

Newsletter No.

226

Swiss Federal Supreme Court Decision Highlights Switzerland's Leading Position as a Global Investment Platform

A recent judgment by the Swiss Federal Supreme Court (2C_58/2025, 22 January 2026) clarifies the relationship between investment treaty arbitration and tax administrative assistance. While confirming that pending investment treaty arbitration does not preclude international tax administrative assistance, this case illustrates Switzerland's unique legal infrastructure, built on a vast network of investment treaties and double tax treaties, and its arbitration-friendly tradition.



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Switzerland as a Global Investment Hub: Investment Protection, Tax Treaties and Arbitration in Focus

Switzerland remains at the forefront of international investment thanks to its extensive double tax treaty network and reliable framework for investor protection. Recent judicial clarifications underscore the interplay between administrative tax exchange of information and investor-state dispute mechanisms.

1. Interplay of Investment Protection and Tax Treaties, Arbitration and Administrative Cooperation

In this landmark matter, the Federal Supreme Court was called upon to rule on complex interactions between international investment protection, tax cooperation, and parallel arbitral and administrative proceedings.

Georgian tax authorities had requested administrative assistance from Switzerland under both the relevant Double Taxation Agreement (DTA) and the Multilateral Convention on Mutual Administrative Assistance (MAC), while the investor had already initiated arbitration proceedings under the Swiss–Georgian Bilateral Investment Treaty (BIT) before the International Centre for Settlement of Investment Disputes (ICSID).

The Court confirmed that these international instruments operate autonomously in their respective domains and that no conflict existed between the BIT, the DTA, and the MAC. In particular, the arbitration procedure under Article 10(2)(a) of the BIT was held to be entirely independent of tax administrative assistance, while Article 22 of the MAC codifies the principle of specialty, ensuring that any information exchanged may be used solely for its intended purpose. The Court rejected claims of any abuse of process arising from parallel proceedings, clarifying that such overlap does not in itself undermine

the system or the legitimate interests of investors. The mere fact that a tax information request closely follows the initiation of arbitration proceedings by an investor against a foreign state does not, by itself, amount to a violation of the good faith principle, absent specific and substantiated evidence.

While finding that Swiss administrative assistance in tax matters may proceed even where an investment arbitration is pending, this ruling reflects Switzerland's attractiveness as a forum for cross-border investment disputes. Even when multiple international agreements and legal processes coincide, Switzerland's approach is pragmatic and deeply respectful of its treaty obligations.

2. The Swiss Investment Treaty Network and Arbitration's Framework

The country boasts more than 110 BITs – the world's third largest network – providing for non-discrimination, protection against unlawful expropriation or unjustified restrictions on capital flows, and fair and equitable treatment to Swiss-based investors in partner countries.

Dispute settlement under Switzerland's BITs allows investors to bring disputes directly to international arbitration, typically choosing between ICSID or ad hoc proceedings (e.g., UNCITRAL). The framework provides binding and internationally enforceable awards that are subject to only very limited review, ensuring a high degree of legal certainty.

Switzerland's status as a global arbitration leader strongly supports enforcement of BITs and reinforces the country's position as a top-tier investment hub. In the field of institutional ar-

bitration, Switzerland continues to feature among the top choices for parties worldwide: in 2024 alone, 81 arbitrations administered by the International Chamber of Commerce were seated in Geneva and Zurich, making Switzerland the third most popular seat globally.

Switzerland's legal framework offers one of the world's leading jurisdictions for the protection of foreign investment. This is underscored by the fact that, despite its size, Switzerland ranks among the top ten home States of claimant investors in investor-State arbitration.

3. The Swiss Double Tax Agreement Network

Another key pillar of Switzerland's standing as a flagship investment platform is its vast network of DTAs, currently numbering more than 100 worldwide. These agreements systematically eliminate or reduce international double taxation on cross-border investments, optimize withholding tax rates for dividends, interest, and royalties, and provide clear dispute resolution mechanisms. Along with the Swiss attractive domestic tax framework, they strongly contribute to the country's appeal as a platform for routing and structuring cross-border investments, offering international investors operating through Switzerland tax efficiency and predictability.

4. Tax-Related Investor-State Arbitration

The judgment also confirms the relevance of tax-related treaty arbitration. It follows from the Swiss Federal Supreme Court's brief description of the ICSID arbitration that the Swiss investor argued that the Georgian tax authorities had imposed unlawful and excessive tax claims amounting to an expropriation in breach of the BIT.

Such disputes are far from unique. Statistics show a steady increase in tax-

related investor-State disputes over the years, including claims amounting to several billion dollars. Some of these arbitrations have resulted in substantial awards in favour of investors.

5. Key Takeaways

The Swiss Federal Supreme Court clarified that the existence of a pending arbitration under a BIT does not curtail administrative assistance in tax matters with a foreign state. BITs, DTAs and MACs serve different purposes, regulate distinct subject matters, and can apply concurrently without one taking precedence over the other.

Switzerland's robust network of investment protection and double tax treaties, respected arbitration framework, neutrality, and commitment to international obligations ensure effective investment protection, favorable tax treatment, and fair dispute resolution. This comprehensive framework strengthens Switzerland's position as a preferred jurisdiction for global investment, cross-border business, and dispute resolution.

Walder Wyss's professionals possess in-depth expertise in both tax law and investor-State arbitration and are ideally positioned to advise and represent clients in such matters.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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