

The anatomy of the three status companies

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

By the end of the 1950s, the tax regime of Zug distinguished three kinds of companies that enjoyed special treatment, in addition to the ordinary companies that were taxed at the general rates. Their features, as they were later codified in federal law, can be summarised as follows.¹ The holding company was a company whose statutory purpose was the long-term administration of participations, which conducted no business activity in Switzerland, and whose participations or income from participations represented at least two thirds of its total assets or income. It paid no cantonal profit tax, apart from the tax on income from Swiss real estate, and a reduced capital tax.

The domicile company was a company that carried on only administrative activities in Switzerland and no business activity. Its income from participations was exempt, whereas its other income from foreign sources was taxed at a reduced rate that depended on the importance of the administrative activity in Switzerland. Income from Swiss sources bore tax at the ordinary rate. Its capital tax was also reduced.

The mixed company was a company whose business activity was predominantly directed abroad and which carried on only a subordinate business activity in Switzerland. Its income from participations was exempt and its income from foreign sources taxed only in part, according to the extent of its activity in Switzerland, while its income from Swiss sources was taxed at the ordinary rate. In Zug, the practice required that at least 80 per cent of revenue be of foreign origin and taxed a quarter of the foreign-source profit.

All three regimes shared a common feature: they distinguished between income from foreign and from domestic sources and taxed the foreign income more lightly. This distinction, which the international community would later condemn as ring-fencing, was the core of the model. It allowed the canton to offer low taxes to international companies without extending

the same terms to domestic businesses, and therefore without a corresponding loss of revenue from the domestic economy. It also meant that the privileges applied only to the federal part of the tax burden in a limited way: the direct federal tax on profits was levied at the ordinary federal rate on all companies, whatever their cantonal status, with the exception of the relief for participation income that federal law granted to all companies.² The effective rate for a mixed company in Zug was therefore determined largely by the federal tax, which is why the combined rate, although low by international standards, was never zero.

The practical administration of these regimes required a close relationship between the tax administration and the companies and their advisers. The allocation of income between foreign and domestic sources, the assessment of the extent of the activity in Switzerland and the treatment of intra-group transactions could not be determined mechanically. They were settled, in practice, through rulings: agreements between the company and the tax administration, made before the company established itself or before a planned transaction, on how its income would be taxed. The ruling practice gave the companies legal certainty and the administration the ability to adapt the regime to the circumstances of each case. It was also the aspect of the model that attracted the most international criticism, since the rulings were confidential and their terms were known only to the parties.

1 Notes

1. Fedlex, StHG of 14 December 1990, SR 642.14, consolidated version of 1 January 2019, fedlex.admin.ch, Art. 28 para. 2–4: holding companies (statutory purpose mainly the long-term administration of participations, no business activity in Switzerland, participations or income at least two thirds of assets or income, no profit tax apart from income from Swiss real estate); companies with administrative but no business activity in Switzerland (participation income exempt, other Swiss income taxed ordinarily, other foreign income taxed according to the importance of the administrative activity in Switzerland); companies with business activity predominantly directed abroad. The reduced capital tax and the Zug practice figures for mixed companies are not covered by this source. ↩

2. Federal Act on the Direct Federal Tax (DBG), SR 642.11, droit-bilingue.ch: Art. 68 sets a single profit tax rate of 8.5 per cent for all companies limited by shares and cooperatives, with no special regime for holding, domiciliary or mixed companies; Art. 69–70 grant the reduction for participation income (participations of at least 10 per cent or with a market value of at least CHF 1 million). ↩

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