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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Code of Conduct Group
Subject: Switzerland's Cantonal holding company status regime (CH003)
– 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 holding company status regime (CH003). 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 holding company status regime (CH003). 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 CH003 regime in 2017 (standstill review)

Annex 1: assessment of the old CH003 regime in 2017 (standstill)

a. Description

This regime applies only at cantonal and municipal level; it does not apply at federal level. It is a special status granted to companies if they meet certain conditions, and affords general privileges to qualifying companies rather than an exemption for specific income (e.g. dividends).

The conditions to obtain holding company status vary among cantons; they either limit (other) activities of the entity in order to obtain privileged holding status or they determine setting qualifications on the participations. Generally, a corporate entity can achieve holding company status if it meets three conditions:

- The company's bylaws state that the main activity of the company is long-term management of equity investments in different companies (formal requirement); this must also correspond to the effective activity of the company (material requirement).
- The company does not engage in any active business activities (trading) in Switzerland. However, activities linked to holding activities, such as intra-group financing, IP management and exploitation and providing intra-group services are allowed.
- In the long-term, approximately 2/3 of the company's income must be income from dividends remitted by its subsidiaries (income test) or 2/3 of the company's assets in its balance sheet must consist of participations (asset test).

b. Preferential features

Holding Company Status ensures that no corporate income tax is levied at cantonal level. Accordingly, income from dividends, interest, royalties and commission/management fees are fully exempt at Cantonal level. Only income from Swiss real estate is always subject to the ordinary Cantonal tax rates, regardless of the privileged tax status. A company loses its privileged status if the conditions have not been met for a consecutive period of 2 to 3 business years (varies per canton).

c. Possible concerns

The issue is that the full corporate tax exemption is granted even for income other than dividends or capital gains. The other activities allowed under the holding status all produce passive income and can still be significant in size.

The lack of substance is contrary to criterion 3 of the Code of Conduct and possibly criterion 5 (status and benefits depend on a non-transparent ruling practice). The measure may also fall under de-facto application of criteria 1 & 2. More importantly, however, as it concerns a regime providing an exemption for highly mobile, passive income, it would likely be found harmful under the overall assessment taking into account the harmful effects for other Member States.

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”.