

Chapter Legal & Tax

The SECA Legal & Chapter, Hannes Glaus, Dieter Wirth and Christian Koller, were again involved in a number of initiatives in the past year, above all the new legislation affecting private equity asset manager, the investment fund cost reporting and the regulatory threshold for smaller private equity managers.

Financial Services Act and the Financial Institutions Act

In June 2014 the Federal Council published two draft bills which will most likely heavily impact the Swiss financial industry: the Financial Services Act and the Financial Institutions Act. SECA participated in the consultation procedure by submitting its comments on the new acts to the Federal Department of Finance. SECA expressed its support for the bills to the extent that they lead to a level playing field among financial service providers, a consolidation and harmonization of the legal framework and an adaptation of Swiss law to foreign principles in order to safeguard Swiss institutions' access to foreign markets. SECA, however, voiced criticism with regards to those proposals going beyond such goals and which are aimed at imposing a redundant bureaucratic burden on the industry and at granting undue procedural benefits to investors not in line with general civil proceedings standards. In addition, SECA made various suggestions for improving the regulatory framework for the Private Equity and Venture Capital industry.

CHF 500 Mio. Threshold

SECA successfully intervened with the Swiss Financial Regulator, FINMA, to establish for the future that the CHF 500 Mio. Threshold according to art. 2 CISA applies to all private equity managers not just to funds of funds managers. In response to our intervention and discussion with FINMA the authority confirmed in the letter of 7 May 2014 to Hannes Glaus and Maurice Pedernana the view of the SECA representatives that the threshold applies also to direct investment funds in spite of the unfortunate wording of art. 2 para. 2 lit. h sect. 2 of the

Swiss Collective Investment Schemes Act ("CISA"; "Kollektivanlagegesetz"). For further reference download our letter to FINMA and the latter's response of 7 May 2014.

TER Negotiations

Last summer a delegation of SECA had developed with the OAK ("Oberaufsichtskommission Berufliche Vorsorge") a plan to replace the NAV by Commitments as a denominator in the SECA TER formula. However, upon consultation with other interested parties from outside the private equity industry the OAK informed us last fall that the idea can unfortunately not be pursued any further. Because of the distortions of the formula in many scenarios, the board of SECA decided in its last meeting of 2014 to abstain from supporting a TER that makes reference to a prevailing NAV for the years 2014 and beyond (i.e. affecting Swiss pensions' 2015 accounts that are audited in 2016). Since an OAK-approved TER is crucial for Swiss pensions in view of their obligation to disclose all costs of asset management, a delegation of SECA has again discussed the matter with OAK. Whilst the formal review of a new proposal is still pending, it is expected that going forward so-called TE (total expenses) as opposed to a ratio will have to be calculated and disclosed to Swiss pensions. The SECA will keep you informed about this matter.

Pressure on the Swiss Tax System

The Swiss Tax System is under pressure from different angles: First, with the FATCA and the Common Reporting Standard (CRS) Switzerland had to react and agree to share information on clients booked in Swiss Banks. Second, the EU sanctioned Switzerland because of the unequal tax treatment of foreign and domestic income in the corporate tax legislation. The 14th of October 2014 Switzerland agreed with the EU that Switzerland is willing to change the areas of concern in the tax legislation and committed to align the Swiss corporate tax regime with the OECD principles, the EU on the other hand agreed to stop the discrimination with the black listing instruments. These steps were major steps towards normalising the Swiss relation-

ship with its most important trading partners. The OECD principles we have agreed to align with are described in the Base Erosion and Profit Shifting (BEPS) Project. BEPS is addressing three major areas of topics (international alignment, substance requirements and transparency). Within these areas there are 15 different action items defined. However, for the Swiss Private Equity industry the substance requirements for intermediary companies, the hybrid instrument definition and interest deduction, the country by country reporting and the definition of the economic substance for IP boxes are of highest importance. Many of these topics are picked up in the Corporate Tax Reform III.

Most of the above topics will keep us busy also this year and we will update as things progress.

For the SECA Legal & Tax Chapter:

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