3

Framework conditions

1. For a Competitive Legal and Regulatory Framework

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

Following a turbulent consultation process, the Federal Council published its Message on the FFSA and FinIA in November 2015.

The GFC noted with satisfaction that the Government opted to remove the most controversial provisions, especially in the area of civil proceedings (e.g. reversal of the burden of proof, introduction of American-style "class actions", creation of a fund to cover clients' legal fees, even for losing lawsuits, etc.)

Similarly, given the intensity of the objections raised during the consultation process, the Federal Council abandoned the provisions in the FinIA regarding tax compliance (also known as the "Weissgeldstrategie"), which would have burdened financial intermediaries with additional due diligence obligations above and beyond accepted international standards.

In principle, the GFC is therefore in favor of ratifying the FFSA and FinIA.

These two laws help to create equivalence between Swiss legislation and the regulations enforced by our main partners, namely the member states of the European Union. This concept of equivalence is essential to ensure access to markets, especially with regard to institutional clients.

These two laws also increase the certainty and predictability of our legal framework. In fact, the main tenets of the FFSA and FinIA are already partly applied in Switzerland, albeit inconsistently, through various provisions of the Collective Investment Schemes Act (CISA) and certain FINMA Circulars (for instance Circ. 2009/01). This trend is bound to intensify in the coming years, especially through case law.

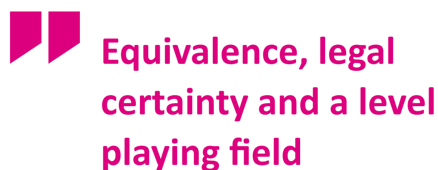
Lastly, the FFSA and FinIA seek to create a level playing field for the different types of financial sector participants who engage in similar activities in Switzerland. It is in the interests of financial intermediaries as well as their clients to see this principle applied as it provides the latter with a higher level of protection.

In this regard, during the consultation process in 2014, the GFC expressed support for better supervision of independent asset managers. There is no question that prudential supervision is the rule at international level and that Switzerland must therefore adopt similar measures for its legislation to be considered equivalent.

Supervision must be commensurate with the size of the company and the nature of its activities. Regulations should not be so burdensome that they result in financial intermediaries being priced out of the market altogether. The principle of “One size does not fit all” remains highly relevant in this case.

The GFC is of the opinion that a supervision system consisting in an ad hoc organization authorized by the FINMA, as suggested in the Federal Council’s message, would fulfill these requirements and enable differentiated treatment of all concerned parties.

Regarding parliamentary discussions, the GFC welcomes the fact that the Council of States’ Committee for Economic Affairs and Taxation (CER-E) has begun work on the two draft laws and refrained from sending them back to the Federal Council. The government has been asked to produce a report on its proposals for the requested changes. It comes as no surprise that the supervision system for independent asset managers is still the most disputed issue.



Young Socialists’ Initiative “No speculation with foodstuffs”

Swiss citizens went to the polls on February 28, 2016 to vote on an initiative sponsored by the Young Socialists, which would have made it illegal for companies with headquarters or branch offices in Switzerland to invest in financial products related to food and agricultural commodities, as well as the relevant derivatives.

If it had been accepted, this initiative would have severely impacted the commodity trading industry in Geneva, which accounts for 20% of the canton’s GDP and is thus its largest economic sector. The proposed measures would have also struck a blow to another pillar of the Geneva financial center, namely commodity trade financing. The initiative thus threatened a unique global value chain.

The GFC actively campaigned against the initiative by arguing that futures markets have very little influence on the price of agricultural commodities, which primarily depends on macroeconomic factors such as weather conditions, the geopolitical situation, agricultural policy decisions and restrictions on imports and exports. The Geneva Financial Center pointed out that on the contrary, futures markets have a stabilizing effect on prices, particularly on the price of major commodities such as corn, sugar and wheat, by allowing farmers to insure crops against various risks.

The Swiss people correctly understood the dangers posed by the initiative, which was rejected by a majority of nearly 60% and approved only in the cantons of Jura and Basel-City by a very small margin.

3

Framework conditions

2. For an Attractive Tax System

In Switzerland

The Geneva Financial Center (GFC) follows taxation issues very closely. In fact, Switzerland's international competitiveness and appeal largely depend on the fiscal conditions it offers to individuals as well as to corporations.

Tax issues and natural persons

Federal Inheritance Tax

On June 14, 2015, the Swiss people voted on an initiative to introduce a federal tax on inheritances and gifts. The law would have introduced a 20% levy on all legacies over CHF 2 million and on gifts, with retroactive effect from January 1, 2012 for gifts only.

Along with other members of the business community, the GFC campaigned against this new tax, whose consequences would have been devastating, especially in the case of intergenerational transfers of family-owned companies.

In this regard, the GFC stressed that assets targeted by the new levy are already subject to income and wealth taxes and that in Geneva in particular, the marginal tax rate on personal wealth, at 1% per annum, is the highest in Switzerland.

The Swiss people wisely rejected the initiative by a 71% majority. None of the cantons approved it. In Geneva, it was rejected by almost 72% of voters and by all electoral districts in the canton.

Despite this clear refusal, the initiative nonetheless created legal uncertainty in the period leading up to the vote, undermining Switzerland's appeal from a fiscal perspective.

Taxation according to expenditure (lump-sum taxation)

In November 2014, a 59% majority of Swiss voters rejected a federal initiative to abolish taxation according to expenditure. The initiative was rejected by all the cantons, with the exception of Schaffhausen.

The outcome of the vote was even more striking in Geneva, where 68.4% of voters rejected a similar cantonal initiative. The counter-initiative was also rejected by a 56.7% majority.

This resounding defeat seemed to suggest that the issue would disappear from the political agenda, at least for a while. Unfortunately, that was not the case.

Contrary to expectations, a referendum was organized in Geneva against the law adopted by the Grand Council in October 2015 implementing the principles established by the federal legislation with the aim of tightening the requirements for obtaining lump-sum taxation.

The citizens of the canton of Geneva will consequently vote on this referendum on June 5, 2016.

The legal uncertainty caused by the referendum will again benefit other Swiss cantons, not to mention numerous foreign States, which actively seek to attract wealthy taxpayers through incentives very similar to lump-sum taxation.

A mass exodus of lump-sum taxpayers would be a huge loss to Geneva.

In fact, they contribute around CHF 150 million to the canton's coffers each year. Furthermore, as significant consumers of goods and services, they help to create and maintain employment in segments such as hospitality, construction, finance, real estate, etc.

It is to be hoped that the people of Geneva will vote as wisely on June 5, 2016 as they did in November 2014, and overwhelmingly reject the referendum in question.

Popular initiative "Yes to the protection of privacy"

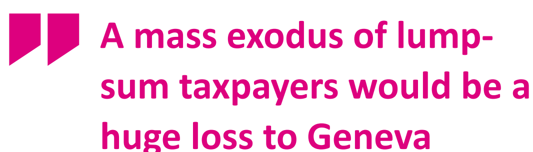
The popular initiative "Yes to the protection of privacy" (also known as the "Matter initiative" after its sponsor) was submitted to the authorities in September 2014 with the required number of signatures. Its aim is to enshrine in the Constitution the principle of financial privacy protection, in effect preserving banking secrecy in tax matters for private clients residing in Switzerland.

The Federal Council recommended rejecting the initiative and has not proposed a counter-draft. The initiative also received a lukewarm welcome from the Swiss Bankers Association (SBA), as it could impose additional tax-related responsibilities on financial intermediaries.

In February 2016, the National Council's Commission for Economic Affairs and Taxation decided to consider the option of a counter-draft, which would enshrine the current tax situation in the Constitution while rejecting parts of the initiative that go beyond the status quo.

The GFC has expressed serious reservations about this initiative as well as the counter-draft.

More fundamentally, the initiative raises the important social issue of the relationship between taxpaying citizens and the state. The Swiss people should be allowed to decide for themselves which tax system best meets their aspirations.



Corporate taxation

Corporate Tax Reform III (CTR III)

In response to international criticism directed at the Swiss corporate tax system, Switzerland initiated sweeping reforms with the aim of abolishing the special tax regimes offered to certain companies. Due to the federal nature of the Swiss tax system, this reform includes measures at federal and cantonal levels.

Federal level

The National Council in Bern has completed its review of the federal component of the reform. The Council of States will review it again in June 2016. The numerous technical aspects of the reform include:

- Taxation of income from dividends
- Notional interest deduction (NID)
- The creation of "patent boxes" and deductions for research and development

Fundamental decisions already appear to have been reached on several issues. For instance, there was wide opposition to the proposed introduction of a tax on private capital gains to compensate for lost tax revenue. Fortunately, this means that the proposal has very little chance of success.

Other important questions are still being debated, including the abolition of issuance stamp tax on equity capital. This tax represents a serious handicap for the attractiveness of Swiss capital markets and its abolition would help to inject some dynamism into the sector. However, Parliament has expressed strong reservations against such a move. As a result, this potentially beneficial measure may well be sacrificed in an attempt to reach a compromise.

Another measure under CTR III proposed by the National Council's Committee for Economic Affairs and Taxation (CER-N) would be to replace corporate income tax with a flat tonnage tax, as applied by many other countries.

The GFC strongly supports the latter proposal, which has the potential to encourage the development of shipping-related activities in Geneva.

The Swiss people will undoubtedly have the last word on this issue of central importance to the country's economy, as the Socialist party has already declared that it intends to introduce a referendum against the reform.

Cantonal Level

The advancement of corporate taxation reforms varies considerably from one canton to the next.

In Vaud, an overwhelming majority of voters (87%) accepted the principle of a single corporate tax rate of 13.79%, with the unanimous support of the canton's State Council.

In Geneva, the Government has not yet submitted its proposal, but it is widely acknowledged that the only effective, viable long-term option is to lower the ordinary corporate tax rate. The State Council has suggested a rate of 13%. Although the coalition in favor of reform seems far less united in Geneva than in the canton of Vaud, it is hard to see how, following the abolition of special tax regimes, Geneva could keep corporate tax at 24% while the neighboring canton of Vaud applies a rate of 13.79%. At stake is the continued presence of a large number of companies and tens of thousands of jobs in Geneva.

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Federal Act on the Tax Treatment of Financial Sanctions

On December 18, 2015, the Federal Council initiated a consultation on a bill regarding the tax treatment of financial penalties.

Two aspects of the draft law are not contested by the financial sector, namely:

- Punitive sanctions of a non-criminal nature which aim to reduce profits should be tax deductible;
- Hidden commissions or bribes paid to individuals should not be tax deductible.

Conversely, the GFC believes that fines, financial penalties, and financial administrative sanctions should remain tax deductible, according to the principle of fiscal neutrality embodied in the Federal Constitution.

This highly controversial draft raises several matters of principle regarding the extent to which legal decisions handed down abroad can be enforced in Switzerland.

In this respect, it is hard to understand why the explanatory report fails to address the central question of the extraterritorial effects of certain foreign laws, which are on the rise. Moreover, no reservations were expressed regarding potential cases of foreign judges or authorities arbitrarily imposing financial sanctions.

Lastly, it is important to note that in Swiss law a corporate entity cannot be held directly responsible for a criminal act but may be considered criminally liable only on the basis of a lack of organization (Article 102 of the Swiss Criminal Code). Moreover, the law states that fines must be set according to the company's economic capacity, up to a maximum of CHF 5 million francs. This is a far cry from the hundreds of millions of francs in fines imposed by foreign courts.

The GFC therefore believes that this highly problematic draft bill should be fundamentally revised.

At the international level

International Exchange of Information in Tax Matters

Implementation in Switzerland of the international standard on the automatic exchange of information

The Federal Parliament ratified the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (hereafter Multilateral Competent Authority Agreement, MCAA) and in December 2015, adopted the Federal Act on the International Automatic Exchange of Information in Tax Matters (AEOI), which stipulates how the principles of the MCAA will be applied.

In the context of bilateral relations with the European Union (EU) and the adaptation of the Agreement on Taxation of Savings in line with new international standards, at the end of 2015 Brussels ratified a fiscal agreement for automatic exchange with Switzerland. In November 2015, the Federal Council in Bern adopted a dispatch on the automatic exchange of information (AEOI) with the EU. The agreement will not apply to information prior to 2017.

With regard to other States, the Federal Council in 2014 stated that preference should be given to:

- Countries with close economic and political ties to Switzerland;
- Countries that provide their citizens with sufficient opportunity to settle their tax debts;
- Countries that offer business opportunities for the Swiss financial sector (market access).

From the perspective of the financial center, it is also essential that Switzerland does not go it alone when signing such agreements, but should ensure that competing financial centers (Luxembourg, the United Kingdom, the United States, Singapore, Hong Kong, etc.) are taking similar steps with the same countries. If not, the absence of a level playing field could place Switzerland at a serious competitive disadvantage.

Switzerland ratified its first bilateral agreement in 2016 with Australia. Unfortunately, this treaty fails to meet the conditions listed above, particularly with regard to the settlement of the past, market access, and equal treatment.

These concerns remain relevant in the context of the series of consultations initiated by the Federal Council in January and February 2016 regarding proposed agreements with Guernsey, Jersey, the Isle of Man, Iceland, Norway, Japan, Canada and South Korea. Parliament should be especially attentive to the level playing field issue in these cases and seriously consider making the implementation of new agreements conditional on the existence of similar treaties with financial centers that compete with Switzerland.

Administrative assistance on the basis of stolen data

In 2015, the Federal Council proposed an amendment to the Act on International Administrative Assistance in Tax Matters (Tax Administrative Assistance Act, TAAA), which would allow it to consider requests from third countries submitted on the basis of information originally acquired by means of acts punishable under Swiss law (stolen data), provided the requesting state obtained the information in the course of administrative assistance proceedings and not through any pro-active behavior.

Moreover, the proposed new bill would not consider the requesting state to have engaged in pro-active behavior if the data was obtained from a publicly available source, such as the media.

The proposed changes elicited significant objections during the consultation process ending in December 2015. Consequently, the Federal Parliament postponed the debate on the TAAA until the fall 2016, although the Government would have preferred it to take place in June 2016 to allow it to be taken into account by the Global Forum on Transparency and Exchange of Information for Tax Purposes in its review of Switzerland (see below).

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

After much back and forth, Switzerland was finally allowed to advance to phase 2 of the peer review process administered by the Global Forum, an entity of the OECD. The review concerns administrative practices in force as at June 30, 2015. For the Forum, the main stumbling blocks are still Switzerland's refusal to provide assistance on the basis of stolen data and the existence of bearer shares.

The verdict is expected by the summer of 2016. The best Switzerland can hope for is to be declared partly compliant. It should be mentioned in this regard that Luxembourg was similarly deemed "non-compliant" at first, which prompted the Grand Duchy to adopt several legislative reforms.