



## SwissHoldings Sessionsticker Special session 2022

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**SwissHoldings**, the association of industrial and service companies in Switzerland, comprises 61 of the largest corporations in Switzerland, which together account for approximately 69 percent of the total market capitalization of the SIX Swiss Exchange. Our member companies employ around 1.6 million people worldwide, around 202,000 of whom work in Switzerland. Through the numerous service and supply contracts they place with SMEs, Swiss multinationals employ - directly and indirectly - over half of all employees in Switzerland.

#### Dear readers

At the beginning of the special session 2022, SwissHoldings will provide you with its current 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 sticker, 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:

### [20.026](#) Code of Civil Procedure. Amendment

Treatment on Tuesday, May 10, 2022

#### That's what it's about

In the present revision, the Federal Council assumes that the Swiss Code of Civil Procedure (CCP), which has been in force since January 1, 2011, has proven itself in practice overall. However, it would like to further improve its practicality and the enforcement of the law through selective improvements.

Of utmost importance in this context is the protection of professional secrecy for in-house counsel. In its draft, the Federal Council provides for a sensible compromise provision (Art. 160a E-ZPO). This goes back to the parliamentary initiative Markwalder [15.409](#) "Protection of professional secrecy for in-house lawyers", which had already been approved by the preliminary advisory committees of the National Council and the Council of States.

Also in the context of the consultation on the CCP, the Council of States is in favor of the introduction of professional secrecy protection for in-house counsel - which we welcome - but the Council has amended and restricted the Federal Council's version in a problematic way.

With regard to the right to refuse to cooperate for in-house counsel, the Committee for Legal Affairs of the National Council (RK-NR) now proposes to delete the requirement of reciprocity introduced by the Council of States. A first minority does not want any new requirements, a second majority wants to stay with the Federal Council's version.

#### Status of the procedure

Council of States Summer Session 2021: (39:0)

RK-NR 08.04.2022: Acceptance (22:0:1)

#### Position SwissHoldings

**Great importance of professional secrecy protection for in-house lawyers:** From the point of view of SwissHoldings and for our member companies, the introduction of professional secrecy protection for in-house lawyers in the bill as it is currently being discussed is of great importance for the following reasons:

- In **very general terms, the following should be noted:** Swiss law grants protection of secrecy to the lawyer and his auxiliary persons for profession-specific activities. The same must also apply to the in-house holder of a lawyer's license and persons subordinate to him if they perform the same activity - i.e. activities specific to a lawyer's profession.

- **Location-relevant - no disadvantages for Swiss companies abroad:** Specifically, the introduction of professional secrecy protection for in-house lawyers is about avoiding disadvantages for our Swiss companies in proceedings abroad, because our legal system - unlike many other legal systems - does not know any professional secrecy protection for in-house lawyers. In proceedings in the USA, the

disadvantage of Swiss companies becomes particularly visible. In so-called discovery proceedings, Swiss companies can be required to disclose the correspondence of their in-house counsel or corporate attorneys employed in Switzerland; at the same time, the correspondence of American companies is protected. Thus, there is a risk that strategically important information from Swiss companies could fall into the wrong hands. In such constellations, lawyers of opposing parties also specifically direct disclosure requests to the internal legal services of Swiss companies. Moreover, the amounts in dispute in these proceedings are regularly very high, which leads to very high risks in the context of civil proceedings. Accordingly, the introduction of professional secrecy protection is relevant to the location.

**- Strengthening internal legal services and thus preventively ensuring compliance with the law:** Furthermore, professional secrecy protection for **in-house counsel is** also important for strengthening legal services and thus ensuring compliance with legal regulations within the company. In-house counsel are now a critical factor in ensuring legal compliance in companies in a preventive manner. In order for in-house counsel to be able to prepare their legal analyses correctly and in a targeted manner, they depend on obtaining the most complete information possible on the relevant facts. However, the bearers of such information will only provide in-house counsel with information if they can trust that the communication will be protected. If the work products (e.g., analyses) and the communications of in-house counsel are not protected, this has a correspondingly strong negative effect in terms of preventively ensuring compliance with legal regulations.

**- Many, and more and more countries with a corresponding provision:** Many countries have now realized that the protection of professional secrecy for in-house counsel is relevant to the location and provide for such protection accordingly. Legal professional privilege does not only exist in the entire Anglo-American legal sphere. It also extends to various countries in Europe. In particular, the Netherlands, Germany, Belgium and Spain have introduced a corresponding provision in recent years.

**The Federal Council's proposal on the protection of professional secrecy is a sensible compromise provision - which was developed in particular with the involvement of the Swiss Bar Association. SwissHoldings therefore recommends that the proposal of minority II of the RK-NR (= in accordance with the Federal Council) be accepted or, should this be rejected, that the proposal of the Commission majority be accepted.**

## National Council:

### [21.019](#) Partial revision of the Value Added Tax Act es

Treatment on Tuesday, May 10, 2022

#### That's what it's about

This bill implements various parliamentary initiatives in the area of value added tax. The focus is on the collection of VAT by mail-order platforms and the obligation to provide information for all internet platforms. Other elements concern CO2 emission certificates, foreign travel agencies and provisions on tax representation. The catalog 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.

#### Position SwissHoldings

VAT is assessed independently by Swiss companies at their own expense and entirely at their own risk. At the federal level, the processing of VAT is one of the largest administrative cost factors for Swiss companies. 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 hardly brings any relief for companies. Since the total revision of the VAT law in 2010, the Swiss system has become continuously 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 desirable, as in the case of the control of online platforms, 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-efficient in application (i.e., associated with little bureaucracy). Measures that distort competition should be avoided.

#### Commission proposals bring improvements

Various motions dealt with in the WAK-NR bring improvements because they simplify matters for a large number of companies, particularly in practice (e.g. in the relocation procedure). Minority motions calling for the inclusion of services in the taxation of online platforms and proposing an alternative solution for the issue of foreign travel agencies are also significant for the protection of the Swiss tax base.

**SwissHoldings supports the partial revision of the VAT Act. In terms of content, we support the proposals listed in the economiesuisse circular of April 27 (pp. 13 - 18 of the circular).**

