

## SwissHoldings Update

April 2020

### Overview ([title clickable](#))

<b>Taxation Department</b> .....	<b>3</b>
Withholding Tax Reform .....	3
Consultation WAK-NR on the abolition of all stamp duties .....	4
OECD/G20 project on taxation of the digital economy .....	6
<b>Corporate Social Responsibility and Direct Investments Department</b> .....	<b>9</b>
Corporate Responsibility Initiative.....	9
Corporate Social Responsibility .....	10
Direct Investments .....	10
<b>Accounting and Reporting Department</b> .....	<b>11</b>
Accounting and Reporting.....	11
<b>Capital Markets Department</b> .....	<b>12</b>
Economic policy in the corona crisis: assessments by SwissHoldings .....	12
<b>Competition Law Department</b> .....	<b>14</b>
Revision of the Cartel Act.....	14
Popular initiative "Stop the high-price island - for fair prices" and indirect counter-proposal by the Federal Council .....	15
<b>Corporate Law Department</b> .....	<b>16</b>
Coronavirus - ban on events and general meetings of large companies .....	16
Corporate Law Revision.....	16
Financial Services Act / Financial Institutions Act (FIDLEG/FINIG) .....	17
Proposal for improving the framework conditions for blockchain/DLT .....	19
Amendment of the Money Laundering Act .....	19
Stock Market Equivalence.....	20
<b>Compliance Department</b> .....	<b>21</b>
Compliance Specialist Group as a platform for the exchange of experience among the member companies - in particular on compliance management systems.....	21
Code of Civil Procedure Revision - Collective Redress- Legal Professional Privileges for in- house counsel.....	21
Deferred prosecution agreement (DPA).....	22



Whistleblowing.....22

**Digitisation and Data Protection Department.....23**

Revision of data protection law .....23

**SwissHoldings**, the association of industrial and service companies in Switzerland, comprises 59 of the largest groups in Switzerland, which together account for approximately 70 percent of the total market capitalization of the SIX Swiss Exchange. Our member companies employ around 1.6 million people globally, around 200,000 of whom work in Switzerland. Through the numerous service and supply contracts they award to SMEs, Switzerland's multinational companies employ - directly and indirectly - more than half of all employees in Switzerland.



## Taxation Department

### Withholding Tax Reform

#### Current status

With the withholding tax reform, the Federal Council wants to strengthen the Swiss debt capital market and encourage Swiss groups (as well as foreign groups with important activities in Switzerland) to issue their bonds here if possible. In addition, these groups should greatly reduce their foreign financing structures and carry out their corresponding activities in Switzerland. According to the Federal Department of Finance, the reform has an "extremely advantageous cost-benefit ratio". As a precaution, the Federal Department of Finance estimates the cost of the reform at CHF 200 million.

After the Bundesrat (Federal Council) passed the withholding tax reform parameters in June and September 2019, the consultation process is now set to begin at the end of March 2020. The parameters contain widely accepted elements, such as the change to the paying agent principle for directly held bonds. The financial sector, on the other hand, is met with resistance from the foreign funds (in particular investment funds) and the foreign structured products. The Federal Council also provides a tax deduction by the paying agent on interest income for these. The banks responded that they could not make any day-to-day deductions for these products without information received in good time and/or without payment. In other words, they would not be able to implement the Federal Council's (and the WAK-N's) requirements at all. Nor could the Swiss legislator require foreign funds to provide the necessary information in good time. The banks prefer a low-cost solution where as many as possible paying agent functions can be transferred to the custodian of securities and funds (e.g. SIX Group). Where this is not possible, the legislature should either accept a gap in tax protection or accept a reporting procedure limited to these matters. Without adjustments in the foreign funds and foreign structured products, there is a considerable risk that the entire withholding tax reform will fail.

From an industrial perspective, reform failure must be prevented. On February 11th, the OECD adopted new transfer price guidelines for financial transactions. The new guidelines deal with intra-group financing (guidelines for intra-group loans, cash pools, etc.). If Swiss groups are to be able to comply with the new guidelines, they must be able to carry out all their financing and issue their bonds from Switzerland (to the benefit of the Swiss tax authorities). The outdated withholding tax, which is detrimental to industry, banks and the tax authorities in the field of debt capital, must now be adjusted immediately. Without reform, companies will be forced to significantly strengthen their financing structures abroad with staff and functions. If the reform is successful, the Swiss tax authorities will be able to collect additional revenues from our companies. The new OECD guidelines also helps ensure the Federal Council achieve its aforementioned goals. If the withholding tax reform fails, however, reduced revenues for the Swiss tax authorities and job relocations abroad are inevitable.

In the future, enterprises will want to carry out their financing at the (Swiss) company headquarters or at the headquarters of the Swiss principal, where they can most easily comply with the new OECD guidelines. Companies with numerous corporate functions are ideal. In many cases, these have investments in subsidiaries and are dependent on a well-functioning participation deduction. It is precisely here that the Swiss participation deduction has shortcomings in an international comparison. These deficiencies lead to double

	<p>taxation (which the participation deduction should be avoided). Due to the uncertainty about the financial consequences for SMEs, the Federal Council, in its benchmark decision of September 2019, rejected our request to slightly adjust the participation deduction and to eliminate the double taxation that arises in connection with financing activities. Amid the new OECD guidelines, this decision is regrettable.</p>
<p><b>Outlook</b></p>	<p>The elimination of withholding tax obstacles for debt financing activities remains the most important internal Swiss tax project for member companies in the wake of the AHV tax bill. Due to the new OECD transfer pricing guidelines, the importance and urgency of the reform has increased significantly for Swiss groups. For SwissHoldings, it is therefore crucial that failure of the withholding tax reform is avoided and that the reform is driven forward rapidly. In order for the reform to succeed and protracted disputes to be avoided, it is important that the Federal Council presents a broadly accepted reform in the consultation phase. It is also essential that the participation deduction be adjusted as part of this reform.</p> <p>During the three-month consultation period, SwissHoldings will work to ensure that the business community is as united as possible. In order to not jeopardize the ability to secure a political majority, a reporting procedure must be limited to those areas where a tax deduction by the paying agent (bank) would cause high expenses (foreign funds and structured products). A complete tax security system is likely to have better political chances than a system with security gaps. Nevertheless, the business community must also point out this possibility. Since the automatic bank data exchange (AIA) with foreign countries often provides data that is difficult to use, a Swiss reporting procedure must function better than the AIA (promoting The E-Securities Project of banks, FTA, and cantons).</p> <p>SH will endeavour to ensure that the Federal Council is able to submit a dispatch to parliament with a majority in the winter of 2020. However, the Corona situation could lead to a delay.</p>

## Consultation WAK-NR on the abolition of all stamp duties

<p><b>Current status</b></p>	<p>In January, the Economic Committee of the National Council held reviews on the gradual abolition of stamp duties. Within the two-step framework (turnover tax on domestic securities and tax on life insurance) and 3 (turnover tax on foreign securities and tax on property and asset insurance), the turnover tax and the insurance tax are to be abolished. The consultation process will last until 23 April.</p> <p>The abolition of the issuance stamp tax on equity capital has made further progress. It has already been approved by the National Council but is currently suspended by the Council of States. The last suspension took place during the spring session 2020 (before Corona). The abolition of the emissions levy is a long-standing concern of the economy. The negative impact of the levy on equity capital contributions from shareholders has been sufficiently demonstrated scientifically. The revenues from the emissions levy have been declining for the Federal Government in recent years (2018: 248 million; 2019: 173 million). In the course of the Corona recession, it is to be expected that the revenues for the Federal Government will increase significantly. This is always the case in times of recession, when companies have to raise new equity from shareholders to prevent bankruptcy (2001: 375 m, 2008: 365 m; 2009: 331 m; 2020: ??). Companies can be exempted from the levy in the case of restructuring. However, the conditions are extremely strict</p>
------------------------------	---



	<p>(under-balance sheet without any open or hidden reserves). In other words, the company must be in very poor financial condition, i.e. it must be on the brink of collapse, in order to benefit from a tax exemption (see the FTA's circular letter and practice regarding Art. 12 StG).</p> <p>The turnover tax is the Swiss Financial Transaction Tax (FTT). While the banks are interfered with by the levy on foreign securities (step 3), the rest of the economy is pushing for the abolition of the levy on domestic securities and life insurance (step 2). The abolition of both parts (steps 2 and 3) would lead to a loss of revenue of around CHF 2 billion. Since this is unrealistic from a political standpoint, it is possible that the banks will advocate the introduction of an FTT modeled after the UK, France or Italy as a measure to counter-finance the abolition of the turnover tax on foreign securities. These FTTs are limited to the taxation of transactions in listed domestic securities.</p>
<p><b>Outlook</b></p>	<p>The most important legislative project for the member companies in SwissHoldings is the reform of the withholding tax (including the participation deduction adjustment). It also has the best cost-benefit ratio for the Swiss tax authorities. In regards to stamp duties, our member companies prefer to abolish turnover tax on domestic securities (2018: CHF 167 million) and abolish the issue tax (2018: CHF 248 million). Both taxes are a burden to our companies and unnecessarily a burden Switzerland as a business location. Together with the withholding tax reform, the abolition of the levies would strengthen both the Swiss debt and equity capital markets. Overall, the Swiss capital market should be substantially strengthened, which would also be reflected in significantly higher tax revenues in the medium term. Switzerland would become more attractive as a business location and would be in a much better position to compensate for any shortfalls in income due to OECD digital taxation.</p> <p>Only a few weeks ago, all three reforms were sought after, due to the positive financial situation of the federal government. This now seems unrealistic in regards to the imminent corona recession. In addition to the withholding tax, the abolition of the issue tax on equity capital should at most offer politically intact prospects of success. In light of the corona recession, the abolition of the issue tax seems politically appropriate. The abolition of the turnover tax on domestic securities (2018: CHF 167 million) and on foreign securities (2018: CHF 1 billion) is likely to be very difficult. To ensure that the banks do not jeopardize the withholding tax revision, SwissHoldings will support the entire sales tax abolition. Currently, however, the issue is likely to be politically hopeless without counter-financing.</p> <p>SwissHoldings will therefore focus on the withholding tax reform and the abolition of the emissions levy. In abolishing the stamp duty, we will focus on finding ways to increase political opportunities (e.g. counter-financing measures).</p> <p>For our member companies, the introduction of an FTT modelled after other European countries is not an option. In order to generate sufficient revenue, the tax rate would probably have to be raised significantly. Such an FTT would weaken the Swiss capital market, increase the cost of capital for companies, reduce share prices, and increase price volatility. The member companies of SwissHoldings already significantly contribute to the financing of the Swiss Confederation, cantons, and municipalities through substantial profit tax payments and withholding tax on dividends to foreign shareholders. The member companies of SwissHoldings account for over 70% of the Swiss stock market capitalisation. Thus, in principle, our companies would also contribute more</p>



than 70% of the revenues of such an FTT. SwissHoldings would strongly oppose such an FTT.

## OECD/G20 project on taxation of the digital economy

### Current status

The project to tax the digital economy made further progress in January/February 2020. At the end of January, the "OECD/G20 Inclusive Framework on BEPS" (IF), which includes 140 countries, decided to continue with its two-pillar approach. The G20 finance ministers supported this approach at their meeting in February 2020 and the next IF in July 2020 is expected to make political decisions on the key architecture issues (e.g. global minimum tax rate). An agreement on all technical details should be concluded by the end of 2020. In 2021, the multilateral agreements for implementing the new rules are to be drawn up and adopted. Since the measures under pillar 1 must globally be put into effect at some point, it is assumed that this will happen at the beginning of 2024 or 2025. Finally, the states parliament needs time in order to approve IF's multilateral agreement. It is not possible at present to estimate what impact the Corona virus will have on the timeline. However, the already ambitious timeline appears to be much more ambitious at present.

### Pillar 1:

Regarding the unified approach of pillar 1 (profit tax redistribution substrate from the domicile states to the market states), the IF adopted an overview of the structure at the end of January ([link](#)). Given the short timeline it is surprisingly rudimentary and shows the great resistance of a large number of states and the enormous tax challenges that still have to be overcome. In addition to Switzerland, the USA in particular, but also many other industrialised countries, are showing great difficulty with the redistribution of profit taxes to the market states provided for by pillar 1.

**Amount A:** According to the overview, under the Unified Approach, large companies (turnover >750 million euros) which provide the following services should transfer an additional percentage of their profits to the market states for taxation: (i) companies that provide automated digitised services (ii) companies that (directly or indirectly) sell consumer-oriented products and services. Amount A is determined according to a fixed formula. If the consolidated profit exceeds the level of routine profits (e.g. 10% return on sales), in accordance with accounting principles, the market state is entitled to a fixed share (e.g. 20%) of the residual profit going beyond this amount. Amount A is therefore only owed if the Group achieves particularly high margins. Various economic sectors are explicitly excluded from Amount A (raw material mining, financial sector).

**Amount B:** In addition to Amount A, Pillar 1 aims to standardize the compensation of market states for basic sales activities. Market states are becoming increasingly aggressive in this area, which ties up additional resources (personnel, capital, time spent on APAs and MAPs, etc.) for many companies. Simple formulas are to be developed for Amount B (possibly differentiated by region or industrial sector).

**Amount C:** If the functions performed in the market State exceed the level for Amount B, the market State may request compensation for the additional functions as "Amount C".

The OECD is facing very major challenges in designing a mechanism for the binding determination of the three amounts A, B, and C. A kind of "ruling process" is being developed in which a limited number of market states have to

	<p>give their approval in addition to the host state. If they agree to the distribution of net profit between the domicile country and the market country, this result should apply to all countries concerned. It remains to be seen whether India with its all-powerful courts can agree to such a process.</p> <p><u>Pillar 2</u></p> <p>At the end of January, the IS adopted an update report on the activities related to the introduction of global minimum taxation rules (Global Anti-Base Erosion Proposal GloBE). Since then, the OECD has continued to work intensively on the design of the GloBE - despite Corona - although major technical challenges remain to be solved in this area too and numerous countries oppose the introduction of minimum taxation rules. These include China in particular, as well as numerous small countries such as Switzerland, which are concerned for their tax competitiveness. For Switzerland, a global minimum tax rate must be moderate. The USA does not appear to have any fundamental objections to the introduction of global minimum taxation rules. However, the USA requires that they be allowed to continue to apply their GILTI rules. This means that two standards should apply to pillar 2 - GILTI for US groups and GloBE for all other groups. While GILTI applies global blending, which is easier for companies to comply with, GloBE is likely to apply jurisdictional blending. In other words, non-US corporations in all countries must demonstrate that they comply with the global minimum tax rate of 10-12% which is often cited. In the case of US corporations, it is sufficient that they comply with the GILTI minimum tax rate (13.125% from 2026). Even though the OECD claims the opposite, apples compared to oranges.</p> <p>The minimum taxation rules should only affect companies with an annual turnover of EUR 750 million or more (CbCR requirements). The minimum tax rate will continue to be calculated on the basis of trustworthy accounting standards such as IFRS or US-GAAP and not on the basis of (widely differing, country-specific) tax assessment rules. Smaller standards such as Swiss GAAP FER should not be recognised and must pass regular equivalence tests. In which cases deviations from the results of the accounting standards are necessary and how to proceed technically is still a matter of controversy (USA: carry forward - rest of the world: deferred tax accounting). Capital taxes should be taken into account when calculating the minimum tax rate, but this is disputed. The question of carve-outs (situations that entitle the user to fall below the minimum tax rate) is also highly controversial. While the chances for R&amp;D carve-outs (IP box) are apparently poor, exceptions for payroll carve-outs are met with greater approval.</p> <p>Despite the obstacles caused by the Corona virus (e.g. Skype meetings instead of physical meetings), the OECD continues to adhere to the schedule. The first draft of the report on Pillar 2 is expected to be available in May. This should also provide information on politically important issues such as the minimum tax rate, blending aspects, carve outs, etc. Discussions within the framework of the IF will follow in June. After which, the report including important technical and political details, should be adopted by the IF in July. It appears uncertain whether the US will still have a quorum after that, due to the presidential elections.</p>
<p><b>Outlook</b></p>	<p>The Swiss economy and Switzerland have no interest in the failure of the project to tax the digital economy. We rely on our companies being able to supply their products and services to a variety of countries without restrictions wherever possible. If the project fails, the introduction of Digital Service Taxes in a large number of countries are threatened. These taxes, which differ greatly in material terms, will initially affect primarily the US digital corporations and the USA. The USA - whoever wins the US presidential</p>



election - will not tolerate this and will take countermeasures. These could have a considerable impact on global trade and make it impossible for the Swiss economy to quickly overcome the Corona recession. For Switzerland, it is therefore important to limit the scope of harmful new rules as much as possible (e.g. minimal redistribution of taxes on profits over Amount A), to support positive rules as far as possible internationally (ruling process for the binding determination of Amounts A, B and C), and to quickly adapt to the new rules and look for new opportunities. In other words, we must behave similarly to the BEPS project, which was completed in 2015. Thanks to the AHV tax reform with the new special measures (patent box, input deduction) and the parallel cantonal profit tax reductions, the BEPS project has brought Switzerland more advantages than disadvantages.

As part of the work on Pillar 1, Switzerland should work to ensure that a large number of companies are exempted from the application of Amount A and that redistribution is moderate (10/20%). It is also important that only those countries that accept the new multilateral agreement and assume the associated obligations should benefit from Amount A. For Amount B, reliable and as simple as possible calculation formulas have to be drawn up. The current tax level for such activities must not be increased. As many sales activities as possible should qualify as basic activities. All companies - including those that do not have to pay Amount A - should benefit from the standardisation of Amount B. The new ruling process is particularly important for Switzerland. This could significantly increase legal certainty for our companies and reduce the risk of double taxation, which would improve the attractiveness of Switzerland as a business location.

In regards to pillar 2 work, it is crucial that the minimum tax rate is moderate. If US companies are allowed to apply GILTI (tax rate 13.125%), the GloBE minimum tax rate may not exceed 10%. Otherwise, global blending must also be applied under the GloBE approach. If a higher minimum tax rate than 10% is adopted despite jurisdictional blending, carve-outs are indispensable for R&D activities and other matters. From the companies point of view, the administrative effort is also central. A jurisdictional blending is much more costly for companies than a global blending. "White lists" are helpful in this context. Should companies from certain states be unable to fall below a minimum tax rate, they must also be "whitelisted". Instead of numerous exceptions, average tax rates (e.g. of the last 5 years) should be used more often. This also reduces the administrative burden for companies.

Given the importance of the project for the member companies and Switzerland, SwissHoldings continues to actively support the project functions. Should the OECD conduct hearings, SwissHoldings will actively participate.





## Corporate Social Responsibility and Direct Investments Department

### Corporate Responsibility Initiative

<p><b>Current status</b></p>	<p>This popular initiative has been in discussion in parliament since fall 2017. In the meantime, both the National Council and the State Council have decided to recommend rejecting the initiative in the upcoming popular vote. However, the parliament has not yet decided whether the initiative will be accompanied by an indirect counter-proposal - and what the content of said proposal would be. In principle, both Councils support the need for a counter-proposal. The National Council is in favour of a bill which is based on an unrestricted due diligence obligation for the entire value chain/ or for all customer relations, resp. and a burden of proof reversal regarding liability provisions. Therefore, the proposal reiterates many harmful elements of the initiative and would represent a Swiss solo attempt in international comparison. The Council of States, on the other hand, prefers a concept that is internationally coordinated. The small chamber's proposal therefore directly reflects the European "best practice" approach with the proposed regulation in the areas of CSR reporting, conflict minerals and child labour.</p> <p>In this year's spring session, the differential adjustment started. According to parliamentary regulations, the existing differences between the National Council and the State Council are to be settled in three rounds of deliberation. In the course of the deliberations, it became apparent that the "State Council version" was constantly gaining approval, particularly in the "middle" (CVP and French-speaking FDP representatives), while the "National Council version" was losing support. In the third and final session of the upper chamber, the proposal of the Council of States failed only narrowly. Only a handful of votes were missing for its breakthrough. The last meeting in the small chamber could not be held due to the termination of the session as a result of the "Covid-19" exceptional situation. According to the latest announcement, deliberations on this matter are to be resumed in the summer session.</p>
<p><b>Outlook</b></p>	<p>From SwissHoldings' perspective, the goal of preventing harmful regulation regarding "Corporate Social Responsibility" in Switzerland remains unchanged - be it by adopting the Corporate Responsibility Initiative or by adopting a counter-proposal that is harmful to the economy.</p>

## Corporate Social Responsibility

### Current status

SwissHoldings is committed to appropriate regulations in the area of corporate social responsibility. In Switzerland, the Federal Council's National Action Plan "Business and Human Rights" (NAP) and SECO's "CSR Position Paper" point in the right direction by focusing on international standards and best practices. On the important topic of corporate social responsibility, only an internationally coordinated approach is useful. The Federal Council is currently revising the strategy. In December, the committee announced the content and direction of the revision of the NAP. In the upcoming 2019/2020 period, the Federal Council will adhere to the 50 policy instruments with which Switzerland has implemented the UN Guiding Principles to date. It was also decided to strengthen measures with regard to raising awareness and increasing cooperation with companies and to improve the coherence of government activities. The Federal Council has not yet published the revision of its "CSR position paper". It is to be expected, however, that in addition to the existing focal points, the committee will also place great emphasis on the aspect of improved "cooperation between stakeholders".

From SwissHoldings' point of view, these Federal Council action plans are of great importance with regard to the upcoming popular vote on the "Corporate Responsibility Initiative" because these plans show how the goals of the initiative can be taken up and implemented alternatively.

## Direct Investments

### Current status

In Switzerland, it is being discussed whether foreign direct investments in Swiss companies pose a threat. A current motion by SR Rieder requires that the Federal Council creates the legal basis for investment control of foreign direct investments in Swiss companies - among other things, by setting up a licensing authority for transactions subject to investment control. The focus is particularly on acquisitions and participations by companies from dynamically growing emerging markets in infrastructures such as energy, transport, telecommunications, data storage, and financial infrastructure.

The Federal Council has dealt with this issue in detail in its report "Cross-border Investments and Investment Controls". The panel believes that the introduction of regulatory controls on direct investments would not bring any added value at this point in time. Regardless of this position, both chambers of parliament have expressed their support for the Rieder motion in recent months - the National Council made this decision in the spring session of 2020. The Federal Council will thus be tasked with drafting a corresponding bill. A "custom-made solution", as promised by the proponents of the bill during the Council debate, will be difficult to realize in practice. Switzerland is one of the largest direct investors in the world. In 2017, Swiss companies held CHF 1,228 billion in foreign capital. The counterpart is the stock of CHF 1,088 billion of foreign direct investment in Switzerland. Additionally, complex questions arise regarding the concrete technical implementation: According to what criteria should the authority decide whether a foreign investment is "in Switzerland's interest"? Furthermore, it will be challenging to clearly distinguish the "strategically important sectors" from other economic sectors.

SwissHoldings will actively support the preparation of the concrete draft legislation. Confidence in Switzerland as an open - but already not barrier-free - investment location and in liberal economic policy must be maintained.



## Accounting and Reporting Department

### Accounting and Reporting

<b>Current status</b>	<p>In the area of IFRS standards, the IASB did not adopt any new standards in the last quarter. Instead, the committee published numerous draft amendments for consultation. In addition to minor adjustments to standards, the draft with the proposed changes to the presentation and structure of financial statements should be highlighted in this context. For a long time, the IASB has been endeavouring to fundamentally reorganise the presentation of the main components of IFRS annual financial statements (balance sheet, income statement, and cash flow statement). Further proposals for revision concern the area of "Goodwill and Impairment". It is being examined if there are alternatives to the existing impairment model and whether the disclosures in the notes should be expanded. With regard to "Rate Regulated Activities", a new model is being developed, which should provide more detailed information on the practice determining a company's rate regulation. Last but not least, the two standards "Business Models under Common Control" and "Management Commentary" are also under discussion.</p> <p>There is much debate on non-financial reporting, especially at the EU level, the issue of sustainability is at the centre of public debate. The focus is on whether an audit requirement should be introduced, whether the existing scope for selecting ESG aspects should be retained, and to what extent a more detailed examination of climate and environment related factors should be required in future.</p>
<b>Outlook</b>	<p>SwissHoldings will continue to actively follow the IFRS accounting developments. Our association continuously participates in the IASB consultations on draft standards.</p>



## Capital Markets Department

### Economic policy in the corona crisis: assessments by SwissHoldings

#### Current status

The fight against the coronavirus pandemic poses major challenges for the economy. The economic consequences of "Covid-19" are already apparent - within just a few weeks since the global outbreak of the crisis. The downward trend in financial markets began in the week of the 24th of February 2020, when the world's leading stock markets reported the biggest slump since the financial crisis of 2008. The consequences quickly became apparent in the form of supply bottlenecks in Western companies' value chains, resulting from the weeks of standstill in Chinese production facilities. The lack of primary products, components, and end products has confronted industry and trade with unprecedented difficulties, particularly in the MEM and textile sectors. The "lock-down" measures taken by many governments - including the Swiss government - in order to contain the virus had a drastic effect. The lock-down measures taken by the Federal Council are likely to cause enormous economic damage. Tourism, gastronomy, and small service companies will be particularly affected. For many companies, the situation is currently coming to a dramatic head. According to estimates, the Swiss economy is currently running at 75% of its original capacity at the beginning of the year.

The Swiss State Secretary for Economic Affairs' (SECO) so-called «V-Scenario» - a GDP decline with quick recovery - is expecting that the Swiss economy will decrease by -7% but recover with a massive increase in GDP of 8% in 2021. The impact of the scenario «L-Recession» would be even more severe for the country. It predicts a massive decrease in GDP by -10% followed by a weak recovery of 3%. However, this forecast is subject to considerable uncertainty. The magnitude of the economic slowdown depends on whether the effects of the pandemic on international markets can be limited swiftly and what measures will be taken.

With that being said, it is not surprising that the Swiss government has adopted the largest economic stabilization package ever adopted in Switzerland. This package is based on familiar instruments and has a multi-layered structure. It includes an expansion of short-time work for a total of CHF 14 billion. It also provides a deferral of payments for social security contributions and taxes such as the value added tax, incentive taxes, and the direct federal tax until the end of the year. Furthermore, compensation for loss of earnings for self-employed persons and immediate aid in the culture, sport and tourism sectors will be provided. Another important component of the economic support package is direct liquidity assistance in the form of state-guaranteed COVID bridging loans totalling CHF 40 billion. The draft for the COVID bridging loans was presented in principle by the Federal Council on 20 March 2020. The detailed program parameters were then adopted five days later within the "Granting of Credits with Solidarity Guarantees by the Confederation" emergency ordinance: Affected companies are to receive credit amounts of up to 10% of their turnover or a maximum of CHF 20 million quickly and easily. The companies are to apply for this credit directly from their house bank. Contributions of up to CHF 0.5 million will be paid out immediately by the banks and are 100% guaranteed by the Confederation. No interest will be charged on these loans. Higher bridging loans are 85% guaranteed by the Confederation, with the respective banking institution guaranteeing the remaining 15% of these loans. For these higher loans, an interest rate of 50 basis points is charged on the first 85%; for the remaining 15%, the bank will determine the interest rate depending on the initial situation. Companies with a turnover of

	<p>more than CHF 500 million do not benefit from bridging loans.</p> <p>At the beginning, „Covid-19“ spread predominantly in well-organised Asian countries and in the West. The emerging and developing countries in Latin America and Africa were only affected minimally. In the meantime, the virus has spread to these countries. Many governments have taken drastic measures to stop the spread which are, however, often hard to implement. Additionally, the weaker health systems will face difficulties in coping with the rising number of patients and effectively containing the virus. It is therefore important that Switzerland, not only focuses its attention on national strategies in the fight against "Covid-19", but also places a strong emphasis on international cooperation.</p>
<p><b>Outlook</b></p>	<p>SwissHoldings understands the need for the “lockdown” regulation issued by the authorities. These measures initially valid from 17 March to 19 April 2020 and now prolonged until 26 April 2020 prevent the further spread of the virus and need to be consistently observed and enforced. However, the association rejects a complete lockdown. The economy must not come to an absolute standstill. Switzerland needs an existing and functioning economic structure. This is the only way it can quickly return to normality after the crisis and until then, secure jobs and wages for its employees. The business environment welcomes the fact that the Federal Council has proceeded prudently in designing its response to the crisis and has clearly communicated how important it is for our country to continue to work in order to ensure the country's economic capacity and comprehensive supply even after the pandemic. SwissHoldings welcomes that the Federal Council will decide on the gradual relaxation of “lock-down” measures at its meeting on 16 April and thus set up the important "exit plan" for the period after 26 April 2020.</p> <p>Further, SwissHoldings supports the relief package enacted by the Federal Council, which holds top priority to secure wages and maintain employment in Switzerland. The association welcomes the fact that the support package is multi-layered and at the same time, relies on proven and familiar instruments. Nevertheless, it is crucial to prevent the package from leading to significant distortions and risks of abuse.</p> <p>SwissHoldings has conducted a survey among its members on the effects of the coronavirus' exceptional situation on their company. The survey was conducted both in writing and verbally through bilateral discussions. Since many medium and long-term effects cannot yet be assessed, the members' assessments differ. It is interesting to note, that all responding companies assume that the Swiss economy will develop in sync with the global economic environment - in other words, that there will be no decoupling of local GDP trends. Furthermore, almost all companies have stated that, in direct contrast to the financial crisis in 2008, they are affected by shocks on both the supply and the demand side.</p>



## Competition Law Department

### Revision of the Cartel Act

<p><b>Current status</b></p>	<p>On 12 February 2020, the Federal Council instructed the Federal Department of Economic Affairs, Education and Research (WBF) to prepare a draft for public consultation. The Federal Council's <b>main aim is to modernize merger control</b>. It states in detail that the change from the current qualified market dominance test to the Significant Impediment to Effective Competition Test (SIEC test) will adjust the test standard of the Competition Commission (COMCO) to international experience. The fundamental difference between the market dominance test applied in Switzerland and the SIEC test to be introduced is the level of the intervention hurdle. The SIEC test could prohibit mergers or impose appropriate conditions if they led to a significant obstacle for competition. Under the current test standard, this would only be possible to completely eliminated effective competition through a merger. Two studies commissioned by the State Secretariat for Economic Affairs (SECO) would show that positive effects on competition in Switzerland could be expected from such a change.</p> <p>Additionally, in accordance with the parliamentary decision of 5 March 2018, the Federal Council intends to include two requests of Motion Fournier 16.4094 "Improving the situation for SMEs in competitive processes" in the revision. The Federal Council states that, on the one hand, regulatory deadlines would be introduced for the competition authorities and courts in order to speed up administrative procedures. On the other hand, the Motion Fournier demands compensation for parties in all phases of the administrative procedure under competition law, and now also for proceedings before the Competition Commission (WEKO).</p> <p>According to the Federal Council, two further technical elements from the 2012 revision of the Cartel Act, which was rejected by parliament, are also to be dealt with. On the one hand, the civil anti-trust law should be strengthened and, on the other hand, the opposition procedure should be improved (see the media release including the mentioned studies in detail under the following <a href="#">link</a>).</p>
<p><b>Outlook</b></p>	<p>The <b>consultation is expected to open in the fourth quarter of 2020</b>. SwissHoldings will participate in the consultation process and will continue to defend the interests of its member companies.</p>

## Popular initiative "Stop the high-price island - for fair prices" and indirect counter-proposal by the Federal Council

<p><b>Current status</b></p>	<p>The <b>federal popular initiative "Stop the high-price island - for fair prices"</b> was formally launched in January 2018. It aims to incorporate various elements of previous parliamentary proposals to combat the so-called "price island of Switzerland" by means of competition law (KG and UWG) into the Constitution. These are to include measures to ensure the non-discriminatory procurement of goods and services abroad and to prevent restrictions of competition caused by unilateral behaviour by companies with strong market power. Broad sections of the business community, but also the WEKO, reject the initiative as <b>system threatening</b> and <b>not useful</b>. Critical voices can also be heard from the WBF.</p> <p>In August 2018, the <b>Federal Council proposed that the "fair price" initiative be</b> confronted with <b>an indirect counter-proposal</b> and opened a consultation procedure on this. With the concept of "relative market power", both aim to facilitate purchasing opportunities for Swiss companies abroad and thus reduce production costs.</p> <p>SwissHoldings took part in the consultation procedure and submitted <b>a response at the</b> end of November 2018, which was <b>clearly negative towards both the initiative and the indirect counter-proposal</b>. From an economic perspective, it is unlikely that this will lower the general price level. Eliminating customs duties and trade barriers will have a more direct (and probably more noticeable) effect. By focusing on closing off foreign markets and being compatible with international trade commitments, the counter-proposal is less harmful than the initiative. However, where prices are not administered, it too stands in the way of price differentiation.</p> <p>Even after the review process, the Federal Council maintained its decision in favour of the indirect counter-proposal already presented and adopted a corresponding <b>dispatch</b> on 29.5.2019.</p> <p>The National Council was the first advisory council. After this, the preparatory advisory committee of the National Council (Commission for Economic Affairs and Taxes of the National Council; WAK-N) rejected the initiative. However, it supported the Federal Council's indirect counter-proposal and enhanced the counter-proposal last year, which we regret. In the same direction, the National Council then recommended the initiative for rejection this year, but it followed the counterproposal and enhancement.</p>
<p><b>Outlook</b></p>	<p>The bill will then be discussed in the Council of States preliminary commission (Commission for Economic Affairs and Taxes of the Council of States, WAK-S); due to the Corona situation the date it is not yet clear.</p> <p>SwissHoldings will continue to lobby for a rejection of the initiative and the counterproposal and, if the WAK-S does not reject the bill, to weaken the proposal.</p>



## Corporate Law Department

### Coronavirus - ban on events and general meetings of large companies

#### Current status / Outlook

Due to the developments of the Corona virus, the Federal Council has issued event bans. The first ban on events provided for a limit of 1000 persons, then a limit of 100 persons, and finally it was stated that all **public and private events were prohibited**.

This led to a conflict with the need for companies to hold their general meetings in the spring, in particular to allow dividend payments.

In order to solve the problem, the Federal Council then **issued a regulation stating that the organiser can order the participants to only exercise their rights: a) in writing or in electronic form; or b) through an independent proxy appointed by the organiser** (cf. Art. 6a of the [Ordinance 2 on Measures to Combat Coronavirus](#) (COVID-19), which we very much welcome.

Practical questions arising from the regulation, which still had to be solved for the member companies, were then also clarified in the Q&A, which was published on the Federal Office of Justice's website (see [link](#)).

SwissHoldings is closely monitoring the measures taken by the Federal Council and will continue to defend the interests of its member companies where necessary.

### Corporate Law Revision

#### Current status/

Preliminary remark: "draft 1" and "draft 2": In corporate law, two bills are currently being discussed in parliament. In parliamentary deliberations, these are referred to as "Draft 1" and "Draft 2". The former (Draft 1) relates to the content of stock corporation law in accordance with the Federal Council's Dispatch to Parliament of 23 November 2016, while the latter (Draft 2) relates to the Corporate Responsibility Initiative counter proposal.

**Message:** On 23 November 2016, the Federal Council passed the [dispatch](#) for the revision of law to the parliament. The aim of the corporate law revision was to include the Ordinance against Excessive Remuneration (VegüV)- which the Federal Council had to enforce five years ago as a result of the "rip-off" initiative - into law and the Swiss Code of Obligations.

**Deliberation in the National Council:** The bill was first discussed by the National Council. **In principle, the decisions taken regarding the bill by the National council were business friendly.** In particular, it passed its resolutions relatively close to the ordinance against excessive remuneration, which is an extremely important concern to the member companies. We were also able to bring virtually all of SwissHoldings's other concerns into the parliamentary process. One exception was the Comply or Explain gender guidelines for the Board of Directors and the Executive Board, which SwissHoldings opposed. The National Council, like the Federal Council, was in favour of these values.

**Deliberation in the State Council:** The bill was then discussed by the preliminary commission of the State Council and the State Council in Summer 2018. Initially, the preparatory committee of the Council of States deliberated the bill in an extremely problematic manner from an economic perspective.



	<p>Intensive lobbying by SwissHoldings in coordination with the other business associations, however, brought the bill back on track. <b>Following the deliberations in the State Council, it then looked far more business-friendly than expected after the 2018 deliberations of the Committee of the Council of States.</b> In accordance with our position, the decisions of the Council of States were made relatively close to the decisions of the National Council. Also, in accordance with our recommendations - with exceptions that now need to be rectified - the deliberations were close to the ordinance against excessive remuneration. Finally, in accordance with our recommendations, the State Council also improved the submission discussed by the National Council in certain respects (e.g. elimination of the Board of Directors' guarantee of the company's solvency). But there were also negative points from the SwissHoldings's ociation's point of view. SwissHoldings regrets that the State Council - like the Federal Council and the National Council before it - also spoke in favour of the Comply or Explain gender guidelines. As the National Council and the Council of States are in agreement, this decision can no longer be resolved in the differential settlement procedure.</p> <p>In addition to the point concerning gender guidelines, the version of the State Council still contains other aspects that need correction, in particular certain aspects concerning the VegüV and a problematic provision according to which the independent shareholders' representative must maintain voting secrecy or alternatively inform the public.</p> <p><b><u>Current procedure for the settlement of differences, first round:</u></b> Since the 5th of July 2019, the bill has been subject to the settlement of differences procedure. Since then, it has been discussed by the National Council and the State Council in the first round of the settlement procedure.</p> <p>We also strongly supported our positioning in the settlement of differences - again in coordination with other associations. (also our various submissions <a href="#">to the preliminary commission of the National Council</a> and to <a href="#">the National Council</a>, to <a href="#">the preliminary commission of the Council of States</a> and to <a href="#">the Council of States</a>).</p> <p>The National Council discussed the differences in an economically acceptable manner. However, the State Council is largely sticking to its decisions, so several differences still remain. The State Council's adherence to certain resolutions that enhance the VegüV and its decision that the independent proxy must maintain voting secrecy or alternatively must inform the entire public (including activist shareholders) is problematic.</p>
<p><b>Outlook</b></p>	<p>It is still unclear when the second round of the differential settlement procedures will take place due to the Corona developments. It is unlikely to come into fruition before 2023.</p> <p>For SwissHoldings <b>in the context of the second round of the settlement procedure, it is very important that the National Council adheres to its resolutions concerning the VegüV, the independent shareholders' representative, and that the State Council joins the National Council on these points.</b></p>

## Financial Services Act / Financial Institutions Act (FIDLEG/FINIG)

<p><b>Current status/ outlook</b></p>	<p>The FIDLEG regulates cross-sectoral aspects (e.g. the obligation to publish a prospectus for issues) and, like the FinfraG, partially adopts regulatory content from the EU (e.g. MiFID II, Prospectus Directive). The State Council, as the first chamber of parliament discussed the draft in December 2016, the</p>
---	---

National Council followed suit in September 2017. Compared to the Federal Council's draft, various important simplifications were achieved in parliament. Among the changes is the welcome waiver of a basic information sheet (BIB) for the issue of bonds without derivative character (Art. 61 E-FDLEG). In the summer parliamentary session, and within the differences settlement procedure, also the discussed inversion of the burden of proof inversion discussion could be eliminated. The FIDLEG was thus discussed – at least as far as the SH member firms are concerned – according to our expectations. In parallel to the legislative procedure, work on accompanying ordinances, namely the FIDLEV, has been ongoing since 2017. SwissHoldings was directly involved in the editorial work at the SIF invitation. The federation focused its efforts on maintaining what had already been achieved in parliament and on securing the status quo under the old law regarding the position of corporate treasury.

On 6 November 2019, the Federal Council of Germany enacted the **two laws together with the two ordinances with effect from 1 January 2020. Transitional periods of two years are also provided.**



## Proposal for improving the framework conditions for blockchain/DLT

<p><b>Current status</b></p>	<p>In December 2018, the Federal Council adopted a report on the blockchain-legal framework and distributed ledger technology in the financial sector. On the 22nd of March 2019, it then opened the review process on the adaptation of federal law to developments in the technology of distributed electronic registers. The aim is to increase legal certainty, remove obstacles to applications based on the distributed ledger technology (DLT) and limit the risk of abuse. The proposal serves to further improve the regulatory framework for DLT in Switzerland, particularly in the financial sector. SwissHoldings took part in the <a href="#">consultation procedure</a> and submitted a corresponding <a href="#">statement</a> - practically identical to <i>economiesuisse</i>. To summarize, the Association has taken the following position:</p> <p>Distributed Ledger Technology (DLT) and blockchain technologies are among the potentially promising developments in digitization. SwissHoldings has a fundamentally positive attitude towards the proposal. It will enable Switzerland to improve and, above all, more legally secure use of the opportunities offered by these technologies. Therefore, it is not necessary to fundamentally adapt the legal framework on the basis of a specific technology which is still under development or to introduce a comprehensive, specific law. The Swiss legal framework already offers much flexibility and opportunities. Nevertheless, there are specific areas in the law where targeted adjustments are necessary to increase legal certainty, remove obstacles to DLT/blockchain-based applications and limit new risks.</p> <p>The Federal Council then issued its dispatch, in which it essentially met the concerns expressed by the business community.</p> <p>The preliminary advisory committee of the National Council (WAK-N) subsequently spoke out in favour of such an approach on the 24th of February 2020.</p>
<p><b>Outlook</b></p>	<p>Due to the Corona situation, it is currently not yet defined when the WAK-N deliberations will be continued. SwissHoldings will continue to promote the interests of the member companies in this draft.</p>

## Amendment of the Money Laundering Act

<p><b>Current status</b></p>	<p>On the 1st of June 2018, the Federal Council opened the review procedure on the amendment of the Anti-Money Laundering Act (see <a href="#">link</a> to the media release and revision documents). On the 26th of July 2019, it then issued a statement (see <a href="#">link</a> to the media release and the corresponding documents). Since then, the National Council's preliminary review committee (National Council's Legal Affairs Committee, RK-N) and the National Council have decided not to accept the bill. Next, the bill will be submitted to the preliminary commission of the Council of States.</p> <p>The aim of the proposal is to take the Federal Council's financial market policy strategy into account for a competitive Swiss financial center and the most important recommendations of the country report of the Financial Action Task Force (FATF). The SwissHoldings member firms are only marginally affected by the proposal. Accordingly, SwissHoldings had submitted only a brief <a href="#">re-viewed response within the</a> framework of the consultation procedure, whose selective concerns relating to the Federal Council's proposal were taken into account by the Federal Council and is now accompanying the proposal from a distance.</p>
------------------------------	---



## Stock Market Equivalence

**Current status /  
Outlook**

Under the new EU Financial Services Directive (MiFIR), EU securities firms may only buy and sell shares that are admitted to trading or traded in the EU on third country stock exchanges (such as SIX) from the 1st of January 2018 if the third countries stock exchange regulation in question (in this case Switzerland) has been recognised as equivalent by the EU Commission. The relevant provision can be found in Art. 23 para. 1 MiFIR [Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and on

Amendment of Regulation (EU) No 648/2012]. With effect from 2018, the EU Commission had initially certified the equivalence on a temporary basis. However, this certificate expired on 30.6.2019. Therefore the protective measure introduced by the Federal Council began to take effect. The stock markets then came to terms with the situation without the distortions that had been feared.



## Compliance Department

### Compliance Specialist Group as a platform for the exchange of experience among the member companies - in particular on compliance management systems

<b>Current status</b>	The ever-increasing compliance burden, also for non-financial companies, forces them to constantly expand their company-wide compliance systems and check their efficiency. In Working Group Meetings in the English language the various <b>Compliance Management Systems</b> of the different member companies are presented and an exchange about them takes place.
<b>Outlook</b>	SwissHoldings will continue to promote the mutual exchange between the member companies.

### Code of Civil Procedure Revision - Collective Redress- Legal Professional Privileges for in-house counsel

<b>Current status</b>	<p>From the 2nd of March 2018 to the 11th of June 2018 a consultation procedure of the Code of Civil Procedure amendment was held. It concerned, in particular, the removal of cost barriers, <b>collective redress</b>, and the implementation of the parliamentary initiative Markwalder (16,409) for a <b>legal professional privilege for in-house counsel</b>.</p> <p>SwissHoldings <b>submitted a response to the consultation procedure</b> on the 11th of June 2018 also supported our concerns through presentations and discussions and in coordination with the other associations. Essentially, SwissHoldings is <b>opposed to the instruments of collective redress</b> and <b>explicitly and emphatically supports the provision regarding the legal professional privilege for in-house counsel</b> (see <a href="#">link</a> to the consultation response on the amendment of the Code of Civil Procedure of the 11th of June 2018).</p> <p>On the <b>26th of February 2020</b>, the Federal Council <b>presented its message on the revision of the Code of Civil Procedure</b> (see <a href="#">link</a> to the press release as well as the message and the Federal Council draft). It <b>decided to remove collective redress from the draft and to deal with it separately. It also decided to retain the provision on the legal professional privilege for in-house counsel in the Federal Council draft</b>, which we very much welcome.</p>
<b>Outlook</b>	When deliberations in parliament will begin is currently still open due to the Corona related events. SwissHoldings will continue to support the interests of its member companies in this area as well.



## Deferred prosecution agreement (DPA)

<p><b>Current status</b> <b>/Outlook</b></p>	<p>The Swiss Attorney General's Office would like to allow deals between the prosecuting authorities and the accused companies to follow the American model. The purpose would be to be able to prosecute the companies more effectively in the future and to counter the accusations of excessively heavy fines and excessively long proceedings in Switzerland, which are often voiced in the international arena. In its message on the revision of the law of criminal procedure of 28 August 2019, the Federal Council rejected the introduction of DPAs in Switzerland for the time being.</p> <p>SwissHoldings is tracking the current movements. While it would occasionally be useful for companies to be able to eliminate unwanted criminal proceedings at an early stage, the granting of new powers to the Public Prosecutor's Office would open up a dynamic that could rapidly increase the pressure on companies and would often be outside the usual judicial system.</p>
--	--

## Whistleblowing

<p><b>Current status / Outlook</b></p>	<p>In 2015, a whistleblowing regulation in labour law (OR), which was quite limited in content, had been approved by parliament but then returned to the Federal Office of Justice for a "more readable reformulation". On 21.9.2018, the Federal Council adopted the new wording together with an additional message (essentially new Art. 321a to 321a septies OR). On 3.6.2019 and, unlike the subsequent Council of States, also on 5.3.2020, the National Council repeatedly rejected the bill and confirmed its rejection in its entirety (cf. transaction <a href="#">13.094</a>). The bill is thus buried.</p>
--	--

## Digitisation and Data Protection Department

### Revision of data protection law

<p><b>Current status</b></p>	<p>In light of European developments, Switzerland must also revise its data protection law. On the one hand, to meet international expectations in accordance with the future revised Council of Europe Convention 108. On the other hand, to maintain the equivalence with the EU-DSGVO, which is very important for the economy.</p> <p>In September 2017, the Federal Council adopted a corresponding message to parliament, which is based on the level of protection provided by the DPA. The first member of parliament was the NR. Although the SPK-N commission responsible decided to intervene in January 2018, it proposed splitting the bill into a Schengen section to be discussed first then the rest later. The National Council and the State Council followed this approach and in June 2018 passed an interim "<i>Federal Act on the implementation of Directive (EU) 2016/680 on the protection of individuals with regard to the processing of personal data for the purpose of the prevention, investigation, detection or prosecution of criminal offences or the execution of sentences (further development of the Schengen acquis)</i>". With completing this first stage, Parliament only then started discussing the actual "large" DPA revision with the aim of comprehensive adaptation to the Council of Europe standard or the DSGVO.</p> <p>The discussion of the second part in the SPK-N took another year and did not end until mid-August 2019. It was planned that the Council of States should go over it again in the coming special session. However, this has been reserved for "urgent" business. It has not yet been decided whether the Data Protection Act is particularly "urgent" on account of the expected EU adequacy review in May 2020. However, it is expected that work on this law will be postponed to a later session.</p>
<p><b>Outlook</b></p>	<p>In the last session, NR advanced the submission in key points and found appropriate solutions from an economic perspective. The "profiling" is still the most important point of contention. It is hoped that the compromise solution now adopted by the National Council will also be accepted by the State Council. The outcome on this issue has no influence on the EU's adequacy assessment. However, it is important for our member companies that this law is passed quickly so that the conditions for the recognition of equivalence are improved.</p>

