

Stability as a promise: reliance, grandfathering and the rule of law

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The interwar experience taught the canton a lesson that it would apply for the rest of the century: a tax privilege attracts companies only if they can rely on it. The law of 1924 failed in part because its terms were not generous enough and in part because companies had no reason to believe that the canton would maintain even those terms. The law of 1930, confirmed in 1947 and maintained in its essentials until 2019, succeeded in part because the canton showed, decade after decade, that it would not withdraw what it had offered.

Swiss law protects the reliance of taxpayers on the stability of the law only to a limited extent. The principle of good faith, anchored today in Article 9 of the Federal Constitution, protects a taxpayer who has acted on a specific assurance given by the competent authority, such as a tax ruling, provided that the assurance was within the authority's competence, that the taxpayer could not have recognised its incorrectness, that he made dispositions on the basis of it that he cannot reverse without disadvantage, and that the law has not changed in the meantime.¹ The principle does not protect a taxpayer against a change of the law itself. A canton may repeal a privilege with effect for the future, in which case the companies that relied on it have no claim to its continuation.

The stability of Zug's tax regime therefore rested less on legal guarantees than on political practice. The canton maintained its regime because its voters and its political class wished to maintain it, and because they understood that its credibility was part of its value. When the regime finally had to be abolished in 2020, the canton, together with the Confederation, adopted transitional rules that spread the effects of the change over several years and protected the hidden reserves that the companies had built up under the old regime, as Chapter III describes. The transitional rules were

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not legally required. They were an expression of the same concern for reliance that had guided the canton's policy since 1930.

For the practitioner, the lesson is double. The first half is that the tax environment of a canton such as Zug is stable in practice and that its political authorities are attentive to the expectations of the companies that have established themselves there. The second half is that this stability is a political fact, with limited legal protection. A structure that depends on a particular tax treatment should be secured, as far as possible, by a ruling that is reviewed whenever the law changes. The history of the status regimes, which lasted ninety years and then disappeared within five years of the international agreement of 2014, shows that even the most stable regime can end.

1 Notes

1. BGE 131 II 627, E. 6.1 (servat.unibe.ch/dfr): an incorrect decision or information of the authority binds it if the authority acted in a concrete situation towards specific persons, acted or was deemed to act within its competence, the person could not immediately recognise the incorrectness, relied on it in dispositions that cannot be reversed without disadvantage, and the law has not changed since. ↩

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