

The business sector's resistance to over-regulation of the Swiss financial centre

With its proposal for the amendment of the Anti-Money Laundering Act (15.048), the Federal Council has attempted for the third time to legislate its clean-money strategy through the back door. In doing so, the Federal Council's achievement is that for the first time in the recent history of the Swiss financial centre, virtually all the important participants have come together to recommend unanimous rejection of these unnecessary Swiss special rules in the "Position Paper of the Business Sector". The message that individual protagonists in the Swiss financial centre have already been proclaiming for years - namely that over-regulation of the Swiss financial centre will be a competitive handicap for it at the international level and that, as a result of the durable weakening of the Swiss financial centre, the Swiss economy would also be seriously affected - has now apparently been heard and understood in broad circles.

Inspired by the EU's 4th Anti-Money Laundering Directive, the Federal Council is determined that financial intermediaries in Switzerland should no longer be able to accept any funds at all that have not clearly been subject to taxation. This approach is unrealistic, because it cannot be implemented by the financial intermediary. On the one hand, he cannot immediately recognize untaxed funds and, on the other, he cannot exactly prove whether they are taxed or untaxed. The financial intermediary would have to have a knowledge of the tax law systems of all countries and in particular have a very precise knowledge of the prerequisites that justify a tax liability, and of the numerous derogations. This is impossible.



Dr. iur. Josef Bollag
Vice president of ARIF

Furthermore, it may be the case that clients are conducting assessment procedures or other negotiations with the tax authorities, or are even concluding tax deals. The financial intermediary would also have to be able to assess and prove all these facts precisely.

The financial intermediary is not an international tax expert, nor is he a henchman of foreign tax authorities, and he cannot perform police functions either. This is not required of financial intermediaries by any democratic country, except Switzerland.

This uncertainty about the situation will in actual fact deny the "majority" of foreign clients access to the Swiss financial market, because in this situation financial intermediaries will reject the client if there is the slightest uncertainty. (cf. for example the Federal Republic of Germany, where already one quarter of the population is not allowed to make financial investments because the financial intermediary is no longer allowed to advise clients who are unversed in finance owing to his duty of due diligence.)

One of the consequences is that the financial markets' clients will therefore evade the regulations by dealing on illegal markets and with organized crime, the first signs of which have already been seen in lending business. In future, increased use will be made of mafia-type offers, very often out of ignorance about who is really behind the loan offer.

So why does the Federal Council have this Swiss "paragon" model for clean money legislation? Is it because it has a guilty conscience about the sins of the past, which are to be purified with excessive regulation? However that may be, the Swiss economy has shown that it will know how to defend itself, both now and in the future. This is sorely needed, because the FATCA regulations, which are one-sided for Switzerland, and their implementation have shown in actual fact that we get nothing in return and do not benefit at all. It must now have become clear to most of the actors in the Swiss economy that we are involved in a war of predatory competition or even economic war, which can also be characterized by the adjective "asymmetric" or even "hybrid". The business sector must therefore develop a strategy to combat this, if the representatives elected by the people do not take up the issue. In any case, a majority of the Committee for Economic Affairs and Taxation of the Swiss Parliament has shown, by recommending that the Federal Council's above-mentioned proposal be rejected, that it has at last recognized the issue as problematic and has acted in good time.

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IMPRESSUM

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Training schedule 2015-2017

2015 - 2016					
E	24 September 2015	C	2 pm - 5 pm	Geneva	«Cross-border : Western Europe (selected countries)»
F	7 octobre 2015	CoD	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
F	5 novembre 2015	C	14h. - 17h. 17h. - 19h.	Genève Genève	«Financement du terrorisme» 17 ^{ème} Assemblée générale ordinaire de l'ARIF
F	1 décembre 2015	B	9h. - 17h.	Genève	Formation de base - LBA
F	20 janvier 2016	C	14h. - 17h.	Lausanne	«Mise en application des modifications LBA»
E	11 February 2016	CoD	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
E	17 March 2016	B	9 am - 5 pm	Geneva	Basic training - MLA
I	13 aprile 2016	C	14 alle 17 ore	Lugano	«Implementazione delle modifiche della LRD»
D	14. April 2016	B	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
D	15. April 2016	C	9 Uhr - 12 Uhr	Zürich	«Umsetzung der GwG-Änderungen»
E	19 May 2016	C	2 pm - 5 pm	Geneva	«Implementation of the MLA amendments»
F	22 juin 2016	C	13h30 - 17h30	Lausanne	«Audits LBA et CoD»

2016 - 2017					
F	21 septembre 2016	B	9h. - 17h.	Lausanne	Formation de base - LBA
F	6 octobre 2016	CoD	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
F	24 novembre 2016	C	18h. - 21h.	Genève	Formation continue LBA ◆
E	7 December 2016	B	9 am - 5 pm	Geneva	Basic training - MLA
F	1 février 2017	C	14h. - 17h.	Lausanne	Formation continue LBA ◆
D	22. März 2017	B	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
E	6 April 2017	CoD	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
E	4 May 2017	C	2 pm - 5 pm	Geneva	MLA continuous training ◆
F	18 mai 2017	B	9h. - 17h.	Genève	Formation de base - LBA
F	14 juin 2017	C	14h. - 17h.	Genève	Formation continue LBA ◆
F	21 juin 2017	C	13h30 - 17h30	Genève	«Audits LBA et CoD»

F in French
D in German
E in English
I in Italian

B MLA basic training
C MLA advanced training
CoD CoD basic training
 ◆ Theme to be defined

November 5, 2015: ARIF will be holding its Ordinary General Meeting (5 pm) following an in-service training session on terrorism financing (2 pm) at the Hotel Warwick. An aperitif with finger food will round off this pleasant day. **We hope many of you will attend!**

Combating terrorist financing

Analysis of the replies to the questionnaire on «Combating terrorist financing»
(Survey of ARIF's members of 30.06.2015)

One of the aims of the AMLA is to combat financing of terrorism and terrorist organizations.

By means of a questionnaire, ARIF conducted a survey of its financial intermediary members to find out about the measures taken in the area, be it amendments to internal directives, lists of suspicions, instructions given to employees, information sources, etc.

1. All or some of our activities, business relationships or our clients involve a degree of potential risk in the area of terrorist financing. Can you explain why?

88% replied "no" or "n/a" mainly on account of clients whom they have known personally for a long time and business relationships not dealing with suspicious countries.

2. Our internal guidelines contain practical measures for detecting and preventing terrorist financing. Can you specify what these measures are?

50% replied "yes" to the existence of internal measures designed to combat terrorism, viz. in order of importance of the replies given:

- a) The principle of increased vigilance
- b) Consultation of the SECO's lists
- c) Use of external information providers
- d) Analysis of the economic background
- e) Hierarchical validation

3. Do you use lists of suspicions, web references or other sources of information designed to combat terrorist financing? Can you tell us which ones?

44% replied "yes" to the use of internal or external information sources designed to combat terrorist financing, viz. in order of importance of the replies given:

- a) External providers (World-Check, CDDS, etc.)
- b) SECO lists and ARIF communications
- c) Internet/web searches
- d) Internal directives
- e) Media

4. Is ARIF's regular information on the subject (mailings, newsletters, web site) useful to you and relevant?

85% replied "yes". It was mentioned that the mailings are very useful and that the information received is read, passed on and archived.

5. Do you systematically check Annex 2 (list of names) of the Ordinance dated 02 October 2000 establishing measures against persons and entities linked to Oussama ben Laden, the "Al Qaida" group or the Taliban?

62% replied "yes" to the existence of a systematic check, according to the following practices (in order of importance of the replies given):

- a) Annual or regular review
- b) Check upon receipt of the ARIF communications
- c) Check at the time the business relationship is opened

6. Do you have an effective IT system for detecting transactions potentially related to terrorist financing?

15% replied "yes" to the existence of an IT detection system.

7. Have you already filed a report to the MROS about suspicions of terrorist financing?

100% replied "no".

8. Have you already attended an ARIF seminar on terrorist financing? Or perhaps with another organization?

50% replied "yes", with ARIF 99%.

9. What, in your opinion, are the suspicions of terrorist financing?

The suspicions of terrorist financing, in order of importance of the replies given, are:

- | | | |
|----|--|-----|
| a) | Country to which the funds are sent | 29% |
| b) | Suspicious economic background or lack of supporting documents | 17% |
| c) | Transactions in cash or gold | 10% |
| | Country of origin of the funds | 10% |
| | Suspicious beneficiaries | 10% |
| d) | Unusual or peculiar transactions | 7% |
| | Large volumes or small amounts | 7% |
| | Frequency of transactions | 7% |
| e) | Charitable donations | 3% |

Prevention, quite simply.

ARIF, as safe as it is simple.

ARIF, recognized by FINMA is:

- > the only multidisciplinary self-regulatory body in Romandie
- > professionals who regulate professionals
- > a Code of deontology for a faultless reputation
- > a high level of expertise
- > about 450 members

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GM notice 2015

The 17th Annual General Meeting of ARIF will be held on Thursday 5th of November 2015, from 5 pm, at the Warwick Hotel Geneva, following the ARIF's advanced training course on terrorism financing.

New approval conditions for auditors

The approval granted to the ARIF auditors is valid until December 31, 2015. They may therefore conduct the MLA audit of the ARIF members for the 2014-2015 financial year.

As from the 2015-2016 financial year, the auditing firms that wish to be approved as auditing firms, as well as the persons wishing to be approved as lead auditors with a view to auditing the ARIF members, must file a new approval application to ARIF by means of the "approval application" form. In order to allow ARIF to guarantee that the approval applications are processed before the end of the financial year with a view to conducting the audit relating to the 2015-2016 financial year, the approval applications must reach us by no later than December 31, 2015.

Risk-oriented supervision

Depending on the specific characteristics of the market sector and the fact that they may be the subject of binding measures on the part of FINMA, and depending on the particular features of its members' activities and the way they operate, ARIF assigns each member a risk degree, based on different criteria, in order to adapt supervision of the members concerned.

The concept of risk-oriented supervision is founded mainly on this risk-based classification, but also on the member's environment and the weaknesses observed, as well as on the resultant need for intervention.

The means at ARIF's disposal to adapt its supervision rely in particular on a cycle of visits made to its members, substitution of the MLA audit with a selected auditor and the imposition of particular conditions or measures, if necessary.

New payment methods

The number of payment applications on mobile devices, the Internet or automatic machines installed in public places is increasing, and cashless payment transactions are undergoing substantial changes. In addition to this, virtual currencies are appearing that are increasingly popular and widely disseminated at the international level, but also in Switzerland.

In order to review the due diligence obligations incumbent upon the new (as well as the old) financial service providers to comply with the existing legal and regulatory framework, ARIF is preparing for its members and for the other actors in the Swiss financial market a half-day symposium of presentations on the topic of new payment methods (NPM), bringing together specialists in the areas concerned to present the relevant ongoing developments and explain how to comply with the due diligence obligations.



Annual report 2014-2015:
Soon available on the
ARIF website
(in French)



Les Rencontres
de l'ARIF

Lunch-debate



“ Qualified tax offences :
Art. 305bis CC revised ”

Guest speaker : Sergio Uldry
Founder and Managing Director of BRP TAX SA
Formerly Head of Tax at Bordier & Cie

Tuesday
6th October 2015
12am - 2pm
Metropole Geneva
Places are limited

Fees VAT incl. :
CHF 54.- (members)
CHF 76.- (non-members)

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ARIF, rapport annuel
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