



## SwissHoldings Session preview Autumn 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 2022 autumn session, SwissHoldings will present you with its latest session ticker. This provides you with an overview of the important business that falls within the scope of our activities and which will be dealt with in the upcoming session of 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:

[22.028](#) Double taxation. Agreement with Ethiopia

[22.033](#) Double taxation. Agreement with Armenia

Treatment on Monday, September 12, 2022

### That's what it's about

Switzerland and **Ethiopia** signed a double taxation agreement in the field of income taxes in Addis Ababa on July 29, 2021. With this agreement, Switzerland's network of agreements in East Africa can be expanded for the first time.

The DTA Amendment Protocol with **Armenia** was signed on November 12, 2021. The DTA dates back to 2006 and has never been updated in the meantime. In the meantime, Switzerland signed the BEPS agreement, to which the DTA is now being adapted.

### Status of the procedure

WAK-NR 06/21-22: (Consent by 15:6:2 each).

### Position SwissHoldings

SwissHoldings supports the conclusion of a **DTA with Ethiopia**. The agreement guarantees legal certainty and a framework that will have a beneficial effect on economic relations. It grants the Swiss economy competitive conditions compared to other industrialized countries (e.g. residual rate for group dividends, for interest and for royalties of 5% each, arbitration clause as soon as Ethiopia agrees such a clause with another state).

SwissHoldings also supports the adaptation of the current **DTA with Armenia to the BEPS** minimum standard of the OECD and G20 and to the international standard on the exchange of information on request. Furthermore, we welcome the introduction of the zero rate for group dividends (participation 50% of the capital, holding period 1 year, minimum investment in distributing company of CHF 2 million) and the relief on the dividend residual rate of 5% (participation 10% of the capital, minimum investment in distributing company of CHF 100,000).

## National Council:

[22.048](#) Automatic exchange of information on financial accounts with additional partner states from 2023/2024. Introduction

Treatment on Monday, September 12, 2022

### That's what it's about

The legal basis for AEOI entered into force on January 1, 2017, and as of today, Switzerland exchanges data with 108 partner countries.

On May 18, 2022, the Federal Council adopted the dispatch on the introduction of the automatic exchange of information on financial accounts (AEOI) with the following 12 additional countries:

Ecuador, Georgia, Jamaica, Jordan, Kenya, Moldova, Montenegro, Morocco, New Caledonia, Thailand, Uganda and Ukraine.

The Federal Council is asking Parliament to approve this expansion of the network so that the AEOI can enter into force with the 12 states mentioned above from 2023.

### Status of the procedure

WAK-NR 21.06.22: Consent (15:7)

### Position SwissHoldings

SwissHoldings supports the introduction of the automatic exchange of information on financial accounts with the 12 countries mentioned. Switzerland has a great interest in ensuring that the AEOI can be agreed with as many countries as possible and that they also participate in the implementation of the standard. Our member companies in the industrial sector are only affected by the exchange to a very limited extent.

## National Council:

[19.4635](#) Mo. Council of States (Ettlin Erich). Avoid discrimination of Swiss by Swiss companies through uniform taxation practice.

[22.3396](#) Po. WAK-NR. Avoiding disadvantages for Swiss companies through uniform taxation practice

Treatment on Monday, September 19, 2022

### That's what it's about

The motion of Council of States member Ettlin ([19.4635](#)) instructs the Federal Council to amend the wording of Article 14 and Article 21 et seq. of the Federal Withholding Tax Act (SR 642.21, VStG) so that the triangular theory is applied without exception for determining the service recipient for withholding tax. The Federal Council proposes that this request be rejected.

The commission postulate of the WAK-NR ([22.3396](#)) instructs the Federal Council to prepare a report on the context explained in the motion [19.4635](#) "Avoiding disadvantages for Swiss companies through uniform taxation practice". The report should cover the following aspects:

- It is intended to provide an overview of Swiss taxation practice in comparison with international practice.
- In this interpretative analysis, particular attention will be paid to the difference between the consequences of the direct beneficiary theory and the triangular theory for the companies concerned.
- The interpretative statement should also outline the risk of abuse of dividend stripping.
- The problems for the companies concerned that result from the layout can be clearly identified.
- Possible solutions to these problems must be proposed, and the consequences of the solutions must also be presented, namely their impact on federal tax revenues.

### Status of the procedure

#### Motion Ettlin:

Council of States Winter Session 2021: Adoption (23:17:5)

WAK-NR 05.05.22: Rejection (14:11)

#### Commission postulate WAK-NR:

WAK-NR 05.05.22: Adoption (14:11)

## Position SwissHoldings

### **On Motion Ettlín (19.4635):**

The direct beneficiary theory applicable to withholding tax is an unnecessary and incomprehensible Swiss unicum. The triangular theory, which is also applied to the Swiss profit tax, is in common use internationally. The change to the triangular theory for withholding tax proposed by the motion allows for a coherent treatment of the same facts for profit tax and withholding tax. The doctrine in the field of tax law is also unanimously of the opinion that the different treatment of the same facts in the profit tax and the withholding tax is absurd. It, too, favors a change to the triangular theory, which is customary internationally. Time and again, Swiss companies stumble into the trap of the direct beneficiary theory. Resulting taxes are perceived by companies as unjustified fines that lack any tax logic. Tax law should be simple and predictable, which is why we welcome the change to the triangular theory for withholding tax called for by the motion. In the opinion of our transfer pricing experts, the justification provided by the Federal Council for the direct beneficiary theory is not comprehensible and does not pass the reality check.

**SwissHoldings recommends the acceptance of the motion.**

For further information, please see our [submission to the WAK-SR](#) dated October 23, 2021.

### **On the WAK-NR commission postulate (22.3396):**

**SwissHoldings recommends the acceptance of the postulate.**

It makes sense to draw up an outline of various relevant issues and to work out possible solutions.



## Council of States:

### [20.026](#) Code of civil procedure. Amendment

Treatment on Monday, September 12, 2022

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

The Federal Council wants to improve the practicability of the Swiss Code of Civil Procedure (CCP) with selective amendments. In particular, it wants to make it easier for private individuals and companies to access the courts and thus improve legal certainty.

The important introduction of professional secrecy protection for in-house counsel should be emphasized. In its draft, the Federal Council provides for a sensible compromise provision (Art. 160a E-ZPO; cf. also parl. Iv. Markwalder [15.409](#) "Professional secrecy protection for in-house counsel").

Although Parliament would like to tighten up the Federal Council's technically more convincing draft, the National Council deleted the problematic requirement of reciprocity introduced by the Council of States. The version decided by the National Council essentially provides that, in the case of commercial companies, with respect to the activities of their in-house legal service, a party may refuse to cooperate and does not have to hand over documents if the legal service is headed by a person who is admitted to the bar and the activity in question would be considered profession-specific in the case of a lawyer.

The bill is thus in the procedure for the revision of differences and will once again be dealt with first by the Council of States, after it had been previously discussed by the Committee for Legal Affairs of the Council of States (RK-S).

#### Status of the procedure

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

National Council Special Session 2022: (183:1:2)

RK-S 01.07.22: Acceptance (9:0:2)

#### Position SwissHoldings

According to the deliberations to date, in addition to the technical modernization, Parliament is particularly in favor of the important introduction of professional secrecy protection for in-house lawyers. SwissHoldings welcomes this decision, which is intended to ensure that Swiss companies operating abroad have the same procedural guarantees as local companies, for example in the USA.

The decision of the National Council is the right step for strengthening Switzerland as a business location. The Committee for Legal Affairs of the Council of States (RK-SR) would like to dispense with the problematic requirement of reciprocity introduced by the Council of States, but recommends retaining the special right of appeal and the separate cost regulation.

SwissHoldings recommends following the National Council's decision on this issue and waiving a special right of appeal and its own cost regulation.



## Council of States:

**[20.036](#) Federal decree on a special taxation of large corporate groups (implementation of the OECD/G20 project on the taxation of the digital economy)**

Treatment on Wednesday, September 28, 2022

### That's what it's about

The two-pillar project on the taxation of the digitalized economy (OECD Digital Taxation Project) is adapting international corporate taxation. This is decided by the "OECD/G20 Inclusive Framework on BEPS" (IF), which comprises around 140 countries.

In pillar 2, large companies are to be subject to a minimum taxation of 15 percent in all their countries of operation. The minimum taxation rules are to be introduced globally in parts as early as 2023. The EU Commission has already presented an implementation proposal for this.

The bill will first be discussed by the Council of States in this fall session. The reading in the second council as well as the possible revision of differences is planned for the winter session (Nov. 28 - Dec. 26). The parliamentary deliberations will therefore already be completed this year and SwissHoldings will closely monitor the content. The mandatory referendum on the amendment of the Federal Constitution will take place in June 2023.

### Status of the procedure

WAK-SR 25.08.22: Acceptance (12:0:1)

### Position SwissHoldings

The WAK-SR, which was asked to give preliminary advice, made only minimal material adjustments to the dispatch proposed by the Federal Council.

The commission decided by 9 votes to 2 with 2 abstentions that, according to the dispatch, 75 percent of the gross proceeds of the supplementary tax should go to the cantons to which the business units belong for tax purposes. 25 percent is to go to the federal government. The 75/25 distribution decided upon is a compromise of the cantons (FDK) and can be supported by SwissHoldings, although in principle an allocation of 100 percent to the cantons would have been desirable. The cantons must be given the necessary room for maneuver in terms of fiscal policy so that they can maintain their attractiveness to their best taxpayers and employers even after the tax reform has been implemented.

The introduction of minimum taxation as part of the OECD/G20 project on the taxation of the digital economy will lead to a paradigm shift in the location competition between states for the most profitable corporate functions. The "profit tax" factor will lose importance and tax competition in this area will decrease. Numerous cantons will thus partially lose one of their most important locational advantages, to which they will have to respond with substitute measures and instruments. The current proposal creates the necessary room for maneuver and design.

During its deliberation of the matter, the WAK-SR refrained from adopting corresponding specifications or recommendations for the cantons. From our point of view, this is the target-oriented way (cf. our [media release of August 26, 2022](#)).

**Accordingly, SwissHoldings recommends to follow the majority in the consultation and to adopt the bill without further amendments.**

