

# Swiss Tax Proposal 17

TTN AGM VIENNA

22 September 2017

Thierry Boitelle

1

## Tax Proposal 17 Swiss Corporate Tax Reform

- Tax Proposal 17 was initiated after the negative Swiss popular vote on the 3<sup>rd</sup> Corporate Tax Reform on 12 February 2017
- Tax Proposal 17 aims to make the Swiss corporate tax system fully **compliant with EU, OECD and other relevant international standards**, in a manner that (i) **preserves the competitiveness of the Swiss tax system**, while also (ii) **preserving**, to some extent, the **overall tax base**
- Tax Proposal 17 **abolishes the current Swiss special tax regimes for companies** (mostly cantonal and some federal)
- Tax Proposal 17 has been open for consultation on 6 September till December 2017. The Law proposal will then be introduced in Parliament in the Spring Session of 2018 and could enter into force as of 2020. Cantons may exceptionally be faced with a reduced deadline to implement the new tax rules (normally 2 full years are granted).
- **Tax Proposal 17 should therefore enter into force as of 2020.** Until then, the current Swiss corporate tax privileges remain available in full.

2

## Tax Proposal 17

- Abolition of current Swiss corporate tax privileges.
- Mandatory cantonal patent box
- Optional R&D super-deductions at the cantonal level – focus on salary expenses
- Cap of 70% on tax relief at cantonal level
- Increase of individual income tax on dividends from substantial shareholdings (from 50% or 60% to 70%)
- Increase of cantons' share of federal tax from 17 to 20.5% allowing e.g. for cantonal rate reductions
- Step up, special tax rate defined by the canton if they are carried out within five years
- Cities and communes must benefit from such increase as well
- Social measure: a monthly increase of 30 CHF for family allowances

3

## New Swiss cantonal patent box (1)

- **Qualifying income** from patents would 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

4

## New Swiss cantonal patent box (2)

**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

5

## New Swiss cantonal patent box (3)

### **1. Eligible rights**

- Patents and comparable rights
- Supplementary Protection Certificates (SPC)
- Exclusive licenses
- Protection of first applicant (Swiss pharma)

### **2. Calculation of the benefit of the patent box**

- the net method
- the residual method

6

## New Swiss cantonal patent box (4)

3. Calculation and application of the nexus approach

4. Calculation of the exemption

- 90% maximum
- 25b LHID limits the effect of the Tax Proposal

17 measures applicable at the cantonal level  
(patent box, R&D super-deduction)

7

## R&D super-deduction

- This **voluntary measure** will likely 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 would be applicable to **individual enterprises** too.

8

## The new Swiss IP regime and compliance with OECD standards

- Within the OECD standards, the nexus approach and subsequently the modified nexus approach were adopted
- The proposed **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 should also be in conformity with OECD's modified nexus approach**, which means that an upper limit of 130% for such deductions should apply instead of the proposed 150%

9

## State Aid ?

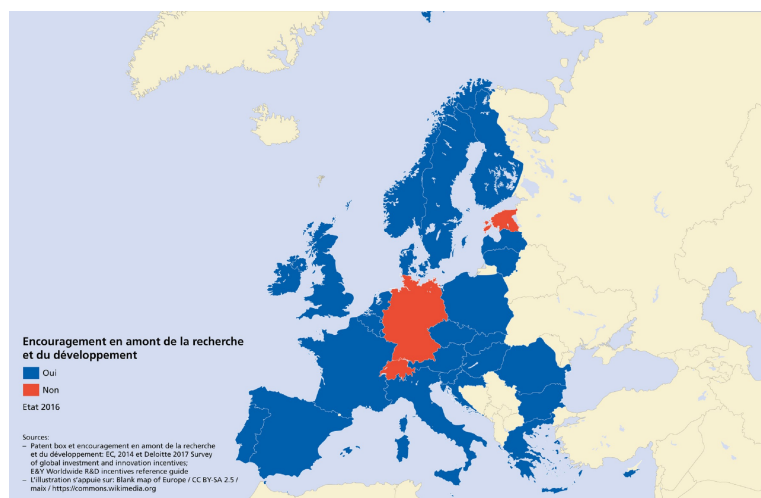
### Analysis of royalty box regimes:

- Patent box not considered State Aid if it forms an integral part of the general tax system and is not selective but accessible to all enterprises (in terms of conditions, restrictions, etc.)
- But ... beware of discretionary and/or standardized rulings
- Not a harmful tax regime if no distinction is made based on source (e.g. domestic or foreign source, from related companies or from third parties)
- Even if it were State Aid, it could still be a justified regime if and to the extent it promotes the investment in innovation and R&D

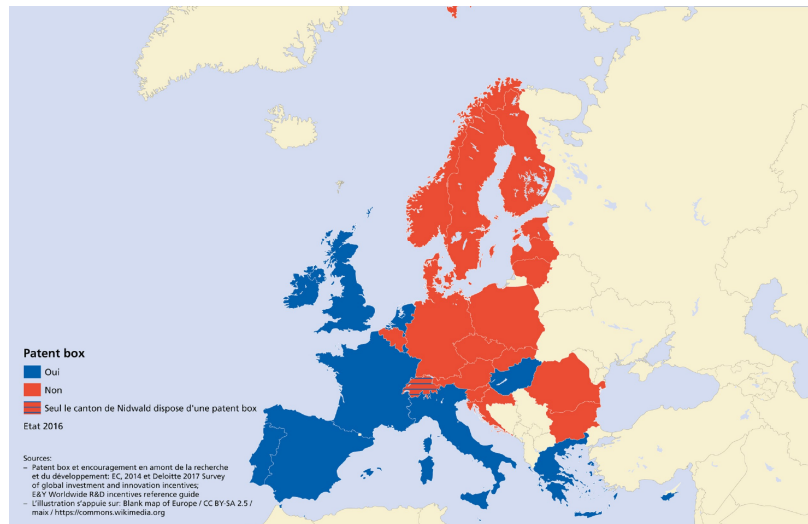
## International comparison

- Royalty boxes exist among others in BE, NL, LU and UK (IT ?)
- BE: patent deduction of **80%**, both for generated and acquired patents, but not for other kinds of IP - **ETR 6.8%**
- NL: innovation box with a **5% ETR** for royalty income on patents and specific approved R&D projects  
– does not apply to other intellectual property, restricted to patents linked with R&D activities in the Netherlands
- LU: 80% exemption for income from and capital gains realized with IP (larger definition than NL and BE) - **ETR 5.4%**
- UK (since 2013): patent box with a **10% ETR**

## International comparison



## International comparison



13

## Other measures of the Tax Proposal 17

### 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%** (2020)
  - In **Geneva**, should be reduced from 24.33% to **13.49%** (2020)

### The reduction of the cantonal corporate capital tax :

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

14

## The financial consequences of the Tax Proposal 17

- The financial consequences of the Tax Proposal would be borne **50/50 by the Confederation and the cantons**, although the Confederation is looking at making additional contributions to align all actors (e.g., the cities and communes) and all political factions (i.e., the Socialists) behind the Proposal.
- The cantons would from the entry into force of the Tax Proposal 17 **keep 20.5% of the federal income tax** that they collect for and on behalf of the Confederation (currently 17%). Some of this needs to be shared with the cities and communes.

15

## Measures withdrawn from the Tax Proposal 17

1. **Notional interest deductions** (heavily criticized)
2. **Stamp issuance tax :**
  - **Since April 1, 2012** : stamp issuance tax on debt instruments (bonds and the like) abolished
  - **March 19, 2013** : Swiss Parliament proposed to abolish stamp duty on equity (currently 1%) as well.
4. **Tonnage tax :**
  - The introduction of a tonnage tax (special request by Geneva) was discussed but **postponed and to be dealt with in a separate law proposal**.

16



## Under the Tax Proposal 17

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

•NE 2016:	15.61%	
•BE 2021:	16.37%	(2016: 21.60%)
•FR 2020:	13.72%	
•GE 2020:	13.49%	(2017: 24.16%)

### Already there:

•VD 2020:	13.79%	(2016: 22.33%)
•ZG 2020:	12.00%	(2016: 14.30%)
•NW 2015:	12.66%	
•LU 2015:	12.32%	

17

## Thank you for your attention!

Thierry Boitelle  
BONNARD LAWSON  
Rue du Général-Dufour 11  
CH-1204 Geneva  
Switzerland

Phone: + 41 22 322 25 00  
Fax: + 41 22 322 25 15  
E-mail: [boitelle@ilf.ch](mailto:boitelle@ilf.ch)  
[www.ilf.ch](http://www.ilf.ch)

18