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12th Capital Market Forum Switzerland

Report on the Conference of October 29, 2015

Table of contents

- I. Introduction
- II. National Visions – Switzerland as a Financial and Industrial Hub – How to Manage Challenges and Opportunities?
- III. Key Note & Discussion «Tax» – Consequences of the Numerous Swiss Tax Reforms
 1. Internationally Driven Reforms
 2. National Developments
- IV. Key Note & Panel Discussion «Asset Management»
- V. Megatrend FinTech – Will the Blockchain Technologies Revolutionize the Financial Markets in 10 Years?

I. Introduction

The 12th annual Capital Market Forum Switzerland took place on October 29 at the Hotel Savoy Baur en Ville in Zurich. As in previous years, professionals from the private and public sector presented and exchanged views on recent trends in and around the Swiss financial industry.¹ In line with the current themes, the spotlight of this year's conference was on *Competition and Partnership among Financial Centres*. In the midst of the implementation of several regulatory and tax reforms, the question of how the Swiss financial center will position itself within the global scene is crucial to the development of the industry over the next years. More than ever, global financial players will have to come up with new business ideas and find the right niches and opportunities to be able to maintain profitability and growth. Innovation and the use of new technologies to create more competi-

tive business models on the one hand or to supervise the markets on the other hand were at the core of the conference.

II. National Visions – Switzerland as a Financial and Industrial Hub – How to Manage Challenges and Opportunities?

The session started with a presentation of the political perspectives by Mr. Ruedi Noser, member of the National Council and President of the Parliamentary Commission for Economy and Taxes. In Mr. Noser's opinion, the financial industry should take a long-term view to be successful. He pointed out that other industries, such as the pharmaceutical or food sectors, invest much more in innovation projects. Mr. Noser is supportive of international regulatory frameworks which he expects to have a positive effect on the integration of the markets and the enhancement of competition. However, following Mr. Noser, the legal framework of financial activities in general should be easier to understand for investors and start-up companies should be accorded certain exemptions or other relief to reduce entry barriers to the market. If industry players in the Swiss market manage to break new ground and create investment vehicles to finance new business ideas, also the financial industry would, as a service provider, profit therefrom, said Noser. Last but not least, the future of the financial industry itself will also depend to a great extent on the level of innovation.

III. Key Note & Discussion «Tax» – Consequences of the Numerous Swiss Tax Reforms

Mr. Adrian Hug, Director of the Swiss Federal Tax Administration, presented the current reforms relating to corporate taxation, withholding tax, criminal tax offences and automatic information exchange and presented

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¹ Capital Market Forum Switzerland was founded in 2010 by a nucleus of passionate financial market experts as an independent and charitable dialog platform for Germany, Austria and Switzerland, as the President Dr. Alexander Lindemann explained. Its mission is to bring together all relevant stakeholders and all international friends of the Swiss financial markets in industry, science and politics to discuss emerging trends in the financial centre (see Mission Statement on www.kapitalmarktforum-schweiz.ch). Present on the 12th Capital Market Forum Switzerland were among others Bankers, Insurers, Fund Managers, Family Offices, Regulators, Tax Officers, Government Officials, Professors, professionals from Stock Exchanges, Cantons and the Media. Slightly more than 100 members and guests had come from Zurich, Geneva, Liechtenstein, Luxembourg, Berlin, Hamburg, Malta, Saudia Arabia, Moscow and London.

the views of the Federal Tax Administration on pending initiatives and international trends.

1. Internationally Driven Reforms

Mainly two big reforms are in progress on an international level, both driven by the Organization for Economic Cooperation and Development (OECD). To be mentioned in the first place is the automatic exchange of information (AEOI), which is in the process of being approved by the Swiss Parliament². The AEOI will be implemented on the basis of the Multilateral Competent Authority Agreement³, which itself is based on the OECD Council of Europe Convention on Mutual Administrative Assistance in Tax Matters⁴ (the Tax Administrative Assistance Convention). Under this scheme, the AEOI is only activated by bilateral agreement of any two signatory states. Switzerland and the EU have signed a bilateral agreement on AEOI in May 2015⁵.

One of the most discussed topics in this context was the retroactive effect of the information exchange. Switzerland will collect data from 2017 onwards and start exchanging it from 2018. However, Mr. Hug pointed out that the Tax Administrative Assistance Convention, under which signatories undertake to provide spontaneous exchange of information, establishes retroactivity with regard to the prosecution of willfully committed tax criminal offences.

A further topic of interest for the audience were the prerequisites for a request for information under the Tax Administrative Assistance Convention, in particular for *group requests*. In such cases, tax authorities ask for information on a group of taxpayers without naming each person individually. Group requests are seen more and more often and the audience was interested in understanding the difference to so-called *fishing expeditions*. Group requests are explicitly allowed under the Draft Federal Act on Administrative Assistance in Tax Matters⁶ and have to be answered if the requesting State provides a detailed description of the group and the specific facts and circumstances that have led to the request including why there is a reason to believe that the requested information would assist in determining tax compliance of the group.

The second reform promoted by the OECD/G-20 is the project *Base Erosion and Profit Shifting* (BEPS), which addresses tax avoidance and pursues the aim of taxing corporate profits in those countries where business activities generating such profits are performed and value is created. A number of practices currently used by multinational companies will no longer be admitted under the action plan developed by the OECD in 2013⁷. Actions aimed at combatting such practices include the exchange among member states of tax rulings for preferential regimes such as IP regimes, transfer pricing rules or the avoidance of a favorable tax treatment for hybrid instruments. Currently, the OECD is developing a framework for monitoring and implementing the BEPS project. Although this entails certain complexity, Hug noted that to date the OECD/G-20's agenda to solve this matter has been quite efficient.

2. National Developments

The third series of corporate tax reforms reflects actions in line with the international standards, such as the abolishment of the Cantonal preferential tax status for holdings and management companies and the introduction of a so-called *patent box* granting preferential tax treatment to revenue generated by intellectual property such as patents and rights from research and development activities in Switzerland. Mr. Hug also briefly referred to other measures such as the adjustment of the taxation of dividends, the reduction of capital tax and the increase of tax deductions for research and development. In June 2015, the Federal Council adopted the dispatch (*Botschaft*) of the *Federal Act on Tax-Related Measures to Strengthen the Competitiveness of Switzerland as a Business Location*⁸, which is now ready for parliamentary debate.

In the field of administrative assistance, Switzerland is working on the revision of double taxation agreements and tax information exchange agreements. As mentioned, the implementation of the AEOI is under way. The withholding tax reform initiated by the Federal Council proposes a shift from the rule that withholding tax is levied from the debtor (debtor principle) to a system of collection from the entity making the payment(s) to be taxed (paying agent principle) and certain advantages for the issuance of bail-in-bonds which are, in Hug's view, only suitable for the short term. The reform procedure has been suspended until the pending referendum on banking secrecy (so called *Matter-Initiative* after its initiator) will have been voted on. Mr. Hug referred to certain efficiency gains if the implementation of the paying agent principle could be introduced in parallel to the AEOI

² See Draft of Federal Act on the International Exchange of Information in Tax Matters (AEOI Act), BBl 2015 5565.

³ Dispatch on the Multilateral Competent Authority Agreement on the Automatic Exchange of Information on Financial Accounts and on its Execution, BBl 2015 5437.

⁴ BBl 2015 5645.

⁵ Amending Protocol to the Agreement between the Swiss Confederation and the European Community providing for Measures Equivalent to those laid down in Council Directive 2003/48/EC on Taxation of Savings Income in the Form of Interest Payments, of May 27, 2015.

⁶ See new Art. 3 lit. c of the Draft Federal Act on Tax Administrative Assistance, BBl 2013 8383.

⁷ See BEPS actions under www.oecd.org.

⁸ BBl 2015 5069.

implementation, as this would likely avoid the problem of paying agents being motivated to leave Switzerland.

With regard to the criminal tax reform, Hug explained to the audience the difference between tax fraud (*Steuerbetrug*) and tax evasion (*Steuerhinterziehung*) under the Swiss system. Under the amended Swiss legal provisions to enter into effect on January 1, 2016 tax evasion of CHF 300'000 or more will qualify as a criminal offence which can be regarded as predicate offence to money laundering⁹.

After Mr. Hug's presentation, a panel discussion on the *Impact of the Tax Tsunami* was held, chaired by Dr. Alexander Lindemann, President of Capital Market Forum Switzerland. The panelists Patrick Brunhart, Government of Liechtenstein, Dr. Andreas Risi, UBS Head of Tax Switzerland and EMEA and Charles Hermann, Partner at KPMG, discussed the *pros and cons* of the proposed reforms.

In connection with the criminalization of tax evasion and the implementation of the recommendations of the Financial Action Task Force (FATF)¹⁰, the panelists expressed their concerns about the potentially excessive burden on financial institutions being made responsible for collecting and interpreting information such as whether a customer is tax compliant. Mr. Hermann expressed his view that the rules should have no retroactive effect as this would violate constitutional principles. Dr. Risi suggested rather a reporting system that would provide evidence on tax compliance and thus avoid that banks have to investigate themselves. In his view, citizens may have to choose between higher banking administrative costs or giving up banking secrecy. According to Mr. Brunhart, Liechtenstein is in a different stage of development regarding national reforms, although on an international level the same questions are or have already been discussed.

Dr. Lindemann asked the panelists which countries should, in their views, be partner states of Switzerland regarding the AEOI. While so-called *off-shore* countries are likely to be envisaged in the near future, the panelists shared their concerns about passing information on to countries with insufficient data protection laws or where corruption could lead to the disclosure of personal information.

IV. Key Note & Panel Discussion «Asset Management»

Maximilian Tomei, COO and Head of Sales and Marketing of Galena Asset Management, made it clear to participants – based on the example of the company he represents – that there are still many great success stories in the wealth management industry. Galena Asset Management S.A. is a subsidiary of the Trafigura group and an asset manager of collective investment schemes authorized by FINMA. It trades with commodities and is sought by investors for its secure and profitable business, said Tomei. He explained that Galena's key to success is the ability to take advantage of inefficiencies in the market. As he pointed out Swiss Asset Management can benefit from the country's position as a globally leading center for commodity trading. He also mentioned that his company, having moved from London to Geneva, was a vivid example of actual competition amongst financial centers.

Following the above, Mr. Raoul Würigler, Deputy Secretary General of Association of Foreign Banks in Switzerland moderated a panel discussion with Markus Fuchs, Director of the Swiss Funds and Asset Management Association SFAMA, Prof. Dr. Joe Bannister, Chairman of the Malta Financial Services Authority (MFSA), and Mr. Alfred Brandner, Head Structured Solutions of Falcon Private Bank as participants. All agreed that the current regulatory environment has raised costs for the fund industry which are passed on to the customers. Especially retail customers are charged with the costs of the increasing regulation. In some cases, the sale to retail customers has been stopped. With regard to competition issues amongst financial systems, the panelists shared the view that the regulatory and tax frameworks play an important role for market participants, but that the political and social environment are equally relevant when it comes to deciding where to establish a company in the financial services sector. Switzerland enjoys a clear advantage thanks to the amount of qualified professionals in the financial sector, as well as a social environment that is appealing for companies, employees and managers alike.

V. Megatrend FinTech – Will the Blockchain Technologies Revolutionize the Financial Markets in 10 Years?

These days, the topic FinTech is inevitable at conferences on competition in the financial markets. As the current frenzy on this buzz word of the global press would expect, the audience and the speakers were excited about discussing which technology will succeed and may or may not change the way banking services and capital markets work.

⁹ See Federal Act for Implementing Revised FATF Recommendations of 2012, of December 12, 2014, related to the amendment of Art. 305^{bis} 1 and 1^{bis} of the Swiss Penal Code.

¹⁰ Federal Act for Implementing Revised FATF Recommendations of 2012.

Dr. Paolo Tasca, Co-Funder and CEO Digital Currency Exchange ECUREX as well as Senior Economist at Deutsche Bundesbank was interviewed by Prof. Oliver Klein of Klein & Von Stahl, a law and tax advisory firm, on the use of virtual/digital currencies, in particular the increasingly popular bitcoin. He explained the technical aspects of bitcoin as digital currency with an underlying cryptographic system and the possible advantages against bank transfers with normal currencies. «Theoretically, the transfers of digital currencies can be processed in a similar way as compared to cash», said Dr. Paolo Tasca. Digital currencies help participants to save money by transferring amounts across countries as transfers are free of charge because there is no central party executing such transfers. Every participant in the system is also an administrator and all participants can see all transactions. In particular in less developed countries where bank transfers can be very expensive, digital currencies are popular. Dr. Tasca also mentioned the risks attached to the use of digital currencies, such as price fluctuations with reference to the currency they are attached to or fraud.

Regulation on digital currencies varies from country to country. The Swiss Federal Council published a report on virtual currencies such as bitcoin in 2014 where it refrained from proposing specific regulation at the time because of the marginal economic importance¹¹. FINMA supports an innovating and competitive financial center that does not protect established market players to the detriment of newcomers and takes a neutral position applying the same regulatory principles to established institutes and start-up companies with the same objective of protecting the interests of customers and the proper functioning of the financial markets¹². This essentially means that the existing regulatory framework is relevant to the virtual currencies to the extent applicable. Further, the revised FINMA Anti-Money Laundering Ordinance (AMLO-FINMA) which will enter into force on January 1, 2016 includes virtual currencies in the concept of *money and value transfers*, mainly meaning that financial intermediaries have to identify the recipient of a payment¹³ as well as the beneficial owner of assets to be transferred from Switzerland¹⁴. In this regard, at least the question of who would be the financial intermediary arises if there will be no central administrator but a digital system managed only by participants. Not only from a legal, but also from a macroeconomic and business

perspective, there are still many open questions with regard to virtual currencies and to which extent they may substitute financial transactions with public currencies in the future.

It was discussed that as a potential scenario, the future of money transfers might be a digital system with full transparency and no central counterparties. That may even resolve some tax aspects and, if not abolish, create a new approach to the concept of banking secrecy.

Whatever the developments may be, surely they will give rise to discussions at the next Capital Market Forum 2016.

¹¹ See Federal Council Report on virtual currencies in response to the Schwaab and Weibel postulates, Bern, June 25, 2014 at www.news.admin.ch.

¹² See Mark Branson, FINMA Director, Presentation at Business Club Zurich, Zunfthaus Saffran, September 10, 2015 at www.finma.ch

¹³ See Art. 52 AMLO-FINMA, according to which the recipient must be identified except for transfers from abroad into Switzerland that do not exceed CHF 1'000 and do not appear suspicious in regards to money laundering activities.

¹⁴ Art. 62 AMLO-FINMA.