing system, which has not been tested anywhere in the world in this form. Any such contraction in bank credit supply would obviously result in higher interest rates, to the detriment of financing for the economy.

Then, there is the fact that this initiative would be a serious threat to the SNB's independence and its ability to pursue a monetary policy destined to guarantee price stability. Enormous pressure would, in fact, be exerted on the National Bank to prevent it from stopping new cash injections.

In February 2016, the Federal Council voiced its opposition to this initiative and decided not to put forward a counter-proposal. Parliament endorsed the Government's opinion. The referendum will be held on June 10, 2018. We can only hope that the Swiss people will overwhelmingly reject the dangerous experiment proposed by the "Sovereign money" initiative!

Let's not play the sorcerer's apprentice

Responsible multinationals initiative

The initiative "in favor of responsible multinationals" was tabled in the fall of 2016 by a coalition involving some 60 NGOs. It seeks to strengthen the provisions governing the responsibility of enterprises in the fields of human rights and the environment. This implies obligations in terms of risk assessment, measures designed to prevent breaches of human rights and damage to the environment, and the publication of full information about the actions taken.

The Federal Council published its Message on September 15, 2017. It recommends rejecting the text, without putting forward a counter-proposal. The Government takes the view that the mechanism of civil responsibility stipulated in the initiative goes too far and would be unique. The Federal Council prefers a concerted international approach (UN, OECD). Then, there is the fact that the initiative would be very hard to implement because of its extraterritorial nature, without guaranteeing any improvement in the situation of the population and environment in developing countries.

The text has now been presented to the Federal Chambers and a referendum is expected in 2019. Several members of parliament are considering the presentation of a counter-proposal.

Federal Financial Services Act (FFSA) and Federal Financial Institutions Act (FinIA)

The FFSA defines the conditions under which financial services and financial instruments may be offered to the public. The aim is to incorporate the standards set by the European MIFID II Directive, with the aim of seeking equivalence.

Following an eventful consultation process, the Federal Council published its Message in November 2015. The Government decided to remove the most controversial provisions, particularly in the field of civil proceedings (e.g. reversal of the burden of proof, introduction of an American-style class action, creation of a fund to cover clients' legal fees, even when they lose lawsuits, etc.).

The central element of the FinIA lies in the supervision of independent wealth managers (IWM). The various stakeholders reached a pragmatic compromise over the course of 2016: independent wealth managers will need to obtain authorization from FINMA, but day-to-day supervision will be carried out by one or more independent organizations, which have yet to be created. Banks will thus not be responsible for this supervision.

The Council of States adopted these two texts in its winter 2016 session. During the debates, the National Council voted in favor of all the demands put forward by the SBA, with one exception, namely the requirement for ordinances to be validated by Parliament.

We have now reached the stage of the procedure at which divergences have to be resolved. However, since the examination was not completed during the autumn 2017 session, the matter will not be considered again by the Council of States until the spring of 2018. Any differences that might still exist would then be eliminated at the 2018 summer session.

At the same time, five working groups led by the State Secretariat for International Finance (SIF) have been instructed to draw up the implementing ordinances.

In any event, entry into force of the FFSA and FinIA cannot be expected before 2019, or even 2020.

Towards differentiated regulation

On October 2, 2017, FINMA organized a "Kleinbankensymposium" (Small Banks Symposium) intended for establishments in categories 4 and 5. Discussions centered, in particular, on the leverage ratio, risk-based equity requirements and the external audit procedure.

One of the suggestions made by FINMA is that Category 4 and 5 establishments with no heightened risk or problematic past history should only need to undergo a regulatory audit once every two to three years. FINMA also intends to organize a pilot phase, involving a few banks, in 2018.

Regulations and technological change

On August 1, 2017, two measures adopted by the Federal Council through an amendment to the Banking Ordinance (BO) entered into force:

- The exception contained in the BO with regard to funds received for settlement will explicitly apply to transactions that are conducted within a 60-day time frame (rather than the current practice of seven days).
- The receipt of deposits from the public of up to CHF 1 million will not be considered a commercial activity and will require no authorization. The purpose of this provision is to allow companies to test a business model before applying for authorization.

FINMA has not been idle in this field. At the beginning of 2018, it initiated a review of its Circular on opening an account online. Under the rules in force at present, opening a bank account online requires funds to be transferred from a Swiss bank. This requirement restricted access to this innovative solution to clients who already held an account in Switzerland. This restrictive approach was not compatible with the needs of our financial center, whose main focus is on an international clientele. The practical approach adopted by FINMA to remove this obstacle is a welcome development.

In February 2018, FINMA also published a practical guide to clarify the rules governing Initial Coins Offerings (ICO). "Tokens" are divided into several categories according to their use. Payment tokens are covered by the anti-money laundering rules and those laid down for investments must meet the criteria concerning the trade in transferable securities (compulsory drafting of a prospectus etc.).

A shared commitment and a pragmatic vision of regulation remain key success factors

Data protection

On September 15, 2017, the Federal Council tabled its message concerning the total overhaul of the Federal Data Protection Act (FDPA). The draft law aims to strengthen data protection, in particular by improving transparency of the processing of such data and the control exercised by the person concerned. It also seeks to maintain equivalent levels of protection between Switzerland and the EU. Lastly, it aims to maintain and strengthen Switzerland's competitiveness by creating an environment conducive to the facilitation of cross-border data flows, by favoring the emergence of new economic activities related to the digital society, which requires a high standard of internationally acknowledged protection.

The appropriate Commission of the National Council addressed the matter in January 2018 and decided to adopt a two-stage approach. First, it intends to adapt Swiss law in respect of the criminal aspect of personal data processing, in order to make Swiss legislation compliant with the Schengen Agreements. An in-depth review of the FDPA will then follow at a second stage. This phased treatment may prove problematic for many Swiss enterprises that come into contact with European clients. These companies will, in fact, need to comply with the EU's General Data Protection Regulation with effect from May 25, 2018. The process leading up to a thorough review of the FDPA cannot therefore be drawn out indefinitely. In this context, any "Swiss finish" will also have to be avoided.

Implementation of the FATF Recommendations

On December 6, 2016, the Financial Action Task Force (FATF) published its 4th Mutual Evaluation Report on Switzerland. Our country obtained a good overall result, better than the average for the countries that had been assessed previously. Switzerland is deemed to be fully or generally compliant with 31 out of 40 Recommendations. In addition, the FATF identified no fundamental failings but noted several weaknesses in the system, in particular the fact that the Anti-Money Laundering Law (LBA) does not apply to lawyers, notaries and accountants with regard to certain non-financial activities, such as the creation of companies and trusts. Furthermore, given the size of the Swiss financial center, the number of suspicious transaction reports is considered to be too low. Lastly, the co-existence of the right and obligation to communicate is a source of confusion.

This assessment report has already led to several initiatives with regard to regulation and self-regulation: :

- Revision of the FINMA Anti-Money Laundering Ordinance (AMLO): in September 2017, FINMA initiated a hearing on a draft review of the AMLO-FINMA. According to this text, financial intermediaries must verify information about the beneficial owner, even in the case of clients with normal risks. They must also update this information regularly. This review also embodies the requirements placed on financial intermediaries who have branches or groups abroad with regard to their overall management of legal and reputational risks. Lastly, FINMA intends to lower the threshold applicable to cash transactions and subscriptions to non-listed collective investments to the level required by FATF, namely CHF 15,000.
- Revision of CDB 2016: it had only just been adopted when CDB 2016 ("Swiss banks' code of conduct with regard to the exercise of due diligence") was the subject of a review procedure concerning, in particular, the identification and verification of
  1) the controlling owners (Article 20 CDB),
  2) the beneficial owners (Article 27 CDB),
  3) persons involved in legal structures (Article 40 CDB).

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Framework Conditions

2. For an Attractive Tax Sytsem

In Switzerland

The Geneva Financial Center (GFC) monitors tax-related issues closely, as Switzerland's international competitiveness and appeal depend largely on the fiscal framework it is able to offer corporations and individuals.

Corporate taxation

Fiscal Project 17 (FP 17)

Federal component

On February 12, 2017, the Swiss people rejected by almost 60% the Federal component of the third Corporate Tax Reform (CTR III).

The Federal Council immediately resumed work on this issue. It developed a new project called "Fiscal Project 17 (FP 17)" on the basis of the guidelines defined by a working group bringing together the Confederation and the cantons. On September 6, 2017, the Government launched a consultation procedure of the interested parties; this was completed on December 6, 2017.

After assessing the opinions expressed, the Federal Council published its Message on March 21, 2018. The main elements of the reform can be summarized as follows:

- Dividend tax is raised to 70% at Federal and cantonal level for natural persons. This feature has come in for criticism in some economic circles, including USAM (Union Suisse des arts et métiers).
- The cantons are required to introduce the "patent box".
- The cantons may impose a supplementary deduction for research and development.
- The cantonal share of Direct Federal Tax (DFT) rises from 17% to 21.2%.
- The interests of towns and municipalities must be taken into account in the allocation of this redistribution of the DFT (it should be recalled, in this regard, that many towns had opposed CTR III).
- Family allowances, financed by the employer, rise by CHF 30 per month to reach a minimum threshold of CHF 230. This measure would have no impact on the cantons of Geneva and Vaud because the amounts paid under this heading already far exceed this threshold.

Among the items that were not adopted, special mention must be made of the NID, "notional interest deduction". There was entrenched opposition to this in the RIE III context.

It is now up to Parliament to examine these proposals. Time is short because in December 2017, the EU placed Switzerland on a grey list of States that have given fiscal undertakings but had so far failed to respect them. Even if this European list is tainted by hypocrisy, it is still worth pointing out that Bern gave an undertaking to Brussels in 2014 to abolish the cantonal fiscal statutes.

Cantonal component

On November 1, 2017, the Vaud Council of State announced its intention of applying the cantonal component of the tax reform, which had been approved by 87% of the citizens in a March 2016 vote, with effect from January 1, 2019. In practice, this means that the single rate of 13.79% will be applied from that date, without waiting for the adoption of the Federal component of PF 17.

In Geneva, there is no plan to anticipate the entry into force of PF 17 at cantonal level. Entry into force is accordingly envisaged for 2020. Until that date, the ordinary rate of 24.2% will therefore be applied. Then, there is the fact that no clear resolve to reach an agreement comparable to the Vaud solution is detectable in the political debate at this stage.

Companies based in Geneva will obviously not be willing to accept tax conditions that are less favorable than those in the neighboring canton of Vaud for any length of time

PF17: failure is out of the question

Federal Act on the Tax Treatment of Financial Penalties

On December 18, 2015, the Federal Council initiated a consultation on the Federal Act on the Tax Treatment of Financial Penalties.

This highly controversial draft law raises issues of principle as to the extent to which decisions on tax matters pronounced abroad should be enforced in Switzerland (from the perspective of arbitrariness in particular).

The concept of corporate criminal liability under Swiss law must also be taken into account. In fact, pursuant to Article 102 of the Swiss Criminal Code, a corporate entity may be found criminally liable only on the grounds of a lack of organization and the resulting fine must not exceed CHF 5 million.

On March 21, 2017, the Council of States' Committee for Economic Affairs and Taxation (CER-E) agreed to study the draft law. After postponing a decision on this matter several times, it spoke out in January 2018 in favor of the deductibility of fines, pecuniary penalties and administrative sanctions imposed by a foreign authority in tax matters.

Unfortunately, this judicious decision was not confirmed by the plenary session of the Council of States, which reverted to the version proposed by the Federal Council. The matter will now be placed before the National Council. We can only hope that it will accept the principle of deductibility of sanctions imposed abroad!

Individual taxation

Initiative on the protection of financial privacy (Matter initiative)

This initiative aims to maintain banking secrecy in tax matters for private clients living in Switzerland. For the record, the initiative had been launched to oppose Federal Councilor Eveline Widmer-Schlumpf's intention of strengthening criminal tax law by adopting binding measures.

Both the Swiss Bankers Association (SBA) and the Federal Council recommended the rejection of this initiative without presenting a counter-proposal.

After a series of twists and turns during 2017, the movement gathered pace in early 2018. The Federal Council announced the outright abandonment of the revision of criminal tax law; that enabled the initiative to be withdrawn. At the same time, the National Council withdrew its counter-proposal, thereby putting an end to the saga.

Attacks on the tax shield in Geneva

In an inter-cantonal comparison, Geneva has a particularly progressive system for the taxation of natural persons. In fact, some 50% of all income tax is paid by just 7% of taxpayers. Moreover, 85% of wealth tax revenue is generated by 4.3% of taxpayers. In order to correct this competitive disadvantage to some extent, the canton introduced, on the basis of a referendum, a tax shield mechanism comparable to the arrangement that already exists in the cantons of Vaud, Bern and Valais. This shield enables Federal, cantonal and municipal taxation to be limited to around 70%.

The Geneva left thought fit to simultaneously table some 10 draft laws seeking to suspend or even abolish the tax shield mechanism. The immediate consequence of the adoption of these texts would be an exodus of major Geneva taxpayers towards more clement fiscal climes, beyond the cantonal border.

It is therefore to be hoped that Parliament and, if appropriate, the people of Geneva will prove reasonable and reject these draft laws, which are synonymous with confiscatory taxation.

At international level

Peer review by the Global Forum on Transparency and Exchange of Information for Tax Purposes

In July 2016, Switzerland successfully passed the peer review by the Global Forum and was rated "largely compliant" with regard to the exchange of information.

Among the positive points, the Global Forum mentioned with regard to the Tax Administrative Assistance Act (TAAA), the existence of an exception to the notification of taxpayers who are subject to a request for information, as well as the extension of the Double Taxation Agreement (DTA) network. It also welcomed the staff increase to ensure efficient cooperation.

The Global Forum expressed reservations about bearer shares, despite the measures already taken by our country. Regarding the assistance requested on the basis of stolen data, reference is made to the Message on the revision of the TAAA forwarded to Parliament on June 10, 2016.

In order to take account of these remarks, the Federal Council launched a consultation procedure in January 2018, which included the following aspects:

- The proposal provides for the compulsory conversion into registered shares of the bearer shares of non-listed companies.
- Provision is also made for the introduction of penalties against shareholders who are in breach of their obligation to disclose the beneficial owners or against companies which fail to respect their obligation to keep lists of shareholders and beneficial owners.
- The draft law also contains provisions on the confidentiality of requests for administrative assistance.
- The subject of applications based on stolen data is not covered by this consultation but will be included in the Message to be placed before the Federal Chambers at a later date.

Parliament is due to examine this matter in the winter of 2018; the next review of Switzerland by its Global Forum peers is expected to begin in the 2nd half of 2018.

Introduction in Switzerland of the international standard for the automatic exchange of information

In May 2014, Switzerland declared its intention of applying the standard drafted by the OECD for the Automatic International Exchange of Information in Tax Matters (AEOI).

Since then, our country has taken all the necessary steps to put this proposal into effect. First of all, Switzerland had to join the various international conventions which lay down the framework for this cooperation, after which an ad hoc Federal law had to be adopted.

Legislative work continued with the ratification of a treaty with the European Union, which came into force at the beginning of 2017. At the same time, the Swiss government pursued bilateral negotiations with several States, with a view to the implementing the AEOI.

Following these various diplomatic steps, Switzerland gave an undertaking to implement the AEOI with 38 States and territories with effect from 2018.

Continuing along these lines, the Federal Department of Finance launched two new rounds of consultations on December 1, 2016 and February 2, 2017, covering the introduction of the AEOI with 21 and 20 new States and territories respectively.

The countries concerned include, in particular, South Africa, Saudi Arabia, Argentina, Mexico, Colombia, India, China, New Zealand and Russia.

In principle, the financial center expressed a favorable opinion on enlarging the AEOI, in particular to the Member States of the OECD and the G20. However, it did ask for precautions to be taken to prevent abuse.

The Federal Council listened to these concerns and adopted a Decree including a verification mechanism, which lays down the criteria that the Administration will need to check before data are sent for the first time in 2019. In particular, it must determine whether:

- the partner State clearly respects the principle of specialty, confidentiality and data protection in compliance with the OECD standard;
- the partner State must have its own adequate network of partner States, including the main financial centers that compete with Switzerland;
- persons concerned by the exchange of data run the risk of proceedings in the partner State that might lead to serious breaches of human rights.

In December 2017, following various incidents surrounding the treaties with Saudi Arabia and New Zealand, the Federal Chambers finally approved the AEOI with the 41 States selected by the Government, with a view to entry into force on January 1, 2018.

On October 13, 2017, the Federal Council launched a consultation procedure concerning agreements on the introduction of the AEOI with Hong Kong and Singapore. The deadline for a position statement on this matter expired on January 27, 2018.

To the extent that two financial centers that are direct competitors to Switzerland are concerned, the controlling mechanism referred to above will assume special importance in relation to the notions of a level playing field and data protection.

AEOI: final verification before implementation