

Subcommittee on Tax Matters (FISC)

Delegation to Bern

3-4 November 2022

Mission Report

1. PROGRAMME

Thursday, 3 November 2022

Time	Institution/Host	Topics
14:30 - 15:30	<p>Preparatory Meeting - Briefing by the EU Delegation</p> <ul style="list-style-type: none"> - Natalie Sleeman, First Counsellor and Head of the Section on Trade and Economic Affairs 	<ul style="list-style-type: none"> - Current political situation and main debates in Switzerland - Overview of main tax issue
15:45 - 16:45	<p>Meeting with Stakeholders</p> <ul style="list-style-type: none"> - Dr. David Mühlemann, jurist, Public Eye 	

Time	Institution/Host	Topics
	<ul style="list-style-type: none"> - Gretta Fenner, Managing Director, Basel Institute on Governance 	<ul style="list-style-type: none"> - Reaction to Pandora Papers: shell companies, beneficial ownership information
<p>17:00 - 18:00</p>	<p>Meeting with Stakeholders</p> <ul style="list-style-type: none"> - René Schreiber, Partner, Eversheds Sutherland - Dr. Gabriel Rumo, CEO, and Martin Hess, Senior Policy Manager Taxation, SwissHoldings - Marc Schneider, Head EAME Tax, Global Tax Lead M&A/Treasury/ITS, Syngenta - Pierre-Yves Maillard, President, Swiss Federation of Trade Unions SGB-USS 	<ul style="list-style-type: none"> - Swiss national tax reforms to address aggressive tax schemes and tax evasion - Implementation of the G20/OECD Inclusive Framework Pillar I and Pillar II agreement - Reaction to Pandora Papers: shell companies, beneficial ownership information - Tax issues related to cross-border workers

Friday, 4 November 2022

Time	Institution/Host	Topics
9:00 - 10:00	<p>Meeting with stakeholders</p> <ul style="list-style-type: none"> - Dominik Gross, Director, Alliance Sud - Dr. Lukas Schmid, Fellow, Avenir Suisse - Prof. Dr. Kurt Schmidheiny, University of Basel 	<ul style="list-style-type: none"> - Swiss national tax reforms to address aggressive tax schemes and tax evasion - Implementation of the G20/OECD Inclusive Framework Pillar I and Pillar II agreement
10:15 - 11:45	<p>Meeting with Members of the Economic Affairs and Taxation Committees of the National Council</p> <ul style="list-style-type: none"> - Balthasar Glättli, Swiss Greens Party - Prisca Birrer-Heimo, Swiss Social-Democratic Party 	<ul style="list-style-type: none"> - Role of the Swiss National Council in international tax matters - Swiss national tax reforms to address aggressive tax schemes and tax evasion - Reaction to Pandora Papers: shell companies, beneficial ownership information - Automatic Exchange of Information - Implementation of the G20/OECD Inclusive Framework Pillar I and Pillar II agreement - Windfall profit taxes - Tax issues related to cross-border workers
		<ul style="list-style-type: none"> - Swiss national tax reforms to address aggressive tax schemes and tax evasion

Time	Institution/Host	Topics
<p>13:00 - 14:30</p>	<p>Meeting with Mr Stefan Flückiger, Deputy State Secretary for International Finance at the Federal Department of Finance and Mr Adrian Hug, Director of the Federal Tax Administration</p>	<ul style="list-style-type: none"> - Reaction to Pandora Papers: shell companies, beneficial ownership - Automatic Exchange of Information (AEOI), including the implementation of the OECD standard for AEOI on crypto-assets - Implementation of the G20/OECD Inclusive Framework Pillar I and Pillar II agreement - Windfall profit taxes - Tax issues related to cross-border workers

2. LIST OF PARTICIPANTS

Members	Country	Group
1. Paul TANG, FISC Chair	NL	S&D
2. Evelyn REGNER	AT	S&D
3. Kira PETER-HANSEN	DK	Greens/EFA

Secretariat	
4. Benoît WETS, Head of Unit	
5. Laurin BERRESHEIM	

Political advisers	Group
6. Aurore CHARDONNET	S&D
7. Johan LANGEROCK	Greens/EFA

3. KEY MESSAGES

KEY FINDINGS FROM THE DELEGATION VISIT:

- The FISC delegation welcomed Switzerland's commitment to the implementation of the two-pillar global tax reform of the OECD/G20 Inclusive Framework (IF) and in particular the plans to move forward with the implementation of Pillar 2. The Swiss government should however make sure that the implementation does not create loopholes that could allow for a continuation of profit shifting practice for tax purposes.
- The FISC Members recalled that Switzerland has a reputation of being a tax haven for wealthy individuals and multinational companies and noted that it is still an important investment hub in the heart of Europe. They expressed worries that the Swiss framework to tackle aggressive tax practices and money laundering was not yet robust enough, despite some important progress over the past years.
- In order to implement Pillar 2 of the OECD/G20 IF agreement, a popular vote will be organized in June 2023 to change the constitution and allow for an unequal treatment of covered multinational companies and smaller companies. The public debate focusses on the question of how the revenues should be distributed between the federal level and the cantons. Depending on the compromise that is found, there is a risk that the reform will not obtain sufficient support and will be rejected.
- There are concerns that the implementation of Pillar 2 will leave open loopholes, which will allow companies to continue paying taxes below the effective minimum rate of 15%. Moreover, some cantons consider offering new subsidies to continue attracting companies. This could lead to a new form of competition which replaces the competition for tax base.
- Switzerland has implemented important reforms over the past years to tackle financial secrecy, including the OECD standard for automatic exchange of information and standards of the Financial Action Task Force to tackle money-laundering. There are however still some significant loopholes, such as the lack of a central register of beneficial owners of legal entities, no due diligence requirements for lawyers and trustees, and the lack of a law to protect whistle-blowers in the private sector.
- The increase of teleworking since the outbreak of the COVID19-pandemic has created new issues regarding the taxation of cross-border workers. Where cross-border workers remain at home, there is a risk that they create a permanent establishment and hence new taxing rights for the country of residence. Switzerland is looking for new agreements with neighbouring countries to solve the issue.

3.1. Preparatory Meeting - Briefing by the EU Delegation

Natalie Sleeman, First Counsellor and Head of the Section on Trade and Economic Affairs, and Manuela Rüegger, Policy Officer in the Political, Press and Information Section, provided an overview of the current political and economic situation in Switzerland and the state of play of the EU-Switzerland relations, notably following the failure of the negotiations of an EU-Swiss Institutional Framework Agreement.

3.2. First Meeting with Stakeholders

The FISC delegation was provided with the following information from the representatives of the non-governmental organisation Public Eye and of the Basel Institute on Governance:

Financial Secrecy

Switzerland remains a 'secrecy haven' in Europe despite a major corporate tax reform in 2020. A big loophole in the Swiss legislation is that lawyers are still exempted from due diligence obligations when providing advice to clients, making it possible to keep the identity of the beneficial owner of a transaction hidden. A revision of the Anti-Money Laundering Act, which would have changed this, was watered down in the Swiss Parliament following an intense lobbying effort by Swiss lawyers.

There is no central register for beneficial ownership information. The Swiss government is obliged to propose legislation to implement the respective standard of the Financial Action Task Force (FATF). A first draft is expected by mid-2023. In contrast to the EU's register, this register will not be public.

According to the Swiss legislation, judicial cooperation with and assistance to another country is only possible in cases of tax crime (which is different from tax fraud). If assistance regarding a tax crime is requested by another country, the Swiss authorities are obliged to inform the concerned persons about the request, who have a right to appeal. In practice, this leaves sufficient time for concerned persons to move capital if necessary.

Protection of Whistle-blowers

Switzerland does not have a law on the protection of whistle-blowers in the private sector, which creates an obstacle to the revelation of money laundering and harmful tax practices. Moreover, article 47 of the Swiss banking secrecy law forbids the revelation of bank details to third parties. For this reason, Swiss

newspapers could not be part of the consortium that published the Swiss Leaks. This law is due to be discussed in Parliament in November 2022 with a view to allowing the revelation of banking details in the public interest.

Public Perception and Political Situation

Revelations on harmful tax practices or money laundering have not created major public outcries in Switzerland. What is more, lobbying is under-regulated and there is a strong influence from practicing lawyers who are members in the Swiss Parliament and who serve their lobby groups. In general, Switzerland is reactive to recommendations from the OECD Tax Forum and FATF and complies with them. These recommendations are however not always strong enough to effectively address harmful tax practices and money laundering.

3.3. Second Meeting with Stakeholders

The FISC delegation was provided with the following information from the representatives of Eversheds Sutherland, SwissHoldings, Syngenta and the Swiss Federation of Trade Unions, who were present at this meeting:

OECD/G20 Inclusive Framework Global Tax Reform

Switzerland is preparing the implementation of the OECD/G20 Inclusive Framework (IF) agreement on a reform of global tax rules. In order to implement Pillar 2, a change of the constitution is needed, which would make it possible to subject multinationals in the scope of Pillar 2 and other companies to a different tax treatment. A popular vote is planned to take place in June 2023 for this purpose. At the moment, a public consultation on the respective ordinances is taking place and the next step is expected in the beginning of 2023.

As a result of the abolishment of tax privileges for companies, some cantons were afraid that companies could leave their territory and lowered their tax rates significantly in order to remain competitive. For some cantons, the implementation of a global minimum tax will therefore lead to higher taxes for multinational companies. They might look for other ways to attract businesses, such as offering R&D regimes. Experts said that the competition to attract capital has now started with the introduction of tax subsidies.

According to a business representative, aggressive tax planning won't make sense anymore. There are however fears that the implementation of Pillar 2 will be very technical and create new risks of double-taxation and tax disputes.

The Fight Against Harmful Tax Practices

A major reform of corporate taxation in Switzerland abolished tax privileges for companies in 2020. Moreover, Switzerland has implemented a reform on automatic exchange of information to comply with the OECD standard. Further reforms to improve transparency have abolished bearer shares and created due diligence obligations for companies. What is more, the Federal Council has launched the work to introduce a centralised beneficial ownership register. As a result of the reforms over the past years, it has become impossible to hide money on Swiss bank accounts to evade taxes, according to one expert.

Besides this, EU Directives also affect Switzerland, such as the 5th revision of the Directive on Administrative Cooperation (DAC6), which has led to the implementation of a database to record transactions. Swiss multinational businesses are closely following the discussions on the Unshell Directive to prepare for the rules, even if they are not directly implemented in Switzerland.

Business representatives are sceptical about the effectiveness of public country-by-country reporting. The implementation of (non-public) country-by-country reporting has created a big administrative burden and companies have the impression that data is almost not used. Moreover, the public does not have the technical understanding that is sometimes needed to understand the data that is published in country-by-country reports.

Cross-border workers

The increase of teleworking, which was accelerated by the measures taken in the context of the COVID19-pandemic, creates new tax issues, notably about the tax residency of cross-border workers. As a result, cross-border workers are sometimes treated differently than domestic workers and don't have the same right to telework, which creates a sentiment of unfair treatment. Negotiations are ongoing between France and Switzerland to find a new agreement on how to deal with teleworking and the taxation of cross-border workers.

3.4. Third Meeting with Stakeholders

The FISC delegation was provided with the following information from the representatives of Alliance Sud, Avenir Suisse and a Professor at the University of Basel:

OECD/G20 Inclusive Framework Global Tax Reform

The implementation of Pillar 2 is estimated to yield additional revenues in excess of 1 to 2,5 billion Swiss francs. These estimates do not however take into account behavioural responses by companies. The public debate mainly focusses on the distribution of these new revenues between cantons and the

federal government. One expert pointed out that leaving revenues to cantons could create the risk of a subsidy competition, if cantons decide to compensate the higher corporate tax rates by providing subsidies to attract multinational companies. Two experts pointed out that this would also be a reaction to measures in other European countries which also provide subsidies to companies. The question of introducing tax subsidies is high on the political agenda and some conservative parties announced that they would introduce them to circumvent the 15% tax rate.

Some multinational companies will have less incentives to shift revenues to Switzerland after the implementation of Pillar 2. Switzerland however benefits of carve-outs, which create an incentive to keep highly salaried jobs and tangible assets (such as laboratories or production sites) in the country. What is more, the effective tax rate of 15% still leaves an incentive for multinational companies to shift profits away from countries where the corporate tax rate is higher. This would affect in particular developing countries, where the corporate tax rate is sometimes above 20%.

One expert pointed out three features of the Swiss tax system, which could possibly create a loophole in the implementation of Pillar 2 and make it possible for multinational companies to lower their effective tax rates below 15%. First, a participation exemption for branches specialised in internal financing inside multinational groups could lead to an exclusion from corporate income tax of the profits only derived from dividends. This is relevant for many European companies who have finance branches in Switzerland. Second, the rules on hidden reserves could allow companies to reduce taxable profits by declaring previously undeclared assets. Thirdly, the capital contribution principle could affect the treatment of multinational groups based on dividend flows and thereby lead to a reduction of the effective tax rate. Neither the OECD, nor the Federal Council have yet provided any answers to the question of how these features will affect the minimum effective tax rate.

The Fight Against Harmful Tax Practices

According to one expert, the times when Switzerland was a haven for money laundering are “long gone”, because important reforms such as the automatic exchange of information and FATF recommendations have been implemented. There is however room for improvement: lawyers and trustees should be required to report suspicious transactions and Switzerland should establish a centralised beneficial ownership register. The Federal Council is currently working on a draft bill in this regard to implement a recommendation by the FATF.

Experts did not support the very advantageous tax regimes offered to very wealthy individuals without activity in Switzerland.

Multinational companies used to shift a lot of profits to Switzerland in the past, but the implementation of Action 5 of the OECD's BEPS Action Plan might have changed this. There are however no figures yet on how the tax base changed since the corporate tax reform of 2020. Statistics on the flows of royalty payments can be an indicator on profit shifting, but these statistics are limited with regards to figures on flows outside Europe, where flows related to some countries are merged together.

3.5. Meeting with Members of the Economic Affairs and Taxation Committees of the Swiss National Council

The FISC delegation met with Ms Prisca Birrer Heimo (Swiss Social-Democratic Party) and Mr Balthasar Glättli (Swiss Green Party), both Members of the Economic Affairs and Taxation Committee of the Swiss National Council. The following points were raised during the discussion:

OECD/G20 Inclusive Framework Global Tax Reform

The implementation of the OECD/G20 IF agreement will be discussed in the Swiss parliament. Since the government has decided to set different tax rates for multinational companies and other companies, a change of the constitution is needed. This reform has to be adopted in a popular vote by a majority votes as well as by a majority of cantons. There is a dispute between the Swiss National Council, which is the lower house of the Federal Assembly, and the Council of States, which is the upper house and represents the cantons, about the distribution of revenues. The National Council wants to attribute more revenues to the federal level, while the Council of States claims more revenues for the cantons. The current proposal is to allocate 75% to the cantons and 25% the federal state. A decision is due to be taken in the winter session of 2022.

The referendum is due to be held in June 2023. If there is a compromise in the Parliament regarding the distribution of revenues, then it is likely that people will accept the reform. However, if too much revenue goes to the cantons, then left-wing parties who favour at least a 50% allocation to the Federal State and 50% to the cantons might be reluctant to give a positive recommendation or even oppose the deal. At the same time, right-wing parties might be opposed because of sovereignty issues. Under these circumstances, a positive vote in the referendum is not guaranteed.

There is a risk that competition is shifting to other areas. It could continue through subsidies to companies, for instance, for research or better tax conditions for natural persons including expats or land use. For this reason, the Members of the Swiss National Council ask for more revenues for the federal level to avoid increasing the leeway for cantons to engage in this kind of competition.

Financial Secrecy

The federal government proposed measures to close the remaining loopholes which allow Switzerland to continue being a secrecy haven. The proposal to extend due diligence obligations to lawyers when they give tax advice (not when they act in their capacity of lawyers) however failed due to a strong opposition from right-wing parties. It has to be noted that Members of the Parliament have all another professional activity and for some of them this activity is precisely to be a tax advisor. The government is expected to submit a new proposal.

Besides this, the government is expected to put forward a proposal on a register of beneficial owners in 2023. This will however not be public and only accessible to relevant authorities. It is not yet clear who the "relevant authorities" will be.

Other topics

Besides these two major issues, Members from the European Parliament and the Swiss National Council also exchanged on other topics, including the lack of protection for whistle-blowers in Switzerland, the taxation of windfall profits, and the Swiss political system.

3.6. Meeting with State Secretariat for International Finance at the Federal Department of Finance and the Federal Tax Administration

The FISC delegation met with representatives from the State Secretariat for International Finance at the Federal Department of Finance and from the Federal Tax Administration, which were headed by Mr Stefan Flückiger, Deputy State Secretary for International Finance, and Mr Adrian Hug, Head of the Federal Tax Administration. They were provided with the following information:

Financial Secrecy

The Swiss anti-money laundering framework complies with the FATF standards. It will however not go beyond, as the protection of privacy is considered to be a cornerstone of the Swiss democracy. The framework is overall robust and achieves good results, despite some remaining issues in the area of

compliance. In March 2021, the Swiss Parliament adopted the latest revision of the anti-money laundering act, which will enter into force in 2023 and will notably introduce new requirements regarding the identification of ultimate beneficial owners. Future work will address the reporting of suspicious transactions and the transparency of legal entities. Switzerland is currently strongly engaged in international negotiations about a revision of recommendation 24, which concerns transparency and beneficial ownership of legal persons. The federal department of finance is currently preparing a law to establish a beneficial ownership register, which will be accessible for relevant authorities. Other measures on regulating the legal profession and advisers are being envisaged.

In the context of implementing sanctions against Russian oligarchs, the total value of frozen assets amounts to 7 billion Swiss francs. This might seem small compared to about 200 billion Swiss francs that were screened by banks in total. This sum however represents only a fraction of overall assets placed in Switzerland and some Russian assets may also be legitimately placed in Switzerland. The Swiss government is in close contact with the EU to ensure a quick implementation of sanctions but receives information only at short notice, leaving little time for the administration to react.

The Swiss authorities will send information in written as regards the compliance of the Freeport in Genève with AML regulations.

OECD/G20 Inclusive Framework Global Tax Reform

The Swiss government has started early with the preparation of the implementation of Pillar 2 because of the need to change the constitution. A referendum will take place in summer 2023 to change the constitution and ensure the possibility of unequal treatment. This will however not oblige the government to actually implement the reform and it will re-assess the situation in the light of what other countries will have done by then. If other countries move forward to implement the reform by 2024, Switzerland will do the same to ensure that multinational companies can adapt their systems simultaneously. There are however still some uncertainties regarding technical aspects due to the lack of guidance from the OECD, which has not yet been issued.

In response to the last national corporate tax reform, cantons have lowered their tax rates to remain attractive. After Pillar 2, international competition to attract companies will go on but will shift to other measures. One possibility is to use subsidies, which do not interfere with minimum taxation, such as tax credits. Switzerland is however concerned that some high-tax market jurisdictions are trying to influence transfer pricing to their own benefits.

The Fight Against Harmful Tax Practices

The automatic exchange of information on country-by-country reports has a preventive effect, as it dissuades companies to engage in aggressive tax behaviours. The data quality is however still not very good because of a lack

of uniform implementation across jurisdictions. Public country-by-country reporting will not solve problems. Rather, it creates new problems if data is interpreted in a wrong way or is not comparable with data from other countries. An example is the treatment of dividend payments: should they be included in profits or not? This might have a huge impact on the interpretation of profits since they are often exempt from taxation when distributed between associated companies.

The State Secretary continues pushing for stronger regulations of tax advisers, but this is a political process that is still ongoing. The Swiss government does not envisage rules on shell companies, such as those proposed by the European Commission's proposal for an Unshell Directive. Specific rules are difficult, because it is impossible to find a precise definition of shell companies. More general instruments, such as the exchange of information on request, can enhance transparency and have a dissuasive effect.

The Swiss government follows the technical work at OECD level on a Crypto-Assets Reporting Framework and the developments at EU level, where a respective revision of the Directive on Administrative Cooperation in the area of taxation (DAC8) is due to be proposed soon. There are concerns that DAC8 will not follow the same standard as the OECD. The previous revision of DAC (DAC7) was found to be deviant from the OECD standard, raising concerns about the equivalence process.