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**Swiss Tonnage Tax** The Swiss Federal Council opened the consultation procedure on the Swiss Federal Law on Tonnage Tax on seagoing vessels on 24 February 2021. Tonnage tax is a globally accepted instrument for promoting international shipping. The introduction of a tonnage tax would ensure Switzerland's competitiveness in this area. Under the tonnage tax regime, the applicable tax rate is based on the freight volume (net tonnage) of a Swiss shipping company's vessel fleet rather than on its operating profits.

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### Switzerland, a maritime nation

In 2019, the Swiss ocean shipping industry ranks 9th globally in tonnage, close behind the UK, and 4th within Europe. Besides the Swiss fleet of seagoing vessels, shipping companies operating internationally are also domiciled in Switzerland. The Industry Head Organisation Swiss Trading and Shipping Association (STSA) numbers slightly over sixty member companies located in twelve cantons, most of them being based in Geneva, Zurich, Basel, Vaud, Ticino and Zug, which hold 900 vessels altogether. Major players in this field domiciled in Switzerland are MSC (Geneva), the second largest container-ship operator in the world, Massoel Shipping (Geneva), ABC Maritime (Nyon), Suisse-Atlantique Société de Navigation Maritime (Renens) and Nova Marine Carriers (Lugano).

### Levelling the playing field

The applicable tax law does not contain any special regulations for maritime shipping. The cantonal tax statutes entered into force on 1 January 2020 along with the Swiss Federal Act on Tax Reform and AHV Financing (TRAF), approved on 28 September 2018. Shipping companies, which had previously enjoyed special cantonal rules, changed to ordinary taxation. Today, over 80 percent of the global fleet (over 98 percent in the European Union) falls under a tonnage tax regime. Tonnage tax is widely accepted across the globe and commonly levied, particularly in the European Union. Among other countries, 21 EU Member States have adopted such a regulation by now. It is thus a key measure to enhance the competitiveness of the Swiss shipping activity.

The introduction of a tonnage tax would level the playing field in the competition to attract highly mobile shipping companies in the segment of freight and passenger transport. The introduction of a tonnage tax is expected to boost Switzerland's attractiveness as an international business hub for maritime activities.

### Guiding principles

The draft bill is closely oriented on the existing rules in the European Union. This applies foremost to the intended purpose of the vessels subject to such a tonnage tax, the minimum quota for flying flags and the determination of the staggered tariffs based on the EU medians for the determination of the assessment base.

Moreover, the Swiss Federal Council believes it is mandatory to link the future Swiss tonnage tax to ecological criteria. Accordingly, the draft bill foresees tax incentives for ocean shipping companies demonstrating ecological awareness.

Tonnage tax is an alternative method of assessing tax on profit, whereby the individual profit is calculated on a flat-rate basis based on the net cubature (freight volume) and the number of operating days. The profit assessed in this way is taxed at the ordinary rate applicable to the relevant tax on profit.

The application of such a tonnage tax is voluntary. This option is available for each seagoing vessel for a period of ten years. If someone wishes to return to the ordinary assessment before the expiration of ten years, they will be able to reapply for said tonnage tax only in the sixth year after opting out. Tax structuring options are thus narrowed down.

Since charging a tonnage tax solely on vessels flying the Swiss flag would not be expedient, the flags of all European Union or EEA Member States must be included as well. In practical terms, this means that a shipping company domiciled in Switzerland will be able to opt for said tonnage tax only if a minimum portion of sixty percent of the tonnage of its vessel fleet travels under the flag of Switzerland or the flags of European Union or EEA Member States. At the same time, this prevents that too large a percentage of the fleet will travel under so-called "offshore" flags subject to lower environmental and social standards. This ensures the compatibility of the future Swiss tonnage tax regime with the requirements applicable in the European Union.

#### Draft bill

The relatively simple law provides for the introduction of a tonnage tax regime that includes the following flat rates per day of operation of a seagoing vessel based on its registered net tonnage (NT):

- per 100 NT up to 1,000 NT - CHF 1.09
- per additional 100 NT up to 10,000 NT - CHF 0.80
- per additional 100 NT up to 25,000 NT - CHF 0.52
- per additional 100 NT above 25,000 NT - CHF 0.26

Where a vessel's propulsion system meets certain ecological requirements, notably low emission requirements, the tax amount may be reduced by up to 20 percent. The requirements and reduction amounts will be set by the Swiss Federal Council.

Maritime vessels (freight and passengers) that would be eligible for such a tonnage tax regime include those engaged in the following operations:

- Goods transport,
- Passenger transport,
- Rescue and assistance operations,
- Laying cables and installing pipes,
- Construction of offshore structures, and
- Oceanographic research.

All profits from the operation of a qualifying vessel would be subject to said tonnage tax. Profits from ancillary activities carried out on qualifying vessels up to a maximum of 50 percent of the profits from the operation of the vessel would also be subject to such a tonnage tax. Other profits, income from trading activities and real estate would not qualify for said tonnage tax.

In order to benefit from such a tonnage tax, at least 60 percent of the fleet (i.e. 60 percent of all ships owned and operated by the enterprise and subject to this tax) should be registered with the Swiss registrar.

#### Conclusion

Though the corresponding legislative draft that has been issued for consultation purposes, Switzerland is clearly taking a big step towards supporting an environmentally-friendly shipping industry with an attractive taxation model boosting Switzerland's attractiveness as an international business hub for maritime activities.

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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