May 2019

Tax Newsletter

Switzerland adopts new corporate tax reform

On 19 May 2019 the Swiss voters approved the new corporate tax reform. The reform will set the basis for new rules on Swiss corporate taxation and will secure and enhance Switzerland's overall attractiveness as a business location. The measures will enter into force in 2020.

walderwyss attorneys at law

Switzerland adopts new corporate tax reform

The new proposal aims to set the basis for new rules on Swiss corporate tax (the last proposal having been rejected in a nationwide referendum in February 2017) and secure and enhance Switzerland's overall attractiveness as a business location. The reform includes a patent box, an R&D super deduction and a notional interest deduction ("NID") for high-tax cantons. There are also substantial non-tax (revenue-raising) measures and new provisions on social security contributions. At the same time, Switzerland will repeal the existing special corporate tax regimes (eg, finance branches, mixed, domiciliary, principal and holding company regimes). Moreover, the bill took into account the criticism that contributed to the rejection of the February 2017 referendum. The measures will enter into force in 2020.

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Measures

The following measures are included in the new bill:

- The introduction of transitional rules for companies benefiting from cantonal tax regimes – such companies may release existing hidden reserves (including goodwill) in a tax-privileged way. This should allow Swiss companies to keep their current tax charge for another five years after the special tax regimes end. Corporations need to make first decisions in this respect already in the course of the year 2019.
- The introduction of a mandatory cantonal patent box in line with the standards of the Organisation for Economic Cooperation and Development (OECD) – a 90% exemption is available on qualifying income (determined on the basis of the modified nexus approach), whereby software is excluded. Qualifying income is likely to include IP development by related parties within Switzerland or by unrelated third parties abroad (ie, outsourcing). Embedded IP income must be determined based on the residual profit method. On entry into the patent box, past tax-deductible expenses will be included in the taxable income ("entry ticket").
- A 50% additional (super) deduction for R&D costs incurred in Switzerland on a cantonal level will be introduced, based on R&D salary costs plus a mark-up.
- An optional NID may be introduced by high tax cantons (currently only the Cantons of Zurich, Berne and Aargau would meet the proposed requirements, but so far only Zurich has expressed the intention to do so).
- The introduction of a maximum relief limitation – the combined tax relief on a cantonal level from the aforementioned measures should not exceed 70% (ie, they may not reduce the taxable income to less than 30%).
- The cantons may introduce relief on the capital tax levied annually on equity capital and may also grant relief on equity relating to intra-group loans.
- Statutory provisions will be introduced relating to the tax consequences of companies entering (full tax-free step-up) or exiting Switzerland.
- Foreign tax credit provisions will be extended to Swiss branches of non-resident companies.
- The cantonal share in the federal tax revenues (currently 17%) will be

increased to 21.2%.

The bill also includes further revenue-raising measures which are meant to cross-finance the reform and garner wider political support:

- The harmonisation and increase of minimal tax on qualifying dividends (ownership of 10% or more) – at least 50% of the dividends will be subject to income tax on a cantonal level and 70% on the federal level.
- The introduction of new distribution rules for publicly listed companies – in terms of retained earnings, listed companies may no longer repay tax-free capital contribution reserves first, but must pay (at least) an equal amount of dividends subject to withholding tax (and income tax in case of Swiss residents) if other reserves from retained earnings are available. However, these rules will not apply to companies that moved to Switzerland after 24 February 2008 (the date on which the tax exemption of capital contribution reserves was approved in a nationwide referendum). The purpose is to protect companies that migrated to Switzerland in reliance on the tax exemption. Further, the new distribution rule will apply only to companies listed on a Swiss stock exchange.
- There will be stricter rules regarding transpositions (which apply to private restructurings involving transfers of securities to personally controlled holding companies).
- A 0.3% increase in social security contributions paid by employees and employers to the old age and survivors' insurance (AHV/AVS) and an increase in the VAT share and federal contributions that are allocated to the AHV/AVS. These measures are expected to generate approximately CHF 2 billion in additional funding for the Swiss social security system.

Although not formally part of the package that was voted on, most cantons envisage more or less significant reductions of the cantonal corporate income tax rates as part of their cantonal implementation projects.

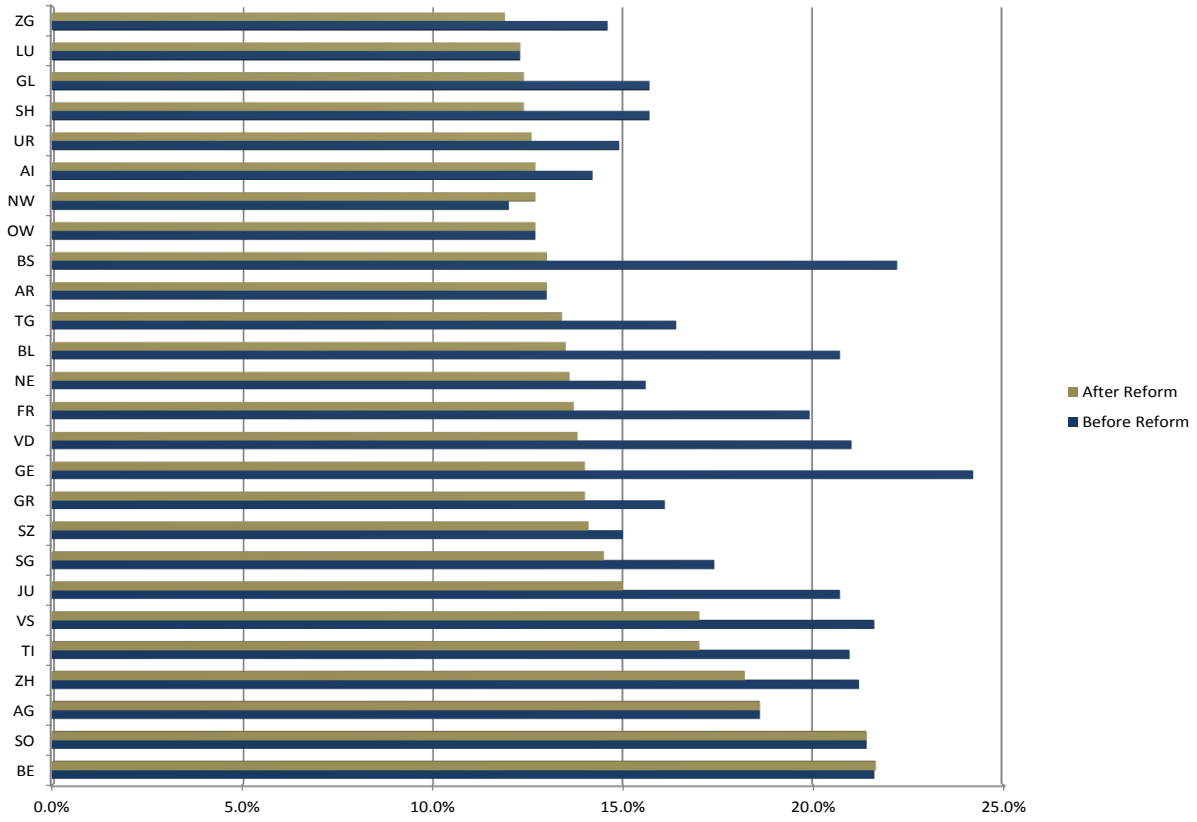
Overview of cantonal implementation

The cantons continue to implement the new rules into the respective cantonal tax laws all with the aim of rolling out the changes to the cantonal tax rules on 1 January 2020. Depending on the status of the political and legislative procedures, a cantonal vote may still be required during the second half of 2019 in one or the other canton.

For the details of these measures, please see the table on page 4.

Overview of effective corporate income tax rates

Some cantons will offer ordinary corporate income tax rates as low as approximately 12% (see table below).



Comments

The popular vote of 19 May 2019 marks the end of a long enduring political and legislative process. Switzerland will eventually repeal corporate tax rules that had attracted a lot of criticism from other countries (some of this criticism dating already back to the pre-BEPS era). At the same time, Switzerland is going to introduce new progressive measures which are compatible with international standards and which should allow the country to defend its traditional premium ranking as a location for international businesses.

In the course of 2019, companies will need to review their structures and the effects of the new rules, especially the transitional rules and take appropriate action in order to ensure a smooth and tax-efficient transition to the post-tax reform environment.

Public companies listed on a Swiss stock exchange may wish to consider a conversion of existing capital surplus into share capital in order to counter the new distribution rules and repay such funds tax-free to its shareholders in the future by way of a share buyback followed by a formal capital reduction.

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Implementation of the corporate tax reform in the cantons (frequently still subject to political and legislative processes)

Canton	Patent box relief	Super R&D deduction	Release of existing hidden reserves (special rates)	Full tax-free step-up of existing hidden reserves (under existing law)	Maximum relief limitation	Ordinary corporate income tax rates after reform (in cantonal capital)	Ordinary corporate income tax rates before reform (in cantonal capital)	Minimal taxation of qualifying dividends (private assets)	Minimal taxation of qualifying dividends (business assets)
Aargau	90%	50%	2.5%	Yes	70%	18.6%	18.6%	50%	50%
Appenzell Ausserrhoden	50%	50%	1.3% / 2.6%	Yes	50%	13.0%	13.0%	60%	60%
Appenzell Innerrhoden	30%	-	2.0%	No	50%	12.7%	14.2%	50%	50%
Basel-Landschaft	90%	20%	2.2% / 2.6%	Yes	50%	13.5%	20.7%	60%	60%
Basel-Stadt	90%	-	3.0%	Yes	40%	13.0%	22.2%	80%	80%
Berne	90%	50%	0.5%	Yes	70%	21.6%	21.6%	50%	50%
Fribourg	90%	50%	-	No	20%	13.7%	19.9%	70%	70%
Geneva	90%	10%	2.8%	No	9%	14.0%	24.2%	70%	60%
Glarus	10%	-	1.5%	Yes	10%	12.4%	15.7%	70%	70%
Graubünden	70%	-	0.5%	Yes	70%	14.0%	16.1%	70%	70%
Jura	90%	50%	0.5%	Yes	70%	15.0%	20.7%	70%	70%
Lucerne	10%	-	0.4%	Yes	70%	12.3%	12.3%	60%	50%
Neuchâtel	20%	50%	not yet defined	No	40%	13.6%	15.6%	60%	60%
Nidwalden	90%	-	1.2%-1.8%	Yes	70%	12.0%	12.7%	50%	50%
Obwalden	90%	50%	not yet defined	Yes	70%	12.7%	12.7%	50%	50%
Saint Gall	50%	40%	0.5%	Yes	40%	14.5%	17.4%	70%	70%
Schaffhausen	90%	-	0.8%	Yes	70%	12.4%	15.7%	60%	60%
Schwyz	90%	50%	0.4%	Yes	70%	14.1%	15.0%	50%	50%
Solothurn*	90%	50%	1.0%	Yes	50%	13.1%	21.4%	60%	60%
Thurgau	40%	-	0.5%	Yes	50%	13.4%	16.4%	70%	70%
Ticino	90%	50%	3-4%	Yes	30%	17.0%	21.0%	70%	70%
Uri	30%	-	1.2%	Yes	50%	12.6%	14.9%	60%	60%
Valais	90%	50%	not yet defined	No	50%	17.0%	21.6%	60%	50%
Vaud	90%	50%	not yet defined	No	70%	13.80%	21.0%	70%	70%
Zug	90%	50%	0.8-1.6%	Yes	70%	11.9%	14.6%	50%	50%
Zurich	90%	50%	0.5%	Yes	70%	18.2%	21.2%	60%	60%

*First cantonal proposals however rejected in cantonal vote on 19 May 2019.

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