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Tax Newsletter

Swiss Government adopts proposal for a corporate tax reform ("Tax Proposal 17") and submits its dispatch to Parliament

On 21 March 2018, the Swiss Federal Council (Government) adopted the new proposal for a corporate tax reform ("Tax Proposal 17"). It is largely based on the draft that was issued in September 2017. The purpose of this new proposal is to set the basis for new rules on Swiss corporate taxation (the last proposal having been rejected in a nation-wide referendum in February 2017) and to secure and enhance Switzerland's overall attractiveness as a business location. It is currently envisaged that the parliamentary debates on the bill will be completed by the end of September. If no referendum is called, the first measures will enter into force on 1 January 2019 and the main part of the reform from 2020 onwards.

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Switzerland: «Tax Proposal 17»

Under the Tax Proposal 17, Switzerland will repeal the current special corporate tax regimes (finance branches, mixed, domiciliary, principal and holding companies). The bill further includes several measures that were already discussed in the past, but it also takes into account the criticism that contributed to the rejection in the February referendum. The measures included in the Tax Proposal 17 are the following:

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– Transitional rules for companies that have been benefitting from cantonal tax regimes: Such companies will, if reported correctly, effectively be subject to a (reduced) taxation during a five-year period. The relevant rates are at the discretion of the cantons.

– Introduction of a (mandatory) patent box in line with the OECD standard on a cantonal level: A 90% exemption is available on the qualifying income (determined on the basis of the modified nexus approach), whereby software is excluded. The qualifying income is likely to include the development of intellectual property by related parties within Switzerland or by unrelated third parties abroad (outsourcing). Embedded IP income must be determined on the basis of the residual profit method. Upon entry into the patent box, past tax-deductible expenses are included in the taxable income. The cantons are free to determine the taxation modalities (within five years following the election into the patent box regime).

– Introduction of a 150% R&D super-deduction for R&D costs incurred in Switzerland on a cantonal level (based on (i) own R&D salary costs incurred by the taxpayer plus a 35% mark-up (for other R&D costs) and (ii) 80% of the R&D costs invoiced by third parties in Switzerland).

– Introduction of a maximum relief limitation: The combined tax relief on a cantonal level from the aforementioned measures may not exceed 70% (i.e. 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.

– Statutory provisions in relation to the tax consequences of companies (or business functions) entering Switzerland (full tax-free step-up).

– Extension of foreign tax credit provisions to Swiss branches of non-resident companies.

Compared with the last reform proposal (that was rejected in February 2017), there are some notable differences:

– The notional interest deduction (NID), which was heavily criticized in the course of the rejected proposal, was dropped altogether, even though notably the Canton of Zurich has repeatedly requested that such a measure be retained in the proposal. It is still possible that the NID will be included in the new bill currently before the Swiss Parliament or, if not, that it could be discussed within a future tax reform (for instance of the Swiss withholding tax regime).

- The maximum relief limitation on the combination of patent box, super-deduction and step-up tax depreciation was brought down from 80% to 70%.
- The cantonal share in the Federal tax revenues (currently 17%) will be increased to 21.2%.

As expected, the Tax Proposal 17 also includes further measures which are meant to cross-finance the reform and/or to gain wider political support:

Harmonization and increase of minimal taxation of dividends derived by individuals resident in Switzerland from privately-held qualifying participations (ownership of 10% or more): At least 70% of the dividends will be subject to income taxation in the hands of (private) owners.

- Tightening of the rules regarding transpositions (which apply in private restructurings involving transfers of investments of at least 5% to personally controlled holding companies).
- Increase of child and education allowances (for employees) by CHF 30 per month.

The cantons are still free to reduce their corporate income and capital tax rates. Although not formally part of the Tax Package 17, most cantons still envisage more or less significant reductions of the cantonal corporate income tax rates as part of their cantonal implementation projects. Some cantons are expected to offer ordinary corporate income tax rates as low as approx. 12% (see table below). On average, the effective tax rates for all companies in Switzerland will be approximately 14,5% (including federal, cantonal and municipal taxes).

Overview effective tax rates for corporate taxpayers

(Source: Dispatch of Swiss Federal Council)

	Current Tax Law in %	After contemplated Reform in %
Aargau	18.6%	18.2%
Appenzell Inner Rhodes	14.2%	12.7%
Appenzell Outer Rhodes	13.0%	13.0%
Basel-City	22.2%	13.0%
Basel-Country	20.7%	13.9%
Berne	21.6%	16.4%
Fribourg	19.9%	13.9%
Geneva	24.2%	13.5%
Glarus	15.7%	12.4%
Grisons	16.1%	14.0%
Jura	20.7%	15.4% - 17.5%
Lucerne	12.3%	12.3%
Neuchâtel	15.6%	12.5% - 13.5%

	Current Tax Law in %	After contemplated Reform in %
Nidwalden	12.7%	12.1% - 12.7%
Obwalden	12.7%	12.7%
Schaffhausen	16.0%	12.1%
Schwyz	15.2%	12.5% - 14.4%
Solothurn	21.4%	13.1% - 16.3%
St. Gallen	17.4%	15.2%
Thurgau	16.4%	13.4%
Ticino	21.0%	17.0%
Uri	14.9%	12.5%
Valais	21.6%	16.0%
Vaud	21.4%	14.0%
Zug	14.6%	12.1%
Zurich	21.2%	18.2%
Weighted average	**19.6%**	**14.5%**

As opposed to the version that was rejected in February 2017, the current proposal appears to have attracted wider political support, especially from the cantons as well as from large cities and municipalities.

The Council of States (upper house in the Swiss parliament) is going to discuss the bill in its spring session (28 May to 15 June 2018). The bill will then be transferred to the National Council (lower house) for its fall session (10 to 28 September 2018). Once both chambers are in agreement and the change of law has been published in the Federal Gazette, the standard 100-day deadline begins, during which 50,000 citizens may request that a popular referendum be held on this matter. If no referendum takes place, the first measures will enter into force quickly, potentially as early as the beginning of January 2019 (and the main part of the reform from 2020 onwards).

Companies should continue to review their structures, the impact of the proposed bill and take action as appropriate in order to ensure a smooth and tax-efficient transition to a changed post-2019/2020 tax environment.

Walder Wyss is happy to assist you in this process.

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