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A l'attention de M. Pierre-Antoine Hildbrand

February 19th , 2013 [Appendix 0 amended as per 05.03.2013]

Inventory of EU tax regimes

Dear Mr. Hildbrand

We refer to our engagement letter dated December 5th 2012 and are pleased to provide you with our attached deliverables.

1. Scope of work

You have requested that we prepare a summary table inventorying tax rates, regimes, practices or others tax related investment aids in countries of the European Union (EU) and potential future adherents. The review is based on the background that Switzerland is currently discussing with the EU the re-design of certain aspects of its corporate income tax system and you would like to get an overview of EU tax practices.

Please note that direct subsidies and cash aids (not linked to tax laws) are not part of our review. For an example of the intensity of such grants we refer to a recent article published in "Die Welt" (Appendix N° 1). Also, we have not made a comparison of "loss carry forward" and "thin capitalisation" provisions.

Also note that in many cases tax rates, different from the statutory country rate, may be achieved through administrative practice (rulings, case law, etc...) or the exploitation of cross-border situations and legislation. In the frame of this work we have not systematically inventoried these cases.

For technical abbreviations, please refer to page 1 of Appendix N° 4.

2. Swiss / EU tax dispute

The details of the dispute are well known and we do not comment further on these aspects. For a summary please refer to the Appendixes N° 2a and b.

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3. State aid modernisation

Currently, the EU is undergoing a modernisation of the State Aid regulations[1]. We have not assessed whether or not these changes may have an impact on the qualification of harmful state aid within the Swiss / EU context.

Note that within the EU, tax measures need also to comply with the Fundamental Freedoms and the Code of Conduct.

4. EU / OECD activities against aggressive tax planning

The year 2012/2013 was marked by several contributions in view of the fight against tax fraud and evasion. The following papers have, in particular, been issued:

- 06.12.2012: EC "An Action Plan to strengthen the fight against tax fraud and tax evasion" (Appendix N° 3a),

- 2013: OECD "Addressing Base Erosion and Profit Shifting" (Appendix N° 3b),

- March 2012: OECD "Hybrid Mismatch Arrangements" (Appendix 3c),

- 29.02.2012: EC "Factual examples of double non-taxation cases" (Appendix 3d).

The European Commission is considering a revision of the Guidelines on Maritime Transport which could potentially include an update on the tonnage tax rules. The EU is also working on the CCCTB project (Common Consolidated Corporate Tax Basis).

5. Highlights from our table

Competitive statutory corporate income tax rate

Countries/regions as Bulgaria, Cyprus, Gibraltar, Ireland (trading income), Latvia, Liechtenstein, Lithuania, Madeira (IBC), Malta (credit system) have comparatively low corporate income tax rates. Portugal is currently discussing a 10% rate with the EU. Zero rates exist in the Channel Islands and the Isle of Man.

Exceptions / variations to the statutory corporate income tax rate

The following countries have differentiated tax rates based on the regions, legal entity type/specificities (SPVs), industry/activity, type of income, size of the enterprise or importance of the profit: Belgium (profit level threshold), Bulgaria (shipping industry) Channel Islands (financial services, banking, insurance and domestic utility companies; domestic rental income), Croatia (free zones until EU accession), Denmark (shipping, oil and gas industry), Finland (shipping industry), France (high-tech start-up, specific zones), Germany (regional trade tax), Greece (shipping industry), Hungary (profit level threshold, utility and energy), Iceland (legal entity type dependant), Ireland (passive income / capital gains, SPV), Isle of Man (banking industry, domestic rental income), Italy (energy industry, shipping industry, regional tax), Latvia (micro companies, free zones), Liechtenstein

[1] http://ec.europa.eu/competition/state_aid/modernisation/index_en.html

(SPV), Lithuania (small companies, free zones), Luxembourg (local tax, minimum tax, SPVs, shipping industry), Malta (shipping industry), The Netherlands (profit level threshold, shipping industry), Norway (shipping industry, oil industry), Portugal (local tax, passive income, holding regime, Azores, Madeira - IBC), Romania (micro companies), Slovenia (shipping industry), Spain (regional business tax, small companies, legal entity type dependant, Canary Islands, Basque Country), Turkey (services rendered to parties located abroad), UK (small companies, oil and gas industry), Gibraltar (domestic utility and energy).

Low dividend withholding tax rate

The following countries do not collect a withholding tax on dividend payments (Channel Islands, Cyprus, Estonia, Gibraltar, Hungary, Isle of Man, Latvia, Liechtenstein, Malta, Slovakia and the UK) whereas for Luxembourg, Ireland, The Netherlands, and Spain either the legal entity form or another rule allows a tax free dividend payment.

Dividend and interest income taxation privilege

All countries practice the participation exemption. Significant differences exist in terms of the conditions for benefiting from the privilege for dividends or capital gains and the intensity of the exemption.

Interest income or certain type of interest is taxed unlike the statutory rate in: Germany, Greece, Luxembourg, Ireland, the Netherlands, Isle of Man, Poland and Gibraltar.

R&D input incentives

Promoting R&D activities is very popular in the EU and a large majority of countries provide incentives that can take the following forms: tax credit, special deduction, super deduction, cash grant, and accelerated depreciation.

R&D output incentives

Licence income (royalties) is often taxed with an 80% privilege. The following countries provide for a "box" or similar system: Belgium, Cyprus, France, Hungary, Ireland, Liechtenstein, Luxembourg, Malta, The Netherlands, Spain, the UK and Gibraltar. The differentiation between the countries' systems is based on the type of intellectual property that is eligible for the privilege.

Some systems allow the re-qualification of trading profit into privileged royalty income: Belgium, France, Ireland, Liechtenstein, The Netherlands and the UK.

Notional interest deduction

The following countries allow an interest deduction on the company's equity: Belgium, Italy, Latvia and Liechtenstein.

Transfer pricing rules

Also a majority of countries apply OECD transfer pricing regulations, specificities may exist in the following countries (not exhaustive): Cyprus (back-to-back financing), Ireland (TP rules apply only to trading transactions), Luxembourg, The Netherlands (interest and royalty conduits), Gibraltar.

Unilateral APA's (advance pricing agreements) are well known in a certain number of countries (Austria, Czech Republic, Lithuania, Luxembourg, France, The Netherlands, Poland, Portugal, Romania, UK, and Greece).

Worldwide tax system

Apart from permanent establishment exceptions, only Malta and Gibraltar do not apply a worldwide tax system in certain situations.

Investment incentives

Almost all countries allow for specific investment and employment incentives that may take variable forms. For example:

Incentive description (non exhaustive)	Benefits for R&D and related activities	Investment and / or job creation related tax credit / holiday / Special economic zone	Increased depreciation / deductions	Environmental investment tax credit	Staff education programs	Worker hiring encouragement	Non tax related aids (not systematically inventoried)
Austria	not inventoried here					x	x
Bulgaria		x				x	
Croatia		x			x		
Czech Republic		x			x	x	x
Denmark			x				
France		x				x	x
Finland			x				
Germany							x
Greece		x					
Gibraltar		x	x				
Hungary		x		x			
Ireland		x			x	x	x
Latvia		x	x				
Lithuania			x				
Luxembourg		x	x	x			
Malta		x	x				
The Netherlands			x	x			
Norw ay		x					
Poland		x					
Portugal		x				x	
Romania					x	x	
Slovakia		x					x
Slovenia		x	x		x	x	
Spain		x		x	x	x	
Turkey		x				x	x
UK			x	x			

Principal companies "status"

Principal company concepts are known in, Belgium, Luxembourg, the Netherlands and the UK. The concepts are based on a transfer pricing and/or tax balance sheet model (informal capital contribution / excess profit rulings).

6. Final statement

Due to the increased complexity of the EU State Aid legislation and its case law (see for example Italian cooperative decision – C 78/08) as well as the increased pressure from the EU and the OECD in combating aggressive tax planning, we recommend that your working group performs an additional study. Indeed, we believe that an inventory of approved, unapproved and pending cases in front of the EU, the EU Courts, the OECD and the Code of Conduct group (with the corresponding reasoning) would allow understanding the most recent trends, getting better prepared and anticipating push backs.

Nevertheless, Switzerland shall not restrict itself solely in discussing fully compliant EU models. The applicable legal framework is different and requires therefore adapted solutions. Care should be taken to avoid a too restrictive working frame.

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Claude-Alain Barke Daniel Gremaud

Appendixes:

- 0. Summary table
- 1. Article "Innovativ die Krise meistern", Die Welt, 9.11.2012,
- 2. Swiss / EU tax dispute publications
- 3. EU / OECD communications
- 4. Full table

Appendix 0 – Summary table

Aspect	Country	Country	Country	Country	Country	Country	Country
Competitive statutory CIT rate (= or < 15%)	BG	CY	GI	IE	LV	LI	LT
	Madeira (IBC)	MT	PT (EU discussion)	Channel Islands (zero)	IM (zero)	**CH in certain cantons**	
Exceptions to the statutory CIT rate	Azores	Canary Islands	Basque Country	Madeira (IBC)			
- Regional tax	DE	IT	LU	PT	ES	**CH**	
- Profit level, entity size, start-up, min. tax	BE	FR	HU	LU	LT	NL	RO
	ES	UK	LV	**CH**			
- Free/specific zones	HR	FR	LV	LT	**CH Bonny / NPR**		
- Oil, gaz and utility industry	DK	HU	IT	NO	UK	GI	Channel Islands
- Tonnage tax regime (shipping industry)	DK	FI	GR	IT	LU	MT	NL
	NO	SI	BG				
- Financial services, banking, insurance*	Channel Islands	IM					
- Others	IS legal entity type	ES legal entity type	PT legal entity type	IE SPV	LI SPV	LU SPV	IE passive income
	PT passive income	TR foreign sourced income	**CH 23,3 + 28 harm. law**				
Zero dividend withholding tax	Channel Islands	CY	EE	GI	HU	IM	LV
	LI	MT	SK	UK	LU*	IE*	NL*
	ES*	*in limited situations					
Participation exemption	All countries practice the participation exemption in different intensities for dividends or capital gains, **including CH**						
Interest income taxation privilege	DE	GR	IM	LU	NL	PL	GI

Aspect	**Country**	**Country**	**Country**	**Country**	**Country**	**Country**	**Country**
Interest income taxation privilege (cont.)	IE	**CH**					
R&D input incentives	A large majority of the reviewed countries allow R&D input incentives, **excluding CH**						
R&D output incentives	BE	CY	FR	GI	HU	IE	LI
	LU	MT	NL	ES	UK	**CH** **1 canton**	
- With embedded royalty	BE	IE	LI	NL	UK		
Notional interest deduction	BE	IT	LV	LI			
Unilateral APA's	AT	CZ	LT	LU	FR	NL	PL
	PT	RO	UK	GR	**CH**		
TP safe harbour rules	CY	IE	LU	NL	GI	**CH**	
Investment incentives	Almost all countries allow for specific investment incentives (see separate table), **including CH**						
Principal company status	BE	LU	NL	UK	**CH**		

*Investment fund industry exceptions have not been inventoried