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Tax Newsletter

Switzerland: Swiss Lower House approves corporate tax reform

On 12 September 2018, the Swiss National Council (Lower House– Nationalrat – Conseil national) approved the revised version for a corporate tax reform ("Tax Proposal 17"). It is based on the Government's proposal issued in March 2017 and on the version negotiated in the Upper House (Ständerat – Conseil des États) in June 2018. 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 nationwide referendum in February 2017) and to secure and enhance Switzerland's overall attractiveness as a business location. The current version includes a notional interest deduction ("NID") for high-tax cantons (which is especially going to apply to the canton of Zurich) as well as substantial non-tax (revenue-raising) measures. The parliamentary debates bill will be formally completed by the end of September. If no referendum is requested, the first measures will enter into force in 2020.

walderwyss attorneys at law

Switzerland: Update on the «Tax Proposal 17»

Under the Tax Proposal 17, Switzerland will repeal the current special corporate tax regimes (finance branch, mixed, domiciliary, principal and holding company). 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 2017 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 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 period of five years after sunset of the special tax regimes.
- Introduction of a patent box in accordance with the OECD standard on a cantonal level: 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 (outsourcing). Embedded IP income is to be determined on the basis of the residual profit method. Upon entry into the patent box, past tax-deductible expenses will be included in the taxable income ("entry ticket").
- Introduction of a 150% super deduction for R&D costs incurred in Switzerland on a cantonal level (based on R&D salary costs plus a mark-up).
- Introduction of an optional NID for high-tax cantons (currently only the canton of Zurich would meet the contemplated requirements).
- Introduction of a maximum relief limitation: The combined tax relief 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 and may also grant relief on the equity related to intragroup loans.
- Statutory provisions in relation to the tax consequences of companies entering (i.e. full tax-free step-up) or exiting Switzerland.
- Opening up of foreign tax credit provisions for Swiss branches of non-resident companies.
- The cantonal share in the federal tax revenues (currently 17%) will be increased (to 21.2%).
- The Tax Proposal 17 also includes further revenue-raising measures which are meant to cross-finance the reform and/or to gain wider political support:
- Harmonization and increase of minimal taxation of qualifying dividends (ownership of 10% or more): at least 50% of the dividend will be subject to income taxation on the cantonal level (70% on the federal level).
- Introduction of new distribution rules for publicly listed companies: In case of retained earnings, listed companies may no longer repay first, free of tax, capital contribution reserves, but will now need to pay (at least) an equal amount of dividends subject to withholding tax (and to income tax in

case of Swiss residents), if other reserves from retained earnings are available. These rules will however not apply to companies that moved to Switzerland after 24 February 2008 (the date on which the tax exemption of capital contribution reserves had been approved in a nation-wide referendum). The purpose is to protect companies that migrated to Switzerland in reliance on the tax exemption. Furthermore, the new distribution rule shall only apply to companies listed on a Swiss stock exchange.
- Tightening of the rules regarding transpositions which apply in private restructurings involving transfers of securities to personally controlled holding companies.
- 0.3% increase of social security contributions paid by employees and by employers to the Old Age and Survivors' Insurance (AHV – AVS) and increase of federal contribution to the Old Age and Survivors' Insurance. These measures should provide additional funding of some CHF 2 bn to the Swiss social security system. As a consequence of the proposed increase of social security contributions, the increase of family allowances for employees that had been suggested by the Government, has now been removed from the proposal.

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 of roughly 12 % (see table below).

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%**

The current proposal has gathered wider political support, especially from the cantons as well as from large municipalities and from almost all political parties. The increases of social security contributions have however been criticized by various actors. From a constitutional point of view, the revised bill also raises certain questions as it combines unrelated matters (tax and social security) into one package.

The parliamentary debates bill will be completed by a final approval on 28 September 2018. Once the new law is published in the Federal Gazette (probably at the beginning of October 2018), the standard 100-day deadline starts running during which 50'000 citizens may request that a popular referendum be held on the matter (deadline: mid-January 2019). If no referendum takes place, the first measures could enter into force in 2020. A referendum may delay implementation.

Companies and corporate groups should continue to review the impact of the new rules and whether any actions should be taken in order to ensure a smooth and tax-efficient transition toa new tax environment. Walder Wyss is happy to assist you in this process.

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