Moreover, there are certain arguments that only penalties rendered by Swiss authorities should qualify as tax penalties in the sense of the aforementioned law.

Given this background, some Swiss congressmen have requested recently to amend the current tax law in order to explicitly exclude the deduction of fines and penalties paid by banks to foreign authorities. These congressmen argue that the banks should not benefit from tax savings caused by penalties or fines they pay to Swiss or foreign authorities. In addition, such a deduction would allay the deterrent effect of potential fines. We would doubt, however, that any contemplated amendment of the law would be effective on penalties to be paid under the Programme. Any new law would likely come into effect at a later stage only.

Effects of a guilty plea by a Swiss bank

It will be interesting to see how Swiss courts will decide the question of whether penalties paid under the Programme can be deducted for corporate income tax purposes and whether there will be a difference between cases in which a Category 1 bank is pleading guilty, such as Credit Suisse in mid-May, and in cases in which a Category 2 bank signs an NPA.

The tax appeal court of the canton of Zurich has recently decided, however, that an antitrust penalty paid to a foreign authority shall be tax deductible. As of today, this decision is not final. We would expect that sooner or later the disputed questions at hand will be decided ultimately by the Swiss Federal Supreme Court.

Distribution of foreign collective investment schemes to qualified investors in Switzerland: foreign distributors' access to the Swiss market under the revised CISA

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The revised Federal Act on Collective Investment Schemes (CISA), which came into force on 1 March 2013, introduced a new regime of distribution of collective investment schemes to qualified investors. The revised CISA redefines the status of qualified investors, in addition to the private placement regime. Foreign financial intermediaries marketing foreign investment funds to qualified investors in Switzerland and foreign collective investment schemes distributed in Switzerland to qualified investors should meet the new CISA requirements before 1 March 2015.

In this new environment, foreign financial intermediaries, such as fund investment managers, fund investment advisors, fund management companies and global distributors (the 'Foreign Financial Intermediary') face a practical issue regarding the conditions under which they can continue to market foreign funds, such as alternative investment funds or private equity funds, to qualified investors in Switzerland.

Under the revised CISA, solicitation towards supervised financial intermediaries, for example, central banks or Swiss Financial Market Supervisory Authority (FINMA) supervised entities (ie, banks, securities dealers, fund management companies, asset managers of collective investment schemes or insurance companies exclusively) does not qualify as a distribution activity subject to the CISA. Marketing directed towards these 'super qualified investors' is not regulated.

The situation changes in cases of marketing directed towards other qualified investors. This category includes public entities and retirement benefit institutions with professional treasury (pension funds), companies with professional treasury and high net worth individuals who have opted for qualified investor status and who meet the required conditions: proven financial knowledge and experience and assets amounting to at least CHF 500,000 or a minimum of CHF 5m, regardless of the level of financial knowledge and experience. Marketing of collective investment schemes to independent asset managers, or multi-family offices, is considered as distribution towards qualified investors, provided they confirm in writing that the information communicated to them will be used in favour of qualified investors within the meaning of Swiss law only.

Marketing towards qualified investors that are not super qualified investors is deemed a distribution activity regulated by the CISA.

As far as a Foreign Financial Intermediary is concerned, the revised CISA provides for the possibility to market foreign funds from abroad to qualified investors in Switzerland on a cross-border basis. This option is available to a Foreign Financial Intermediary provided it is subject to the appropriate supervision in its country of domicile. This condition is fulfilled if the Foreign Financial Intermediary is authorised to market investment funds in its country of domicile and is supervised for this activity.

However, neither Swiss law nor the FINMA have defined so far the meaning of *appropriateness* of the foreign supervision regime. In particular, the FINMA has not issued any guidelines or published any communication in this respect. No list of jurisdictions offering such a level of supervision is available.

In practice, the supervision regimes established in the European Union and Member States are considered as adequate. The United States should also be deemed to offer an adequate level of supervision for the purpose of the CISA. For other jurisdictions, this issue needs to be examined on a case-by-case basis. However, the Foreign Financial Intermediaries who intend to distribute investment funds from the EU or US to qualified investors in Switzerland still need to establish that they are authorised to sell funds in their country of domicile. Distribution activity is not necessarily subject to specific authorisation: it may be included in a broader supervision regime, as might be the case for US investment advisors. The deciding criterion is that the Foreign Financial Intermediary should be able to contact investors (whose typology would depend on the local applicable law) in view of selling investment funds to them and that this activity be under the (appropriate) supervision of a prudential authority.

Any foreign fund distributed to qualified investors in Switzerland needs to appoint a Swiss representative who will act as a contact point between the foreign fund, FINMA and investors. The foreign fund must also appoint a Swiss paying agent that must be a Swiss bank.

The CISA requires that the Swiss representative of the foreign fund be party to the distribution agreement between the foreign fund and the distributor, even if the distributor is a Foreign Financial Intermediary marketing funds in Switzerland on a cross-border basis. The distribution agreement should be subject to Swiss law.

If the two conditions mentioned above, that is, appropriate supervision and signed distribution contract, are fulfilled, the Foreign Financial Intermediary may distribute investment funds in Switzerland by contacting qualified investors from its country of domicile or by coming to Switzerland to organise road shows or other marketing events or to meet prospective investors personally in Switzerland. However, the Foreign Financial Intermediary's activities should be performed within the framework of cross-border distribution; if it requires a regular presence in Switzerland, then the Foreign Financial Intermediary should consider setting up a distribution entity in Switzerland so as to avoid being deemed to be bypassing Swiss regulatory obligations. Furthermore, the Foreign Financial Intermediary is subject to the rules of conduct provided by the CISA together with their self-regulatory implementing provisions. These provide, among others, a duty of loyalty, a duty of due diligence and a duty to provide information to investors.

Subject to the limitations set out above, a US hedge fund manager may target Swiss qualified investors directly from the US. In particular, it has no notification or registration obligations towards the FINMA. However, the US fund manager will have to enter into a distribution agreement with the investment fund marketed in Switzerland and the Swiss representative of the investment fund must be party to this agreement. The fund itself is required to have appointed a Swiss representative, in addition to a paying agent in Switzerland.

Should the Foreign Financial Intermediary have a permanent presence in Switzerland, or prefer marketing foreign funds from Switzerland, it can either incorporate a Swiss entity in the form of a corporation or partnership, or appoint an existing Swiss distributor or a Swiss representative, specifying that Swiss representatives are authorised to carry out a distribution activity that is authorised by their representative licence. In the case where the Foreign Financial Intermediary decides to set up a Swiss entity to act as a distributor, the entity should obtain a licence from the FINMA and cannot start operating as a distributor until this licence is granted.

It should be noted that Swiss independent asset managers or multi-family offices do not enjoy distributor status unless they have obtained a distributor's licence from the FINMA. Nevertheless, the CISA provides that under some conditions, met by most of them, they can place investment funds or recommend the latter to their clients under investment management agreements, respectively under advisory agreements.

The European legislator has followed a different approach in the framework of the Alternative Investment Fund Managers Directive (AIFMD). Indeed, the US hedge fund manager mentioned above willing to market its fund in a European country under the private placement regime, which should be abolished as from 2018, will still have to register with the local supervisory authority and comply with certain reporting and disclosure obligations provided in the AIFMD, even though it operates from a third party country. In the near future, from 2018 at the latest, the non-European manager shall comply with the whole AIFMD regime if it wishes to benefit from the European passport. Therefore, from this point of view and compared to other European countries, Swiss law maintains a competitive framework for distribution by Foreign Financial Intermediaries.

The revised CISA offers several gateways to Foreign Financial Intermediaries willing to access the Swiss market to sell foreign collective investment schemes to qualified investors. Each option has risks and advantages. The Foreign Financial Intermediary should analyse them carefully before choosing the distribution channel best adapted to its structure and requirements.

The provisions of 'Destinazione Italia'

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The Italian Government introduced new law provisions to attract investment from outside Italy and boost the Italian market.

Law Decree No 145/2013, converted into Law No 9 dated 21 February 2014 (the 'Destinazione Italia Law'), sets out the main provisions aimed at attracting capital, both financial and human, in order to create value, jobs, knowledge and growth. This follows other recent laws with the same goal. In this article we underline some provisions, which in our opinion could be of interest to foreign investors and, in particular, financial investors. The Italian judicial system and Italian taxation are renowned for holding back investment: the Destinazione Italia Law, in addition to other recent laws, deals with the following two issues and simplifies them.

Special jurisdiction for foreign companies

The Destinazione Italia Law introduces a special jurisdiction for foreign companies, even if they have an Italian branch, which can now sue the counterparties or be sued by them in 11 special court sections that specialise in corporate matters. These special courts will be competent for intellectual property, commercial agreements and similar matters, abuse of dominant positions, concentrations, violation of European Union competition law, corporate claims, including claims concerning incorporation and