



SwissHoldings session preview Summer session 2022

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SwissHoldings is the association of industrial and service companies throughout Switzerland. Accounting for approximately 66 percent of the total market capitalization within the SIX Swiss Exchange. SwissHoldings is comprised of 61 of the largest groups in Switzerland, employing roughly 1.8 million globally, of which 202,000 work in Switzerland. Through the numerous services and supply contracts provided to SMEs by SwissHoldings, Switzerland's multinational companies employ - directly and indirectly - more than half of all employees in Switzerland.

Dear readers

At the beginning of the summer session 2022, SwissHoldings will provide you with its latest session ticker. This provides you with an overview of important business that falls within our area of activity and which will be dealt with in the upcoming session in the National Council and the 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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National Council:

[22.3381](#) Mo. RK-NR - Harmonization of term calculation

Treatment on Wednesday, June 8, 2022

That's what it's about

The Committee for Legal Affairs of the National Council (RK-NR) has passed a motion that provides for the standardization of the calculation of time limits in the Swiss legal system. Specifically, the solution discussed in the context of the revision of the CCP ([20.026](#)) is to be applied to Art. 90 para. 1^{bis} StPO, Art. 40 para. 1^{bis} BGG, Art. 20 para. 1^{bis} VwVG, Art. 38 para. 1^{bis} ATSG, Art. 77 OR and to all other federal laws containing rules on the calculation of time limits.

Status of the procedure

[RK-SR 08.04.22](#): Acceptance

Position SwissHoldings

The solution in Art. 142 para. 1^{bis} E-ZPO discussed in the context of the revision of the CCP ([20.026](#)) provides that for the service of an item on a Saturday, Sunday or a holiday recognized by federal or cantonal law at the place of jurisdiction by ordinary mail (Art. 138 para. 4 CCP), the time limit starts to run on the following working day.

SwissHoldings supports this simple method of calculating time limits, which does justice to improving the practicality and enforcement of the Code of Civil Procedure. Accordingly, we are positively disposed towards a harmonization of the calculation of time limits within the meaning of Art. 142 para. 1^{bis} E-ZPO in the Swiss legal system.

SwissHoldings therefore recommends that the motion be accepted.

National Council:

[21.4189](#) Mo. Preserve investigative principle. No reversal of burden of proof in antitrust law

Treatment on Thursday, June 9, 2022

That's what it's about

The motion instructs the Federal Council to amend the Cartel Act (KG) so that the constitutional presumption of innocence also applies there. This is to be done in particular by strengthening the principle of investigation.

Status of the procedure

Council of States Winter Session 2021: Adoption (29:13:0)

Position SwissHoldings

The competition authorities have the sovereign task of investigating both incriminating and exonerating facts and weighing them against each other. The principle of "proven with probability bordering on certainty" applies as the standard for fulfillment. According to the ancestral practice of antitrust law, but also its embedding in the Federal Constitution and the ECHR, the competition authority must consequently provide full proof.

However, various players have noticed a tendency to limit investigations to incriminating circumstances. This is justified in particular by the fact that the competition authorities have adopted a term from European law, the "overall agreement", although the Cartel Act does not provide for it. According to the figure of the overall agreement, the competition commission no longer has to prove that a company has participated in an agreement. Already impressions are sufficient for this. Proof of actual damage to the national economy is thus not required.

SwissHoldings supports the clarification and strengthening of the principle of investigation in the Cartel Act and therefore recommends that the motion be adopted.

Council of States:

[21.073](#) Double taxation. Agreement with Northern Macedonia

[21.074](#) Double taxation. Agreement with Japan

Treatment on Monday, June 13, 2022

That's what it's about

The protocol with North Macedonia (21.073) contains an implementation of the BEPS minimum standards, an abuse clause, and the adaptation of the provision on information exchange according to the international standard on information exchange on request.

The protocol with Japan (21.074) also provides for implementation of the BEPS minimum standards and an abuse clause. It also contains the revision of some provisions (e.g. dividends, interest, international traffic and corporate profits), taking into account the current agreement policy of both contracting parties.

Status of the procedure

WAK-NR 25.01.2022: Adoption (17:4:1)

National Council Spring Session 2022: Adoption (unanimous)

WAK-SR 26.04.22: Adoption (unanimous)

Position SwissHoldings

SwissHoldings supports the adaptation of the current double taxation agreement with Northern Macedonia to the BEPS minimum standard of the OECD and G20 and the inclusion of a provision on the exchange of information in accordance with the international standard in the agreement.

We also welcome the fact that it has been possible to include an arbitration clause in the agreement. Arbitration clauses are not the subject of the minimum standard. In view of the internationally observed increase in double taxation and bilateral disputes, arbitration clauses are becoming increasingly important for internationally active companies. From the point of view of companies, however, it should be noted that arbitration proceedings are excluded if a court decision has been made.

The time limit on the offsetting of profits (Article III of the Revision Protocol) is also to be welcomed. Offsetting profits leads to double taxation and bilateral disputes. The time limit on offsetting means that companies do not have to accept unwelcome adjustments to their assessments many years later, which in turn lead to lengthy mutual agreement procedures and possibly even arbitration proceedings. We therefore welcome the time limitation of profit offsets to five years from the relevant tax period. From the point of view of companies, the time limit increases legal certainty. Increasing legal certainty for companies in the tax area is also in line with a G20 objective.

SwissHoldings also supports the amendment protocol to the existing double taxation agreement with Japan, which contains various improvements from the perspective of international Swiss industrial and service companies.

For example, the zero rate is now applied to dividends on equity holdings of 10 percent or more, either directly or indirectly. The same applies to all interest payments. To resolve disputes between the tax administrations of the two countries concerned, a detailed arbitration clause will be applied as an "ultimate ratio solution". Arbitration clauses ensure that the tax administrations involved not only strive to eliminate double taxation, but actually do so. Arbitration clauses are therefore of great importance to companies. It is also positive that the 2010 revised provision of the OECD Model Tax Convention applies to corporate profits (Art. 7) (AOA approach). We also welcome the fact that the agreement now complies with the BEPS minimum standard and that the necessary adjustments have been made for this. We do not see any significant improvement in the area of the LOB clause, where the "principal purpose test" preferred by Swiss business is only applied on a subsidiary basis.

