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OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
To:	Code of Conduct Group
Subject:	Switzerland's Cantonal administrative company status (auxiliary company) regime (CH001) – Final description and assessment

ROLLBACK REVIEW PROCESS (SEPTEMBER 2019)

Background

Member States signed a Joint Statement with Switzerland in October 2014[1]. In the Statement Switzerland agreed to amend or abolish its tax legislation in relation to 5 preferential regimes, including the Cantonal administrative company status (auxiliary company) regime (CH001). In return, Member States agreed to lift their national countermeasures linked to these regimes, once they are abolished.

The tax reform was scheduled for adoption in 2017. However, a referendum meant that the draft law had to be amended and submitted to Parliament again.

[1] See doc. 6972/18 ADD 43.

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In October 2018, the new draft law was adopted by the Swiss parliament, and a new referendum was subsequently called on 19 May 2019.

The ECOFIN Council agreed on 12 March 2019 to grant Switzerland an extended deadline to comply with criterion 2.1 until end 2019 considering that it was prevented from amending/abolishing its harmful regimes by end 2018 "*due to genuine institutional or constitutional issues despite tangible progress in 2018*".

Following the positive outcome of the above-mentioned referendum, Switzerland informed the COCG in August 2019 that the official results had been published in the Official Gazette:

https://www.admin.ch/opc/fr/federal-gazette/2019/4771.pdf

https://www.admin.ch/opc/fr/official-compilation/2019/2413.pdf

Assessment

The law adopted by the Swiss parliament on 3 October 2018 abolished the auxiliary company (CH001) regime. It entered into force on 16 July 2019 and will enter into application on 1 January 2020. The COCG meeting of 13 September 2019 therefore approved the rollback of this regime. This conclusion was endorsed by the ECOFIN Council on 10 October 2019.

Annex 1: Assessment of the old CH001 regime in 2017 (standstill review)

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Annex 1: assessment of the old CH001 regime in 2017 (standstill)

a. Description

The domiciliary or management company regime is available at cantonal level. The domiciliary status is regulated in cantonal tax laws, but the conditions do not differ significantly amongst the cantons. Essentially, in order to obtain this privileged status the company must have limited activity and substance in Switzerland. They are allowed to engage in commercial activities (trading, sales) but only outside Switzerland. Typically, these are so-called "letter box" companies. Domiciliary company status is available if the following conditions are met:

- The company is both foreign-controlled and managed from abroad;
- It has a registered office in Switzerland (usually at a lawyer's premises);
- It has neither physical presence (own office space) nor staff in Switzerland;
- It must carry out most (if not all) of its business operations abroad;
- It only receives foreign source income.

A special form of Domiciliary Company is the Auxiliary Company. This is in essence a Domiciliary Company which in addition may carry out a certain proportion of its business in Switzerland. The Auxiliary Company status is not available in all cantons, only seven cantons of this regime. Unlike a Domiciliary Company, an Auxiliary Company may have its own Swiss offices and staff and it is allowed to earn some Swiss income though most of its income must be from a foreign source. The Swiss source income will be taxed.

b. Preferential features

At a federal level there are no tax advantages in terms of corporate income tax payable on income and gains. At a cantonal and municipal level between 75% and 100% of foreign source income may be exempted, depending on the substance of the company in Switzerland.

For an Auxiliary Company this is the same, but Swiss-sourced income is taxed. The level of tax payable on Swiss source income varies among the seven cantons who give favourable treatment, but on average is around 5%, subject to an advance tax ruling.

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c. Possible concerns

This regime is de facto an offshore regime: no domestic substance or income, only foreign source profits allowed receiving a beneficial tax treatment. In case of an assessment against the Code criteria, the regime would probably fall foul of criteria 1 & 2 (limited to foreign source profits), criterion 3 (no substance allowed) and criterion 5 (status and benefits depend on a non-transparent ruling practice).

d. Assessment by the COCG

Switzerland has committed to abolish this regime under the EU-Swiss 2014 Joint Statement.

In the FHTP the status of this regime is "in the process of being eliminated".

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