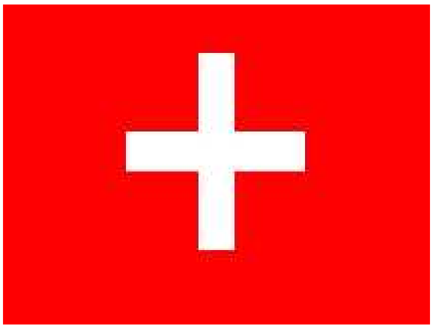
TAXE Committee

Ad hoc Delegation to Bern, Switzerland
22 May 2015



Secretariat : Mr Marcus Scheuren - marcus.scheuren@europarl.europa.eu
Service GSM no: +32-498/981 391

European Parliament

TAXE Committee

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European Parliament

TAXE COMMITTEE
ad hoc Delegation
to Bern (Switzerland) 22 May 2015

Table of content:

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FINAL Draft Programme as of 19/05/15

Thursday 21 May 2015

Arrival in Bern on 21 May in the evening
It is suggested to take the train from Strasbourg to Bern, via Basel (one change, takes 2h30), and to book via the travel agency. There are trains hourly at 13h51, 14h51, 15h51 etc.

Friday 22 May 2015

All meetings with stakeholders will be in English (with interpretation EN/FR) and will take place in the EU Delegation to Switzerland, Bubenbergplatz 5, Bern (200m / 2 min from the train station)

8.30-09.15 **Welcome and presentation by Ulrich TRAUTMANN**
First Counsellor, Head of Sector Trade and Economic Affairs
Delegation of the EU to Switzerland & Liechtenstein

Presentation on the EU delegation's analysis of Swiss tax policy and in particular the use of the cantonal Swiss company tax schemes including ruling practice and policies in different Swiss cantons

09.15 - 10.00 **Meeting with Business representatives**

Markus R. Neuhaus, Chairman of the Board of PwC Switzerland, Member of the office of the Global Chairman of PwC

Economie Suisse
Frank Marty, Member of the executive board, Head Financial Services & Taxes
François Baur, Permanent Delegate in Brussels, Head European Affairs

Swiss Holdings
Martin Zogg, Member of the Executive Committee, Head Domestic and International Taxation,

Swiss Bankers Association
Urs Kapalle, Director Financial Policy and Taxes

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10.00 - 10.45 Meeting with NGOs: Alliance Sud and Declaration of Berne (DoB)
Mark Herkenrath, Programme Officer International Finance & Tax Policy and designated Director of Alliance Sud, Member of Global Alliance for Tax Justice
Olivier Longchamp, Tax Policy & International Finance, Declaration of Berne (DoB)

11.00 - 12.00 Meeting with Jacques de Watteville, State Secretary in the Federal Department of Finance (DFF)
Meeting will be held in French only (interpretation arrangements by EP)
Venue: State Secretariat for International Financial Matters SIF
Bundesgasse 3, 3003 Bern (200m / 2 min from the EU delegation)

The State secretary will be accompanied by
Ambassador Christoph Schelling, SIF, Head of Tax Policy Division
Ambassador Dominique Paravicini, Directorate for European Affairs (DEA), Head of Division for Economic Affairs
Adrian Hug, Director of the Swiss Federal Tax Administration
Fabian Baumer, Swiss Federal Tax Administration, Vice-Director, Head of Tax Policy Division
Natassia Martinez, SIF, Section for Multilateral Tax Issues and Corporate Taxation

12.00 - 14.00 Working lunch with the State Secretary
This working lunch is kindly hosted by the State Secretary. Meeting will be held in French only (interpretation arrangements tbc by EP)
Venue: State Secretariat for International Financial Matters SIF

Participants will be as above, plus in addition:
Ruedi Noser, Member of the National Council, Head of the Committee for Economic Affairs and Taxation
Tbc, Member of the Council of States
Martin Godel, State Secretariat for Economic Affairs (Seco), Deputy Head of Promotion Activities Directorate
Ambassador Richard Jones, EU Ambassador to Switzerland

14.00 - 14.15 Press point State Secretary and TAXE Chair *(in French only)*

14.30 - 15.30 Meeting with think tank: "Avenir Suisse"
Dr. Marco Salvi, Senior researcher
Avenir Suisse
Venue: EU Delegation to Switzerland

Programme to end around 15.30

As there are few flights from Bern to other European cities, it is recommended to fly from Basel, Zurich or Geneva. No transfers can be organised to the airports.
Transfer by train from Bern to
- Zurich airport: 1h20 by train (direct)
- Geneva airport: 1h50 (direct)
- Basel airport: 1h20 (1 change, airport bus from Basel train station)

TAXE COMMITTEE
ad hoc Delegation
to Bern 22 May 2015
Draft list of participants

Members

Alain LAMASSOURE, Chair	PPE
Theodor STOLOJAN	PPE
Elisa FERREIRA	S-D
	ECR
Michael THEURER	ALDE
Miguel VIEGAS	GUE
Eva JOLY	Verts/ALE

Political advisers

Eriks DAUKSTS	PPE
Luc ROCHTUS	ECR
Sinead NI TREABHAIR	GUE
Michael SCHMITT	Verts/ALE

Secretariat

Massimo PALUMBO	Head of Unit
Marcus SCHEUREN	Administrator

Interpreters

Peter STRAUSS (team leader)
Sarah ADLINGTON
Vanessa EGGENBERGER
Catherine GRIS
Pascal GODART, technician

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TAXE COMMITTEE
ad hoc Delegation
to Bern 22 May 2015
Information on logistics for participants

Hotel:
NOVOTEL EXPO HOTEL
Am Guisanplatz 2
3014 BERN
Phone: +41 31 339 09 09
Website: www.novotel.com/gb/hotel-5009-novotel-bern-expo/index.shtml

How to get from train station to hotel:
- either take taxi or direct tram line T9 from Bern train station, direction "Wankdorf Bahnhof", leaves every 6 min, takes 13 min, exit "Guisanplatz Expo" (8 stops)
Hotel is directly on Guisanplatz

From hotel to meeting venue (Bubenbergplatz 5):
- either take taxi or direct tram line T9 from "Guisanplatz Expo", direction "Wabern, Tram-Endstation" or "Bern Bahnhof" to Bern train station, leaves every 6 min, takes 13 min, exit (8 stops). Meeting venue is 200 min / 2 min. from train station.

EU delegation to Switzerland
Bubenbergplatz 5
3011 Berne
Phone: +41(31)310.15.38

State Secretariat for International Financial Matters SIF
Bundesgasse 3
3003 Bern
Phone: +41 58 46 32401

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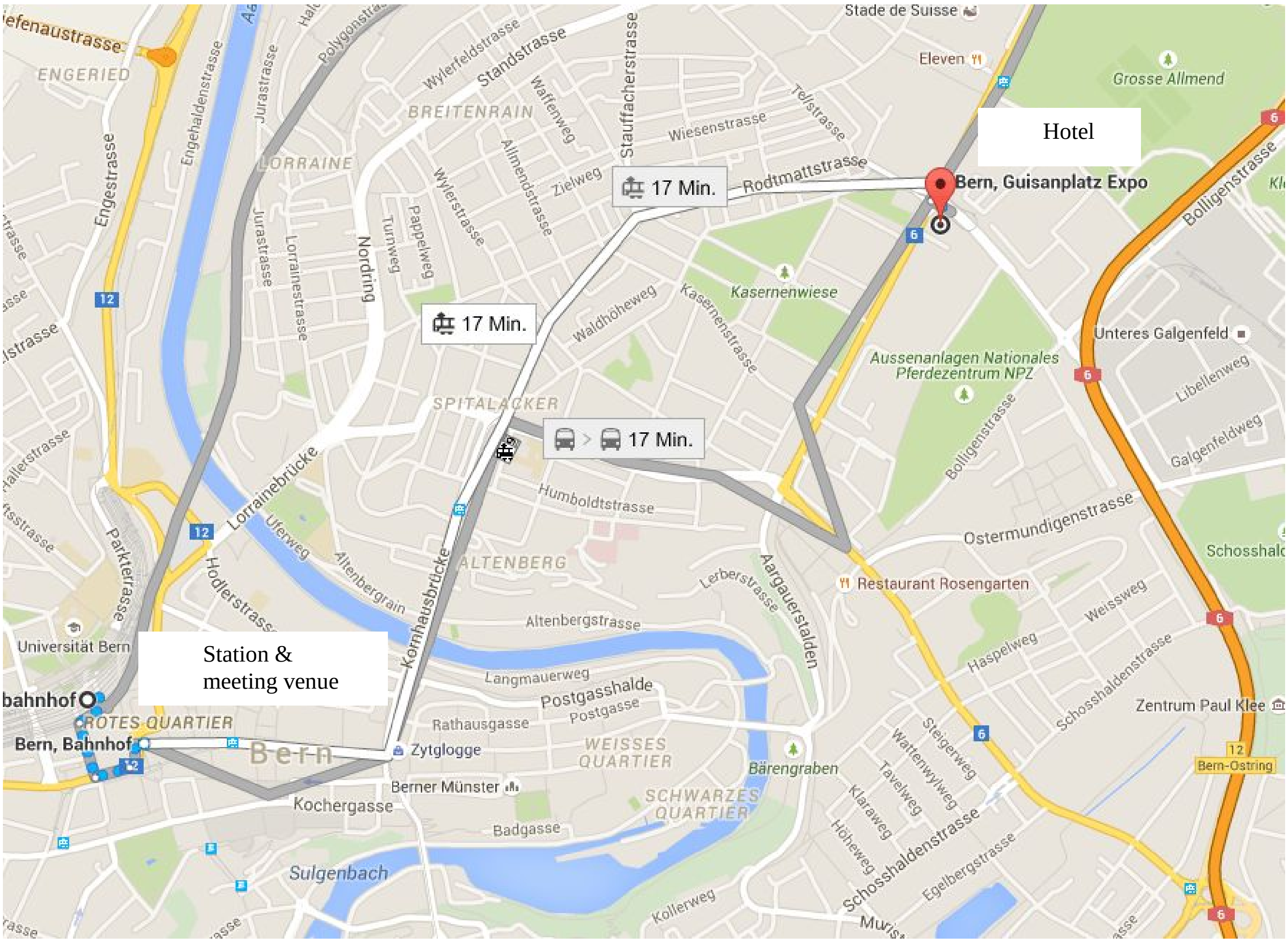

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MARKUS R. NEUHAUS

Position	Chairman of the Board of Directors of PwC Switzerland, member of the Office of the global Chairman of PwC
Education	PhD in law, certified tax expert (Dr. iur./dipl. Steuerexperte)
Professional Career	Joined PricewaterhouseCoopers Ltd. in 1985 and became partner in 1992. From 2003 until June 2012 CEO and from July 2012 Chairman of PwC Switzerland
Other Professional Activties	o Lecturer for corporate finance at the ETH Zurich / Swiss Federal Institute of Technology, department for management, technology and economics o Chairman of the Public Affairs Committee of the Swiss American Chamber of Commerce o Member of the Foundation Board and Chairman's Committee of Avenir Suisse o Member of the Board and Chairman of the Tax Chapter of the Swiss Institute of Certified Accountants and Tax Consultants / EXPERTsuisse o Member of the Board and the Committee for Finance and Tax matters of economiesuisse o Vice President of Zürcher Handelskammer o Member of the Board and 2nd. Vice President of the Zürcher Volkswirtschaftliche Gesellschaft o Member of the Foundation Board oft he Festspiele Zuerich o Member of the Board of stars – Stein am Rhein Symposia o Auditor of the Zürcher Kunstgesellschaft

CV – Marc Herkenrath

Dr Marc Herkenrath (1972), PhD, is a senior policy officer at Alliance Sud, the Swiss Coalition of Development Organisations. He is responsible for Alliance Sud's research and advocacy in the area of international tax policy and financial market regulation. In August 2015, he will assume his new post as director of Alliance Sud. In 2012 he was elected by the Swiss government as a member of the Advisory Committee on International Development Cooperation. He also works as a Privatdozent (senior lecturer) in sociology for the University of Zurich and has had recurrent teaching assignments as guest lecturer at the University of Freiburg/Fribourg. Dr Herkenrath served as the vice-chair and interim chair of Tax Justice Europe and as member of the international steering committee of the Global Alliance for Tax Justice. He is currently a board member of Eurodad, the European Network on Debt and Development.

Monbijoustrasse 31 l P.O.Box l CH-3001 Berne l Phone +41 31 390 93 35 l Fax +41 31 390 93 31 l www.alliancesud.ch
mark.herkenrath@alliancesud.ch

JOINT STATEMENT

The representatives of the governments of the Member States, meeting within the Council of the EU, and

The Swiss Federal Council,

Have drawn up the following Joint Statement on company tax issues and on the way forward and declare:

1. Subject matter

The parties have engaged in a dialogue to identify solutions for company tax issues that are of mutual concern and that have the potential to distort business operations and opportunities. This Statement expresses shared principles and the shared political intention to solve these issues.

2. Shared principles

I. General principles

The parties

- Welcome the high level of market integration between the European Union and Switzerland and their well-established cooperation in various tax related areas;
- Agree on the positive effects of fair tax competition and the need to ensure competitiveness at international level, whilst noting that unfair tax competition may lead to harmful effects;
- Recognise their mutual interest in creating and maintaining a global level playing field in the company tax area.

II. Features of potentially harmful tax measures and practices

Without prejudice to existing international agreements the parties recognise the essential features constituting harmful tax competition and acknowledge that at international level these features are reflected in specific principles and criteria at the OECD and within the EU at EU level.

III. The application of anti-abuse legislation and practices

The parties concur that tax avoidance and tax evasion need to be countered appropriately.

Anti-abuse provisions or countermeasures contained in tax laws and in double tax conventions play a fundamental role in counteracting tax avoidance and evasion.

The parties agree that the application of anti-abuse rules or countermeasures needs to be justified and transparent and to correspond to generally accepted international standards.

3. Swiss company tax policy

In line with generally accepted international standards, in particular those developed by the OECD, the Swiss Federal Council launched in autumn 2012 a legislative project to further develop its company tax law which has led to the publication of reports on measures aimed at reforming company taxation.

The Swiss Federal Council intends to take measures to remove the following five tax regimes (subject to approval by the appropriate legislators where necessary):

- the cantonal administrative company status;
- the cantonal mixed company status;
- the cantonal holding company status;
- Circular Number 8 of the Federal Tax Administration on principal structures, and;
- the current practice of the Federal Tax Administration regarding finance branches.

Moreover, the Swiss Federal Council has expressed an intention that any possible replacement measures will need to be in line with generally accepted international standards as referred to in paragraph 2.II above.

The Swiss Federal Council therefore intends to adopt draft legislation and open the compulsory consultation process with the cantons, political parties and other interested groups as soon as possible.

4. Tax policy in EU Member States

The representatives of the governments of the Member States, meeting within the Council of the EU, acknowledge that in the situation where an above mentioned Swiss regime is effectively removed, then any Member States' countermeasures which are expressly targeted at such a regime should also be removed.

5. Future Discussion / Consultation

Building on the understanding noted in this declaration the parties may further discuss any items of common interest in the area of company taxation, taking into account international developments (paragraph 2.II above).

Done at Luxembourg on the fourteenth day of October in the year two thousand and fourteen.

For the Kingdom of Belgium

For the Republic of Bulgaria

For the Czech Republic

For the Kingdom of Denmark

For the Federal Republic of Germany

For the Republic of Estonia

For Ireland

For the Hellenic Republic

For the Kingdom of Spain

For the French Republic

For the Republic of Croatia

For the Italian Republic

For the Republic of Cyprus

For the Republic of Latvia

For the Republic of Lithuania

For the Grand Duchy of Luxembourg

For Hungary

For the Republic of Malta

For the Kingdom of the Netherlands

For the Republic of Austria

For the Republic of Poland

For the Portuguese Republic

For Romania

For the Republic of Slovenia

For the Slovak Republic

For the Republic of Finland

For the Kingdom of Sweden

For the United Kingdom of Great Britain and Northern Ireland

For the Swiss Federal Council

'HARMFUL' REGIMES

EU agrees to end corporate tax row with Swiss

JUN 20, 2014 - 13:27

Canton Zug is attractive for companies with a tax rate which is about half of the Swiss average

(Keystone)

Switzerland's long-running corporate tax spat with the European Union looks like it could soon be over. EU Finance Ministers on Friday adopted a joint declaration outlining an agreement reached with Switzerland over its 'harmful' tax regimes.

According to the declaration, Bern has agreed to end certain company tax measures regarded as 'harmful' as part of its reform of corporate tax rules. The cabinet will ask parliament and interested parties in Switzerland to consult the proposals after summer.

"In return, the EU member states confirm their intention to lift corresponding countermeasures as soon as the regimes in question have been abolished," the Swiss authorities said.

They added that "the reform should allow the Swiss tax system to develop and strengthen the competitiveness of the Swiss economy while taking into account international changes".

Switzerland has been forced by the EU to rethink its generous corporate tax code after years of pressure. In 2011 an EU finance working group identified five Swiss company tax measures which it regarded as harmful.

At the cantonal level Brussels has criticized Switzerland's tax perks for holdings, as well as domicile and mixed companies. At the federal level it has been critical of Swiss-based headquarters and branches of multinationals as well as companies active as "Swiss finance branches".

In particular the EU has been demanding that cantons remove "discriminatory" tax breaks on the overseas earnings of foreign firms and apply the same rate as domestic profits.

Talks between officials from the European Commission and Swiss officials lasted between 2012 and June 2014.

Despite the EU's latest conciliatory declaration, several EU member states have expressed fears that Switzerland may introduce new 'harmful' tax regimes to compensate for the enforced changes.

For its part Switzerland has failed to gain full guarantees that halting certain company tax measures will end EU sanctions.

swissinfo.ch and agencies

Switzerland in Europe – a first rank partner

April 2015

Common goals and values:

- **Switzerland is a reliable partner of the EU in foreign policy matters**. As an active member of the Council of Europe, OSCE and OECD, Switzerland contributes to the promotion of democracy, the rule of law, human rights, stability and welfare in Europe and worldwide.
- **Through its development cooperation policy**, Switzerland assists the Eastern European and Balkans countries. Moreover, Switzerland supports the 13 Member States who joined the Union since 2004 with a contribution of over 1 billion EUR.
- **In the area of peace promotion**, Switzerland participates with civil and military personnel in the EU missions EULEX Kosovo, EUFOR Althea in Bosnia-Herzegovina as well as in KFOR in Kosovo in the framework of the NATO Partnership for Peace. It is also active in the areas of mediation and mutual interest representation (e.g. between Armenia and Turkey and between Georgia and Russia).

Close and intensive relations:

- **Switzerland is among the top economic partners of the EU**[1]:
  - **Concerning trade in goods, Switzerland is the EU's forth partner and, behind the USA, the Union's second export market** (around 8% of total EU exports were destined to the Swiss market in 2014). The total trade value amounts to almost 1 billion EUR per working day. Trade with Switzerland is profitable for the EU, with an annual trade surplus of 44 billion EUR in 2014.
  - **Concerning trade in services, Switzerland is the second partner of the EU behind the USA** (in 2013, about 12% of the EU imports come from Switzerland and the Swiss market absorbs about 12% of the EU services' exports). In 2013, the total value of trade in services amounted to 580 million EUR per working day and the services balance has benefited the EU with about 45 billion EUR surplus.
  - **Switzerland is the second foreign investor in the EU** with direct investment stocks of more than 430 billion EUR in 2013. At the same time, Switzerland is the second destination of EU foreign investment with almost 670 billion EUR.
- Swiss companies in European countries employ more than **1,2 million people** on their location (2012) and more than **287 000 EU commuters** come to work in Switzerland every day (2014).
- **Over 1,3 million EU citizens live in Switzerland**, whose total population stands at 8 million. Around 430 000 Swiss citizens live and work within the EU. More than **1,3 million persons and 700,000 vehicles** cross the Swiss-EU border daily.
- **With the construction of the AlpTransit worth around 15 billion EUR**, also known as the transalpine railway network (NEAT), Switzerland is building additional capacities for the smooth trade within the Union's internal market. With this endeavour, Switzerland also contributes to a sustainable and environmentally friendly transport policy in Europe.
- Thanks to **numerous bilateral agreements**, Switzerland and the EU sustain very close relations. With no other third country has the Union concluded more agreements (more than 120). Thus Switzerland and the EU are intertwined in many policy areas. Examples: **Internal market** (free trade agreement, free movement of persons agreement), **internal security** (Schengen/Dublin), **transport** (overland transport and civil aviation agreements), **cooperation in tax matters** (taxation of savings and fight against fraud agreements).

[1] Statistical data from Eurostat.

Vote of 9 February 2014:

- On 9 February 2014, the Swiss population **adopted the popular initiative “against mass immigration”** which requires that immigration be restricted by means of quotas and which is not compatible with the Swiss-EU agreement on free movement of persons (AFMP).
- The result of the vote of 9 February must be understood in light of a substantial increase in immigration of EU/EFTA citizens in Switzerland since the AFMP entered into force (23% of the Swiss population are foreigners; 16% from EU/EFTA countries).
- The new constitutional provisions provide a **3-year time limit** for implementation and for the adaptation of all international agreements incompatible with these provisions. On 11 February 2015, the Swiss government approved a draft implementing legislation. In the meantime, Switzerland will continue **to apply the AFMP** and all its other agreements with the EU.
- Even in case the AFMP was terminated by one of the parties, **rights acquired** by EU/EFTA-citizens established in Switzerland **would be preserved** (Art. 23 AFMP).
- The Swiss government is in contact with its European partners in order to seek solutions that preserve the interests of both sides in the totality of their bilateral relation. To this end, the President of the Swiss Confederation and the President of the EU Commission have agreed to carry out intensive consultations.
- It is in both parties’ interest to **maintain existing agreements** between Switzerland and the EU and to **continue ongoing negotiations,** including the **negotiations on institutional issues** in parallel with the discussions on migration.

The institutional questions:

- For several years, Switzerland and the EU have been working on finding solutions to **open institutional issues** in relation to the bilateral agreements (development, interpretation, surveillance and dispute settlement).
- Negotiations were launched on 22 May 2014.

Intensify the relations in areas of common interest:

- **Electricity:** The main concern for Switzerland and the EU is to secure supply in the deregulated market environment. To this end, network access for cross-border electricity is to be regulated and security standards for electricity network harmonised. Switzerland would thus be able to ensure its role as Europe’s electricity hub and, thanks to the flexible intervention of pumped-storage power plants, could contribute to the European power supply as a “battery” in the alpine region.
- Pending a solution for the AFMP, an agreement has been reached on a partial participation of Switzerland to the **European programme in the area of research**. In addition, Switzerland and the EU are negotiating a Swiss participation in the EU’s cultural programme.
- Switzerland and the EU opened negotiations on the linkage of their trading schemes with respect to CO2 **emission rights (ETS).** In 2013, agreements on **cooperation between competition authorities** and in the area of **satellite navigation** (Galileo) were signed.

Tax issues:

- On 14 October 2014, Switzerland and the EU signed a **joint statement on business taxation**. In this understanding, the Swiss government reaffirms its intention to propose the removal of certain tax regimes. In return, the EU member states confirm their intention to lift corresponding countermeasures once these regimes are abolished. This joint statement put an end to a controversy which has troubled Swiss-EU relations for almost ten years.
- The negotiations regarding the introduction of the global standard for the **automatic exchange of information in tax matters** (AEOI) are concluded: the agreement on AEOI was initialled on 19 March 2015 and should be signed in the coming weeks. The agreement is intended to enter into force on 1 January 2017, provided that the approval processes in Switzerland and the EU are completed by this date. It will replace the current agreement on taxation of savings.

La Suisse dans l’Europe – un partenaire de premier ordre
(avril 2015)

Des objectifs et des valeurs partagés

- **La Suisse est un partenaire fiable en matière de politique extérieure.** En tant que membre actif du Conseil de l’Europe, de l’OSCE et de l’OCDE, la Suisse œuvre en faveur de la démocratie, de l’Etat de droit, des droits de l’homme, de la stabilité et de la prospérité en Europe et dans le monde.
- **À travers sa coopération au développement,** la Suisse fournit une assistance aux pays d’Europe de l’Est et des Balkans. En outre, elle soutient les 13 Etats membres qui ont adhéré à l’UE depuis 2004 avec une contribution à l’élargissement de plus d’un milliard d’euros.
- **En matière de promotion de la paix**, la Suisse prend part, avec des experts civils et des membres de l’armée, aux missions européennes EULEX au Kosovo, EUFOR Althea en Bosnie-Herzégovine, ainsi qu’à la KFOR au Kosovo, dans le cadre du Partenariat pour la paix de l’OTAN. Elle est également active dans les domaines de la médiation et de la représentation mutuelle des intérêts (exemples : entre l’Arménie et la Turquie et entre la Russie et la Géorgie).

Des relations étroites et intenses

- La Suisse compte parmi **les principaux partenaires économiques de l’UE**[1] **:**
  - En ce qui concerne le **commerce de marchandises, la Suisse est le quatrième partenaire de l’UE et constitue, derrière les Etats-Unis, le deuxième marché d’exportation** le plus important pour les produits de l’UE (en 2014, env. 8 % des exportations de l’UE sont destinées au marché suisse). La valeur totale de leur commerce de marchandises s’élève à près d’1 milliard d’euros par jour ouvrable. L’UE retire un bénéfice de ses échanges avec la Suisse, l’excédent de sa balance commerciale s’est chiffré à env. 44 milliards d’euros en 2014.
  - Au niveau du **commerce des services, la Suisse est le deuxième partenaire de l’UE derrière les Etats-Unis** (en 2013, env. 12% des importations de services dans l’UE proviennent de la Suisse, qui absorbe, quant à elle, env. 12% des exportations de services de l’UE). En 2013, la valeur totale des services échangés atteint 580 millions d’euros par jour ouvrable et l’excédent de la balance des services bénéficie à l’UE à hauteur d’env. 45 milliards d’euros.
  - **La Suisse est le deuxième investisseur dans l’UE** avec des stocks d’investissement directs qui dépassent les 430 milliards d’euros en 2013. En même temps, la Suisse est le second lieu de destination des investissements étrangers européens dont la valeur s’élève à près de 670 milliards d’euros.
- Les entreprises suisses dans des pays membres de l’UE emploient plus de **1,2 million de personnes** sur place (2012) et plus de **287 000 frontaliers** travaillent en Suisse (2014).
- **Plus de 1,3 million de citoyens et citoyennes de l’UE sont domiciliés en Suisse**, pour une population totale de 8 millions d’habitants. Chaque jour, près de **1,3 million de personnes** et **700 000 véhicules** traversent les frontières communes.
- **Avec la construction des nouvelles lignes ferroviaires à travers les Alpes (NLFA) pour une valeur d’environ 15 milliards d’euros,** la Suisse met à disposition de nouvelles capacités de transport pour assurer le bon fonctionnement des échanges commerciaux dans le marché intérieur européen. Elle contribue également à la mise en œuvre d’une politique des transports durable et respectueuse de l’environnement en Europe.
- Liées par **de nombreux accords bilatéraux**, la Suisse et l’UE entretiennent des relations particulièrement étroites. Il n’existe aucun pays tiers avec lequel l’UE ait tissé un tel réseau d’accords (plus de 120). La Suisse et l’UE entretiennent dès lors des liens très étroits dans maints domaines politiques. Exemples : **marché intérieur** (accord de libre-échange, accord sur la libre circulation des personnes), **sécurité intérieure** (Schengen/Dublin), **transports** (accord sur le transport terrestre et accord sur le transport aérien), **coopération fiscale** (accord sur la fiscalité de l’épargne ; accord sur la lutte contre la fraude).

[1] Données statistiques tirées d’Eurostat.

Le scrutin du 9 février 2014

- Le 9 février 2014, le peuple suisse s'est prononcé en faveur de **l'initiative dite « Contre l'immigration de masse »** qui prévoit de limiter l'immigration par des contingents et des plafonds annuels et qui est incompatible avec l'accord Suisse-UE sur la libre circulation des personnes (ALCP).
- Le résultat de la votation doit être interprété à la lumière de la très forte immigration européenne qu'a connue la Suisse depuis l'entrée en vigueur de l'ALCP (23% de population étrangère; 16% issus de l'UE/AELE).
- Les nouvelles dispositions constitutionnelles prévoient un **délai de 3 ans** pour leur mise en œuvre ainsi que pour l'adaptation des traités internationaux incompatibles avec elles. Le 11 février 2015, le gouvernement suisse a approuvé un projet de loi de mise en œuvre. Dans l'intervalle, la Suisse continuera à appliquer l'ALCP ainsi que tous les autres accords qui la lient à l'UE.
- En cas de résiliation éventuelle de l'ALCP, les **droits acquis** par les Européens déjà établis en Suisse **ne seront pas touchés** (Art. 23 ALCP).
- Le gouvernement suisse est en contact avec ses partenaires européens pour chercher des solutions qui préservent les intérêts des deux parties dans l'ensemble des relations Suisse-UE. À cet effet, la Présidente de la Confédération et le Président de la Commission européenne ont convenu de mener des consultations intensives.
- Il est dans l'intérêt commun de **maintenir les accords existants** entre la Suisse et l'UE et de **poursuivre les négociations** ouvertes, notamment **les négociations institutionnelles** en parallèle aux discussions dans le domaine migratoire.

Les questions institutionnelles

- Depuis plusieurs années, la Suisse et l'UE cherchent des solutions aux **questions institutionnelles** en suspens en relation avec les accords bilatéraux (évolution, interprétation et contrôle de la mise en œuvre des accords, règlement des différends).
- Les négociations ont débuté le 22 mai 2014.

Intensifier les relations dans les domaines d'intérêt commun

- **Electricité :** la principale préoccupation de la Suisse et de l'UE est de sécuriser l'approvisionnement sur ce marché libéralisé. À cette fin, l'accès au réseau pour le transit transfrontalier de l'électricité doit être régulé et les normes de sécurité pour le réseau électrique doivent être harmonisées. La Suisse serait ainsi en mesure d'assurer son rôle de plaque tournante de l'électricité en Europe et, grâce à l'intervention flexible de ses centrales de pompage-turbinage, la Suisse pourrait contribuer à l'approvisionnement électrique de l'Europe en tant que « batterie » dans la région alpine.
- Dans l'attente d'une solution pour l'ALCP, un accord permettant une participation partielle de la Suisse au **programme européen dans le domaine de la recherche** a été trouvé. La Suisse et l'UE négocient également une participation de la Suisse au programme culturel de l'UE.
- La Suisse et l'UE ont ouvert des négociations en vue d'un couplage de leurs systèmes respectifs de commerce de droits d'émission de CO2 **(ETS)**. En 2013, des accords sur la coopération entre les **autorités de concurrence** et dans le secteur de la **navigation par satellite** (Galileo) ont été signés.

Les questions fiscales

- Le 14 octobre 2014, la Suisse et l'UE ont signé une **déclaration commune sur la fiscalité des entreprises**. Dans ce document, le gouvernement suisse confirme sa volonté de proposer l'abrogation de certains régimes fiscaux. En contrepartie, les Etats membres de l'UE confirment qu'ils supprimeront leurs mesures de rétorsion dès que les régimes en question auront été abrogés. Cette déclaration commune met fin à une controverse qui a pesé sur les relations entre la Suisse et l'UE pendant près de dix ans.
- Les négociations relatives à l'introduction de la norme internationale d'**échange automatique de renseignements en matière fiscale** (EAR) sont conclues : l'accord sur l'EAR a été paraphé le 19 mars 2015 et sera signé ces prochaines semaines. La date d'entrée en vigueur visée est le 1er janvier 2017, à condition que les procédures d'approbation soient terminées d'ici là en Suisse et dans l'UE. L'accord sur l'EAR remplacera celui sur la fiscalité de l'épargne.

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.2.2007
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COMMISSION DECISION

of 13 February 2007

on the incompatibility of certain Swiss company tax regimes with the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972[1], hereinafter referred to as "the Agreement", and in particular Articles 23(1)(iii) and 27(3)(a) thereof,

Having regard to the declaration by the European Economic Community of 22 July 1972 concerning Article 23(1) of the Agreement[2],

Having regard to Regulation (EEC) No 2841/72 of 19 December 1972[3] on the safeguard measures provided for in the Agreement between the European Economic Community and the Swiss Confederation, and in particular Article 2(1) thereof,

Whereas:

I. PROCEDURE

1. By letter D/520905 dated 26 September 2005 to the Swiss Ambassador and Head of the Swiss delegation to the Joint Committee under the Agreement, the Commission departments concerned raised the question of the compatibility of certain Swiss corporate tax regimes with the Agreement and asked the Swiss authorities, pursuant to Article 27 of the Agreement, to provide the EC delegation with all relevant information in order to be able to examine the regimes in the framework of the Joint Committee meetings.

2. By letter A/39306 dated 29 November 2005 the Swiss authorities responded to the Commission's request and provided information about the Swiss tax system and the special tax regimes in favour of management, mixed and holding companies in Switzerland.

3. On 15 December 2005 the issue was discussed between the EC and the Swiss Confederation at the 50th meeting of the Joint Committee on the Agreement in Brussels.

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1 OJ L 300, 31.12.1972, p. 189.
2 OJ L 300, 31.12.1972, p. 281.
3 OJ L 300, 31.12.1972, p. 286.

4. By letter A/7655 dated 9 March 2006 the Swiss authorities replied to the requests made by the Commission at the Joint Committee's meeting on 15 December 2005.

5. On 4 May 2006 experts from the Commission and Switzerland met in Brussels to discuss further the tax regimes and their compatibility with the Agreement.

6. The matter was discussed again on 5 May and 14 December 2006 at the 51st and the 52nd meeting of the Joint Committee on the Agreement in Brussels.

II. DESCRIPTION OF THE MEASURES

7. The fiscal system of the Swiss Confederation consists of the Swiss Federation, 26 sovereign cantons and approximately 2 900 municipalities, having a variable fiscal sovereignty except for certain taxes (including customs, excise duties and value-added tax) which are allotted to the Federation.

8. The Federal company tax is levied at a flat rate of 8.5% of taxable income, pursuant to the Direct Federal Tax Law of 14 December 1990 (DFTL). Each of the three levels of government in Switzerland levies direct company taxes. The overall company tax rate, counting Federal, cantonal and municipal taxes, varies from 14% to 30%, depending on the canton or municipality in which companies are established. Cantonal and municipal company taxes therefore make up a substantial part of direct company taxation in Switzerland.

9. A Federal law lays down the principles on which cantonal legislation must base these taxes. The cantonal and municipal rules on company taxation fit into a common framework of Federal legislation with the aim of limiting tax competition between the different tax jurisdictions within the Swiss Confederation, pursuant to the Federal Tax Harmonisation Law of 14 December 1990 (THL).

10. Under this common company tax framework, several preferential tax regimes are available, at cantonal and municipal levels, to companies which are established in Switzerland to reduce the company tax levied to the sole Federal tax of 8.5% of taxable income. Cantonal tax legislation provides for three special company tax regimes for multinational undertakings with activities in Switzerland: the management company, holding company and mixed company regimes. These allow favourable effective tax rates to be applied to profits derived from business activities outside Switzerland and from participations in foreign companies by management, holding and mixed companies.

11. Under the same company tax system, each canton follows its own adaptation of the common framework, implementing the tax regime applicable in the canton. Although this decision takes as examples specific tax regimes laid down by the legislation of the cantons of Zug and Schwyz, it applies to all the cantonal regimes in favour of management, holding and mixed companies in Switzerland, pursuant to the THL.

The management company regime

12. Under the tax regime for management companies, any company established in Switzerland or any Swiss branch of a company established outside Switzerland and solely or primarily with an international focus may register as a management

company and benefit from more favourable cantonal taxation than ordinarily applicable to other companies in Switzerland. Under this cantonal tax regime, the business income received by management companies from sources outside Switzerland (income from business activities performed abroad such as foreign sales) is taxed only in proportion to the management activities effectively exercised in Switzerland. Management companies also benefit from the special cantonal tax regime for holding companies (described in detail below) for their income from participations in other companies, including foreign companies[4].

13. In particular, pursuant to paragraph 3 of Article 28 of the THL, special tax rules apply at cantonal and municipal levels to the income of management companies from business activities exercised abroad. Income from business activities exercised abroad is taxed in Switzerland only in so far as the income stems from management functions performed in Switzerland. The tax regime for management companies also stipulates that their income from participations in foreign companies, including all dividends, income and capital gains, is exempt from taxation in Switzerland. This provision specifically reduces the income from business activities exercised abroad which is taxable in the Swiss cantons, while keeping intact the income taxable for Federal purposes.

14. As a result of application of the special tax regime outlined above, management companies are liable to taxation based only on their income from (a) management and administrative activities performed in Switzerland and (b) Swiss real estate owned by such companies. Therefore, unlike income from activities in Switzerland which are liable to ordinary cantonal and municipal taxation on the entire income earned, management companies are subject to much lower taxation in the Swiss cantons.

15. Each canton has enacted its own rules to transpose the general framework of tax incentives for management companies, whereas Swiss law provides for no particular Federal tax relief for management companies.

16. By way of illustration, under Article 69 of the Tax Law of the canton of Zug and Article 76(c) of the Tax Law of the canton of Schwyz, management companies are defined as profit-making companies, cooperatives and any other legal persons engaged in management activity but not in business activity in Switzerland. Such entities are liable to company tax as follows:

(a) income from holdings and capital and gains from increase in capital value on such holdings are exempt;

(b) other income from Switzerland, including real estate income and profits, is taxed at the ordinary rate;

(c) other income from abroad is taxed at the ordinary rate, in so far as it can be attributed to management activities performed in Switzerland.

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4 The difference between a holding company and a management company is that a management company does not earn its income exclusively from foreign participations; instead, foreign holdings are an ancillary activity in addition to the management company's main commercial and business activities exercised abroad.

The holding company regime

17. Paragraph 2 of Article 28 of the THL provides that income earned by holding companies may be entirely exempt from cantonal and municipal company taxes in Switzerland. Under this regime a holding company is defined as a company (i) whose main activities consist of managing participations in affiliated companies, (ii) which carries out no commercial activities in Switzerland and (iii) either (a) has participation revenue equal to two thirds or more of the total revenue earned or (b) has participations with a book value equal to two thirds or more of the total assets on its balance sheet, independent of the amount of commercial revenue earned.

18. The conditions for the cantonal tax exemptions in favour of holding companies are broader in scope than those applied at Federal level under the holding reduction for participation revenue regime provided for by Articles 69 and 70 of the DFTL. The Federal tax exemption applies only to the earnings distributed by Swiss or foreign corporations to entities liable to tax in Switzerland, whereas the cantonal exemption concerns all income earned by beneficiaries, provided they qualify as holding companies. Pursuant to Article 28 of the THL, participation revenue exempt from cantonal taxation typically includes dividends, capital gains and any other extraordinary distributions and dividends. Income received by the holding company that is a deductible expense for the paying company, including interest income, and which therefore reduces the taxable income of the paying company is not normally considered income from participation for the holding company. However, depending on the specific canton where the beneficiary is established, complete tax exemption is granted on income from dividends, interest, royalties, capital gains and commercial activities, provided the company meets the conditions to be considered a holding company.

19. At cantonal level, in certain cantons not only shares in the capital of other companies (without any percentage limit) but also long-term loans to affiliated companies can be considered participations. Affiliated companies are usually defined as companies in which a holding company holds 20% of the share capital. Under paragraph 2 of Article 28 of the THL, capital gains on participations and gains from the increase in capital value of participations are also exempt from company taxes at cantonal and municipal levels[5].

20. In conclusion, under the holding company regime all earnings from a qualifying participation in a company are exempt from tax at Federal, cantonal and municipal levels, while other earnings obtained from foreign sources, including commercial revenue, are exempt from tax at cantonal and municipal levels. The only revenues of a holding company liable to taxes at cantonal and municipal levels are the ones from Swiss real estate.

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5 Furthermore, certain cantons grant special tax relief for group financing to finance branches of foreign companies in Switzerland, provided three quarters of the branch's gross profits stem from financing the foreign companies, including trade, and three quarters of its assets are invested in such financing activities. In order to qualify for tax relief, the other non-financing income must account for less than one quarter of the branch's activities. If, however, the trading income exceeds this threshold, it may be possible to establish two branches in order to obtain the benefit.

21. By way of illustration, Article 68(b) of the Tax Law of the canton of Zug and Article 75(b) of the Tax Law of the canton of Schwyz provide that holding companies whose principal registered business activity is permanent management of holdings and which engage in no business activity in Switzerland are not liable to pay tax on profits as long as the holding or income from the holding accounts for at least two thirds of their entire assets or income. The combined company taxation on income from participations, including royalty income from licensing use of intangible property to sell products abroad (licensing fees, royalties, etc.), interest income from group financing activities and income from services rendered abroad, including those connected with trading activities abroad, is therefore limited to 8.73% (the Federal company tax rate) as such income is exempt from cantonal taxation.

The mixed company regime

22. Mixed companies are companies holding interests in other companies and which, in addition to earning income from participations like a holding company (primary activity), carry out manufacturing, commercial and trading activities in Switzerland and abroad.

23. Under paragraph 1 of Article 28 of the THL, a mixed company benefits from the cantonal exemption for its earnings from any participations qualifying on the same conditions set for exemption at Federal level. In addition to the exemption regime for holdings, since mixed companies also carry out production, commercial and trading activities Article 28 of the THL provides that the commercial (non-holding) income that such companies earn from sources outside Switzerland is taxable in the canton only in proportion to the volume of business activity performed in Switzerland.

24. Each canton autonomously implements the general framework of tax incentives for such companies and grants partial exemptions for commercial income from foreign sources. Income from foreign sources typically includes revenue from use of intangible property abroad (licence fees, royalties, etc.), interest on loans provided to group companies (intra-group financing) and income from services rendered abroad, including those connected with trading activities abroad. Therefore, under this cantonal tax regime, business income earned by mixed companies from sources outside Switzerland (income from business activities performed abroad) is taxed only in proportion to the business functions exercised in Switzerland, unlike income from sources within Switzerland which is taxed in its entirety.

25. For example, under Article 69 of the Tax Law of the canton of Zug and Article 76(c) of the Tax Law of the canton of Schwyz, mixed companies which engage in activities with an international focus but not in business activity in Switzerland and conduct only a small proportion of their business activity in Switzerland are liable to company tax as follows:

(a) income from holdings and capital and valuation gains on such holdings are exempt;

(b) other income from Switzerland, including real estate income and profits, is taxed at the ordinary rate;

(c) other income from abroad is taxed at the ordinary rate in proportion to the volume of business activity in Switzerland.

III. ASSESSMENT OF THE MEASURES

Scope of the assessment

26. Before assessing the Swiss cantonal tax measures in favour of management, holding and mixed companies under the State aid provision in Article 23(1) of the Agreement, the Commission observes, by way of preliminary, that establishment and maintenance of fair conditions of competition for trade between the Community and the Swiss Confederation is indisputably one of the objectives of the Agreement, as specifically mentioned in Article 1 thereof. The State aid provision in Article 23(1) of the Agreement very clearly declares incompatible with the proper functioning of the Agreement any public aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it may affect trade between the Community and Switzerland.

27. The wording used in the State aid provision in Article 23(1) of the Agreement is very similar to Article 87(1) of the EC Treaty. Neither the terms nor the purpose of the Agreement indicate that Article 23(1) should be interpreted narrowly. On the contrary, the Commission considers that the important role which the Agreement ascribes to the principle of fair competition in the economy and the specific language used to express the principle of incompatibility of State aid are arguments in favour of giving broad scope to that provision. It should also be noted that on signature of the Agreement the EC annexed a declaration that it would assess any practices contrary to Article 23(1) on the basis of criteria arising from application of the EC competition rules, and that Switzerland did not challenge that declaration.

28. Moreover, the Commission considers that, in the context of the Agreement, the traditional strong economic and geographic links between the Community and the Swiss Confederation, plus the fact that Swiss companies already enjoy privileged access to the common market, require correct application of the competition rules, including prohibition of State aid incompatible with the Agreement.

29. The Commission's assessment is therefore based on accepted definitions and common criteria, such as those already in place at the time of signature of the Agreement and those applied by international organisations[6].

Advantage

30. The Commission considers that advantages which could favor certain undertakings, in line with the definition of State aid provided by Article 23(1) of the Agreement, can take many forms, including not only a direct subsidy but also indirect relief from charges normally borne by beneficiary undertakings. It is clear that an advantage in the form of a tax reduction is the economic equivalent of a direct subsidy. The Commission accordingly considers that a tax reduction which favors certain beneficiary undertakings and the groups of which they form part by relieving them of

6 Cf. Article 1.1(a)(1)(ii) of the WTO Agreement on Subsidies and Countervailing Measures.

charges which would normally have been borne by their budgets may constitute State aid under Article 23(1) of the Agreement.

31. The Commission considers that the cantonal tax regimes described above, such as those provided by the cantonal Tax Laws of Zug and Schwyz, confer on management, holding and mixed companies tax advantages that derogate from normal operation of the Swiss tax system and accordingly reduce the costs which the beneficiary companies would normally bear in the course of their business.

32. Under the definition of State aid in Article 23(1) of the Agreement, to be termed state aid, a tax measure must provide an exception, in favor of certain undertakings, from the application of the relevant tax system. The first issue, therefore, is whether an exception has been made and whether such an exception is justified by the nature or general set-up of the system.

33. The Commission notes that, as acknowledged by the Swiss authorities, the common framework of Federal legislation, pursuant to the THL, is the reference tax system. Under this common cantonal tax framework, several preferential tax regimes are made available to management, holding and mixed companies, which are clearly conceived as exceptions to the ordinary tax system as they concern only income from business activities exercised abroad and income from foreign participations by management, holding and mixed companies.

34. The Commission notes that, under certain tax regimes, holding, mixed and management companies benefit from the following cantonal tax reductions:

(a) tax exemption for the part of the income, including trading income, earned abroad by management or mixed companies based in Switzerland and not corresponding to activities effectively managed in Switzerland;

(b) tax exemption for income from participation interests held abroad by holding companies based in Switzerland having participations with a book value equal to two thirds or more of the total assets on their balance sheet, independent of the amount of trading income earned.

35. The Commission considers that the tax advantages in favour of management and mixed companies do not stem from the nature or general set-up of Switzerland's tax system, because that system does not typically differentiate between Swiss and from foreign source earnings, while only in the case of management and mixed companies is the part of income from foreign sources not corresponding to activities effectively managed in Switzerland exempt. More specifically, the management and mixed companies regimes provide that income earned from sources outside Swiss jurisdiction is liable to the ordinary tax rate only in proportion to the volume of management activity performed in Switzerland. Such regimes therefore confer an advantage since such companies are not taxed on their income which can not be attributed to management activities performed in Switzerland.

36. The Commission further considers that the regime in favour of holding companies also provides exceptional tax advantages in that all income earned by holding companies is exempt from cantonal taxation irrespective of the typical requirements in order to be considered income from participations under the general exemption

system. The Commission notes that, under the Swiss tax system, tax imposed on a company resident in Switzerland can be reduced only to avoid multiple taxation of income distributed along a chain of companies under the exemption regime for participations, where such income has already been taxed. The Commission notes, however, that this justification is not relevant to the cantonal tax reduction in favour of holding companies, as this provides a full exemption for income, based solely on the fact that the beneficiaries fulfil the conditions to be considered a holding company and, most notably, hold participations with a book value equal to two thirds or more of the total assets on their balance sheet, independent of the amount of trading income earned and of the tax possibly paid on the income earned. The holding company regime accordingly provides for exemption of all income earned by companies and cooperatives whose principal registered business activity is permanent management of holdings and which engage in no business activity in Switzerland. Such exemptions constitute economic and financial advantages for the recipients in the form of lower taxation of such companies' earnings and lower tax payments to the cantons' treasuries.

37. The Commission concludes that because of the favourable tax treatment in Switzerland of foreign revenue and revenue from participations, trading and trading-related activities exercised from Switzerland by management, holding and mixed companies, the abovementioned cantonal regimes reduce the costs that certain beneficiary companies bear in the course of their business and therefore provide advantages to them and to the groups of which they form part within the definition of State aid provided by Article 23(1) of the Agreement.

Imputation and public resources

38. The Commission considers that the advantages under the management, holding and mixed companies regimes are granted by the Swiss Confederation and its cantons, such as Zug and Schwyz, in the form of lower revenue accruing to the public treasuries.

39. The Commission notes that the cantonal tax breaks are an integral part of the Swiss tax system and are imputable to the Swiss Confederation as contracting party to the Agreement. The Commission concludes, therefore, that the loss of tax revenue for the cantons equates to direct subsidies in the form of forgone fiscal expenditure by the Swiss cantons granting such tax reductions, including Zug and Schwyz.

Specificity

40. The Commission considers that the management, holding and mixed company regimes are specific or selective, in the manner proscribed by Article 23(1) of the Agreement, in that they favour certain undertakings or production.

41. More specifically, the tax reductions provided by the management and mixed company regimes apply only to beneficiaries which earn income from business activities outside Switzerland, whereas income earned from sources in Switzerland, such as real estate income, is liable to ordinary taxation at cantonal and municipal levels. The Commission concludes that only companies engaged in business activities abroad may benefit from the tax reductions in question and that the tax

advantages are therefore not open to all undertakings in comparable situations following the logic of the tax system in Switzerland.

42. In the case of the holding company regime, the Commission considers that the tax exemptions in question are available only to companies whose principal activity is management and holding of participation interests or which hold participations with a book value equal to two thirds or more of the total assets on their balance sheet, whereas other companies are excluded from the exemption and liable to ordinary taxation at cantonal level. The Commission concludes, therefore, that only companies satisfying the conditions to be considered holding companies under the relevant cantonal and municipal tax laws may benefit from the tax reductions in question.

43. The Commission notes that the tax reductions in question can benefit only one category of undertaking, namely undertakings which have export activities or make certain investments allowing them to earn income from abroad or which fulfil the conditions to be considered holding companies. This finding suffices to show that this tax deduction fulfils the condition of specificity which is one of the characteristics mentioned in the definition of State aid, i.e. the selective nature of the advantage in question.

44. The Commission considers that although the aforementioned tax advantages are granted on the basis of objective requirements and are not formally limited to certain sectors of the economy or industries, in order to confirm the selective nature of the contested measures it is not necessary for the competent national authorities to have any discretionary power over application of the tax reductions at issue. The Commission in fact considers that the regimes in question are specific because they are available only to Swiss companies earning income from abroad or from activities carried out with respect to foreign persons or fulfilling other specific conditions in terms of assets or participations. In any event, the Commission considers that they do not constitute general tax measures available to the entire Swiss economy and are therefore selective.

45. The Commission considers that the measures in question are also specific because their advantages are effectively limited to companies carrying out certain business functions such as management and coordination activities, including activities related to trade, either exclusively or primarily. The Commission also notes that such activities typically include intra-group financing, trade licensing (of patents, trademarks, copyrights and other intangible assets) and provision of intra-group services such as coordination or (re-)invoicing which can all be detached from the production and sales functions to be performed locally (i.e. outside Switzerland) and can be allocated across borders (in this case in Switzerland). The Commission notes that these activities constitute a well-defined economic sector relating to the market in cross-border financing, licensing, (re-)invoicing and coordination and management services to affiliate and non-affiliate corporate clients. The Commission therefore concludes that the cantonal tax schemes in question effectively favour the abovementioned economic sector defined by reference to the corporate services market.

46. Such regimes discriminate against multinational enterprises which do not establish their holding or management activities in Switzerland. Specifically, any corporation

currently doing business (including trading) in the EU, and therefore paying company tax in one of the Member States, can reduce its tax liability by locating significant new or existing business functions (including supplying goods and coordinating trade activities) within Switzerland, but will receive no such reduction in tax liability if it locates comparable activities elsewhere. Moreover, out of two businesses in an otherwise similar situation and each liable to Swiss taxation, the business that chooses to expand its outside presence (while leaving the coordination and management functions in Switzerland) will bear a lower tax burden, based directly on its new investments outside Switzerland, whereas a competitor which invests completely in Switzerland will face a comparatively higher tax burden because it will be ineligible for any tax reduction with respect to its income earned outside Switzerland.

Justification

47. The Swiss authorities consider that the cantonal tax system is based on use of the cantonal infrastructure and therefore the lower use of such infrastructure would justify the cantonal tax reductions in favour of management, holding and mixed companies. However, they have not submitted any evidence to substantiate the claim. The Commission considers that use of cantonal infrastructure does not constitute a distinctive characteristic of the cantonal company tax system because it does not apply, for example, to companies which do not take the specific form of management, holding and mixed companies. The Commission observes that, in fact, the cantonal company tax liability of all other companies in Switzerland may not be reduced if they make less use of the cantonal infrastructure. The Commission concludes that this criterion does not justify the more favourable tax treatment granted to management, holding and mixed companies.

48. The Commission also finds that the same criterion is not applied in Switzerland to tax companies at Federal level, whereas, by admission of the Swiss authorities, company taxes are effectively harmonised at Federal, cantonal and municipal levels and therefore could not take a different territorial approach. Secondly, the Commission notes that tax neutrality between income earned, irrespective of the source (local or foreign), is a fundamental principle of the equity of the Swiss company income tax system.

49. The Commission considers that it is unjustified, in the light of the general set-up of the Swiss tax system, for the regimes under review to impose substantively different nominal and effective taxation on Swiss companies generating income from sources placed outside Switzerland, as opposed to their competitors being in comparable legal and factual situations. The Commission therefore concludes that the scheme is selective, in that it favours only certain undertakings conducting business abroad and that this specific feature is not justified by the nature of the scheme.

50. The Commission also considers that the out-of-canton effect of the exemptions conflicts with the territorial scope of cantonal jurisdiction. If a tax measure is to be considered general (and accordingly non-specific) it must be effectively open to all undertakings in comparable business situations, as described by the cantonal laws in question, on the basis of equal access, and its scope may not be reduced by factors that restrict the practical effects of the advantages conferred. These conditions are not fulfilled by the abovementioned cantonal tax reduction regimes, which discriminate

between undertakings subject to company tax depending on their place of establishment and the activities performed outside Switzerland, rather than outside of the canton[2], without there being any apparent justification by the nature of the territorial scope of cantonal taxation.

Distortion of competition

51. The Commission considers that the cantonal tax reductions in question favour only certain undertakings and effectively distort or threaten to distort fair competition between Swiss and Community's undertakings. The advantages in question, which relieve the beneficiaries from operating costs normally borne in the course of their business activities, strengthen the position of the beneficiaries and the groups of which they form part and are susceptible to improve their competitive position vis-à-vis their competitors operating on the same markets.

52. The Commission further notes that the advantages in question are likely to affect cross-border competition between the Community and the Swiss Confederation, considering that they are granted specifically with respect to cross-border activities carried out by Swiss-based undertakings and taking account of the geographic proximity and the high economic integration of the Swiss market with the common market.

53. The Commission considers that the markets affected by the scheme include the wholesale and retail sale of products and services, the provision of services related to the supply of products and the supply of financial and corporate services. The typical activities performed by management, holding and mixed companies include direct sales and supplies of services related to such supplies, as well as financing, leasing and the provision of other services, such as and the management of trade licences. These activities can be either detached from the production and sales functions in the Community market and be supplied from the cantons, or be included in production of goods, traded from Switzerland to the Community, and vice-versa. According to the Commission, the tax reductions granted to the management, holding and mixed companies result in a financial benefit strengthening not only the single beneficiary companies but also the groups to which they belong, which may also be active in markets open to cross-border competition.

Effect on trade between the European Community and Switzerland

54. The Commission considers that the management, holding and mixed company regimes may affect trade in the manner proscribed by Article 23(1) of the Agreement, by influencing existing cross-border trade patterns concerning third-country origin products sold on the common market via the establishment of special-purpose intermediaries in the Swiss cantons granting the tax reductions to carry out trade and trade-related activities from Switzerland instead of from the Member States of the European Community in order to benefit from the company tax reductions granted by the management, holding and mixed company regimes. As the tax advantages in question specifically concern the income earned by such companies from foreign sources, including trading income or income from participation interests held abroad, they may affect cross-border prices in dealings between the European Community and the Swiss Federation and therefore distort trade.

55. The Commission considers that management and mixed companies typically carry out business activities including trade between the Community and Switzerland, as the tax advantages are provided specifically to certain Swiss companies earning income from abroad and taking account of trade between the European Community and the Swiss Confederation. The tax advantages in favour of management and mixed companies effectively take the form of exempting income earned from sources outside Switzerland, including income from sales on the common market, and accordingly favour Swiss-based undertakings by improving their trading conditions vis-à-vis their competitors based in EU Member States carrying out comparable cross-border activities. The Commission therefore concludes that when the business activities carried out by the beneficiary management and mixed companies in Switzerland involve trade between the European Community and the Swiss Federation the tax reductions in question may directly affect trade in a manner prohibited by Article 23(1) of the Agreement.

56. The tax exemptions in favour of holding companies are conditional upon the requirement that the holdings are not engaged in business activity in Switzerland. Such holding companies must necessarily belong to economic groups directly engaged in business activities within and/or outside Switzerland, for which they perform management activities and provide coordination services, including licensing and financing functions. By strengthening the economic position of such economic conglomerates in relation to those with no Swiss holding, the tax exemptions in question may affect trade between the Community and Switzerland in all cases where the groups carry out an economic activity involving trade in goods.

Compatibility of the aid with the functioning of the Agreement

57. The Commission considers that the tax preferences in question constitute State aid and are incompatible with the proper functioning of the Agreement. The Commission considers that the tax advantages granted by the regimes under review are not related to specific investments which could justify granting an advantage to compensate for specific costs incurred by the beneficiaries but, instead, constitute a reduction of charges that should normally be borne by the firms concerned in the course of their business. They must therefore be considered as public operating aid. As explained above, this type of operating aid has a negative effect on competition as it improves the trading conditions of the beneficiaries by influencing the prices they are able to set in their trade between the European Community and the Swiss Confederation, without achieving any objective of common interest under the Agreement.

58. The Commission takes the view that such aid cannot be considered compatible with the proper functioning of the Agreement. In addition, it does not facilitate the development of certain economic activities of common interest to the parties to the Agreement, nor are the incentives in question limited in time, degressive or proportionate to what is necessary in order to remedy a possible economic handicap or market failure related to trade between the European Community and the Swiss Confederation. The Swiss authorities have not presented any argument in this respect. The Commission concludes that the company tax incentives in question therefore may not be considered compatible with the proper functioning of the Agreement.

IV. ARGUMENTS OF THE SWISS AUTHORITIES

59. The Swiss delegation to the Joint Committee contested that the tax regimes in question fall under the scope of the Agreement as the competition rules in the Agreement could not be compared with those in the EC Treaty. According to the Swiss authorities, the tax regimes did not constitute public aid and did not distort competition or trade in goods between the EC and Switzerland.

60. Switzerland claimed that the tax measures in question did not fall within the scope of the Agreement, as it could not be interpreted in the same way as the corresponding articles of the EC Treaty. Furthermore the tax measures could not be described as public aid under Article 23(1)(iii) of the Agreement, as the Agreement contains no operational rules on State aid. Switzerland argued that the Commission had in the past abstained from intervening with operators on the basis of the Agreement. In any case Article 23(1)(iii) applied only to taxation at Federal or national level, but not at cantonal or municipal level.

61. According to the Swiss authorities, the tax exemptions were justified as they avoided multiple taxation and the companies in question made only minimum use of Swiss infrastructure. The tax regimes were not selective as any business activity could benefit from the exemptions, irrespective of whether the company was in Swiss or foreign hands.

62. In addition, the trade in goods covered by the Agreement was not affected; either the companies in question did not engage in trading activities or, where they did so, their trading activities were taxed in the normal way. Consequently, there could be no distortion of competition. Finally, the Swiss rules on company taxation had already been in force for over 50 years, and therefore traders could invoke the principle of protection of legitimate expectations.

V. THE COMMISSION'S VIEWS ON THE SWISS ARGUMENTS

63. The Commission considers these arguments to be either unfounded or irrelevant and maintains its assessment outlined above. In particular, concerning the scope of the Agreement, its applicability is obvious from the fact that competition rules are an essential part of the Agreement. Competition is mentioned in the Preamble and in Articles 1(6), 18 and 23, and public aid is covered by Article 23.

64. It is generally acknowledged that tax measures count as public aid if they meet certain criteria. Therefore it must be possible to address the Swiss tax schemes under the Agreement. A perceived answer to the question whether the tax schemes meet these criteria cannot be used as an argument against application of the Agreement. The same applies to the question whether the tax regimes threaten to distort competition and may affect trade and are therefore to be regarded as incompatible with the proper functioning of the Agreement. The facts that these regimes have existed for a long time and that Article 23 has not been invoked before are irrelevant, as forfeiture does not exist in international law.

65. As for the interpretation of Article 23, its wording mirrors Article 87 of the EC Treaty, the only difference being that under the Agreement it suffices that trade between Switzerland and the EC "may be affected", whereas Article 87 of the EC Treaty requires that the aid actually "affects trade between Member States". It should also be noted that the definition of public aid was already in place at the time of

signature of the Agreement in 1972 and corresponds to that generally accepted at international level.

66. The criteria for establishing incompatibility with the proper functioning of the Agreement are listed in Article 23 itself: 1) public aid; 2) distortion or threat of distortion of competition by favouring certain undertakings or production of certain goods; and 3) possibility of affecting trade between the Community and Switzerland. All these criteria are fulfilled, as outlined above.

67. Any inaction against operators or public declarations by Commission representatives about the lack of direct effect of competition rules under the Agreement may not deny the Agreement general validity and may only concern the operators in question. They are irrelevant as far as qualification as State aid is concerned.

68. The classification of the tax regimes as public aid has been explained in detail above. The advantage for the economic operator takes the form of avoidance or reduction of company taxation. This advantage is granted by the State or through State resources in the form of reductions of tax payments which would be due under the generally applicable rules. The alleged distinction between the Federal and local levels is irrelevant as generally all layers of State organisation are concerned. The Federal tax law provides for these regimes and company tax is a typical source of State revenue.

69. The regimes are selective as only certain companies, mainly earning income from outside Switzerland and only companies fulfilling the conditions to be considered holding companies and not primarily active on the Swiss market, are eligible. This is sufficient to consider the schemes selective. The fact that the regimes are granted to branches of foreign, including Community, companies is irrelevant.

70. Avoidance of double taxation is no justification, as the mechanisms for such avoidance are set out in the respective double taxation agreements and, in any case, no proof of taxation in other countries is required. Nor is the marginal use of local infrastructure any justification as this is no general rule and would also apply to companies active on the Swiss market.

71. As for distortion or the threat of distortion of competition, all tax reductions selectively granted to certain operators are by definition liable to distort competition because they amount to financial and economic advantages and tilt the level playing field which is the precondition for fair competition between undertakings operating on the relevant markets. A tax advantage favouring certain undertakings, by its very nature, distorts, or threatens to distort, competition.

72. As regards the possible effect on trade in goods between the Community and Switzerland, the Commission considers that the cantonal tax advantages in favour of management and mixed companies specifically favour activities carried out with respect to foreign persons, including trading activities, and accordingly affect trade. With respect to holding companies, the Commission considers that they also benefit from the exemption for income regarded as similar to income from participations, even if this is trading income. Furthermore, the Commission considers that the exemption of the income from participations granted to holding companies may also affect trade because it indirectly favours the trading companies of the group to which the holding company belongs. To the extent that other companies in the group

produce or trade in goods which are imported from the Community to Switzerland or exported from Switzerland into the Community, trade between the Community and Switzerland is affected.

VI. CONCLUSIONS

73. The Commission therefore concludes, on the basis of the information available, that the company tax regimes in favour of management, holding and mixed companies of the type applied in the cantons of Zug and Schwyz constitute State aid incompatible with the proper functioning of the Agreement, in particular Article 23(1) thereof. The specific tax breaks in question may directly affect trade between the Community and the Swiss Federation in a manner proscribed by the Agreement, where such companies are actively engaged in such trade activities. The tax advantages in favour of management, holding and mixed companies of the type applied in the cantons of Zug and Schwyz, as well as the other tax practices outlined above, may also indirectly affect trade between the Community and Switzerland in a manner proscribed by the Agreement, where the economic group to which the beneficiary company or holding belongs is actively engaged in such trade.

74. The Commission stresses the great importance of this issue in view of the key role of the Agreement and its proper functioning for the overall relations with Switzerland. It reserves the right to propose the adoption of safeguard measures to the Council in accordance with Article 27(3)(a) of the Agreement and with Article 2 of Regulation 2841/72.,

HAS DECIDED AS FOLLOWS:

Article 1

The State aid schemes implemented by Switzerland in the form of special company tax regimes for management, mixed and holding companies which grant favourable tax rates for income generated abroad are incompatible with the proper functioning of the Agreement.

Article 2

Switzerland should abolish or amend these tax regimes by removing the differentiated tax treatment of domestic and foreign source income.

Article 3

The Commission reserves the right to propose the adoption of safeguard measures to the Council in accordance with Article 27(3)(a) of the Agreement and with Article 2 of Regulation 2841/72.

Article 4

This decision shall be communicated to the Swiss Confederation.

Done at Brussels, 13.2.2007

For the Commission
Benita FERRERO-WALDNER

IP/07/176

Brussels, 13 February 2007

EU-Switzerland: State aid decision on company tax regimes

The European Commission has decided that certain company tax regimes in Swiss Cantons in favour of holding, mixed and management companies are a form of State aid incompatible with the proper functioning of the 1972 Agreement between the EU and Switzerland. At stake are schemes offering unfair tax advantages to companies established in Switzerland, for profits generated in the EU. The Commission asks Switzerland to amend these tax schemes to bring them in line with the terms of the Agreement. The Commission has also asked the Council for a mandate to start negotiations with Switzerland with a view to finding a mutually acceptable solution.

External Relations Commissioner Benita Ferrero-Waldner said: *"Switzerland enjoys the benefits of privileged access to the internal market and must accept the responsibilities that go along with this. The decision the Commission has taken is not about tax competition but about State aid undermining the level playing field necessary for our partnership and the trade relations between Switzerland and the EU."*

Under Swiss law, the Cantons may fully or partially exempt profits generated abroad from cantonal and municipal company tax. All Swiss Cantons have made use of this provision, although in different forms. Over the years, this has proved to be a formidable incentive for the headquarters, co-ordination and distribution centres of multinationals to be based in Cantons such as Zug and Schwyz, in order to minimize their tax liabilities. As these multinationals are mostly active in the EU market, such tax regimes may directly or indirectly affect trade between the EU and Switzerland. While the Commission is not against tax competition or low tax rates, it cannot accept schemes that differentiate between domestic and foreign source income.

Following complaints by Member States, Members of the European Parliament and businesses, the Commission reviewed some of the cantonal tax regimes to assess their compatibility with the State aid provision in Article 23(1) of the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972[1].

The issue was referred to the Joint Committee established under the Agreement at its meeting on 15 December 2005 and was further discussed with Switzerland at an expert meeting on 4 May 2006 and at subsequent meetings of the Joint Committee on 5 May and 14 December 2006. It has not been possible to find a solution in this framework.

In 1972, all EFTA countries concluded identical agreements with the EU. Similar action against State aid has been taken in the past on the basis of the corresponding

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[1] OJ L 300, 31.12.1972, p. 189.

provisions in agreements with other EFTA countries.[2] Tax regimes similar to those in Switzerland are not allowed inside the EU under the State aid provisions of the EC Treaty (Article 87), and the Commission has taken action against Member States.

Also, Member States have committed themselves to abolishing similar preferential tax measures in the Code of Conduct for Business Taxation of 1997[3] and to promoting the standards of the Code of Conduct with third countries.

Following today's decisions, the European Commission will discuss further proceedings with Member States with a view to negotiating with Switzerland the modification of the tax schemes in question in order to remove the differentiated tax treatment of foreign profits in Switzerland and put an end to the resulting distortion of competition.

For more information:

http://ec.europa.eu/comm/external_relations/switzerland/intro/index.htm

http://ec.europa.eu/comm/competition/state_aid/overview/index_en.html

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[2] Council Regulation (EC) No 3697/93 of 20 December 1993 withdrawing tariff concessions in accordance with Article 23(2) and Article 27(3)(a) of the Free Trade Agreement between the Community and Austria (General Motors Austria), OJ L 343, 31.12.1993, p. 1; Council Regulation (EC) No 317/94 of 20 December 1993 withdrawing tariff concessions in accordance with Article 23(2) and Article 27(3)(a) of the Free Trade Agreement between the Community and Austria (Grundig Austria), OJ L 41, 12.2.1994, p. 18).

[3] OJ C 2, 6 January 1998, p. 3

Corporate Tax Reform III – the South left out

Published: 20. 10. 2014

Multinational corporations should pay taxes in the places where they make their profits. Reality is completely different. And with the Corporate Tax Reform III, Switzerland wants to offer them new possibilities for aggressive tax avoidance.

Those for whom the term 'world trade' immediately evokes exports and imports between independent enterprises are finding themselves ever further off the mark. OECD estimates are that today more than half of international trade takes place between companies belonging to the same group.

This poses enormous challenges when it comes to levying corporate taxes. Multinational corporations are able to use intra-corporation trade to accumulate their worldwide profits in a place where the lowest taxes are levied. Earnings are therefore not reported where they are generated, but are transferred to tax havens. The corporations themselves colourfully describe such profit transfers as tax optimization. Non-governmental organizations prefer to speak of aggressive tax avoidance.

Who is being harmed?

The victims of this practice are the countries in which production actually takes place: they provide the companies with labour and the necessary infrastructure, they allow them to exploit mineral deposits, but go away empty-handed when it comes to tax revenues. They must fill the financial deficits by cutting back on public services or by taxing small companies and employees more heavily.

Developing countries too are being particularly affected. For years British brewery SAP Miller made millions in turnover in Ghana, but officially garnered hardly any profits and therefore, according to research by the Action Aid development organization, paid as good as no corporate taxes. The branch in Ghana allegedly used up all profits to settle internal company debts, license fees were paid to a Dutch sister company and costly intra-company services were contracted in Switzerland. The group's public justification was that it had acted strictly in accordance with the law.

Immoral, but legal

The fact is that most of the practices whereby companies transfer their profits to low-tax countries such as Switzerland are perfectly legal. Only the so-called arm's length principle applies. It holds that internal corporate transactions should be conducted at the normal market prices that would apply to transactions with unrelated parties. Nevertheless, the responsible tax authorities often find it difficult to monitor compliance with this rule at a reasonable cost. In developing countries for the most part, the authorities often lack the human resources needed and at times even the requisite legal bases.

Added to this is the fact that the arm's length principle allows considerable leeway. There are really no free markets for patents, trademark rights and internal company loans for example, and hence also no straightforward possibilities for comparison. Corporate groups can therefore set prices for intra-company transactions more or less freely.

This is one of the reasons why intra-company royalty payments are becoming an ever more frequently used vehicle for aggressive tax avoidance. It suffices to hold expensive patents and trademark rights in a country that hardly taxes the corresponding revenues, and the result is that almost no more taxable profits are generated in the actual country of production.

Switzerland's role

Switzerland is a favourite destination for fiscally motivated profit transfers. This is down to the tax privileges for so-called special status companies (holding companies, mixed companies and management companies above all). They bring about unequal treatment of domestic and foreign profits, they boost the foreign business of firms headquartered in Switzerland and secure an unfair competitive advantage for the country in the international competition to attract companies. Profits from abroad are often largely tax-free. This has long angered countries where the profits originate and has also been a source of growing annoyance for the OECD.

But this should end soon. The Federal Council has launched expert consultations on the so-called Corporate Tax Reform III. To put an end to the protracted row with the EU, the Federal Council wishes at long last to eliminate the existing tax privileges for special status companies. At the same time, however, it wants to ensure that Switzerland does not lose market share in the competition amongst tax havens. Alongside other measures, the planned reform therefore envisages replacing exceptional taxation of special status companies with fiscal privileges for income from royalties (the so-called license boxes). Moreover, the cantons are to receive support in drastically lowering their corporate taxes yet again.

Developmentally dubious

Of course it makes sense to abolish cantonal tax privileges for special status companies. The planned replacement measures (license boxes and other corporate tax cuts) are highly questionable from a developmental standpoint. They would continue to represent a powerful incentive for multinational corporations to transfer their profits from developing countries to Switzerland via internal company transactions, thereby depriving the country concerned of urgently needed government revenues. This would clearly contradict the aims (and successes) of Switzerland's development policy.

The fact is, however, that the gloves are already off in the international tax competition. License boxes, for example, already exist in several European countries. Switzerland's renunciation of such boxes would be of rather limited benefit to developing countries. More corporate profits from poor countries would simply flow into Holland or the United Kingdom instead of Switzerland.
But in the competition between business locations, Switzerland has more to offer than tax dumping. Rather than further stoking the tax competition, it would do better to actively combat tax dumping by other countries and advocate for fairer corporate taxation internationally.

Mark Herkenrath, Alliance Sud

Classification: Economy , Finances , Switzerland

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1er Cahier

L'Union européenne revient à la charge

Tanguy Verhoosel, Bruxelles

Les ennuis de la Suisse vis-à-vis de l'UE, dans le domaine de la fiscalité des entreprises, vont-ils recommencer? En tout cas, une délégation de la commission spéciale que le Parlement européen a instituée afin d'enquêter sur les avantages fiscaux illégaux dont bénéficieraient certaines multinationales dans différents pays se rendra le 22mai à Berne.

La nouvelle n'a pas encore été officialisée, mais, souligne-t-on, il ne fait aucun doute que la visite aura lieu, avec le consentement du Conseil fédéral.

La «commission taxe» du Parlement européen a été constituée en février, après qu'eut éclaté l'affaire des LuxLeaks, à la fin 2014. Elle est chargée de faire la vérité sur la pratique des «tax rulings», ces accords fiscaux anticipés que les multinationales concluent avec les administrations fiscales en vue de réduire leur base d'imposition.

L'affaire des LuxLeaks, qui a fragilisé le président de la Commission européenne, l'ancien premier ministre luxembourgeois Jean-Claude Juncker, a déjà conduit Bruxelles à ouvrir des enquêtes formelles sur les avantages dont ont bénéficié Amazon et Fiat au Luxembourg, Starbucks aux Pays-Bas et Apple en Irlande ainsi que sur un régime fiscal belge. Parallèlement, l'exécutif communautaire a proposé, en mars, d'imposer dès 2016 aux Etats membres de l'Union l'obligation de s'échanger automatiquement des informations sur leurs décisions de tax rulings. Objectif: éviter qu'ils continuent à se livrer une concurrence fiscale déloyale.

Pour le parlement, le problème déborde les frontières de l'UE. Hier, la vice-présidente de la commission taxe, l'ancienne magistrate franco-norvégienne Eva Joly, a par exemple évoqué la situation du groupe suédois Ikea qui, grâce à certains montages réalisés à Genève, aurait privé des pays de l'UE d'importantes recettes fiscales.

Moralité: le vieux différend entre la Suisse et l'UE dans le domaine de la fiscalité des entreprises, que Berne espérait avoir aplani en s'engageant notamment à démanteler plusieurs régimes fiscaux cantonaux litigieux (holdings, sociétés boîtes-aux-lettres, sociétés mixtes), pourrait rebondir.

Le Conseil fédéral s'en passerait bien, alors que la Commission, le Parlement et les Vingt-Huit semblent déjà s'être tous entendus pour resserrer les boulons vis-à-vis de la Suisse, suite à la votation du 9février 2014 «contre l'immigration de masse», et à l'absence de progrès dans les négociations institutionnelles. Il n'est par exemple plus question, pour eux, de conclure un accord provisoire dans le secteur de l'électricité, ni de poursuivre un quelconque dialogue exploratoire sur la faisabilité d'un accord sur les services financiers.

La fiscalité suisse est dans le viseur des députés de l'UE

Concurrence fiscale Une délégation européenne vient en Suisse examiner la fiscalité des entreprises helvétiques.

Une délégation du Parlement européen vient à Berne vendredi prochain pour examiner la fiscalité des entreprises helvétiques et les fameux *tax rulings*. Elle représente la commission spéciale créée en février suite aux révélations de LuxLeaks, afin d'enquêter sur les avantages fiscaux illégaux accordés aux multinationales dans différents pays.

Selon le programme obtenu par «Le Matin Dimanche», le groupe de sept députés européens emmené par le Français Alain Lamassoure sera reçu par le Département fédéral des finances. «Ils seront reçus par le secrétaire d'Etat aux questions financières internationales, Jacques de Watteville», confirme son porte-parole Mario Tuor. Sont également prévues des auditions d'EconomieSuisse, d'Avenir Suisse, des représentants des cantons, ainsi que de la Déclaration de Berne et d'Alliance Sud.

Jusqu'ici, la Suisse n'a jamais été au centre des discussions de la commission spéciale qui, après la Belgique, se rend demain au Luxembourg, puis enchaînera ces prochaines semaines avec des visites en Irlande, aux Pays-Bas et en Grande-Bretagne.

Cela dit, la pression européenne sur la Suisse pourrait s'accentuer. Premièrement, la réforme helvétique de l'imposition des entreprises III, engagée pour se mettre en conformité avec les nouvelles normes de l'OCDE, est jugée à la fois trop lente (2019 au plus tôt) et pas assez radicale. Deuxièmement, les abattements fiscaux accordés à des multinationales, en particulier dans le canton de Vaud, sont considérés comme anticoncurrentiels. Tout comme les particularismes que certains cantons tels que Bâle-Ville ou Fribourg cherchent à mettre en place dans le domaine des IP boxes, ces allégements fiscaux sur les revenus liés à la propriété intellectuelle et générés par la recherche et le développement.

Les sept députés européens seront reçus le 22 mai à Berne par le secrétaire d'Etat aux questions financières internationales, Jacques de Watteville. Denis Balibouse/Reuters

En mars, la Commission européenne a annoncé un échange automatique des rulings fiscaux entre les Etats membres de l'UE. La visite de la délégation du Parlement européen de ce vendredi pourrait être le premier pas pour exiger une transparence similaire concernant les décisions fiscales anticipées en Suisse. Il sera toutefois difficile d'obtenir la même chose, car même l'Administration fédérale des contributions n'a jamais réussi à obtenir l'ensemble de ces informations de la part des cantons.

Titus Plattner et Catherine Boss

Switzerland introduces corporate tax reform III aiming to maintain its global competitiveness: 6 key points

Global Tax News

27 MAR 2015

By: Michael W. Hardgrove | Hans-Jürg Schmid*

Anticipating ongoing pressure from the European Union and the OECD, Switzerland has launched a draft corporate tax reform, called CTR III, focusing on increasing the competitiveness of Switzerland as a global corporate center.

Switzerland is already favored by multinationals thanks to its attractive combination of stability, location, efficiency and technology, as well as its continuing commitment to a business-favorable tax system.

CTR III's measures include:

1) the license box,

2) a notional interest deduction (NID),

3) a step-up mechanism to reveal hidden reserves,

4) a general lowering of cantonal corporate income tax rates,

5) a stronger participation exemption, and

6) abolition of the 1 percent capital stamp duty on equity capital contributions.

These measures are intended to counteract the elimination of cantonal tax regimes such as holding, domicile and mixed company regimes. The new measures are also intended to offset the elimination of the federal principal company regime and the Swiss finance branch regime, in order to ensure that Switzerland will remain a very favorable option for multinational companies.

1. Swiss license box

The proposed license box regime broadly follows similar regimes existing in other EU countries, such as the UK, although the Swiss variation may be more expansive in its definition of qualifying income/assets. The details are being drafted, and final provisions are, of course, subject to further developments at the OECD and/or EU level in order to stay internationally acceptable. But, the objective is an effective tax rate (including both federal and cantonal taxes) of between 2.4 and 4.8 percent, depending on the location within Switzerland.

2. Notional interest deduction (NID)

The proposed NID regime would be applicable at both the federal and the cantonal level on the so-called "surplus equity". As a result, deemed interest would be deductible on the part of the equity deemed to be in excess of the necessary core equity.

3. Step-up mechanism

A company moving to Switzerland will be allowed to step up its assets to their fair market value (FMV), including the goodwill related to future profits. The FMV of these assets will be depreciated in the following years according to the general guidelines. The same step-up will apply when a company relocates from a privileged tax regime (holding, mixed, license box, principal company) to an ordinary tax regime.

4. Lowering of cantonal tax rates

The base cantonal and communal income tax rates are expected to be reduced, so that the combined Swiss tax rates (cantonal and federal income tax) will be 12 – 14 percent. Certain Swiss cantons have already adopted the new lower rates, while others have announced new target rates.

5. Participation exemption

Dividends and capital gains upon sales (even on small participations), would be fully exempt from income taxation. This is viewed as a more certain and broader application of the current mechanism. Thus, by abolishing the current regime, the general Swiss participation exemption on dividend or participation income will **not be** negatively affected.

6. Abolition of capital stamp duty

The 1 percent stamp duty on equity capital contributions to a Swiss corporate entity will be fully abolished. This will facilitate the use of Swiss holding companies by eliminating the primary obstacle to use of Switzerland for corporate structuring and reorganizations.

Timing

Following the recent end of official consultations on the CTR III draft (January 31, 2015), it is clear that:

a) the CTR III will not come into force until 2018 and 2020 and

b) in the interim, the current Swiss rules and tax regimes still apply to existing and newly created Swiss entities (including the rules relating to cantonal holding companies and mixed companies).

Attractive package for multinationals

The general reduction of the corporate income tax rates in many cantons will result in effective tax rates as low as 12 percent on **all** income. Together with the step-up basis, license box and notional interest, once the new rules are in effect, companies will be able to achieve an even lower rate on Swiss income.

Moreover, these changes aim to attract non-Swiss companies that may be facing higher scrutiny by tax authorities and financial auditors regarding income tax and low/no-tax jurisdictions. Among such companies may be those that will be under pressure to "on-shore" their holding companies and intangible property due to pressure from the EU to comply with OECD guidelines. The new Swiss tax rules to be enacted under CTR III should ensure that relocation to Switzerland will remain a very favorable option. Thus, it appears advisable for companies to evaluate the long-term impact of these changes and to consider initiating forward-looking tax planning that includes Switzerland.

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