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SwissHoldings Session Sticker Summer session 2023

Templates (title clickable)

SwissHoldings, the association of industrial and service companies in Switzerland, comprises 63 of the largest corporations in Switzerland, which together account for approximately 66 percent of the total market capitalisation of the SIX Swiss Exchange. Our member companies employ around 1.8 million people globally, around 202,000 of whom work in Switzerland. Through the numerous service and supply contracts they place with SMEs, Switzerland's multinationals employ - directly and indirectly - over half of all employees in Switzerland.

Dear readers

At the beginning of the 2023 summer session, SwissHoldings will provide you with its latest session ticker. This will give you an overview of the important issues falling within our sphere of activity that will be dealt with in the upcoming session of the National Council and Council of States. With the session ticker, we show what the business is about and what SwissHoldings' position is on it.

We hope to pass on useful information to you with this issue as well. We would be happy to receive your feedback on the ticker.

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SwissHoldings

National Council:

21.019 Value Added Tax Act. Partial revision

Treatment on Monday, 1 June 2023

That is what it is about

This bill implements various parliamentary initiatives in the area of value added tax. The focus is on the levying of VAT by mail-order platforms and the obligation of all internet platforms to provide information. Other elements concern CO2 emission certificates, foreign travel agencies and provisions on tax representation. The catalogue of tax exemptions is to be expanded and new services are to be subject to the reduced tax rate. Simplifications for SMEs such as voluntary annual accounting and measures to combat fraud are also included.

Status of the procedure

WAK-NR 12.04.22: Adoption without dissenting vote

The WAK-NR has not made any fundamental changes to the Federal Council's bill. However, there are minority motions on various procedural issues.

Special session 2022: Adoption of the bill in the overall vote (129:53.1)

WAK-SR 14.02.23: Adoption without dissenting vote

Position SwissHoldings

VAT is assessed independently by Swiss companies at their own expense and entirely at their own risk. The handling of VAT is one of the largest administrative cost factors for Swiss companies at the federal level. The situation has a lot to do with the numerous breaks that run through the VAT system: Countless exceptions, different tax rates and various turnover limits make the system enormously complex. The present partial revision brings hardly any relief for businesses. Since the total revision of the VAT law in 2010, the Swiss system has continuously become more complicated, and new complications are also associated with the present draft law. Unfortunately, the present draft reinforces the negative tendency by giving privileged treatment to new areas of consumption. Every privilege represents a disadvantage and a burden for other, non-privileged areas, because without privileges the tax burden could be lower for the same tax revenue. This is also the only justifiable, fair solution from the consumer's point of view. New privileges should therefore be dispensed with in the interest of a broad-based value-added tax that treats all services equally and can thus be accepted equally by the companies providing the services and by consumers.

Where adjustments and further developments are deemed necessary or, as in the case of the control of online platforms, occasionally desirable, the regulations should be made in such a way that they fit smoothly into the VAT system. In addition, the regulations should be as legally secure as possible for business practice and cost-effective in application (i.e. associated with little bureaucracy). Measures that distort competition should be avoided.

SwissHoldings supports the partial revision of the VAT Act. However, we are critical of the exceptions and special regulations for individual sectors (travel agencies, Spitex, etc.).

SwissHoldings

National Council:

22.077 Double taxation. Agreement with Tajikistan

Treatment on Monday, 1 June 2023

That is what it is about

The Protocol amending the DTA with Tajikistan contains an abuse clause that focuses on the main purpose of an arrangement or transaction and thus ensures that the DTA is not abused. In addition, the protocol contains an administrative assistance clause in accordance with international standards on the exchange of information upon request.

Furthermore, the DTA adjustment implements the minimum standards from the BEPS project in matters of double taxation agreements.

Status of the procedure

WAK-SR 14.02.23: Adoption

Position SwissHoldings

SwissHoldings also supports the adjustment of the current **DTA with Tajikistan to the** OECD and G20 BEPS minimum standard and to the international standard on the exchange of information on request, as well as the introduction of an abuse clause.

SwissHoldings

National Council:

23.3013 Po. APK-NR. Supplementary report on the foreign economic strategy

Treatment on Monday, 12 June 2023

That is what it is about

The Federal Council is mandated to draw up a supplementary report on the foreign economic strategy, highlighting the economic policy implications of the US Inflation Reduction Act and the European Green Deal Industrial Plan (Net Zero Industrial Act, European Sovereignty Fund, etc.) - this against the background that the Federal Council's current foreign economic strategy does not yet take into account these significant recent geopolitical developments in US and EU economic policy.

Status of the procedure

APK-N 14.02.23: Adoption (a minority: Büchel, Aebi, Aeschi, Grüter, Tuena proposes to reject the postulate).
to reject the postulate)

Not yet dealt with in the Council

Position SwissHoldings

With the Inflation Reduction Act, or IRA for short, the USA has launched an investment programme worth billions of dollars which, in addition to measures to combat climate change and a reorientation of the US economy towards renewable energies, also provides for comprehensive new tax regulations. Reactions to the US programme are mixed. On the one hand, the IRA is welcomed, as this programme aims to enable the USA to better achieve its climate goals in the future. However, it is also argued that this broad-based US initiative would trigger a global race for industrial subsidies.

In mid-March, the EU, for its part, presented the Net Zero Industry Act (NZIA) as part of the European response to the IRA. The NZIA is intended to work towards improving the regulatory framework and investment conditions for "net zero technologies" - such as photovoltaic plants, wind turbines and heat pumps. The goal is to produce at least 40 percent of the annual demand for climate-neutral technologies in Europe from 2030.

SwissHoldings recommends acceptance of the postulate. It is important that the positive and negative impacts and possible strategic responses of these new large-scale initiatives at US and EU level for Swiss foreign economic policy and for Swiss location and climate protection policy are carefully analysed.

SwissHoldings

Council of States:

21.019 Value Added Tax Act. Partial revision

Treatment on Monday, 1 June 2023

That's what it's about

This bill implements various parliamentary initiatives in the area of value added tax. The focus is on the levying of VAT by mail-order platforms and the obligation of all internet platforms to provide information. Other elements concern CO2 emission certificates, foreign travel agencies and provisions on tax representation. The catalogue of tax exemptions is to be expanded and new services are to be subject to the reduced tax rate. Simplifications for SMEs such as voluntary annual accounting and measures to combat fraud are also included.

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Special session 2022: Adoption of the bill in the overall vote (129:53.1)

WAK-SR 14.02.23: Adoption without dissenting vote

Position SwissHoldings

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SwissHoldings

Council of States:

19.4313 Mo. National Council (Müller Leo). Show sustainable financial flows

Treatment on Wednesday, 31 May 2023

That is what it is about

Private sector investments play a central role in the transition to a sustainable economy. The financial sector in Switzerland is already very active in this area of so-called "sustainable finance". For example, the local market for sustainable investments grows disproportionately every year: according to a survey by Swiss Sustainable Finance (SFF), the volume for sustainable investments increased again by 30 percent in 2021 compared to the previous year to over CHF 1.9 trillion. Switzerland is well on its way to becoming the leading financial centre in this promising market.

However, it is not always easy for financial market actors - both large investors such as banks and pension funds as well as small investors - to decide which investments are sustainable. The motion instructs the Federal Council, in cooperation with the sectors, to look for ways to improve this data basis.

Status of the procedure

National Council 20.12.2019: Fought, postponed

National Council 02.03.2020: Adoption

Position SwissHoldings

The motion primarily addresses the financial sector. Nevertheless, it should be noted that the real economy is directly affected by the planned measures. Banks and insurance companies depend on the information provided by the manufacturing companies in general and the ESG data in particular to fulfil their accountability obligations. Only on the basis of this disclosure of the real economy is the desired conception and management of investment portfolios aligned accordingly with sustainability criteria possible.

It should also be mentioned that in addition to the disclosure efforts, various classification systems for environmentally sustainable activities (so-called "taxonomies") are currently being developed worldwide - whereby these efforts are very dynamic in the EU and in other financial centres. From the association's point of view, it is central against this background that no special Swiss solution is created. Such a "Swiss Finish" would represent an immense effort for Swiss companies. Many of the local companies with a strong connection to the EU are already required to apply the EU taxonomy in the near future. The more uniform the standards are, the easier it is for these companies to implement them.

Basically, the association takes the position that the most important instrument for promoting Sustainable Finance is not rigid classification systems such as the taxonomy, but the creation of binding

transparency of technical ESG data. With the adoption of the ordinance for climate reporting in December 2022, Switzerland has taken an important step towards standardising this data. It is now important to implement this ordinance consistently.

In principle, SwissHoldings supports the thrust of the motion. From the association's point of view, however, it is essential that no special Swiss solution is created. Any efforts to improve the data basis in the area of sustainability should always be coordinated with internationally supported initiatives.

SwissHoldings

Council of States:

23.3448 Mo. Chiesa. Systemically important companies. Ensuring decisions in the interest of Switzerland

23.3495 Mo. Noser. Regulation on variable remuneration

Treatment of both motions on Tuesday, 13 June 2023

That's what it's about

According to the Chiesa motion, the Federal Council should be instructed to take appropriate measures to ensure that the boards of directors of systemically important companies make decisions in the interests of the Swiss economy as a whole. The following requirement should apply: The majority of board members of companies defined as systemically important must hold Swiss citizenship and be resident in Switzerland.

According to the Noser motion, company law should be amended as follows: The variable part of the remuneration of all employees, which the board of directors can decide on in its own authority, may not exceed 15 percent of the reported net profit. If the board of directors wants a higher total variable remuneration, it must propose and justify this at the general meeting. In particular, it shall transparently explain how the higher amount is allocated to the different levels of employees. In the case of systemically important companies, the large part of the variable compensation must be deferred in the long term, and in a graduated manner. This deferral should be at least 3 years for lower management, and then increased in steps up to executive management, for which it must be at least 10 years. In the event of a restructuring, all deferred variable remuneration that has been deferred for longer than 3 years shall be forfeited.

Status of the procedure

Date of submission of the Chiesa motion: 11.4.2023; not yet dealt with in the Council.

Date of submission of the Noser motion: 12.4.2023; not yet dealt with in the Council.

Position SwissHoldings

From SwissHoldings' point of view, **both motions** are **very problematic, in** particular for the following reasons:

- **No additional hasty regulation for the well-functioning industrial and service companies because of the Credit Suisse case in the financial sector**: From our point of view, it is important to remain calm after the Credit Suisse case and to work through the case. Problems that arise in the financial sector should be regulated in this sector and the real economy should not be burdened with additional regulation in an over-hasty manner.
- **Unnecessity of the motions, especially insofar as they affect the real economy (via company law)**: Both motions are unnecessary from our point of view, especially insofar as they also affect the real economy via company law as envisaged. Switzerland has a well-functioning and recently completely revised company law and this is supplemented by the Swiss Code of Best Practice for Corporate Governance, which contains provisions in the area covered by the two motions. To now burden the real economy with rigid additional regulation would reduce the competitiveness of Swiss companies and ultimately also of Switzerland as a business location.

With regard to the Noser motion on variable remuneration, it should be specifically noted that variable remuneration does have many advantages. Among other advantages, it should be mentioned that systems with profit-sharing lead to a balance of interests between owners, companies and employees. It should also be noted that a profit-sharing system conveys appreciation to the employees.
With regard to the Chiesa motion, it should be specifically noted that it is essential to avoid introducing a quota that is based on nationality and thus pushes criteria such as competence, expertise, independence, experience, etc. into the background. Moreover, there is no empirical evidence that board members would manage a company more responsibly or with more foresight if they had Swiss citizenship and Swiss residency.

- **No further intervention in company law after it has just been totally revised**: It should also be noted that company law has just been totally revised. In our view, it should be avoided at all costs and would lead to uncertainty - also internationally - if it were to be amended again for all companies because of the Credit Suisse case in the financial sector.
- **No systemically important companies, but only systemically important banks, which are rightly regulated by special law**: Both proposals refer in whole or in part to the systemic relevance of companies. It should be noted that there are no systemically important companies, but only systemically important banks, and rightly so. For these, there is already a TBTF law, which is designed as a special law. A "spill-over" into the real economy and into stock corporation law is to be strictly rejected, as explained above.

Accordingly, we recommend that both motions be **rejected.**

SwissHoldings

Council of States:

23.3224 Mo. Français. Institutional reform of the Competition Commission

Treatment on Wednesday, 14 June 2023

That is what it is about

The text of the motion submitted reads as follows: Civil society strongly criticises the functioning of the Competition Commission (ComCo); in particular, it criticises the communication, the reluctance in suspicion cases, the non-respect of the presumption of innocence towards suspects, the duration of the proceedings, the readiness, etc. Therefore, it is necessary to review the structure of the Commission, its prerogatives and also its means. A functional separation of its roles as prosecutor and as judge must be ensured.

Status of the procedure

Date of submission of the motion: 16.3.2023; not yet dealt with in the Council.

Position SwissHoldings

In our opinion, the current administrative proceedings in Swiss cartel law suffer from serious legal deficiencies that need to be eliminated. The following should be mentioned in particular:

- Lack of separation of powers in general: The central flaw in the rule of law is the lack of separation of powers between the investigating and deciding authorities.
- In particular, problematic lack of separation between the Secretariat and the WEKO: Actually, the WEKO should act as a decision-making authority and the Secretariat as an investigating authority. However, the institutional de facto separation of the two bodies is insufficient. They do not act independently of each other; a fair judicial process thus does not come about. This is demonstrated, for example, by the fact that the secretariat, the prosecutor, is present at every step of the proceedings, even when a verdict is reached. However, unlike the investigating and prosecuting Secretariat of the Competition Commission, the companies concerned cannot participate in the decisive meetings of the Commission. Furthermore, according to the law, the secretariat is dependent on the consent of a member of the presidium of the Competition Commission for the opening of an investigation; according to Art. 27 of the Competition Act, the opening must take place in agreement with a member of the presidium. Also, according to Art. 30 para. 2 CO, the Competition Commission may, for example, decide to hold a hearing and instruct the Secretariat to take additional investigative measures. Overall, the picture that emerges is of an administrative authority in which the tasks and personnel of the Secretariat and the Competition Commission are insufficiently separated.
- Structurally conditioned, inadequate, critical questioning of the investigating authority by the deciding authority despite high threats of fines: In view of the high threats of fines, independent questioning of the sanctioning is necessary, but very difficult to achieve without a corresponding separation of powers. An institutional separation of the investigation from the decision-making process would obviously lead to a sanctioning of the investigated conduct having to meet more critical standards than those of the inevitably biased investigating authority.
- Factual coercion of companies to forego legal proceedings: Companies, especially small and medium-sized enterprises, are often forced to agree to an interim injunction by the Comco, thereby committing themselves to change their behaviour, even if their behaviour has been

legal. Legal proceedings are thus nipped in the bud. This coercion of the companies arises not only from cost issues in general, but also from the following circumstance: the Comco publishes the names of the accused companies as soon as it opens an investigation. Against the background of the problem described above of the lack of separation of powers without "equality of arms" between the companies and the investigating authority before an independent decision-making body, the companies know that they must be prepared for a difficult procedure. Accordingly, it is in the interest of the respective companies that the proceedings are concluded as quickly as possible, even if they are possibly convinced that they would be proven right in the outcome. In addition, proceedings take a long time to be concluded, which adds to the pressure on the companies. Measures to speed up proceedings, such as the setting of binding deadlines (always in compliance with the rule of law), can provide a partial remedy with regard to this latter circumstance. However, they alone do not solve this specific problem at its root.

- Tension with Art. 6 ECHR and Art. 30 BV in sanction proceedings: Art. 6 ECHR as well as Art. 30 BV are applicable to the sanction proceedings pursuant to Art. 49a KG and accordingly the requirements contained in these guarantees must be fulfilled, in particular the assessment by an independent and impartial court. However, according to case law, the Competition Commission is not recognised as a judicial authority (BGE 138 I 154, E 2.7., p. 158). According to the Federal Supreme Court and the European Court of Human Rights, this deficiency can only be remedied in appeal proceedings before the Federal Administrative Court, which has full jurisdiction. However, as described above, this route is associated with many obstacles, which is why this deficiency cannot always be remedied in practice.

Accordingly, it is very important that an institutional reform is carried out in cartel law with a consistent separation between the investigation and decision-making levels.