



GENEVA / SWITZERLAND

The 2019 corporate tax reform

Agenda

- Current Swiss tax advantages
- EU-Swiss cantonal tax dispute
- 3rd Swiss corporate tax reform
- Geneva 2019 cantonal tax reform
- Lump sum tax – 2016 update
- Exchange of Swiss tax rulings
- 2016 Swiss treaty update
- Dutch group request re UBS clients

Current Swiss tax advantages

- Effective **low tax rates**: generally 12 to 24% CIT.
Special regimes (approx. 8 to 12% CIT) available in full until the entry into force of the 3rd corporate tax Reform (in 2019) which abolishes them
- Full or partial **tax holidays** available
- Modern and extensive **double tax treaty network (117 treaties!)**
- Participation reduction without subject to tax requirements, activity tests, CFC rules
- **Rulings in advance** available at federal and cantonal levels
- **No WHT on royalties** and **0% WHT on dividends and interest** in qualifying EU-CH group relations
- Relatively **interesting income tax rates**
- **Low VAT rate: 8%**

Swiss Corporate Income Tax (CIT)

1. Effective **overall** corporate income tax rate (federal, cantonal and municipal) generally ranges from **12 to 25%**, depending on the canton and the specific facts
 2. Cantons such as Zug (2016 rate 14.60%) would be in the low range whereas cantons such as Zurich or Geneva are currently in the high range (Geneva 2016 rate 24.16%). With the corporate tax reform, most of the cantons in the high range are planning to reduce their tax rates (Geneva is planning to reduce it to 13.49%).
 3. Each canton offers **privileged taxation for foreign source income**, such as licensing, trading or financing income
 - privileged tax rates generally range from **9 to 12%**
- **Incentive** : move profitable trading functions (traders, buyers, sellers etc.) and/or valuable intangibles from high tax jurisdictions to Switzerland

EU-Swiss cantonal tax dispute (1)

- Since 2005 EU-CH dispute on **cantonal corporate taxation**. EU claims that the Swiss cantonal tax privileges constitute **forbidden state aid** (based on FTA 1972)
- 14 October 2014 - EU-Swiss Agreement to abolish criticized cantonal regimes, likely as per **31 December 2018**:
 - the cantonal administrative/**domicile** company status;
 - the cantonal mixed/base/**auxiliary** company status;
 - the cantonal **holding** company status;
 - Circular Number 8 on **principal companies**, and;
 - the current practice regarding **finance branches**.
- Moreover, any possible replacement measures will need to be in line with generally accepted international standards

EU-Swiss cantonal tax dispute (2)

- Cantonal tax regimes becoming **Euro-compatible**:
 - Neuchâtel **NE** overall effective tax rate of 22.2% in 2011 reduced to **15.6%** since 2016.
 - Nidwald **NW** introduced a **license box** whereby the cantonal corporate income tax rate on net license income is reduced by 80% to an overall effective rate of 8.8%
- Swiss Parliament accepts the **3rd Swiss corporate income tax reform** (see hereafter)
- Corporate income tax reductions to **12 to 14%**
- **Stamp duties** and **corporate net wealth tax** reduced or abolished

3rd Swiss Enterprise Tax Reform

- The Reform was initiated to make the Swiss tax system **compliant with EU and international standards** and has been conceived in a manner that **preserves the competitiveness and attractiveness of the Swiss tax system.**
- The Reform **abolishes Swiss special tax regimes.**
- The Reform was approved in Parliament on **14 June 2016.** It should become effective as per 1 January 2017. Cantons will have a 2-year deadline to implement the new tax rules. **The Reform should enter into force as of 2019.** Until then, the current Swiss tax privileges remain available in full.

3rd Swiss Enterprise Tax Reform

- Cantonal patent box
- R&D super-deductions
- Step-up and tax treatment of hidden reserves
- Notional interest deduction (NID)
- Reduction of cantonal corporate income tax rates
- Reduction of cantonal corporate capital tax

New Swiss cantonal patent box (1)

- **Qualifying income** from patents can benefit from a **reduction of up to maximum 90%**
- Corporate taxpayer needs to (i) (economically) **own the patent** and (ii) **have made a crucial contribution to the development of the underlying invention** (creation and continuous development)
- In group context: control/oversight or crucial contribution by group company in case of usufruct or exclusive license

New Swiss cantonal patent box (2)

Also applies to:

- Supplementary Protection Certificates (SPC)
- Exclusive licenses
- Protection of first applicant (Swiss pharma)

New Swiss cantonal patent box (3)

Qualifying patent income =

Overall income of the company less:

- financial income
- production, trading and services income insofar as not related to an eligible patent
- an amount relating to routine functions and all income from brands, trademarks

R&D super-deduction

- This **voluntary measure** will be introduced on the **cantonal level**.
- This measure aims to promote **Swiss based research & development** activities.
- It consists in a special super-deduction for **Swiss research and development expenses up to 150%**
- It will be applicable to **individual enterprises** too.

The new Swiss IP regime and compliance with OECD standards

- Within the OECD standards, the nexus approach then the modified nexus approach were approved of
- Whilst the **Swiss patent box complies with the Nexus Approach** in the sense that IP income is only qualifying to the extent that the taxpayer demonstrates the income results from R&D expenses incurred by it,
- The **Swiss R&D super-deduction (150%) is not in conformity with OECD's modified nexus approach** as the latter determines among others an upper limit of 130% for such deductions

The step-up and tax treatment of hidden reserves (1)

- This **compulsory measure** will be introduced on **the federal and on the cantonal tax level**.
- **Hidden reserves and goodwill created by the relocation of a company which was abroad, assets or functions into Switzerland will be capitalized (stepped-up) in the tax balance sheet without immediate taxation.**
- Should the company, the assets or functions leave Switzerland, such hidden reserves or goodwill would be immediately taxed.

The step-up and tax treatment of hidden reserves (2)

- **For newly arriving companies :**
 - Step-up remains tax-free
 - Hidden reserves can be amortized
- **For existing Swiss resident companies currently enjoying a cantonal tax privilege :**
 - Assessment of the hidden reserves by the cantonal tax authorities when the Reform Law enters into force
 - **The hidden reserves will be taxed at a reduced rate if they are realized within a 5-year transitory period following the entry into force of the Reform Law**

The notional interest deduction (NID)

- This measure will be introduced on the **federal tax level**. It is also a **voluntary measure** at the **cantonal tax level**.
- It consists in the **deduction of notional interests on part of a company's equity**.
- The NID aims to favour companies which finance themselves with equity and not with debt.
- Should a canton implement the NID, it **shall necessarily implement a minimum income tax inclusion of 60% on dividends** received by Swiss residents from substantial shareholdings.

Other Reform measures

The reduction of the effective corporate income tax rates :

- **voluntary measure** introduced on a cantonal tax level.
- For example, the effective rate including cantonal, communal and federal income taxes :
 - In **Vaud**, has been reduced from 22.33% to **13.79%** (2019)
 - In **Geneva**, should be reduced from 24% to **13.49%** (2019)

The reduction of the cantonal corporate capital tax :

- **voluntary measure** introduced on a cantonal level.
- This measure will apply to **qualifying participations or patents** and to **loans between group companies**.

The financial consequences of the Reform

- The financial consequences of the Reform will be borne **50/50 by the Confederation and the cantons**.
- The cantons will from the entry into force of the Reform **keep 21.2% of the federal income tax** that they collect for and on behalf of the Confederation (currently 17%).

Measures withdrawn from the Reform

Stamp issuance tax :

- **Since April 1, 2012** : stamp issuance tax on debt instruments (bonds and the like) abolished
- **March 19, 2013** : Swiss Parliament proposes to abolish stamp duty on equity (currently 1%) as well. **RIE III postponed this measure.**

Tonnage tax :

- The introduction of a tonnage tax (special request by Geneva) was discussed but **postponed as well to be dealt with in a separate law proposal.**

Under the 3rd corporate tax Reform

Corporate income tax could be reduced to 12 to 14%:

- BS 2010: 13.00% (2016: 22.00%)
- FR 2019: 13.72% (2016: 19.86%)
- GE 2019: 13.49% (2016: 24.18%)
- *ZH 2019: 18.20% (2016: 21.10%)*

Already there:

- VD 2019: 13.79% (2016: 22.33%)
- ZG 2019: 12.00% (2016: 14.30%)
- NW 2015: 12.66%
- LU 2015: 12.32%

Geneva 2019 tax reform

On 30 August 2016 the Geneva State Council unveiled its Reform Plan:

- **Flat corporate income tax rate of 13.49%** (reduced from 24.16%)
 - Possible 5 year increase to 13.8% to finance transition
 - **Full credit** of corporate income tax against **capital tax**
 - **Reduced capital tax** for investments in participations, group loans and licenses or similar IP rights
 - **Modest 10% base exclusion for the Patent Box**
 - **150% R&D super-deductions**
 - But: **minimum 13% tax rate**
 - Step-up and tax treatment of hidden reserves (temporary 13% rate)
- **Clear focus on introducing an attractive low flat rate for all companies rather than offering new special regimes**

Lump sum tax (update 2016)

- **Abolished in 5 out of 26 cantons:** Zurich (2009), Schaffhausen (2011), Appenzell-Ausserrhoden and Basel-Land (2012) as a result of popular votes. Abolished by Parliament in Basel-City (2012).
- **Lump-sum reinforced in 7 cantons :** Berne, Lucerne, St Gall, Thurgau, Nidwalden , Glarus and Appenzell-Innerrhoden
- **2014 Referendum** against lump sum tax **rejected** with a majority of **62%**
- **2016 New federal and cantonal laws** re lump sum taxation :
 - increase minimum **from 5 to 7 times rental value** or annual rent ;
 - fix a **minimum** tax base of **CHF 400'000** for federal tax purposes
 - the cantons will also have to fix a minimum tax base
(**Geneva CHF 440'000, Vaud CHF 415'000, Valais CHF 250'000**);
 - the lump sum tax treatment will also **account for the net wealth tax** ;
 - existing rulings respected for a **period of five years (incl. 2020)**

Exchange of Swiss tax rulings

- Initially, **only certain information** in connection with the ruling will be **transmitted** and, **upon request, the ruling itself**
- BEPS Action 5 questionnaire: the information sent to foreign countries will focus on the **identification of the company, affiliates, parent company, the ultimate shareholder**, certain information related to the ruling (**type of ruling concerned, date, summary, tax periods concerned**) and other non-mandatory information (sales, profit and value of transactions)
- **Eventually the ruling itself**

Exchange of Swiss tax rulings

- The **Federal Council** regulates the details of the **spontaneous exchange** based on international standards and practice of states
- The **draft of the new tax administrative assistance ordinance** includes the rules for spontaneous exchange of information concerning rulings covered by action 5 of the BEPS project (*status in parliament : consultation period was from 20 April 2016 until 10 August 2016*)
- Expected entry into force : **January 1st, 2017**

2016 Swiss treaty update

106 Double tax treaties in total

- **47 DTT's in force with exchange** : Argentina, Australia, Austria, Bulgaria, Canada, China, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, India, Ireland, Italy, Japan, Kazakhstan, Luxembourg, Malta, Mexico, the Netherlands, Norway, Peru, Poland, Portugal, Qatar, Romania, Russian Federation, Singapore, Slovak Republic, Slovenia, South Korea, Spain, Sweden, Turkey, Turkmenistan, the UAE, the UK, Uruguay and Uzbekistan
- **6 DTT's signed with exchange** : Albania, Belgium, Ghana, Liechtenstein, Oman and the USA
- **Initialed with a/o** : Columbia, Pakistan and Ukraine

10 Tax Information Exchange Agreements (TIEA's)

- **7 TIEA's in force** : Andorra, Greenland, Guernsey, Isle of Man, Jersey, San Marino and Seychelles
- **3 TIEA's signed with** : Belize, Brazil, Grenada,

New treaty policies

New treaty policies :

- Exemption from WHT on dividends paid to **qualifying pension schemes** (e.g. Australia, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Greece, Hong Kong, Hungary, Ireland, Japan, Luxembourg, the Netherlands, Poland, Qatar, Romania, the Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, the UAE, the UK and the USA)
- Exemption from WHT on dividends paid to **sovereign funds** e.g. Qatar, Singapore and UAE

Swiss anti-treaty abuse rules (1)

- **Treaties rarely included anti-treaty abuse rules** enabling corporate entities to elude withholding taxes only by incorporating conduit companies in Switzerland
- Switzerland has **unilateral anti-treaty abuse rules** (the 1962 Decree) limiting the use of Swiss double tax treaties by foreign-controlled Swiss persons
 - **most notable rule** is the **anti-base erosion provision** : not more than 50% of the (gross after residual WHT) treaty protected royalties can be paid out as expenses to parties not entitled to the treaty (i.e., persons or entities abroad)
 - NB depreciation of IP purchased from a foreign party falls in **50% limit !**

Swiss anti-treaty abuse rules (2)

- Domestic anti-treaty abuse rules (1962/1999) are relaxed since August 2010. **Licensing or financing companies can now be considered active if the Swiss company disposes of at least one competent employee. Possible to engage in royalty conduit structures or back to back financing and still make use of the extensive Swiss treaty network.**
- One qualified employee is sufficient as long as his functions are directly related to the said activity. **If the group already employs people in Switzerland, it is no longer necessary that the company itself employs it's own people.**
- The Swiss domestic anti-treaty abuse rules **do not apply when treaties (33 treaties au 01/01/2016) include specific anti-abuse provisions** (since the 2010 Circular).

Swiss anti-treaty abuse rules (3)

- **Action 6 of the BEPS project** recommends that States take **measures against treaty abuse** e.g. amending treaties or including in new treaties general or **specific anti-abuse provisions** : the Swiss anti-treaty abuse rules' scope of application will therefore be reduced
- In addition, if and to the extent double tax treaties concluded by CH are used to reduce foreign withholding taxes, **treaty based anti-abuse provisions** apply :
 - e.g. full Swiss taxation required under treaties with BE, FR and IT
 - e.g. LOB provisions in the treaties with the US, France and Colombia

Dutch group request re UBS clients

- Dutch tax administration asked for information exchange re all Dutch residents holding at some point during 2013 and 2014 at least EUR 1'500 in a UBS bank account and not having rendered sufficient proof of tax compliance.
- **Anonymous criteria, no names, group request**
- A well-dressed **fishing expedition** one would say ...
- **Disallowed** by the Swiss federal administrative court, **but ...**
- **Approved** by the Swiss federal supreme court ruling of 16 September 2016
- **Door wide open for requests to other banks and by other countries**
- **Voluntary disclosure programs become obsolete**

Any questions ?

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