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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group
Subject: Switzerland's Cantonal mixed company status regime (CH002)
– Final description and assessment

ROLLBACK REVIEW PROCESS (SEPTEMBER 2019)

Background

Member States signed a Joint Statement with Switzerland in October 2014¹. In the Statement Switzerland agreed to amend or abolish its tax legislation in relation to 5 preferential regimes, including the Cantonal mixed company status regime (CH002). 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.

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

¹ See doc. 6972/18 ADD 43.

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 Cantonal mixed company status regime (CH002). 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 CH002 regime in 2017 (standstill review)

Annex 1: assessment of the old CH002 regime in 2017 (standstill)

a. Description

The Mixed 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. To achieve Mixed Company Status, a company must be foreign controlled. It is allowed to have business income in Switzerland but only to a maximum of 20 percent of its total income. The limitations with respect to substance and actual presence in Switzerland do not apply. Consequently, the Mixed Company Status is widely used for Swiss based companies conducting active international trading activities. The tax privilege applies to the foreign source income only.

b. Preferential features

No relief from federal tax is available under the Mixed Company Status.

At cantonal level, only the part of foreign source income attributable to the management activities in Switzerland will be taxed. Any Swiss source income realised by the company, however, is taxed at ordinary rates. In practice, a reduction of the cantonal taxes normally due of around 80% is available (effective Cantonal tax 2%-5%), resulting in a federal/cantonal combined effective tax rate of 9% to 12%, depending on the cantonal domicile.

c. Possible concerns

The mixed company regime is similar to the domiciliary company regime as far as the beneficial treatment of foreign source income is concerned (offshore character). It may concern profits which under international tax principles and DTC's concluded by CH are assigned to the state if residence (CH), but which CH decides not to tax.

In case of an assessment against the Code criteria, the regime would probably fall foul of criteria 1 and 2 (only available to foreign source profits, domestic profits ordinarily taxed), criterion 4 (profit allocation departs from internationally accepted rules) and criterion 5 (to the extent the effective tax rate is negotiable (lack of transparency)).

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”.

