

The federal environment: banking secrecy, withholding tax and company law

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The holding privilege of 1930 did not operate in isolation. Its attraction depended on the federal environment in which it was embedded. Three elements of that environment, all established or consolidated in the interwar and war years, deserve mention.

The first is banking secrecy. The Federal Banking Act of 1934 made the violation of banking secrecy a criminal offence. The duty of discretion that bankers owed their clients, which had existed before as a matter of civil law and professional custom, now received the protection of criminal law.¹ For the owners of international holding structures, the combination of a Swiss holding company with a Swiss bank account offered a level of confidentiality that few other jurisdictions could match. The holding company in Zug and the bank in Zurich were, in many structures, two halves of the same arrangement. The Geneva volume describes the history of banking secrecy and its end for foreign clients in detail. For the history of Zug, the essential point is that the canton's fiscal offer and the federal legal protection of financial confidentiality reinforced each other.

The second is the federal withholding tax. Introduced during the Second World War, the withholding tax is levied at source on dividends paid by Swiss companies and on interest paid by Swiss banks, at a rate that today stands at 35 per cent. Swiss residents who declare the income recover the tax in full, whereas foreign recipients recover it only to the extent provided by a double taxation treaty.² The withholding tax limited the usefulness of a Swiss holding company as a conduit: dividends that the holding company paid to its foreign shareholders bore the tax, which the shareholders could recover only under a treaty. The development of the Swiss treaty network after the war, which gradually reduced the residual withholding tax for treaty residents, was therefore as important for the holding business as the cantonal privileges themselves. The structuring of holding companies in

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Zug has always been, in this sense, a federal and international exercise as much as a cantonal one.

The third is company law. The revision of the Code of Obligations of 18 December 1936 modernised the law of the company limited by shares and introduced the limited liability company into Swiss law.³ The Swiss company limited by shares offered features that international users valued: a relatively small minimum capital, the possibility of bearer shares, which allowed the owners of a company to remain anonymous, and a flexible regime for the board of directors, which could consist of a single member resident in Switzerland. Bearer shares remained available until the reform that abolished them for most companies with effect from 2019, in response to the requirements of the Global Forum on Transparency and Exchange of Information for Tax Purposes.⁴ The single board member of Philipp Brothers AG in 1957, described in Chapter II, is a typical example of the lean governance that Swiss company law permitted.

The holding privilege of Zug was thus one element in a larger Swiss offer, composed of cantonal tax privileges, federal banking secrecy, a manageable withholding tax regime and a flexible company law. The canton could control only the first of these elements. Its success depended on the others, which were decided in Bern, and on the international treaties that the Confederation concluded. This dependence on federal and international frameworks, a constant of the canton's history, explains why the canton's political class has always invested heavily in federal politics.

1 Notes

1. Federal Act on Banks and Savings Banks of 8 November 1934 (BankG), SR 952.0, droit-bilingue.ch: Art. 47 is a criminal provision (custodial sentence or monetary penalty for intentional disclosure of secrets). Wikipedia (German), "Schweizer Bankgeheimnis": the Act came into force on 1 March 1935 and places violations of banking secrecy under Art. 47. ↩
2. ESTV, "Daten aus der Geschichte" (August 2022), estv2.admin.ch: on 1 September 1943 the Federal Council decided to introduce the withholding tax, levied at source and recoverable on proper declaration; the Federal Act on Withholding Tax of 13 October 1965 (SR 642.21) came into force on 1 January 1967. Art. 13 para. 1 let. a VStG, droit-bilingue.ch: 35 per cent on capital income. ↩
3. Fedlex, BBl 1936 III 605, "Bundesgesetz über die Revision der Titel XXIV bis XXXIII des schweizerischen Obligationenrechts" (title as shown in the search index of fedlex.admin.ch); Federal Office of Justice,

"Revision der GmbH", bj.admin.ch: the law of the GmbH had remained unchanged since 1936. ↩

4. Art. 622 para. 1bis OR, swissrights.ch: bearer shares are admissible only if the company has equity securities listed on a stock exchange or if they are structured as intermediated securities; Federal Council, press release "Bundesrat setzt Bundesgesetz zur Umsetzung von Empfehlungen des Global Forum in Kraft", 27 September 2019, admin.ch: entry into force on 1 November 2019; Homburger, "Umsetzung der Empfehlungen des Global Forum", homburger.ch: 18-month transition with automatic conversion of non-compliant bearer shares. Treated in Part C. ↩

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