



SwissHoldings session preview spring session 2023

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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 66 percent of the total market capitalization of the SIX Swiss Exchange. Our member companies employ around 1.8 million people globally, around 202,000 of whom work in Switzerland. Through the numerous service and supply contracts they place with SMEs, Switzerland's multinationals employ - directly and indirectly - over half of all employees in Switzerland.

Dear readers

At the beginning of the spring session 2023, SwissHoldings will provide you with its current session preview. This will give you an overview of the 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:

[22.050](#) **Financial Market Infrastructure Act (FMIA). Amendment (Recognition of foreign trading venues for trading in equity securities of companies domiciled in Switzerland).**

Treatment on Monday, February 27, 2023

That's what it's about

On 30 November 2018, the Federal Council, acting directly on the basis of Article 184 of the Federal Constitution, issued the measure to protect the Swiss stock exchange infrastructure (safeguard measure) after the European Commission had not extended the stock exchange equivalence for Switzerland provided for in European Union (EU) law by that date. The safeguard measure ensures that EU securities firms can continue to trade Swiss equities on Swiss trading venues even without EU stock exchange equivalence.

To ensure that the protective measure does not expire without replacement, the Federal Council submitted the transfer of the protective measure to the Financial Market Infrastructure Act (FMIA) to Parliament for approval in the summer of 2022.

Status of the procedure

Council of States Winter Session 2022: Adoption (39:0)

WAK-NR 30.1.2023: unconditional acceptance

Position SwissHoldings

SwissHoldings welcomes the planned transfer of the stock exchange protection measure into ordinary law.

National Council:

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

Treatment on Monday, March 6, 2023

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. In this context, the important introduction of professional secrecy protection for in-house lawyers 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 lawyers"). This 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 need not surrender documents if the legal service is headed by a person who is admitted to the bar and the activity in question would be considered professionally specific in the case of a lawyer.

In the meantime, the Parliament has deliberated on the bill and carried out the first round of the revision of differences. The provision on the protection of professional secrecy for in-house counsel was initially drafted more narrowly by the Council of States, which in particular wanted to introduce a problematic requirement of reciprocity. The National Council, however, subsequently reworded the provision somewhat more broadly, and in particular dispensed with the problematic requirement of reciprocity. With regard to the provision on the protection of professional secrecy for in-house lawyers, there is no longer any difference as things stand today, but the bill itself is still in the second round of the differences settlement.

Status of the procedure

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

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

Council of States Autumn session 2022: Revision of differences

National Council Winter Session 2022: Revision of differences

Position SwissHoldings

Great importance of professional secrecy protection for in-house lawyers: From SwissHoldings' perspective, the introduction of professional secrecy protection for in-house lawyers is by far the most important aspect of this bill. Accordingly, we welcome the fact that the introduction of professional secrecy protection has been decided by Parliament according to the current state of information for the following reasons:

In general, 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 corporate 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 corporate 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.

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: Finally, it should be noted that many countries have now realized that professional secrecy protection for in-house counsel is relevant to the location and provide for such protection accordingly. The 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.

National Council:

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

Treatment on Monday, March 6, 2023

That's what it's about

Comments see National Council p. 3-4.



Council of States:

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

Treatment on Tuesday, February 28, 2023

That's what it's about

This bill implements various parliamentary initiatives in the area of value added tax. The focus is on the 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.

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

WAK-SR 14.02.23: Adoption without dissenting vote

Position SwissHoldings

Value added tax 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-effective in application (i.e., associated with little bureaucracy). Measures that distort competition should be avoided.

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



Council of States:

[22.077](#) Double taxation. Agreement with Tajikistan

Treatment on Tuesday, February 28, 2023

That's what it's about

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

Furthermore, the DTA adjustment implements the minimum standards from the BEPS project with regard to double taxation agreements.

Status of the procedure

WAK-SR 14.02.23: Adoption

Position SwissHoldings

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

Council of States:

[22.4452](#) Po. Gmür-Schönenberger. Ensuring a Functioning Resource Equalization within Switzerland as a Result of the OECD Minimum Tax.

Treatment on Tuesday, February 28, 2023

That's what it's about

The postulate instructs the Federal Council to examine, as part of the NFA effectiveness report 2026-2029, whether there is a need for adjustments in the NFA if disparities between cantons increase disproportionately with the introduction of the OECD minimum tax.

Status of the procedure

Not yet discussed in the Council

Position SwissHoldings

SwissHoldings recommends the acceptance of the postulate. At the same time, we would like to point out that the effects of the OECD minimum taxation on resource equalization are manifold and difficult to predict. Tax-attractive cantons such as Zug or Basel-Stadt could tend to be among the losers in terms of location attractiveness and thus also in terms of resource equalization after a few years. In contrast, cantons such as Zurich or Aargau could be among the winners. Also, the supplementary taxes will not simply accrue in Basel-Stadt and Zug or other low-tax cantons. Zurich also offers companies attractive tax conditions, which is why supplementary taxes can be expected there. At the same time, it must be taken into account that the companies concerned will adjust to the new framework conditions or the changed international competition in terms of location. In other words, the situation in resource equalization is only likely to have readjusted a few years after the start of OECD minimum taxation in 2024.