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PERIODIC LEGAL AND TAX INFORMATION REVIEW

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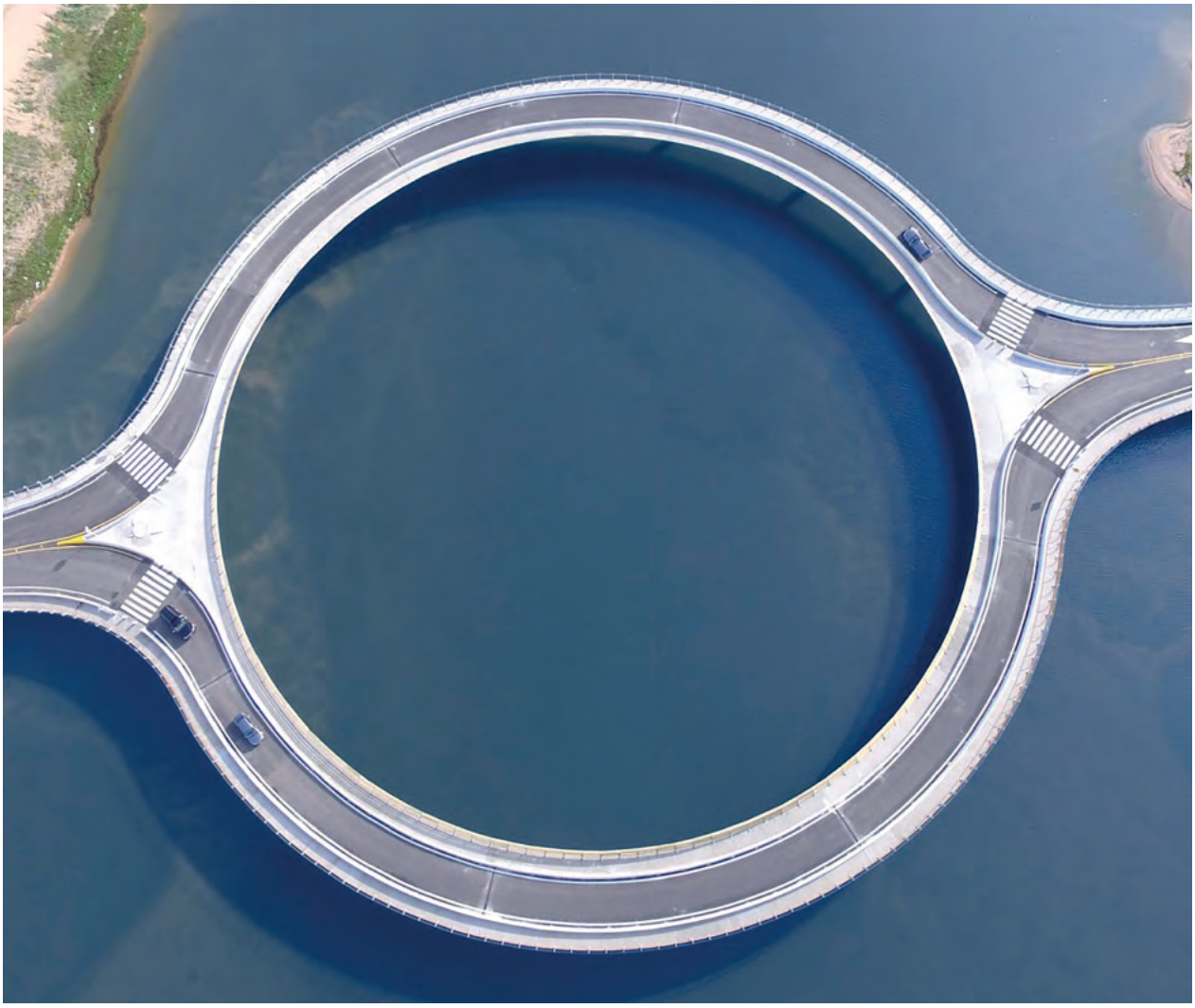
AUTOMATIC EXCHANGE OF INFORMATION: RISKS OF COLLATERAL DAMAGE

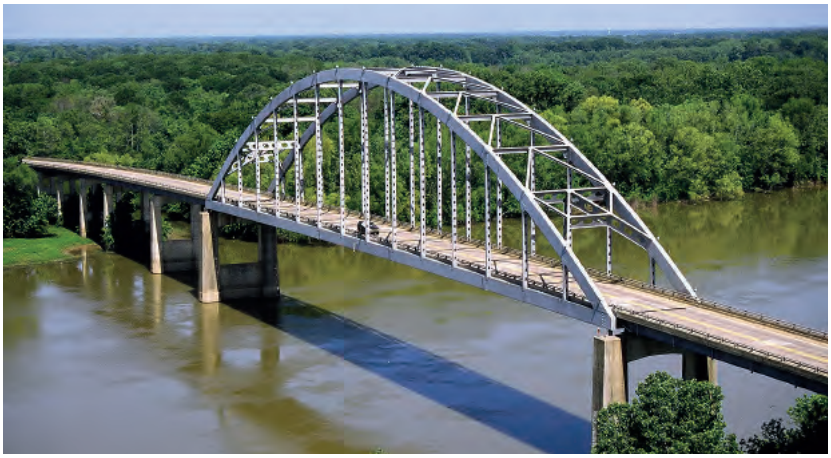
In 2017, the Automatic Exchange of Information (AEOI) will enter its operational phase. Recipient States are already taking the necessary measures in order to treat as effectively as possible the significant amount of information they are to receive. Even if the information communicated concerns disclosed assets, which by definition are already known to the tax administration, the taxpayers concerned by this exchange could nonetheless have to participate in complex and risky discussions/justifications with their respective tax administration.

Information communicated by financial institutions within the framework of the automatic exchange of information mainly concern:

- data related to the taxpayer (name, address, State of residence, tax number, date of birth, etc.);
- data related to accounts that have to be mentioned in the tax return (account number, name and address of the financial institution);
- financial data related to these accounts, i.e.:
  - the overall amount of assets as of 31 December;
  - the overall annual amount of credits having an impact on the accounts (dividends, interests, other income, etc.).

However, the amounts and income to be communicated will not be individualised, and **will not be included in any given category or allocation,** notably in the event of





joint holding of assets. This will be the case either if the assets are held « directly » on a jointly basis or through passive entities (companies, foundations or trusts).

This « globalisation » of the information which will be automatically transmitted is likely to generate more « risky » situations for taxpayers, notably in the following situations :

– holding of « dismembered » financial assets (usufruct / bare ownership) or undivided financial assets ;
– joint holding or co-ownership of financial assets between residents of different countries (couples where husband and wife live in different countries, joint ownership between parents and adult children in different countries, heirs or partners in different countries, or beneficiaries of asset structures, etc.).

The absence of individualisation will require an *a posteriori* justification to be provided to the tax administration of the respective shares of each taxpayer, their origin and the taxation options taken.

Therefore, there are significant risks that a tax administration will challenge the tax allocation and the tax choices made.

Moreover, it cannot be excluded that the information transmitted will lead the tax administration to ask for explanations and clarifications for the purpose of :

– cross-referencing national data related to the financing of the taxpayer's lifestyle ;
– challenging the modalities of taxation chosen. Hence, with regard to the transfer of bonds, the option chose between « capital gain » and « interest » could be the subject of debates fuelled by information received within the framework of the AEOI (where information transmitted as « formatted » in accordance with AEOI may appear contrary to the taxation choices made by the taxpayer) ;
– challenging the deductibility from the French wealth tax of the cash position of foreign companies, on the grounds of the information received within the framework of the AEOI.

PERSPECTIVES

The Automatic Exchange of Information will not be a mere administrative formality of transmission of information ; in our opinion, it will trigger a real tsunami, with regard to the intensity of the flow of information. This significant amount of financial information, often raw, indistinct, even partial, will nonetheless be necessarily used by tax administrations in order to target high potential taxpayers. Besides, the last report of the French Committee on the Fight against Tax Fraud, published on 14 September 2016 clearly shows that « the purpose is to fully exploit data resulting from the automatic exchange of information ». A decree issued on 5 December 2016, completed by a decree issued on 9 December 2016, clarify in detail the rules and procedures France intends to implement within the framework of these exchanges.

In order to avoid « risky » situations, it is highly recommended to perform an asset audit in order to simplify and individualise the structures holding foreign assets.

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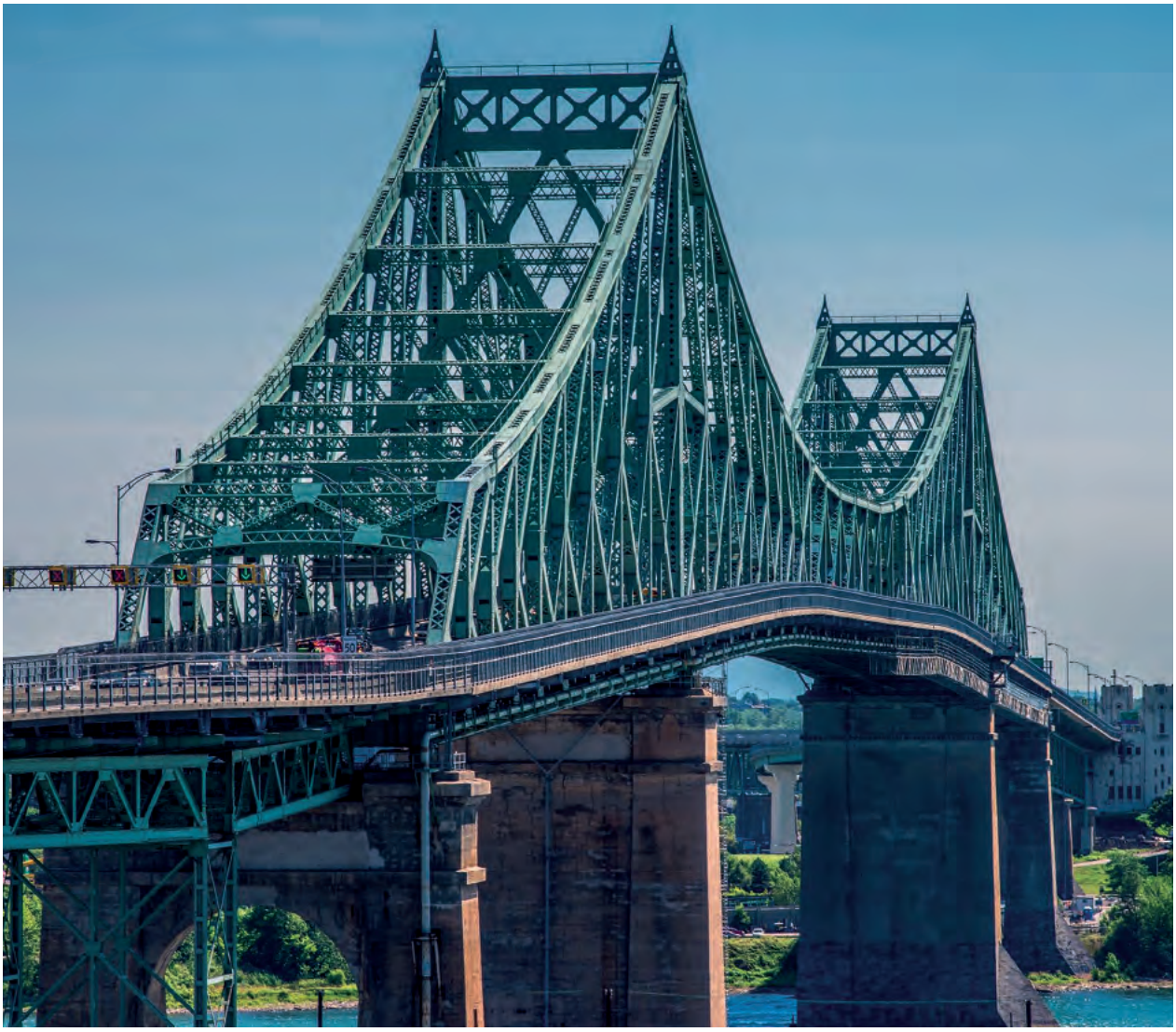
FREEZING A CLIENT'S ASSETS BY BANKS AS SECURITY AGAINST CLAWBACK CLAIMS BROUGHT IN THE UNITED STATES – DEVELOPMENTS IN SWISS CASE LAW

Since the unveiling of Bernard Madoff's fraud in December 2008, the liquidators of Madoff's company (Bernard L. Madoff Investment Securities) and its feeder funds have initiated an extensive recovery campaign through clawback claims under American law. The liquidators challenge the redemptions made by banks on behalf of their clients during the six years prior to these entities' bankruptcy. Several Swiss banks are threatened by these clawback claims in the United States. As security against the amount they could be required to pay, these banks have decided to freeze the assets of clients that benefitted from redemptions during the period at risk.

In a decision rendered 1 April 2016, the Swiss Federal Supreme Court *(Tribunal fédéral – TF)* acknowledged the merits of a bank freezing a client's assets, considering that the bank's claim against the client to be released from the recovery claim filed in New York was sufficiently foreseeable to be covered by the provisions of the pledge agreement (ATF 4A_540/2015 ; see our Newslex of October 2016).

This decision seemed to put an end to a long period of uncertainty in this area. However, against all odds, while examining the same question within the framework of another case, in a decision of 3 October 2016, the TF considered that this bank's clawback claims against its client were not covered



by the pledge agreement since the debtor could not sufficiently foresee them at the time the pledge agreement was entered into (ATF 4A_81/2016).

With no mention of the decision ruled 1 April 2016, in this second decision, the TF appeared to take the opposing position, which involved excluding the pledge due to the unforeseeable nature of the bank's claim to be released from the duties that might be imposed on it because of the clawback claims.

Failing the express annulment of April's case law in the decision rendered in October, we consider that these two decisions may coexist.

The key to their compatibility seems to lie in the way the TF interprets the will of the parties in both cases. It should be noted from the outset that in its decision rendered 1 April 2016 the TF considered that the parties had *«agreed on the fact that the client would entirely bear the benefits and the risks on the investment in the funds»* (ATF 4A_540/2015, recital 3.3.3). This observation is absent from the decision of 3 October 2016.

In both cases, the TF specifically refers to the will of the parties at the time of deciding on the extent of the pledge. In its decision rendered in April, the TF decided that the bank's claim is covered by the pledge after having identified relevant elements allowing establishment of the client's will (resulting notably from the contractual documents sent by the client).

In its decision rendered in October, the TF considered that the bank's claim was not foreseeable at the time the pledge agreement was entered into and that it was not covered by the pledge. It did not, however, exclude that the parties' will could have led to a different result: *«Neither the real and mutual will, nor the objective will, nor the hypothetical will of the parties in this regard may be taken into account to justify the extension of the pledge.»* (ATF 4A_81/2016, recital 2.4.2).

PERSPECTIVES

The main issue seems to be whether or not the parties wanted to extend the bank's pledge to possible future claims resulting from a clawback filed by a third party that was also related to fraud. The contractual documents and other statements of the parties prove crucial in this respect. In the end, the TF needs to confirm it or explain on what grounds its decisions of April and October are compatible; for the legal safety of banks and their clients, we hope that these two decisions indeed are compatible.

Contacts: Serge Fasel and Alexis Dubois-Ferrière

TAXATION OF THE ABANDONMENT OF CLAIM

Pursuant to Article 16 para. 1 of the Federal Act on the Federal Direct Tax (FDTA), the abandonment of a claim by a bank in favour of its private debtor shall be subject to income tax.

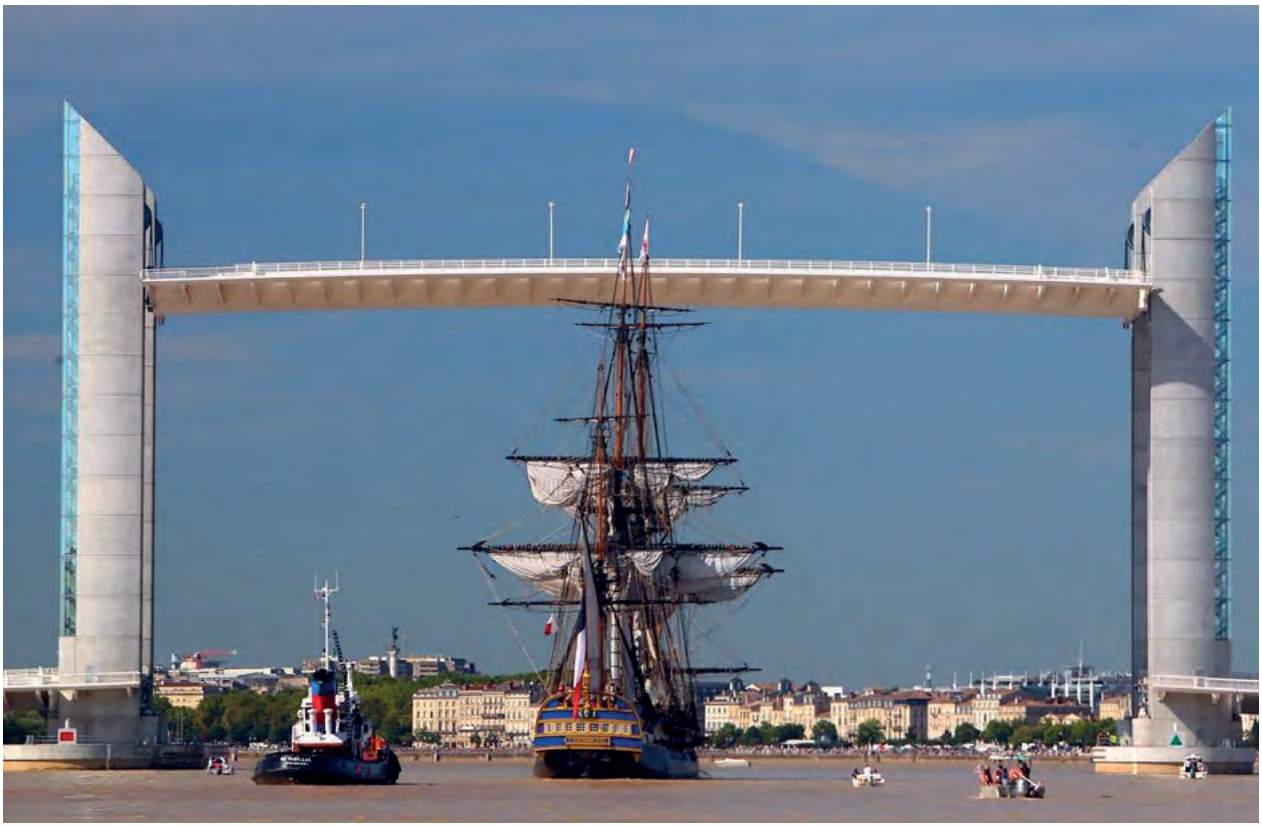
In a decision rendered on 17 march 2016, published in the ATF 142 II 197, the Swiss Federal Supreme Court *(Tribunal fédéral – TF)* has examined the issue of the tax treatment of an abandonment of a claim by a bank in favour of its client.

According to the facts retained by the Federal Judges, the clients (Mr and Mrs X) had bought, in a joint ownership, the share capital of a real estate company in 1986. This company was the owner of a house in which Mr and Mrs X lived with their three children. The house was mainly financed by a mortgage. In 1996, the bank terminated the loan and initiated debt recovery proceedings. Later on, Mr X deceased. Mrs X made an arrangement with her creditors. This agreement provided notably for the abandonment of a claim of CHF 1,000,000 by the bank having granted the mortgage.

The cantonal tax authorities have taxed this amount of CHF 1,000,000 in Mrs X tax return as earned income. Mrs X appealed against this decision up to the TF.

The TF refers first of all to Art. 16 para. 1 FDTA, according to which *« income tax applies to the overall income of the taxpayer, be it single or regular income »*. It further reminds its case law, according to which the abandonment of a claim by a bank in favour of one of its clients is considered, for tax purposes, as income for the client and not as a gift. Therefore, two scenarios are possible : if the debt is of a commercial nature, the write-off is treated as income resulting from an independent gainful activity within the meaning of Art. 18 FDTA ; on the other hand, if the write-off is of a private nature, it is deemed as taxable income pursuant to Art. 16 para. 1 FDTA.

In the case at hand, the Federal Court notes that the abandonment of the claim by the bank triggered a reduction of Mrs X's debt vis-à-vis the bank, without consideration.



Hence, this item of revenue falls within the scope of Art. 16 para. 1 FDTA.

Mrs X challenges this interpretation. In her opinion, account taken of her difficult financial situation, the bank's claim at issue should be considered as having no value and, accordingly, its abandonment may not be deemed as income. Mrs X was making her argument based on a prior decision of the TF rendered in 2010, according to which the write-off of a commercial debt is taxed on its nominal value; accordingly, Mrs X claimed that the write-off of a private debt should be taxed according to *« the residual value of the credit, taking into account the debtor's solvency »*, which is this case would be equal to nil.

This reasoning did not convince the Federal Judges, who still decided that the amount of the abandonment of claim resulted in an equal increase of the appellant's fortune (theory of the net enrichment). They considered that the appellant's interpretation of the above mentioned decision of 2010 is wrong, since it concerned only a situation where the taxpayer had a commercial debt.

In another argumentation, Mrs X prevails herself of another case law of 2008, in which, in her opinion, the TF considered that the abandonment of claim with no value (« non-value ») was not be considered as income for the debtor. In accordance thereof, and pursuant to the principle of taxation according to ability to pay (Art. 127 para. 2 of the Federal Constitution of the Swiss Confederation), the abandonment of a claim should not be taxed.

The TF underlines that, in the 2008 decision, it did not examine the issue of whether the overall nominal value of the abandoned claim should be taxed, without taking into account the debtor's solvability, since in that 2008 case the appellant did not challenge the amount of the income taken into account for taxation purposes.

Even though the TF admits that, in general, the value of a claim is defined from the creditor's point of view and not from the debtor's, it considers however that the issue of whether the abandonment of a claim increases, or not, the economic capacity of the debtor does not depend on the debtor's solvability.

Moreover, the Federal Court also excludes that the abandonment of a claim be deemed as capital gain fiscally exonerated within the meaning of Art. 16 para. 3 FDTA.

Finally, Mrs X's argument that this taxation is in breach of the principle of taxation according to ability to pay (Art. 127 of the Federal Constitution of the Swiss Confederation) is dismissed by the Federal Judges. Admittedly, they acknowledge that even if the abandonment of claim increases the economic capacity of the taxpayer, it does not increase simultaneously the taxpayer's liquidities. However, they specify that, in this case scenario, pursuant to Art. 167 FDTA, the taxpayer may ask for a total or partial write-off of the taxes normally due.

PERSPECTIVES

Even though in fact this decision is nothing but the confirmation of the TF previous case law, it has the merit of responding to some arguments challenging the taxation of the abandonment of claim as income of the debtor. It is however unfortunate that, as a result, this case law may discourage creditors from making use of the abandonment of claim, which is a reorganisation measure in favour of the debtor. Since the abandonment of claim is taxed as income, it is clear that, in practice, the insolvent debtor only changes its creditor. Indeed, once the debtor of the bank, he becomes the debtor of the tax authorities further to the abandonment of claim. Nonetheless, the TF rightly points out that in order to avoid consequences too strict for indigent taxpayers having to face the tax burden of the abandonment of claim, the law provides for the possibility to ask for a tax rebate.

Contacts : Michel Abt and Gilles Dubuis

REVISON OF FINMA CIRCULAR 2011/1 «ACTING AS FINANCIAL INTERMEDIARY UNDER AMLA»

Further to the entry into force, on 1 January 2016, of the new Anti-Money Laundering Ordinance (AMLO) – integrating the Ordinance on the Professional Financial Intermediaries Activity (FIO), which in the meantime has been repealed – the FINMA has revised its Circular 2011/1 on the financial intermediary activity under the Anti-Money Laundering Act (ALMA) (FINMA Circular 2011/1). Although the changes made were mostly drafting changes, the FINMA took advantage of this opportunity to further specify the geographical scope of the Swiss regulation on money laundering with regard to financial intermediaries within the meaning of Art. 2 para. 2 AMLA and to trading activities.

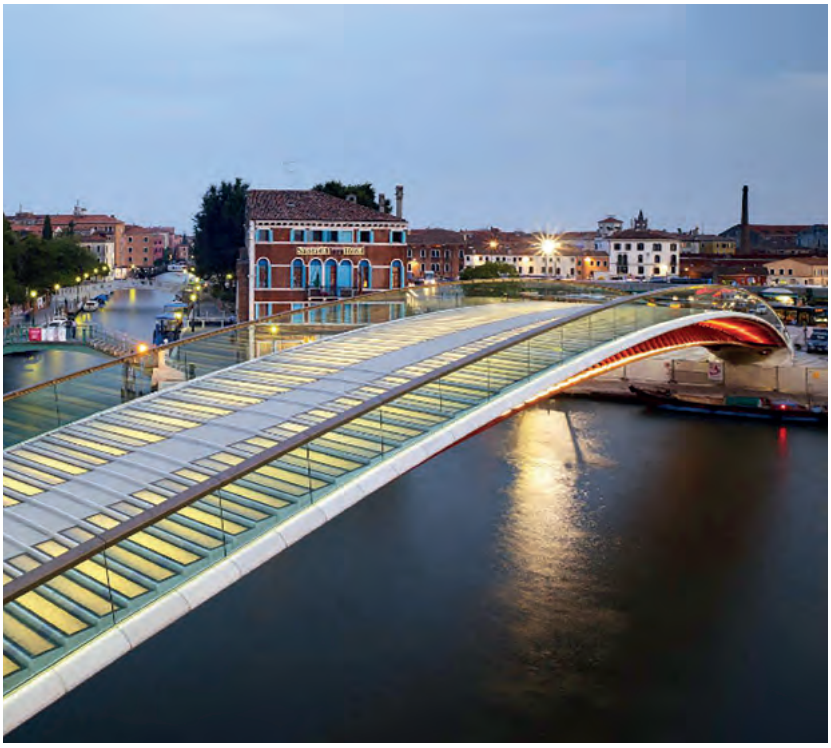
The AMLA sets forth its own scope of application, but there are no provisions on its geographical scope. Nonetheless, it is covered under Art. 2 para. 1 AMLO, which provides that the anti-money laundering regulation applies to financial intermediary activities performed «in or from Switzerland». Those terms are defined in FINMA Circular 2011/1.

In accordance with FINMA Circular 2011/1, financial intermediaries are deemed to operate «in or from Switzerland» if they a) have their seat in Switzerland, b) are registered with the Commercial Register in Switzerland (legal branch) or c) employ persons who permanently assist or perform financial intermediation activities in or from Switzerland (de facto branch). Even if the geographical scope of the AMLA has not changed, FINMA Circular 2011/1 provides a clearer understanding of the terms «in or from Switzerland» by including some examples. Hence, the distribution of foreign prepaid cards via a sales agency in Switzerland, the use of a network of agents in Switzerland for the payment and reception of assets, or the entering into loan agreements in Switzerland for a foreign company are deemed financial intermediation activities subject the AMLA. On the other hand, the asset manager licenced abroad who was entrusted with a proxy on a bank account in Switzerland and makes regular visits to its clients in Switzerland, the banknote trader active and licensed abroad, or the foreign financial intermediary which offers its services exclusively on the internet are not included in the scope of the law.

PERSPECTIVES

The geographical scope of the regulation on the fight against money laundering has always been a delicate issue. The amendments to the Circular 2011/1 improve legal certainty, since the clarifications made as well as the examples provided by the FINMA allow to better determine if an activity is subject to Swiss regulations.

Contacts: Frédérique Bensahel and Véronique Chatelain Gomez



NEW FINMA CIRCULAR 2017/6 «DIRECT TRANSMISSION»

In accordance with Article 42c of the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA), which entered into force on 1 January 2016, institutions supervised by the FINMA can cooperate and send non-public information or information related to non-public transactions performed by clients or supervised entities directly to foreign supervisory authorities entrusted with overseeing their activities or to other foreign bodies. However, depending on the circumstances or the type of information to be sent, the supervised entity must notify the FINMA beforehand, as the latter may restrict its cooperation to administrative assistance channels.

In order to ensure uniform implementation of this regulation and minimise as far as possible the risks associated thereto, notably the risks related to the type of information authorised for transmission abroad, the FINMA has embodied the conditions governing this cross-border communication in its new Circular 2017/6 «Direct Transmission», offering interpretation guidelines. The FINMA develops the four contemplated communication patterns, and explains each item.

Circular 2017/6 specifies that Article 42c FINMASA only applies to cross-border direct transmissions of information by entities supervised by the FINMA. Transmissions may occur on the supervised entities initiative or upon request from the foreign supervisory authorities. Information may be communicated in paper, electronic, oral or telephone format to the foreign supervisory authorities, and the supervised entity must ensure that they comply with the principles of confidentiality or specialty (notably by consulting a list published by the FINMA in this respect).

In no circumstances can the information be transmitted to authorities in charge exclusively of criminal or tax matters.

One of the important risks related to this regulation is the type of information that the supervised entity may directly transmit abroad. Indeed, a non-authorised transmission of information resulting from a too large interpretation of Article 42c FINMASA could be deemed a breach of article 271 of the Swiss Criminal Code. The supervisory authority does not provide for a definition of non-public information. Save as regards information related to a financial transaction, the supervised entity must first ensure that the information requested or the transmission of this information is not deemed an «incident that is of substantial importance» within the meaning of Article 29 para. 2 FINMASA. Should this be the case, the information shall be first notified to the FINMA, which shall in principle respond within five days whether it intends to reserve administrative assistance channels. The FINMA has provided a list of examples and counter-examples in order to illustrate the cases where the transmission of information must be reported beforehand.

PERSPECTIVES

The publishing of Circular 2017/6 should minimise the risks of a too large interpretation of the conditions governing the direct transmission of information, notably criminal risks. From now on, supervised entities must issue internal directives governing the processes required for the direct transmission of information, pursuant to marginal note 80 of Circular 2017/6, which was included after the consultation procedure. In particular, they must mention the type of information to be transmitted, after or without a prior notification to the FINMA, as well as the foreign authorities to which the information may be transmitted. These guidelines are to be implemented by 30 June 2017 at the latest. The FINMA has already mentioned that, within two years as of the entry into force of the Circular, it would examine the issue of whether it will be revised in order to take its practice into account.

Contacts: Frédérique Bensahel and Véronique Chatelain Gomez

PARTIAL REVISION OF THE FINMA BANKING INSOLVENCY ORDINANCE

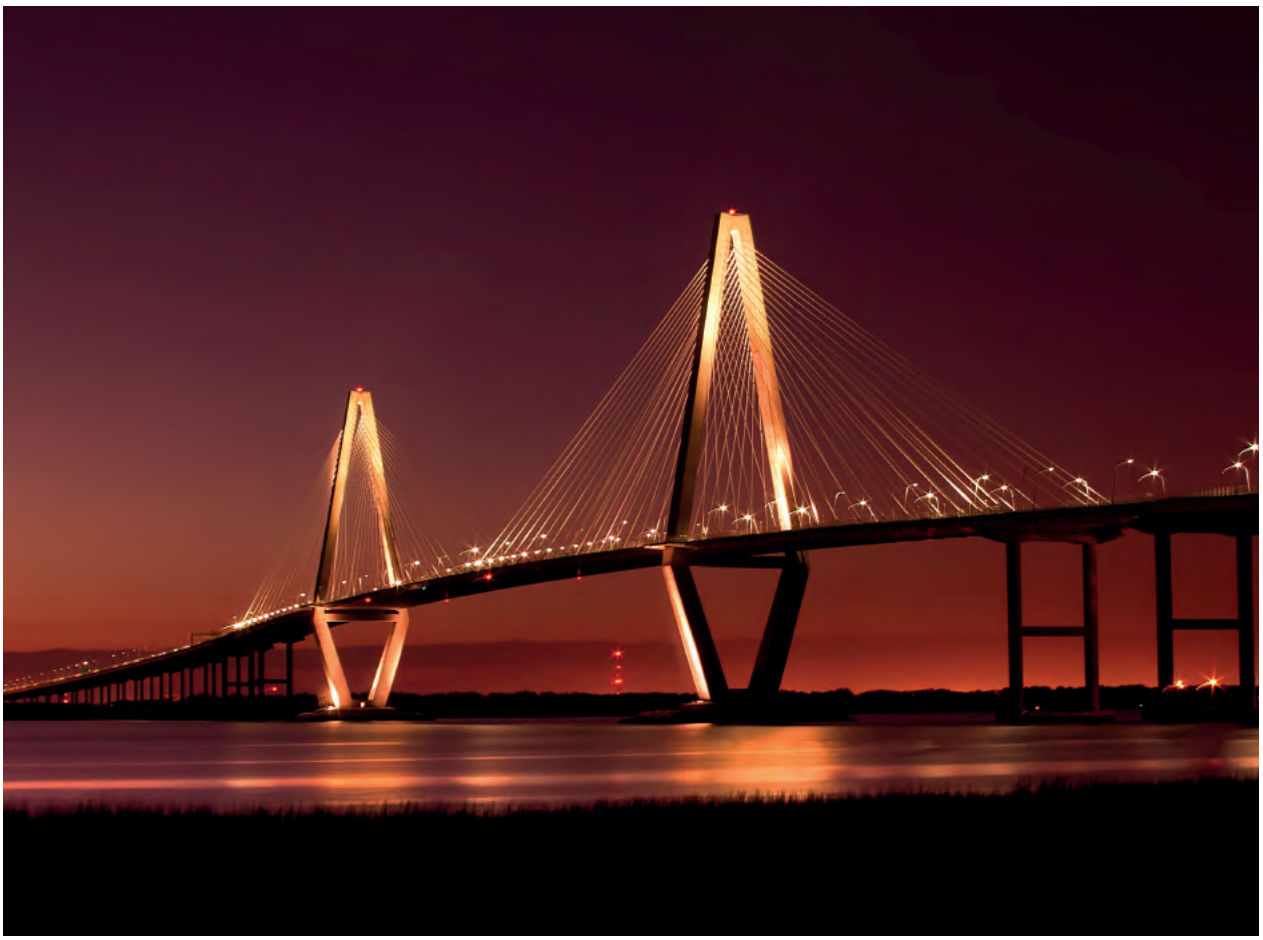
On 8 November 2016, the FINMA has closed the period of consultation on the partial revision of its Banking Insolvency Ordinance («BIO-FINMA»). The revised provisions are scheduled to enter into force on 1 March 2017 (Art. 56 and 61a BIO-FINMA). They specify which contracts shall include a clause on the recognition of a temporary stay of their termination ordered by the FINMA.

A temporary stay aims at allowing the FINMA to impose measures on institutions subject to a risk of insolvency without creating a right of termination of the existing contracts for their counterparties.

This instrument was first introduced in the BIO-FINMA in 2012 exclusively for financial contracts; since 1 January 2016, it is also mentioned in Article 30a of the Banking Act (BA) and now extends to all kinds of contracts, as well as to the exercise of certain rights (set-off , realisation of collaterals and transfer of claims, undertakings and guarantees).

In order to ensure compliance therewith, Article 12 para. 2bis of the Banking Ordinance (BO) imposes on Swiss institutions, including entities being part of the same group, the duty to include a clause of recognition of any temporary stay ordered by the FINMA when signing new agreements or amendments to existing agreements subject to a foreign law and/or a foreign place of jurisdiction.

Inspired by foreign jurisdictions, the proposed revision of the BIO-FINMA limits the application of this article to contracts under foreign law whose non-termination is crucial to the bank in financial troubles, i.e. customary contracts in the financial market, pertaining



to the purchase and the sale of certain underlying assets.

Moreover, Article 56 para. 2 BIO-FINMA provides for exceptions to the duty set forth in Article 12 para. 2bis BO : they aim notably at contracts concluded with entities of the group that are not active in the financial area, those that do not link the termination to the imposition of a measure by the FINMA or those that are not cleared through a trading facility..

The draft provides for a transitional period of three months as from the entry into force of the revised BIO-FINMA for contracts concluded with banks and securities dealers, and of six months for other contracts.

In order to facilitate the adaptation of their contracts, counterparties subject to the « Resolution Stay Protocol » of the ISDA will be able to adhere to a « Swiss Module » to be created by the ISDA based on the new provisions of the BIO-FINMA.

PERSPECTIVES

The results of the consultation procedure of the BIO-FINMA have highlighted the wish of the concerned parties to reduce the list of contracts to be adapted, excluding for instance those that do not represent a material risk for the institution. As for the transitional periods, they could be extended, notably in view of the creation of the « Swiss Module ». However, the FINMA has not yet specified how foreign law contracts that the BIO-FINMA intends to exempt from the duty set forth in Article 12 para. 2bis BO, applicable as from 1 January 2016, should be treated until the entry into force of this Ordinance, scheduled for 1 March 2017. As a precaution, it would be advisable that banks and securities dealers include a clause of recognition in contracts that they may conclude or amend before 1 March 2017.

Contacts : Pierre-Olivier Etique and Jean-Marie Kiener

NEW CRIMINAL PROVISIONS THAT CRIMINALISE CORRUPTION IN THE PRIVATE SECTOR

An amendment to the Swiss Criminal Code (CP), effective as of 01.07.2016, extends the fight against corruption to the private sector (Article 322octies and 322novies CP). This offence is prosecuted ex officio (except in minor cases) and shall be punishable by a custodial sentence not exceeding three years or by a monetary penalty.

Private corruption was previously covered under the Unfair Competition Act (UCA). Prosecution depended on the link between corruption and unfair competition and was only initiated on complaint, but these provisions did not prove very efficient and were almost never applied.

This offence is now set forth in Articles 322octies and 322novies CP. A criminal offence mentioned in the CP has more of a symbolic value. Moreover, the link with economic competition is no longer necessary. Private corruption, as set forth in Articles 322octies and 322novies CP, is now prosecuted ex officio except in minor cases. Two behaviours are covered:

ARTICLE 322OCTIES CP, ACTIVE CORRUPTION

Offering, promising, or granting an undue advantage to induce an employee, partner, agent, or any other auxiliary of a third party to carry out or fail to carry out an act in connection with his/her

professional or commercial activities that is contrary to his/her duties or dependent on his/her discretion.

ARTICLE 322NOVIES CP, PASSIVE CORRUPTION

When an employee, partner, agent, or any other auxiliary of a third party secures the promise of or accepts an undue advantage for himself/herself or for a third party so that the person carries out or fails to carry out an act in connection with his/her professional or commercial activities that is contrary to his/her duties or dependent on his/her discretion.

Advantages permitted under public employment law or contractually approved by a third party are excluded from the scope of these criminal provisions (Article 322decies CP).

This amendment strengthens and facilitates the prosecution of corruption offences. They come in the wake of scandals of corruption, notably sports (the FIFA, for example). The scope of these provisions goes beyond this field and extends to such people as lawyers, asset managers, politicians, etc.

Corporate liability should also be considered. It is indeed provided for in Article 102 para. 2 CP and limited to active corruption, i.e. the case where the person who bribed acted in a company, which will then be held liable for having failed to take all reasonable organisational measures that are required to prevent such an offence. In this event, the company faces a fine of up to five million francs as well as the forfeiture of assets acquired through the commission of an offence (Article 70 CP).

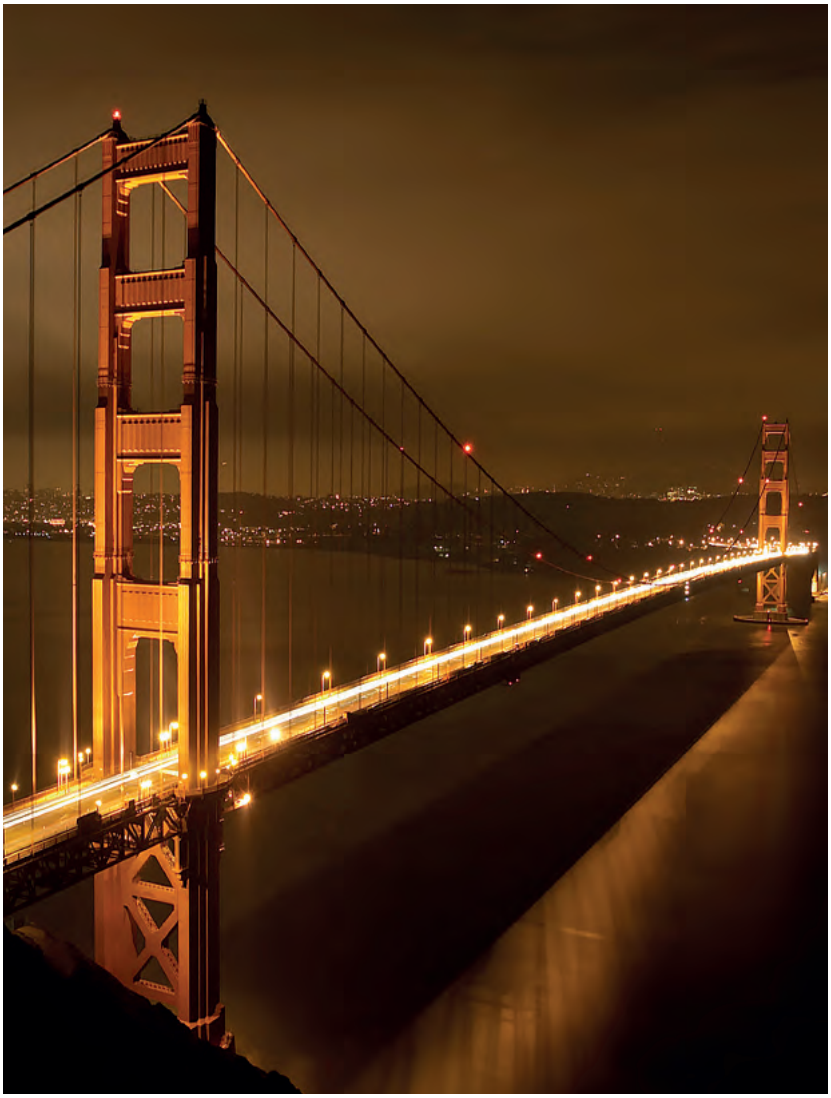
PERSPECTIVES

These provisions strengthen the fight against corruption and should increase the number of proceedings in the future. Private corruption, however, remains an act of unfair competition, triggering civil actions provided for in the UCA. Indeed, Article 4a UCA remains unchanged but has been excluded from the list of offences set forth in Article 23 UCA. A person may face criminal or civil charges, depending on the activity performed. Finally, it is worth mentioning that the requirement of a professional or commercial context excludes private life.

Contacts : Michael Biot and Olivia de Weck

FINANCIAL SERVICES AND FINANCIAL INSTITUTIONS ACTS: THE ELUSIVE ACTS

The Draft Financial Services Act (FinSA) and the Draft Financial Institutions Act (FinIA) submitted by the Federal Council to the Parliament on 4 November 2015 have been thoroughly examined by the Committee for Economic Affairs and Taxes of the Council of States, first Committee to examine the two texts. Each of the two draft acts were examined section by section and significantly modified during the Committee's sessions of 13 October and 3 November 2016. The Council of States adopted the drafts during its session of 14 December 2016. Their content is unknown to date.



The Committee for Economic Affairs and Taxes of the Council of States (hereafter the «Committee») made several fundamental amendments to the Federal Council's draft. It had previously made two decisions of principle: exclude insurers from the scope of the FinSA and speak in favour of the creation of one (or more) supervisory authorities subject to the supervision of the FINMA, which will be entrusted with the supervision of asset managers and trustees.

Moreover, the Committee adopted a proposal aiming at creating a «light» banking licence for FinTech companies in order to facilitate their access to the market.

One of the FinSA's main purposes, i.e. to **facilitate the enforcement of civil law claims brought by clients of financial services providers,** was **deleted** from article 1 para. 2 of the draft. A minority of the members of the Committee wanted nonetheless to include a provision setting forth that the burden of proof of compliance with the duties to inform and explain to the client should lie with the financial services provider, and that, failing compliance with this obligation, the client should be considered as not having entered into any transaction (draft Article 76a FinSA). Challenged by the majority of the members of the Committee, this reverse onus was not retained.

The provision on **retrocessions received by financial services providers** set forth in the FinSA has been enhanced: financial services providers shall not only inform their clients on the type and extent of the retrocessions to be received, but also obtain that their clients expressly waive these retrocessions (Article 28 FinSA). However, such a waiver, which is already provided for in civil law, is

not a real novelty as regards the legal frame of retrocessions.

Finally, the Committee has modified the definitions of «asset manager» and «trustee». From now on, are deemed «asset managers» persons who, on a professional basis, may manage, in the name and on behalf of their clients, the latter's financial assets (which are no longer defined in the FinSA) (Article 16 para. 1 FinIA). Moreover, shall be deemed «trustees» persons who administrate or dispose, on a professional basis, of a separate fund for the benefit of a beneficiary or for a specified purpose, based on the instrument creating a trust within the meaning of the Hague Convention on Trusts; the reference to a «restricted grant given namely in the instrument» has been removed (Article 16 para. 2 FinIA). **New requirements on management, risk management and internal audit, as well as requirements on a minimal capitalization and guarantees,** notably an obligation to dispose of a minimum fully paid up cash capital of CHF 100,000.-, have been added regarding asset managers and trustees (Articles 18a, 18b and 19 FinIA). Moreover, both will need to dispose of adequate equity amounting to a quarter of their fixed expenses (Article 19a FinIA).

PERSPECTIVES

The Council of States has examined the draft laws during its session of 14 December 2016. The amendments made to the drafts submitted by the Committee are not known to date. The drafts will now be examined by the Committee for Economic Affairs and Taxes of the Council of States, before the vote of the lower chamber of Parliament. At this stage of the legislative procedure, amendments can still be made. The general principles of the draft laws, which now seem to have reached a consensus, should not be challenged anymore. Even if the draft laws provide for transitional provisions, particularly useful for entities newly licenced such as asset managers and trustees, all entities concerned by these draft laws should already start thinking about the implementation of the new provisions.

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