

Opening Speech for the CAS Tax Compliance Management Program for Financial Institutions

Zug, 27th September 2018
Page 1/5

Ladies and gentlemen,
Dear colleagues and speakers,
Dear participants,
Dear sponsors,

I am very pleased to welcome you all to Zug and to this unique **one-year study program on Tax Compliance Management for Financial Institutions**. Throughout the course of this year, very distinguished colleagues will discuss and analyze current **tax and regulatory issues faced by financial institutions** and share their knowledge with us, both from a practical and academic perspective.

This year's program comprises the latest domestic tax and regulatory developments with particular focus on their impact on the internal compliance system of financial institutions. Furthermore, the course also internalizes various international tax compliance concepts and comparatively analyzes them in relation to the specific characteristics of the Swiss tax and regulatory system.

This year's program will be organized as follows. We will start with an introduction to "*Tax Compliance Management in the context of Enterprise Risk Management*" (**Course 2**). In the following course, we will have a look at "*Direct Tax Compliance*" (**Course 3**). Course 4 will be dedicated to "*Indirect Tax Compliance*" (**Course 4**) while course 5 will cover "*Operational/Transactional Tax Compliance*" (**Course 5**). "*Cross Border Withholding Tax Compliance*" will be the topics of course 6 of the program (**Course 6**). Course 7 will cover "*Client Tax Obligations of Financial Institutions*" (**Course 7**), which will be followed by "*Tax Compliance Aspects of International Tax Transparency Rules (QI, FATCA Model I+II and Common Reporting Standards)*" in course 8 (**Course 8**). At course 9 we will have a look at "*Regulatory Compliance Aspects within Switzerland and in a Cross Border Context*" (**Course 9**). Finally, in our last course, we will have a conclusion "*Evaluation of Tax Compliance Management Frameworks for Banks, Insurance Companies, Family Offices and Asset Managers*" (**Course 10**).

We are lucky and grateful to have a number of talented experts among us, who have agreed to share their knowledge with us today and during the course. I would like to extend special thanks to (*in alphabetical order*):

- **Dr. Stefanie Gey**, Ernst & Young
- **Dr. Marcel Jäggi**, Bank J. Safra Sarasin Ltd.
- **Dr. Monica Mächler**, Member of various board of directors
- **Dr. Andreas Risi**, UBS Group
- **Carl Emanuel Schilling**, Zurich Insurance Group
- **Dr. Gabe Shawn Varges**, HCM Hostettler & Company
- **Prof. Dr. Urs Zulauf**, Expert and Consultant in Financial Markets Regulation, Supervision and Enforcement and Professor at the University of Geneva

I would also like to thank our sponsor:

- **Ernst & Young**

As well as our supporters:

- **STEP**
- **VQF Academy**

In our ever-changing world of tax compliance, the program on Tax Compliance Management for Financial Institutions is designed to prepare participants for this challenge. We expect to give our students all the skills and tax compliance management knowledge they need to efficiently and successfully navigate the current challenges faced by financial institutions.

Before diving into the first day of this year-long journey, I would like to briefly refer to the present tax environment both from a Swiss and international perspective since, to some extent, it determines the action plan for practitioners and academics. As the world moves towards a tax transparent world, regulation designed to achieve this is constantly being improved, amended or replaced; forcing all players to keep up the pace with the latest tax compliance developments. Under the current scenario we, as tax compliance operators, cannot fall behind.

In this context, competition among jurisdictions to, for example, attract foreign investments, is key. Larger nations such as the United States and Germany as well as economic blocks like the EU or the OECD have used their power to consistently implement their demands and claims against smaller financial centers like Switzerland. Nevertheless, the fact that, in the past months, emerging countries -amongst them Argentina and Turkey-, have suffered significant losses in their local currencies due to their political and economic crisis, turned stable countries such as Switzerland into attractive jurisdictions for investment or asset protection purposes. Scenarios such as this one, which generally involve more assets coming into Switzerland, usually triggers an increase in the level of pressure of neighbor countries and financial centers in terms of compliance.

The competition to attract investments is fierce. A major tool used by countries in terms of competition, is the lowering of their effective tax rates. Another powerful mechanism exploited by jurisdictions is their regulation. In fact, while many jurisdictions adapt their legislation to the regulation issued by the OECD (*i.e.*: Model Tax Convention), thus homogenizing the

international tax system; other very strong jurisdictions, such as the US and the UK, issue their own domestic legislation and continue to dance “their own way” in the tax arena. To name a few, clear examples of this behavior are the US Tax Reform, FATCA and UK’s DOTAS program regarding the disclosure of tax avoidance schemes.

The introduction of these local regulations brings some level of uncertainty. For instance, is not always clear for financial institutions which regulation should be applied (*i.e.*: either local or international). Furthermore, both domestic and international legislation impose additional tax compliance obligations on intermediaries such as lawyers, banks, etc. Therefore, even if financial institutions are not always sure which legislation they should apply, what they can be sure of is that their compliance requirements have doubled.

Undoubtedly, the world is rapidly moving and new rules and regulations are being discussed, negotiated and implemented on a daily basis all around the globe. In this context, the implementation of the automatic exchange of information for tax purposes (AEOI) was seen - in principle - as a major milestone in moving away from opaque transactions and structures, as well as to bring some consensus amongst jurisdictions worldwide. However, upon AEOI deployment, many consider that the system has not performed as expected, and raised several issues such as being burdensome for financial institutions, not guaranteeing individual’s rights to secrecy and privacy regarding tax-related information and the fact that the effective collection of taxes did not improve as promised.

Furthermore, the AEOI seems to ignore that investors/wealth owners in certain financial centers, such as Switzerland, have a constitutional right and therefore a reasonable expectation to the protection of sensitive private data by the state entrusted therewith. In this sense, the right to secrecy and privacy for investors/wealth owners holding assets in financial centers has historically played a vital role for these centers, since the protection of secrecy and privacy granted to investors/wealth owners by financial centers has been one of the pillars upon which the centers’ financial system is built. A system like the AEOI overlooks this fundamental right and the corresponding obligations of the states to protect it.

As of today, there are several gaps in the implementation of the AEOI. Consequently, jurisdictions continue to design and implement new reporting requirements, referred in the OECD language as “mandatory disclosure rules” and the like to attempt to fill the gaps that were not foreseen by the AEOI or were out of its scope. At an international level, the main features of a tax transparent world include the implementation of the Common Reporting Standard, the Country by Country Report, the extension of tax liability to tax advisors, amongst others.

I would like to focus for a moment on the mandatory disclosure rules and their impact on financial institutions. In general terms, these rules are contained both in the Action 12 BEPS Final Report and in the Council Directive (EU) 2018/822. It must be noted that, while the EU Directive is directly applicable to financial institutions in Switzerland, provisions included under Action 12 are not considered a minimum standard to be included in each jurisdictions’ legislation, but mere recommendations.

Under the new rules set forth in the Directive, intermediaries such as tax advisors, accountants and lawyers that design, promote or implement tax planning schemes are required to report potentially aggressive tax arrangements to the tax authorities. At a first glance, compliance with this Directive should not impact financial institutions. Still, the Directive defines “**intermediary**” as any person that designs, markets, organizes, makes available for implementation or manages the implementation of a reportable cross-border arrangement. Additionally, **intermediary is also means any person**

that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows, or could be reasonably expected to know, that they have undertaken to provide aid, assistance or advice with respect to a reportable cross-border arrangement. Therefore, in practice, intermediaries include lawyers, accountants, tax and financial advisors, **banks** and consultants. Now more than ever, banks face a new and overwhelming set of rules and regulations with which they need to comply.

Evidence shows that in many cases, taxpayers and intermediaries are effectively complying with mandatory disclosure rules in order to present themselves as fully tax compliant for international tax purposes. Although in most cases disclosures of this kind have to do with the safeguard of the taxpayer's reputation, the truth is that these rules are already being complied with and **financial institutions should be following the same line.**

At this point, I believe we all agree that “**following the same line**” proves to be a greater challenge for financial institutions than for other taxpayers. Why is that? Mainly because financial institutions have to comply with tax transparency standards not only at the level of the financial institution itself, but also at two other levels (client and product) which, altogether, comprise what in the program we have come to know as the “House of Tax Compliance”.

The “House of Tax Compliance” somehow illustrates the complexity that moving into a tax transparent world entails for a financial institution. On the one hand, financial institutions must manage tax compliance at all three levels of the organization: financial institution level, client level and product & services level. On the other hand, changes in tax compliance regulations are happening all the time, turning difficult for financial institutions to keep up with the applicable regulations at all three layers.

For example, at the **first layer** -this is, financial institutions'-related duties- entities are currently implementing the mandatory disclosure rules I mentioned a minute ago. In addition, under the **second layer** -client-related duties-, financial institutions concentrate on compliance in terms of AEOI, fund reporting, Rubik and flat tax agreements, etc. Finally, at the **third layer** -products and services offered by the financial institution-, most entities are currently analyzing products involving digital assets such as cryptocurrency, tokens, etc. This has grown exponentially in Switzerland, which has actually become the world's hub for the launch of Initial Coin Offerings (ICOs) and Token Generating Events (TGEs). In the past few months, this third level has proven to be the most complex one in terms of tax compliance, due to the lack of regulation for tax or reporting purposes both from a domestic and international perspective. This circumstance only brings uncertainties to financial institutions, which, in many cases, cannot from a practical standpoint, properly implement existing regulation to new products such as Bitcoin.

The scenario I have presented to you in the past few minutes, clearly reflects the need for financial institutions to act as chameleons, constantly adapting themselves to new regulations, new reporting requirements, new risk assessments and new product designs to meet clients' demands as well as to comply with local and international regulations.

In addition to these measures at an international level, new taxes are also being introduced or planned by the states at a domestic level, such as the transaction tax on financial services. All these constant developments demand that national and international financial services providers have a solid knowledge thorough understanding of tax compliance management in order to thrive. The "*CAS Tax Compliance Management Program for Financial Institutions*" of the Institute for Financial Services Zug (IFZ) at the Lucerne University of Applied Sciences offers precisely this knowledge as one of the first programs of this kind in the world.

I would now like to welcome our first speaker, who will share her insight on "*Tax Compliance Management in the Context of Regulatory Tax Developments and Risk Management*". Please give a warm welcome to Dr. Monica Mächler.

17. Pfister

Roland A. Pfister