



Análisis de la distribución de las competencias fiscales entre las distintas colectividades suizas

Analysis of the distribution of fiscal competencies among the various Swiss collectivities

Análise da distribuição de competências fiscais entre as diversas coletividades suíças

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Abstract

This study focuses on analyzing the distribution of fiscal competencies among different Swiss administrative entities. We will explore the fundamental principles underlying this allocation of powers. As a territory expands, its administration becomes more complex, therefore there must be a representation of power closer to the people to optimally execute state activities. Consequently, a nation divides into sub-regions, sometimes responsible for subordinate entities themselves, which enjoy relative independence from the central state.

In Switzerland, we observe a federal state structure, granting substantial autonomy to lower-level entities, even though subject to restrictions embodied in legal, constitutional, and federal texts. We will thus illuminate the functioning of Swiss federalism and the distribution of general competencies between the Confederation and the cantons, before delving into the fiscal and legal implications of such a distribution.

Keywords: swiss fiscal competencies, value added tax, principle of subsidiarity.

Resumen

Este estudio se centra en el análisis de la distribución de competencias fiscales entre diferentes entidades administrativas suizas. Exploraremos los principios fundamentales que subyacen a esta asignación de competencias. A medida que un territorio se expande, su administración se vuelve más compleja, por lo que es necesaria una representación del poder más cercana a la ciudadanía para ejecutar óptimamente las actividades estatales. En consecuencia, una nación se divide en subregiones, a veces responsables de entidades subordinadas que gozan de relativa independencia del Estado central.

En Suiza, observamos una estructura estatal federal que otorga una autonomía sustancial a las entidades de nivel inferior, aunque sujeta a restricciones establecidas en los textos legales, constitucionales y federales. De este modo, analizaremos el funcionamiento del federalismo suizo y la distribución de competencias generales entre la Confederación y los cantones, antes de profundizar en las implicaciones fiscales y jurídicas de dicha distribución.

Palabras clave: competencias fiscales suizas, impuesto sobre el valor añadido, principio de subsidiariedad.

Resumo

Este estudo se concentra na análise da distribuição de competências fiscais entre diferentes entidades administrativas suíças. Exploraremos os princípios fundamentais subjacentes a essa alocação de poderes. À medida que um território se expande, sua administração se torna mais complexa, portanto, deve haver uma representação de poder mais próxima do povo para executar as atividades estatais de forma otimizada. Consequentemente, uma nação se divide em sub-regiões, às vezes responsáveis por entidades subordinadas, que desfrutam de relativa independência do estado central.

Na Suíça, observamos uma estrutura de estado federal, concedendo autonomia substancial a entidades de nível inferior, embora sujeitas a restrições incorporadas em textos legais, constitucionais e federais. Assim, iluminaremos o funcionamento do federalismo suíço e a distribuição de competências gerais entre a Confederação e os cantões, antes de nos aprofundarmos nas implicações fiscais e legais de tal distribuição.

Palavras-chave: Competências fiscais suíças, imposto sobre o valor acrescentado, princípio da subsidiariedade.

I. Swiss federalism

A. Administrative entities, their rights and duties

Switzerland has been a federal state since 1848. This state is characterized not by the unification of independent states creating a whole, but by the division of an independent state into various federated states. This distinction is important because, contrary to what it was previously, Switzerland, although still often called the “Swiss Confederation” and represented by the symbol “CH” (from the Latin *Confœderatio Helvetica*), is today a federal state with a strengthened central power, which can lead to confusion.

Its numerous local entities, 26 in total, called “cantons” (which are similar to states or provinces in other federal systems), are placed under the aegis and dependence of the central state. Article 3 of the Swiss Constitution (Cst.; RS 101) stipulates that cantons are sovereign insofar as their sovereignty is not limited by the federal Constitution and that they exercise all rights that are not vested in the Confederation. Therefore, a canton could not be considered a subject of international law as the competence for international representation falls to the federal state.

In accordance with the federal Constitution, cantons must adhere to certain rules, including but not limited to, the elaboration of a written cantonal constitution with the establishment of direct democratic institutions (Art. 51 Cst.), subdivision into communes (Art. 50 Cst.), and respect for the primacy of federal law (Art. 49 Cst.).

Beyond federal prerogatives, local entities enjoy genuine autonomy, akin to what one might find in a sovereign state. As in the federal state, cantonal activity comprises legislative, governmental, and jurisdictional functions exercised over their territory and population. Each canton is also competent in fiscal matters: it levies taxes, establishes its own fiscal regime, and manages its finances (Vatter, 2018, chapter 2.1).

To counterbalance the power of the Swiss federal state, federated states can act at the federal level, in which they participate with the people in all modifications to the federal Constitution. They can also submit an initiative to the Federal Assembly (Ladner & Desfontaine Mathys, 2019, p.55)—potentially leading to a constitutional revision—or jointly with seven other cantons, request an optional referendum. Furthermore, cantonal representatives form the Council of States (Conseil des États), one of Switzerland’s two parliamentary chambers, representing the cantons in the federal legislative process (Gonin & Moret, 2021, p.389, paras.1047-1050). Finally, cantons are consulted during federal legislative projects.

Between power and duty, what about the distribution of competencies between the federal and federated state?

B. The general distribution of competencies

As we have observed, cantons enjoy considerable autonomy. Consequently, it is crucial to operate a distribution of competencies and tasks between the cantons (the federated states) and the Confederation (the federal state). This distribution allows for a clear determination of responsibilities and modes of action for each entity. To understand the distribution of competencies between the Confederation and the cantons, one must refer to the supreme text of the central state, the Federal Constitution. Only the latter is capable of effecting this division of specific activities for each (Malinverni *et al.*, 2021, p.358, para. 994).

This distribution of competencies is by no means permanent and rigid; it can evolve with social and ideological movements, allowing more or less room for centralized activity (Malinverni *et al.*, 2021, p.358, para.997). Even though constitutional modifications remain accessible in Switzerland, it should be noted that it is a text which, in its formal sense, requires a more demanding approval for any revision. Indeed, the people, as well as the cantons, are called upon to decide on constitutional revisions.

Articles 3 and 42 of the Constitution (hereafter, Cst.) respectively indicate that “The Cantons are sovereign except to the extent that their sovereignty is limited by the Federal Constitution” and “The Confederation shall fulfil the duties that are assigned to it by Federal Constitution.” This provides us with the general key to the distribution of competencies (Gonin & Moret, 2021, p.385, para.1035). The Confederation has enumerated competencies while the cantons have general competencies. Article 43 Cst. specifies in this regard that “The Cantons decide on the duties that they must fulfil within the scope of their powers.” The respective “tasks” between the Confederation and cantons are thus defined constitutionally (Knapp, 2001, pp.458-459).

These articles also contribute to legal certainty in that they allow for a distribution of competencies without legal gaps: either they are enumerated in the Constitution and fall to the Confederation; or they are not, and thus fall to the cantons (Malinverni *et al.*, 2021, pp.380-381, para. 1049). It should be noted that this is a general principle and that the effectiveness of the competence remains subject to legislation by the Confederation (Malinverni *et al.*, 2021, pp.380-381, para. 1049).

Indeed, a federal competence can be exclusive to the Confederation, concurrent, concurrent limited to the principle, or parallel. Depending on their typology, the entities will be more or less competent. In the case of concurrent competence, cantonal competence may or may not persist, thus allowing the canton to legislate on the matter, subject to authorization by the federal legislator. Moreover, there may exist parallel federal competencies, in which case the Confederation and the canton benefit from similar competencies, particularly in the fiscal domain where the Confederation and cantons levy taxes and fees separately (Gonin & Moret, 2021, pp.428-430, paras. 1212-1222).

Analysis of state activity allows us to observe that the Confederation is essentially competent in legislative matters. Articles 54 to 135 Cst. enumerate its specific competencies (Knapp, 2001, p.459, paras. 11-13). These articles are materialized in various federal laws to which the cantons are subject according to the principle described in Article 49 Cst. concerning the primacy of federal law. Regarding governmental and jurisdictional functions, the Confederation is only partially competent. It is primarily the cantons that implement federal law (Art. 46 Cst.) and justice (Diggelmann *et al.*, 2020, pp.700-703, paras. 10-12). The Confederation nevertheless remains competent in matters of taxation on value-added tax (hereafter, VAT) and customs duties. For justice, the Confederation is competent particularly on appeals.

The Constitution also provides for a number of provisions relating to communes. These are notably mentioned in Articles 37, 39, 100, 129 Cst. Also, Article 134 Cst. restricts the fiscal freedoms of communes (Knapp, 2001, p.466, para. 53). Article 50 Cst., for its part, defines the autonomy of communes but imposes in paragraphs 1 and 2 that the Confederation “shall take account in its activities of the possible consequences for the communes” and “shall take account of the special position of the cities and urban areas as well as the mountain regions.” By doing so, the Constitution grants federal recognition to communes as quasi-third level of the federal state. Of course, this is in reality more of a “declaration of intent, without concrete scope” (Knapp, 2001, pp.466-467).

C. Compliance with federal law

We know that cantons in Switzerland enjoy a certain freedom to legislate and take measures within the limits authorized by the Constitution. They thus have significant leeway, but must nevertheless always respect federal law. It is for this reason that a number of monitoring and security mechanisms are in place. Whether it be Parliament, the courts, or the Federal Council, all can, by virtue of their prerogatives, monitor and/or sanction the cantons.

First, Parliament grants federal guarantee to the cantons after examination by the Federal Assembly of all cantonal constitutional revisions. Then, the Federal Court can be seized following an appeal in matters of public law according to abstract or concrete control and thus rule on the conformity with federal law of a cantonal norm. In case of a cantonal rule contrary to federal law, the Federal Court can annul it generally without retroactive effect (*ex tunc*), in which case we would be in the presence of an absolute nullity, rare in practice (Malinverni *et al.*, 2021, pp.419-421).

In Switzerland, there is no judicial control of federal laws. It is Article 190 Cst. that postulates this and specifies that even if a federal law were unconstitutional, the Federal Court cannot in any case annul the latter, thus immunized. Only a “political” sanction, via referendum, could be attempted. Finally, the Federal Council can monitor and inspect the cantons via various regulatory means (Diggelmann *et al.*, 2020, p.707, para.18).

II. Swiss fiscal competencies

A. The Swiss fiscal system

Thus far, we have primarily addressed the various competencies and their distribution between the Confederation and the cantons. It is now pertinent to examine the financial regime, as the distribution of competencies necessarily entails specific funding needs. Every task and competency requires adequate financial resources. It is in this context that funding issues take on their full importance. Articles 126 to 135 of the Federal Constitution specifically deal with the financial regime, establishing the principles and funding mechanisms to ensure the proper functioning of the various entities.

As we have just seen, the Confederation can only be fiscally competent if the Constitution authorizes it (Gonin & Moret, 2021, p.473, para.1411). This distribution of competencies between the Confederation and the cantons is not entirely hermetic. The right to tax can exclusively belong to the Confederation or the cantons, but also to both simultaneously if it is a so-called parallel competence (Malinverni *et al.*, 2021, p.432, paras.1167-1168). However, this distribution must be clear to prevent authorities from hindering each other by creating a system that is too complex for the taxpayer, thus undermining legal certainty (Administration fédérale des contributions [AFC], 2023, p.10). The Confederation levies only what is permitted by the Constitution, with the remainder falling to the cantons, subject to express prohibitions (*cf.* Art. 134 Cst.). For example, direct taxes (on the income of natural persons and on the profits of Swiss legal entities) are not subject to any prohibition; the Confederation and cantons are therefore concurrent in this matter (AFC, 2023, p.10), which is not the case for VAT. Article 134 Cst. allows for the identification, among the enumerated federal competencies, of those that fall exclusively within the purview of the Confederation.

As seen, the Swiss tax system is strongly influenced both by federalism, which implies a distribution of competencies between the Confederation, cantons, and communes, and

by the democracy that characterizes Switzerland. It is this democracy, in its most quintessentially Swiss form, that is at the origin of the numerous revisions and the increasing complexity of the Constitution.

The Constitution of 1874 originally contained only four provisions relating to the central state, which concerned customs duties and various federal revenues. Since then, the world has changed dramatically: from increased expenditures, mainly during wars, to the expansion of federal tasks and competencies, the Confederation had no choice but to regularly create new taxes, legitimized by various provisions scattered throughout the Constitution. It was not until the new Constitution, in force since 1999, that a better-organized text appeared with the introduction of a chapter (Art. 126 to 135 Cst.) dedicated to the Confederation's expenditures and revenues (Malinverni *et al.*, 2021, pp.433-435).

It is also worth noting that this direct democracy shapes the Swiss fiscal landscape in surprising ways. Indeed, we estimate that there exists a "conflict of interest" insofar as the people, who are called upon to vote in referendums, are also taxpayers. It thus seems evident that additional taxation generally does not receive unanimous support. This produces two effects. On the one hand, the Constitution, which is supposed to establish principles that are detailed in a federal law, is surprisingly precise, especially in matters of taxation, particularly regarding rates (Art. 128 para. 1, 130, and 196 no. 2 Cst.). On the other hand, due to voter reluctance, taxes often have a temporary character. This is the case, for example, with the federal direct tax (hereafter, FDT) and VAT, which are valid until 2035 (Art. 196 no. 13 and 14 Cst.). Elevated to constitutional status, these characteristics help to reduce the Confederation's liberties and thus facilitate the adoption of a fiscal legal act by the people (Malinverni *et al.*, 2021, pp.441-442).

B. The principle of subsidiarity

The distribution of fiscal competencies, examined in the previous section, follows a well-defined logic, based on the principle of subsidiarity. This principle, fundamental in Swiss law (Art. 5a Cst.), described in Article 43a para.1 Cst., stipulates that "The Confederation only undertakes tasks that the Cantons are unable to perform or which require uniform regulation by the Confederation." In other words, competencies should be the responsibility of the federal state only if they are more optimal at this level. This is fundamentally the purpose of federalism: to allocate different activities to the most competent level capable of accomplishing them (FF, 2002, p.2168). Moreover, the competence for a task should go hand in hand with its funding; the competent collectivity should finance itself (Art. 43a para.2 and 3 Cst.).

Once again, this optimal separation of powers is not hermetic. The intertwining of competencies is a reality; even exclusive federal competencies can be partially delegated to the cantons. This is the case, for example, with military recruitment (Malinverni *et al.*, 2021, p.402, para.1097). The opposite is also not desirable: it is not about excessively centralizing competencies at the federal level, which could reduce the autonomy of the

cantons. This requires a subtle balance between the intertwining and disentanglement of tasks.

It is with this perspective that the Confederation and the cantons have recently launched the “Disentanglement 27” project. This ambitious initiative aims to thoroughly re-examine the distribution of tasks between institutional levels, covering 21 task groups ranging from individual premium reduction to landscape protection. The objective is to assign execution and funding responsibilities while respecting the principles of subsidiarity and fiscal equivalence. This project, which will extend until 2027, testifies to the constant will to adapt and improve the Swiss federal system, seeking to enhance its efficiency while preserving the autonomy of the cantons (Conseil fédéral, 2024).

III. Main taxes at the federal level

In this section, we will focus on the Federal Direct Tax (FDT) and the Value Added Tax (VAT), which represent nearly 70 % of the Swiss Confederation’s revenue. Although this study cannot exhaustively cover all federal taxes, the analysis of these two major taxes will allow us to concretely illustrate the distribution of fiscal competencies between the Confederation and the cantons. This approach is based on the almost “binary” principle established by Articles 3 and 42 of the Federal Constitution: federal competencies are explicitly enumerated, while cantons have a general residual competence. Thus, by understanding what falls under the Confederation’s purview, we deduce by opposition what belongs to the cantons or indirectly to the communes (Gonin & Moret, 2021, p.426, para.1206). This study, although concise, aims to provide a basis for questioning the justification of this distribution of competencies, particularly through the lens of the principle of subsidiarity. The logic developed here can be applied, by extension, to other federal taxes not addressed in this analysis (such as customs duties or special consumption taxes), thus offering a broader understanding of the Swiss tax system and its distribution of competencies.

A. The federal direct tax

1. Definition

The most important tax for the Confederation’s coffers is the Federal Direct Tax (FDT), governed by Article 128 of the Federal Constitution. This tax applies to the income of natural persons and the profits of Swiss legal entities. However, it does not apply to wealth or capital, which fall under the sole purview of the cantons. The FDT is thus a direct tax that is also characterized by its periodicity. For natural persons, the calculation basis operates on a calendar year, while for legal entities, it is based on the fiscal year (AFC, 2023, pp.31-32). This principle of periodic levy implies taxation on income actually realized during the period and thus partially underpins the use of commercial accounting for legal

entities. Moreover, this periodicity implies a separation of accounting periods and notably allows legal entities to recover losses incurred previously. Article 128 of the Constitution is materialized in a federal law, named “loi fédérale sur l’impôt fédéral direct” (Federal Law on Direct Federal Tax) (LIFD; RS 642.11) of December 14, 1990.

2. Legal analysis

Upon reading this legal provision, we first note that the Confederation can levy a tax on the income of natural persons and the net profit of legal entities. However, in accordance with Article 134 of the Constitution, this tax is not subject to any exclusion and therefore “can” also be levied by the cantons. It is thus a parallel tax that requires the constitutional article to be sufficiently complete to prevent the two entities from hindering each other (AFC, 2023, p. 10). Therefore, paragraph 2 is justified and confirms that when the Confederation “sets the rates, it takes into account the burden of direct taxes of the cantons and communes.” The maximum collectible rate amounts are mentioned in the first paragraph.

Furthermore, we are in a case of executive federalism (Art. 46 Cst.) (Malinverni *et al.*, 2021, p. 442, para. 1203), where the cantons are responsible for collecting this tax on behalf of the Confederation. Paragraph 4 specifies that for this purpose, 15 % to 17 % of the tax revenue is allocated to the cantons at minimum. On average, the allocation to cantons amounts to 21.2 % (AFC, 2020, p. 12).

It should also be noted that the collection of direct taxes on income and profits is a choice for the Confederation, unlike the cantons which are required to do so under Article 2 para. 1 LHID (Oberson & Yazicioglu, 2021, Art. 128 Cst., para. 17). This allows the federal state legislator to relax or tighten its tax regime according to the administration’s needs.

3. Is a federal competence justified?

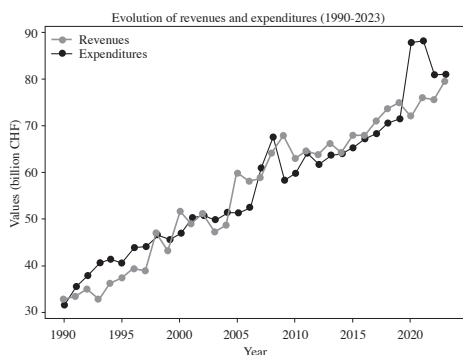
To answer this question, it would be opportune to understand that the cantons, like the Confederation, have a certain number of tasks to accomplish and therefore expenses to incur, and that’s putting it mildly. In 2023, 81 billion Swiss francs (CHF) (approximately 95.5 billion USD or 86 billion EUR as of mid-September 2024) were spent by the Confederation, of which one-third was for social welfare, or 27.2 billion Swiss francs (Federal Department of Finance [FDF], 2024). According to the 2025 budget, these amounts should grow by 0.8 % and 3.7 %, respectively (Federal Finance Administration [FFA], 2024). In parallel, revenues (according to the Confederation’s 2023 income statement) amounted to “only” 79.6 billion Swiss francs in the same year (FDF, 2024), including 27.8 billion Swiss francs from FDT (Administration fédérale des finances [AFF], 2023, p. 9).

We can thus observe that the FDT contributes to more than a third of the Confederation’s revenues. If it was not the case, the result would be catastrophic, and numerous

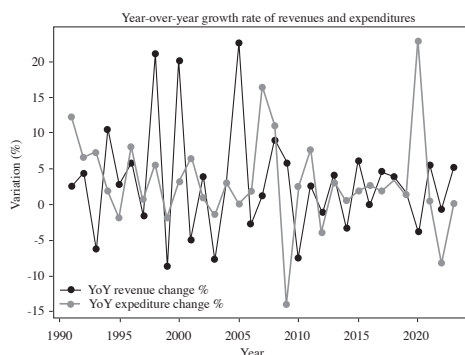
strategic federal activities, such as social welfare, traffic, defense, and notably education, would be severely affected.

In the past, the Confederation's tasks were limited and could largely be financed with customs duties, for example (AFC, 2022, p.2). Currently, with the expansion of federal state competencies (Gonin & Moret, 2021, p.427, para. 1210) and the recurring increase in expenses year after year, depriving oneself of such a source of funding would be very problematic and difficult to replace with another tax (AFF, n.d.).

GRAPH 1. THIS GRAPH SHOWS THE EVOLUTION OF REVENUES AND EXPENDITURES OF THE SWISS CONFEDERATION FROM 1990 TO 2023, IN BILLION CHF



GRAPH 2. THIS GRAPH ILLUSTRATES THE ANNUAL VARIATIONS OF REVENUES AND EXPENDITURES AS A PERCENTAGE FOR THE SWISS CONFEDERATION



Of course, we might question whether the state has too many competencies and whether it should perhaps grant more independence to the cantons. Are we facing too much centralization of powers? We think not, and granting more cantonal independence cannot apply to a state such as Switzerland. Indeed, looking at federal expenditures, we see that a large part of them relate to areas of national scope. The old-age and survivors' insurance system (hereafter, OASI) is a good example. Who better than the Confederation could be competent in matters of OASI? Certainly not the cantons, for the simple reason that assigning such competence to the cantons would create financial tourism in Switzerland, somewhat like the tax rates that differ between entities. Some cantons that would freely offer more advantageous retirement benefits, as it would be within their purview, would quickly attract numerous residents to the detriment of other cantons.

Financial tourism is obviously not the only reason that explains this distribution logic; administrative simplification is equally important. For example, if all traffic were the responsibility of the cantons, we would end up without national roads and with numerous railway companies, each with its own funding method. In Switzerland, for instance, the motorway vignette system simplifies travel across the entire national network: for

40 francs, a single vignette allows circulation on all the country's motorways. Imagine a Switzerland with 26 different automobile vignettes, one for each canton? Such a situation would not only be complex but also impractical for users.

This is where the principle of subsidiarity mentioned above takes on its full meaning in terms of FDT, but also for all other taxes under federal competence. The increase in the number of federal tasks goes hand in hand with the increase in expenses and therefore budgetary needs, financed by federal taxes.

Finally, we wish to address the issue of the rate and erosion of the cantons' tax base. According to paragraph 2 of Article 128 of the Constitution, "when [the Confederation] sets the rates, it takes into account the burden constituted by the direct taxes of the cantons and communes" and must thus defend its fiscal capacity. However, in a climate of cantonal and international competition, cantonal revenues have continued to decrease (Oberson & Yazicioglu, 2021, Art. 128 Cst., para. 51) to the point of wondering whether the legal rates in force for the FDT, set in Articles 36, 68, 71, 72 LIFD are not too high (Oberson & Yazicioglu, 2021, Art. 128 Cst., para. 45).

To conclude, we believe that the FDT is legitimate, but that the legislator should modify the current rates and take into consideration the needs and particularities of the cantons as precisely specified in Article 46 para. 3 of the Constitution: "The Confederation shall leave the cantons with the greatest possible scope for maneuver, taking into account their particularities."

Let us now discover the second federal tax that contributes the most to the Confederation's tax revenues.

B. Value Added Tax

1. Definition

The second most remunerative tax is the Value Added Tax (VAT), which is regulated by Article 130 of the Federal Constitution. Like the FDT, VAT is also a temporary tax, theoretically valid until 2035 (Art. 196 no. 14 Cst.). This Article 130 Cst. is materialized in a federal law, named "Federal Act on Value Added Tax" (VAT Act; RS 641.20).

VAT is a general consumption tax that aims to tax the consumption of goods and the provision of services in Switzerland (AFC, 2023, p. 38). It differs from the FDT in its indirect nature. Indeed, the consumer, who is the taxpayer, is not the one who directly pays it to the Federal Tax Administration (hereafter, FTA). This responsibility falls to businesses that function as collecting agents on behalf of the administration. However, it is indeed the consumer who pays the entirety of the tax. This indirect collection method allows for administrative simplification; it is much easier for a business to collect the tax and remit it to the administration than to wait for the taxpayer to actively declare their own consumption and the amounts due (AFC, 2024, p. 4).

It should also be noted that VAT is often considered a real tax, meaning it does not take into account the taxpayer's financial capacity. Nevertheless, this qualification can be nuanced; VAT remains, in its structure, dependent on the taxpayer's economic capacities, in accordance with Article 127 Cst., for three reasons. First, the legislator has provided for different tax rates depending on the necessity of products, with certain essential products being taxed less (Art. 25 para. 2 VAT Act). Second, certain activities with a social or medical purpose are clearly exempt from the tax, as illustrated in Article 21 VAT Act. Finally, we can also consider the proportion of high spending as a real indicator of wealth (Oberson, 2021, p. 434, para. 5).

2. Legal analysis

VAT is constitutionally governed by Articles 130 and 196 no. 14 Cst. The transitional provisions of Article 196 no. 14 Cst. provide additional indications relating to the rate and allocation of tax revenues. Article 134 Cst., for its part, mentions that cantons are prohibited from levying a tax of the same kind. VAT is therefore, unlike the FDT, a tax under the exclusive competence of the Confederation (Obrist, 2023, p. 175, para. 235).

If we analyze Article 130 Cst. more precisely, we observe that it is very vague, in the sense that it does not present any mechanism for the application and methods of tax collection (Glauser, 2021, Art. 130 Cst., para. 11). Upon reading this article, we only know that the tax is levied "[...] on the supply of goods and services, including self-supply, as well as on imports" (Glauser, 2021, Art. 130 Cst., para. 12). However, the definition of the article "value added tax" indicates, although not explicitly, that it is "a net multi-stage system" (AFC, 2019, p. 4) and thus allows us to interpret the general functioning of VAT, granting significant latitude to the legislator (Glauser, 2021, Art. 130 Cst., para. 11).

On the other hand, as it is common with Swiss constitutional articles, Article 130 Cst. is surprisingly precise on certain aspects, particularly regarding rates where these are inscribed.

In paragraph 1, we find the reference rates (6.5 % for the normal rate and 2 % for the reduced rate), which are then adjusted in paragraphs 3, 3bis, 3ter, and 3quater of the same article and in no. 14 of Article 196 Cst. These progressive adjustments, added over the years, have led the current rates to stabilize at 8.1 % for the standard rate, 3.8 % for the special rate, and 2.6 % for the reduced rate (Federal Tax Administration [FTA], 2024). VAT rates have regularly changed in recent years to meet various needs. The last change occurred on January 1, 2024.

We thus observe that VAT rates, excluding the special rate, are constitutionally determined. As previously mentioned, this allows for reducing the legislator's powers and thus defending the taxpayer against unexpected increases. Only a constitutional amendment, subject to popular and cantonal acceptance, can act on VAT rates.

3. Is the federal exclusivity of competence justified?

is the exclusive distribution of competence and its use by the federal state perfectible? To answer this question, we will first examine the analysis of the Confederation's exclusive competence, then, secondly, its use within the Swiss legislative framework.

As we have detailed previously, the Confederation benefits from exclusive competence in matters of VAT. Only the latter is authorized to levy this tax. In our opinion, the fact that the Confederation is competent is not at all problematic. Contributing nearly a third to federal tax revenues (AFF, 2023, p.9), such income is, in our view, difficult to substitute with another tax. To give you an idea, the amounts collected through VAT are practically equivalent to what the Confederation collects in FDT. Replacing it would come at the cost of, for example, doubling FDT rates, a measure that would be difficult to accept. Other methods could be imagined, such as combining an increase in several different taxes. However, we are talking about more than 25.1 billion Swiss francs here, or nearly a third of revenues (AFF, 2023, p.9); would scraping together a few francs here and there be enough?

Regarding the exclusivity of competence, we are more reserved. We wish to emphasize that the VAT rates applied in Switzerland are relatively low compared to what is practiced in our European neighbors (Obrist, 2023, p. 179, para. 240). With a European VAT average of 21.68 % in 2024, and a prohibitive maximum of 27 % in Hungary (Tax Foundation, 2024), increasing the rates a bit for the benefit of the cantons would probably not be a problem. We could thus apply a strategy similar to what is practiced with the FDT, where cantons and the Confederation could levy VAT in parallel. A sharing of competencies would also, in part, help to combat the deleterious effects of the erosion of tax revenues suffered by the cantons in the context of the FDT. The cantons could therefore regain a bit more of their fiscal sovereignty and finance more ambitious projects for the community.

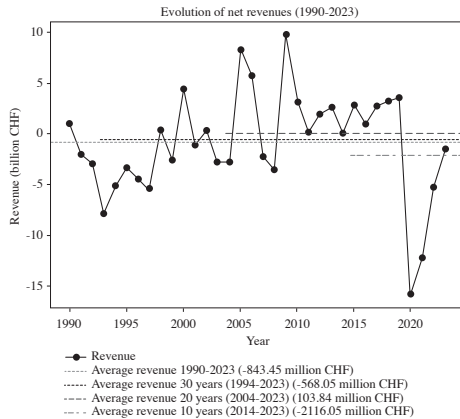
Of course, this parallelism of competencies would raise questions of administrative efficiency. Indeed, Switzerland is a small country with highly interdependent cantons, particularly in terms of commercial exchanges. This would lead to the emergence of a particular fiscal competition. Some cantons could apply very competitive rates to attract consumers, thus reinforcing the already problematic cantonal competition. Indeed, a consumer is much more flexible than a company. It is much easier and quicker to buy in a competitive canton than to establish one's business or residence there, which would inevitably harm the national economy by exacerbating competition between cantons.

To combat these issues, legislative measures coupled with increased surveillance should be put in place. These actions seem, in our opinion, inconceivable. Even if some countries have taken the step and practice different VAT rates between federated states, as in the United States, the "reduced" scale of Switzerland would complicate its adoption.

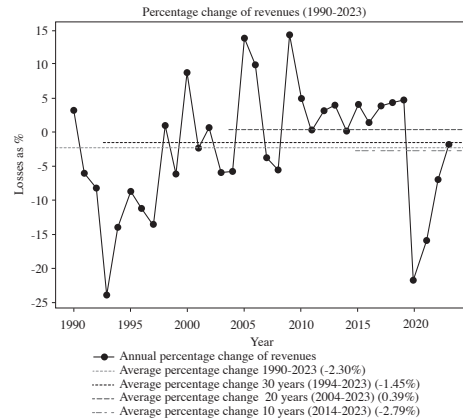
Finally, we will analyze the use of competence by the Federal Administration. As we know, the Confederation must face numerous expenses. However, it is interesting to note that on average, over the last twenty years, the Confederation has recorded a budget

surplus of “only” 104 million Swiss francs per year. This represents approximately 0.39 % of the revenues collected (AFF, n.d.).

GRAPH 3. EVOLUTION OF THE NET REVENUE OF THE CONFEDERATION (REVENUES - EXPENDITURE)



GRAPH 4. THIS GRAPH SHOWS THE PERCENTAGE OF LOSSES OR GAINS RELATIVE TO THE REVENUES OF THE SWISS CONFEDERATION



Although the recent pandemic has not made the situation easier, the overall result remains stable and reassuring. This balanced management demonstrates that the Confederation manages to maintain a healthy financial situation, without massively resorting to debt, while continuing to seek solutions to meet growing financing needs. However, the appearance of new taxes generally does not win the favor of the people, which is why it is often much easier to increase existing rates. This is why VAT rates and the allocation of funds have regularly evolved and been the subject of numerous political debates, without necessarily focusing exclusively on VAT itself (Glauser, 2021, Art. 130 Cst., para. 51), as very well illustrated by the vote of September 25, 2022, on additional financing for the OASI.

We therefore have the feeling that the federal authorities use VAT as a global tax serving to finance various projects, and thereby considerably complicate the understanding of VAT rates. This approach seems to divert the real purpose of VAT and thus, from an abstract angle, all its legitimacy.

Conclusion

In conclusion, we wished to highlight two elements of study that we consider essential in the apprehension of this work.

Firstly, the residual nature of the distribution of competencies defined in Article 3 Cst.: if a competence is not exclusive to the Confederation, it is necessarily within the cantonal purview. Thus, examining the distribution of federal fiscal competencies necessarily

means understanding the distribution key that applies between the Confederation and the cantons.

Secondly, the principle of subsidiarity. This principle assumes that an activity should always be attributed and financed at the level of the most competent and optimal collectivity (Confederation, cantons, communes). Competencies should be exercised in a subsidiary manner, namely only when the lower level of power is incapable of exercising it effectively. This principle allows for framing largely the analyses and issues addressed throughout this work. In our opinion, there is an absolute margin of maneuver that the Confederation and the cantons cannot circumvent without exceeding their prerogatives.

Today, we believe that federal competencies are very, or sometimes even too broad. These great responsibilities imply significant expenses that go hand in hand with colossal financing needs. Therefore, the expansion of fiscal competencies seems difficult to ignore. We have observed that the Confederation, in constant quest for new financing, did not hesitate to mix certain taxes with irrelevant political debates.

While the Confederation had to wait until 1848 to be endowed with its own fiscal system, its revenues have not ceased to grow concomitantly with the expansion of its fiscal competencies. However, the current system appears mature and tending towards a balance. In our opinion, the current distribution of fiscal competencies could be improved, especially regarding the loss of fiscal substrate suffered by the cantons, but remains largely satisfactory. Let us emphasize that the Confederation, over the past twenty years, has recorded an average annual surplus of 104 million Swiss francs (AFF, n.d.). Suffice it to say that, as things stand, it hardly has a choice. Any loss of fiscal competencies results in an increase in debt.

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Appendix A

Python code for generating graphs

```

=====

import pandas as pd
import matplotlib.pyplot as plt

# Function to convert values to billions with two decimal places
def to_billions(x):
    return x / 1e9

# Function to format values in billions or millions, with two decimal
places
def format_value(value):
    if value >= 1:
        return f"{value:.2f} billion CHF"
    else:
        return f"{value * 1000:.2f} million CHF"

# Data provided (revenues and expenditures of the Swiss Confederation)
data = {
    "Year": list(range(1990, 2024)),
    "Expenditures": [31615728807, 35501372522, 37816481159, 40600210446,
41341247014, 40528463774, 43839701783, 44121502163, 46589431511,
45655513602, 47131463781, 50215431587, 50722165521, 49961907643,
51405191842, 51403157454, 52377130031, 61003015457, 67738582488,
58227865545, 59693114507, 64330677633, 61735617094, 63699976007,
63999998159, 65243143959, 66970421084, 68236356435, 70574106891,
71414106003, 87816948122, 88281258560, 80897160342, 81037910492],
    "Revenues": [32673387167, 33489848987, 34953001088, 32781711274,
36238841050, 37265731472, 39476557239, 38852049210, 47073552385,
43015746701, 51683067429, 49113575572, 51107980659, 47161315784,
48628643998, 59669809384, 58114888467, 58846429751, 64177285468,
67972855132, 62833149771, 64535296320, 63735234125, 66338113720,
64089007169, 68073819082, 67919340599, 71034515341, 73802611881,
75014445783, 72042470177, 76079907407, 75648054286, 79606690116]
}

# Creating the DataFrame
df = pd.DataFrame(data)

# Calculating Revenue (Revenues - Expenditures)
df['Revenue'] = df['Revenues'] - df['Expenditures']

# Calculating percentage of losses relative to revenues
df['Losses_as_%_of_Revenue'] = (df['Revenue'] / df['Revenues']) * 100

# Calculating year-over-year percentage changes for Revenues and
Expenditures
df['YoY_Revenue_Change_%'] = df['Revenues'].pct_change() * 100
df['YoY_Expenditure_Change_%'] = df['Expenditures'].pct_change() * 100

# Applying the conversion to the data in the DataFrame
df['Revenues'] = df['Revenues'].apply(to_billions)
df['Expenditures'] = df['Expenditures'].apply(to_billions)
df['Revenue'] = df['Revenue'].apply(to_billions)

# Recalculating means after conversion to billions
mean_revenue_1990_2023 = df['Revenue'].mean()
mean_revenue_30_years = df[df['Year'] >= 1994]['Revenue'].mean()
mean_revenue_20_years = df[df['Year'] >= 2004]['Revenue'].mean()
mean_revenue_10_years = df[df['Year'] >= 2014]['Revenue'].mean()

mean_loss_1990_2023 = df['Losses as %_of_Revenue'].mean()
mean_loss_30_years = df[df['Year'] >=

```

```

1994]['Losses_as_%_of_Revenue'].mean()
mean_loss_20_years = df[df['Year'] >=
2004]['Losses_as_%_of_Revenue'].mean()
mean_loss_10_years = df[df['Year'] >=
2014]['Losses_as_%_of_Revenue'].mean()

# Create subplots (2x2 grid)
fig, axs = plt.subplots(2, 2, figsize=(14, 10))

# Plot 1: Revenues and Expenditures at (1, 1) (top-left)
axs[0, 0].plot(df['Year'], df['Revenues'], label='Revenues', marker='o',
color='green')
axs[0, 0].plot(df['Year'], df['Expenditures'], label='Expenditures',
marker='o', color='red')
axs[0, 0].set_title("Evolution of Revenues and Expenditures (1990-2023)")
axs[0, 0].set_xlabel("Year")
axs[0, 0].set_ylabel("Values (Billion CHF)")
axs[0, 0].legend()
axs[0, 0].grid(True)

# Add a text label below this plot
axs[0, 0].text(0.5, -0.2, "Graph 1 - This graph shows the evolution of
revenues and expenditures \nof the Swiss Confederation from 1990 to 2023,
in billion CHF.",
horizontalalignment='center', verticalalignment='center',
transform=axs[0, 0].transAxes, fontsize=12, fontstyle='italic')

# Plot 2: Year-over-year variation at (1, 2) (top-right)
axs[0, 1].plot(df['Year'], df['YoY_Revenue_Change_%'], label='YoY Revenue
Change %', marker='o')
axs[0, 1].plot(df['Year'], df['YoY_Expenditure_Change_%'], label='YoY
Expenditure Change %', marker='o')
axs[0, 1].set_title("Year-over-year Growth Rate of Revenues and
Expenditures")
axs[0, 1].set_xlabel("Year")
axs[0, 1].set_ylabel("Variation (%)")
axs[0, 1].legend()
axs[0, 1].grid(True)

# Add a text label below this plot
axs[0, 1].text(0.5, -0.2, "Graph 2 - This graph illustrates the annual
variations of revenues \nand expenditures as a percentage for the Swiss
Confederation.",
horizontalalignment='center', verticalalignment='center',
transform=axs[0, 1].transAxes, fontsize=12, fontstyle='italic')

# Plot 3: Revenue with averages at (2, 1) (bottom-left)
axs[1, 0].plot(df['Year'], df['Revenue'], label='Revenue', marker='o',
color='green')
axs[1, 0].axhline(y=mean_revenue_1990_2023, color='blue', linestyle='--',
label=f'Average revenue 1990-2023
({format_value(mean_revenue_1990_2023)})')
axs[1, 0].axhline(y=mean_revenue_30_years, color='purple', linestyle='--',
xmin=(1994-1990)/33, label=f'Average revenue 30 years (1994-2023)
({format_value(mean_revenue_30_years)})')
axs[1, 0].axhline(y=mean_revenue_20_years, color='orange', linestyle='--',
xmin=(2004-1990)/33, label=f'Average revenue 20 years (2004-2023)
({format_value(mean_revenue_20_years)})')
axs[1, 0].axhline(y=mean_revenue_10_years, color='red', linestyle='--',
xmin=(2014-1990)/33, label=f'Average revenue 10 years (2014-2023)
({format_value(mean_revenue_10_years)})')
axs[1, 0].set_title("Evolution of Net Revenue (1990-2023)")
axs[1, 0].set_xlabel("Year")

```

```

axs[1, 0].set_ylabel("Revenue (Billion CHF)")
axs[1, 0].legend()
axs[1, 0].grid(True)

# Add a text label below this plot
axs[1, 0].text(0.5, -0.2, "Graph 3 - Evolution of the net revenue of the
Confederation\n(revenues - expenditures).",
              horizontalalignment='center', verticalalignment='center',
              transform=axs[1, 0].transAxes, fontsize=12, fontstyle='italic')

# Plot 4: Losses as % of Revenues with averages at (2, 2) (bottom-right)
axs[1, 1].plot(df['Year'], df['Losses_as_%_of_Revenue'], label='Annual
Percentage Change of Revenues', marker='o', color='g')
axs[1, 1].axhline(y=mean_loss_1990_2023, color='r', linestyle='--',
label=f'Average percentage change 1990-2023 ({mean_loss_1990_2023:.2f}%)')
axs[1, 1].axhline(y=mean_loss_30_years, color='b', linestyle='--',
xmin=(1994-1990)/33, label=f'Average percentage change 30 years (1994-2023)
({mean_loss_30_years:.2f}%)')
axs[1, 1].axhline(y=mean_loss_20_years, color='purple', linestyle='--',
xmin=(2004-1990)/33, label=f'Average percentage change 20 years (2004-2023)
({mean_loss_20_years:.2f}%)')
axs[1, 1].axhline(y=mean_loss_10_years, color='orange', linestyle='--',
xmin=(2014-1990)/33, label=f'Average percentage change 10 years (2014-2023)
({mean_loss_10_years:.2f}%)')
axs[1, 1].set_title("Percentage Change of Revenues (1990-2023)")
axs[1, 1].set_xlabel("Year")
axs[1, 1].set_ylabel("Losses as %")
axs[1, 1].legend()
axs[1, 1].grid(True)

# Add a text label below this plot
axs[1, 1].text(0.5, -0.2, "Graph 4 - This graph shows the percentage of
losses or gains \nrelative to the revenues of the Swiss Confederation.",
              horizontalalignment='center', verticalalignment='center',
              transform=axs[1, 1].transAxes, fontsize=12, fontstyle='italic')

# Adjusting the layout to avoid overlap and display properly
plt.tight_layout()
# Adjust the space between the top and bottom rows of subplots
plt.subplots_adjust(hspace=0.5)

# Display the combined figure
plt.show()

```