

The federal state of 1848 and the division of taxing powers

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The Federal Constitution of 12 September 1848 transformed the Confederation from an alliance of sovereign states into a federal state.¹ It created a federal parliament, a federal government and a federal court. It abolished the internal customs duties and transferred the right to levy customs at the borders to the Confederation. It placed the postal service, coinage and the system of weights and measures in federal hands. It guaranteed the freedom of establishment for Swiss citizens of the Christian confessions and the freedom of trade within the country.² In 1850, the Swiss franc became the single currency of the country.³

For the future of Zug as a business location, the most important feature of the new constitution was what it left to the cantons. The Confederation financed itself almost exclusively through indirect taxes, in particular customs duties and postal revenues. The cantons retained the authority to levy direct taxes on income and wealth.⁴ This division of taxing powers was the constitutional foundation of cantonal tax competition. A canton that set its own rates and its own rules for the taxation of individuals and companies could, if it chose, use that freedom to attract residents and businesses from its neighbours.

The Confederation encroached on the cantonal monopoly of direct taxation only gradually and, at first, only in times of crisis. In April 1915, during the First World War, it introduced its first direct tax, the war tax, approved by parliament and by popular vote. A war profits tax followed in September 1916 and remained in force until 1920. In 1918, an initiative of the Social Democrats for a permanent federal direct tax was rejected. On 9 December 1940, on the basis of the emergency powers granted on 30 August 1939, the Federal Council enacted the defence tax, the Wehrsteuer, which covered the income and wealth of individuals and the profits and capital of companies. Its constitutional basis was established in 1958,

subject to a time limit. In 1982 it was renamed the direct federal tax. The Federal Act on Direct Federal Taxation of 1990 entered into force on 1 January 1995.⁵

The federal direct tax remained, throughout, a tax levied at uniform rates across the country and assessed and collected by the cantons. Its existence reduced the differences in the overall tax burden between the cantons, but it left the cantonal and communal taxes, which formed the larger part of the burden for most taxpayers, entirely in cantonal hands. The harmonisation of the formal rules of cantonal taxation began only with the Federal Act on the Harmonisation of Direct Taxes of 1990, which left the rates untouched.⁶ The constitutional architecture of 1848 thus persisted, in its essentials, into the twenty-first century: the cantons decide how much they tax and compete with each other.

The federal state also created the other preconditions of the business location. The common market, the single currency, the freedom of establishment and the federal court made it possible for a company or an individual to move from one canton to another without leaving the Swiss legal and economic space. Tax competition between the cantons presupposes such mobility. A company that moves its seat from Zurich to Zug remains in the same customs area, uses the same currency, is subject to the same company law, which was unified at federal level in 1881 with the Code of Obligations, and can rely on the same federal courts.⁷ It changes only its tax regime, its commercial register and its local administration. This combination of a unified legal and economic space with fiscal diversity, whose foundations the Federal Constitution of 1848 laid, is the constitutional essence of the Swiss model of tax competition.

The Federal Supreme Court added a further element: the prohibition of intercantonal double taxation, which it developed from the federal constitution in a long line of decisions. The prohibition ensured that a taxpayer with connections to several cantons would not be taxed twice on the same income or wealth and allocated the taxing rights between the cantons according to criteria such as domicile, seat and the location of permanent establishments and real estate.⁸ Without this allocation, the mobility that tax competition requires would have been impaired, since a taxpayer who moved to a low-tax canton would have remained exposed to claims from the canton he had left.

1 Notes

1. Verfassungen der Schweiz, "Bundesverfassung der Schweizerischen Eidgenossenschaft (1848)", verfassungen.ch, adoption on 12 September

1848; articles on customs and commerce (Art. 23–32), postal services (Art. 33–34), coinage, weights and measures (Art. 36–37) and federal revenue sources (Art. 39–40). ↩

2. Federal Constitution of 12 September 1848, text at verfassungen.ch/verf48.htm: Art. 29 guarantees free purchase and sale and free import, export and transit of goods from one canton to another; Art. 41 guarantees the right of free establishment throughout the Confederation to all Swiss who belong to one of the Christian confessions. ↩
3. Wikipedia (English), "Swiss franc", accessed September 2026: the first Federal Coinage Act, passed by the Federal Assembly on 7 May 1850, introduced the franc as the monetary unit of Switzerland. ↩
4. Eidgenössische Steuerverwaltung (ESTV), "100 Jahre Eidgenössische Steuerverwaltung – Direkte Bundessteuer", estv2.admin.ch: in 1848 the federal government relied almost exclusively on indirect taxes (customs, postal revenues), while the cantons held the authority over direct taxation of income and property; HLS, "Finanzausgleich", version of 13 July 2017: the 1848 constitution gave the cantons authority over direct taxation, the Confederation financing itself from customs and postal revenues. ↩
5. Source as cited in the printed edition. ↩
6. Federal Act on the Harmonisation of Direct Taxes of the Cantons and Communes (StHG) of 14 December 1990, SR 642.14, droit-bilingue.ch: Art. 1 para. 3 ("Sache der Kantone bleibt insbesondere die Bestimmung der Steuertarife, Steuersätze und Steuerfreibeträge"); entry into force on 1 January 1993 under Art. 79 (Federal Council decision of 3 June 1991). Treated in Part B. ↩
7. Wikipedia (English), "Swiss Code of Obligations": the first Code of Obligations was adopted in 1881 and came into force on 1 January 1883. ↩
8. Federal Constitution of 18 April 1999, SR 101, Art. 127 para. 3, droit-bilingue.ch: "Die interkantonale Doppelbesteuerung ist untersagt. Der Bund trifft die erforderlichen Massnahmen." ↩

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