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INTERNATIONAL TAX REVIEW™

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Strengthening Switzerland's attractiveness for investment

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Developments at national level in Switzerland

Rejection of Corporate Tax Reform III

On February 12 2017, 59.1% of the Swiss voters rejected the federal bill on Corporate Tax Reform III (CTR III) adopted by the Swiss parliament in June 2016. The main goal of CTR III was to align Swiss tax law with the international tax standards, while retaining the attractiveness of Switzerland as an investment and business location. This objective would have been achieved by replacing the privileged tax status regimes for corporations with new internationally accepted tax measures effective from January 1 2019.

The rejection was mainly caused by disagreements on certain new tax measures, particularly the introduction of the notional interest deduction on surplus equity and the deduction of more than 100% of research and development costs incurred in Switzerland. The missing amendment to the partial taxation of dividends from qualified participations (i.e. of at least 10%) was also subject of controversy: the bill presented to the voters did not include the taxation of qualified dividends at 70% as included in the initial dispatch adopted by the Federal Council because this was already rejected by parliament (at present, dividends from qualified participations are taxed at 60%, although this varies from canton to canton). In addition, the opponents argued that CTR III as adopted by parliament in June 2016 would have caused relevant tax losses to be eventually borne by the Swiss population.

As a result of the rejection of CTR III, the corporate tax law remains in force and corporations may continue to benefit from the privileged tax status regimes until a new law enters into force.

In order to maintain Switzerland's attractiveness as a business and tax location and to improve the tax planning options for corporations, the Swiss Federal Council has already instructed the Federal Department of Finance to prepare a new corporate tax reform proposal by mid-2017. However, it seems improbable that the reform will enter into force before 2020.

In the meantime, cantons may already cut their ordinary corporate income tax rates to maintain their competitive position as business locations. Numerous cantons already boast favourable corporate income tax rates of 12%-15% (effective pre-tax rates including federal income tax). Moreover, in the majority of the cantons it is already possible for companies that benefit from privileged tax status regimes to disclose without any tax impact certain hidden reserves (step-up),

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Apart from his professional activities as a partner of Tax Partner AG, David is also a regular speaker and lecturer at selected important tax seminars and has published various articles on international and national tax themes. Further activities include the membership on selected boards of directors of various companies in Switzerland as well as membership of various professional organisations.

Tax Partner is one of the leading tax firms in Switzerland. With a team of 38 professionals, the firm advises a range of multinational and national corporate clients, as well as individuals. In 2005, Tax Partner co-founded Taxand – the first global network, with more than 2,000 tax advisers and more than 400 partners from independent member firms in nearly 50 countries.

which were developed under the privileged tax regime, in cases of a voluntary transition from privileged taxation to ordinary taxation.

Swiss withholding tax

In principle, a Swiss company has to declare to the Swiss Federal Tax Administration (FTA) any dividend distributed to the shareholders within 30 days of its due date (i.e. the due date decided during the shareholders' meeting or, if no due date has been set, the date of the shareholders' meeting) and to deduct and remit the 35% withholding tax. The shareholders may then apply to the FTA for the partial or full refund of the levied withholding tax. In cases of intra-group dividends and hidden dividend distributions, if certain conditions are met, the Swiss company may fulfil its withholding tax obligation by way of declaring and notifying the dividend to the FTA instead of withholding and remitting the withholding tax: relief at source is granted by applying the dividend notification procedure.

Based on the Swiss Federal Supreme Court decision of January 19 2011, the FTA followed a restrictive practice according to which if the Swiss company did not declare and notify the dividend within 30 days after the due date, it could not apply the dividend notification procedure and the withholding tax had to be deducted from the dividend and remitted to the FTA. In addition, the FTA levied interest for late payments of 5% per annum on the withholding tax owed. While the withholding tax was then partly or fully recoverable for the shareholder, the interest for late payment represented a final cost.

According to the revised Swiss Withholding Tax Act, which entered into force on February 15 2017, the restrictive practice of the FTA is no longer applicable. This means that Swiss companies can apply the dividend notification procedure even if the dividend is not declared and notified within the 30-day period, as long as the material conditions for this are met. Furthermore, in this case, no interest for late payment is owed. However, as a consequence of the late filing, an administrative penalty limited to CHF 5,000 ($5,000) can be levied.

The new provisions are applicable retroactively from January 1 2011 and interest for late payments levied since this date can be recovered within one year after the amended law came into force, i.e. by February 14 2018, provided that the tax liability and the interest for late payments have not passed the statute of limitations and have not been finally assessed prior to January 1 2011.

The new legislation is a positive signal for domestic and international corporate groups in Switzerland.

Developments at international level in Switzerland

Spontaneous exchange of information on tax rulings

In 2013, Switzerland signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAC), which was later ratified in 2016.

Along with Action 5 of the BEPS Report 2015, Switzerland has now introduced into domestic legislation the mandatory minimum standard for a spontaneous exchange of information on tax rulings. The implementation has taken place by way of a revision of the Federal Act on International Administrative Assistance in Tax Matters, together with a revision of the Federal Ordinance on International Administrative Assistance in Tax Matters, and both entered into force on January 1 2017. The information exchange begins a year later on January 1 2018 and covers tax rulings that were issued after January 1 2010 and which will still be applicable on January 1 2018.

Tax rulings are defined in the revised ordinance as any information, confirmation or assurance of a tax administration that is given to the taxpayer, which describes the tax consequences of the facts as presented by the taxpayer, and on which the taxpayer can rely. In line with the recommendations

of the OECD, the revised ordinance entails five categories of tax rulings covered by the spontaneous exchange of information:

1) Rulings on preferential tax regimes, e.g. rulings on the taxation of holding companies, domiciliary companies, mixed companies, or principal companies, or rulings on the reduced taxation of revenues from intellectual property rights;
2) Unilateral rulings with cross-border implications regarding transfer pricing;
3) Rulings with cross-border implications regarding the reduction of taxable profit in Switzerland that is not disclosed in the financial statements;
4) Rulings regarding the existence or non-existence of permanent establishments and the respective profit allocation; and
5) Rulings regarding related conduit companies.

In principle, the country of domicile of the group parent company and the country of domicile of the direct parent company are among the recipient countries. In addition, the recipients include the countries of domicile of those group companies (with at least 25% participation) whose transactions with the Swiss taxpayer are covered by the rulings mentioned above and the countries of domicile of those group companies with a permanent establishment in Switzerland and vice versa.

The potential consequences of the spontaneous information exchange on tax rulings have to be assessed individually. If a taxpayer wants to avoid the exchange, existing tax rulings should be rescinded by the end of 2017.

Automatic exchange of information on financial accounts

In 2014, the OECD adopted the new global standard for the automatic exchange of information in tax matters (AEOI) regarding financial accounts.

Under the AEOI, certain financial institutions, like deposit-taking banks, custodial institutions, certain investment entities and certain insurance companies, have to collect financial information on their clients as long as they are resident abroad for tax purposes. These financial institutions automatically transmit client details and tax-relevant financial data to the tax authorities in their country, which then forward this information to the tax authorities in the client's country of residence.

By the end of 2016, 101 states had committed themselves to this global standard. Of these jurisdictions, 54 will start to exchange information in accordance to the AEOI standard from 2017, the remaining 47 countries, including Switzerland, from 2018.

At international level, the AEOI implementation can proceed based on two models:

1) It is either possible to agree to AEOI implementation in bilateral treaties (AEOI Agreement) (Model 1); or
2) The AEOI can be implemented on the basis of the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information (MCAA), which must be activated bilaterally between the signatory states by means of notification to the secretariat of the coordinating body (AEOI Joint Declaration) (Model 2).

At national level, the AEOI is implemented by means of the Swiss Federal Act on the International Automatic Exchange of Information (AEOI Act) and the Ordinance on the Automatic International Exchange of Information on Tax Matters (AEOI Ordinance). The legal provisions for the introduction of the AEOI in Switzerland came into force on January 1 2017. In 2017, the reporting financial institutions in Switzerland and the partner countries will collect financial information from their customers for the first time. The national tax authorities will then exchange this information with each other from 2018.

In 2015, Switzerland signed the AEOI Agreement with the EU, which applies to all EU member states and replaces

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the taxation of savings agreement between Switzerland and the EU that had been in force since 2005. The AEOI agreement entered into force on January 1 2017 and Switzerland and the EU will collect data from 2017 and mutually exchange these data from 2018. This new agreement with the EU replaces also the withholding tax agreements with Austria respectively with the UK, which concerned the regularisation of assets held in Switzerland by Austrian respectively UK taxpayers and the taxation of income generated by these assets; these withholding tax agreements were terminated on January 1 2017. The AEOI with the UK has been introduced by virtue of the agreement with the EU despite the Brexit vote and will remain in effect until the UK's exit has actually taken effect.

Switzerland also activated the MCAA with effect from January 1 2017 with Australia, Iceland, Norway, Guernsey, Jersey, Isle of Man, Japan, Canada and South Korea. Data collected from 2017 will presumably be mutually exchanged from 2018.

In order to continue to ensure the integrity, credibility, attractiveness and stability of its financial centre and position as a business location, Switzerland intends to further expand its AEOI network. To date, the Swiss Federal Department of Finance has already initiated the consultation on introducing the AEOI with an approximate additional 40 states and territories. The implementation of the AEOI is planned for January 1 2018 so that the first exchange of information will take place in 2019.

Finally, since 2015 Switzerland has been negotiating the implementation of FATCA Model 1 with the US, according to which data would be exchanged automatically between the competent authorities on a reciprocal basis. At present, FATCA is implemented in Switzerland based on Model 2, which means that Swiss financial institutions disclose account details directly to the US tax authorities with the consent of the US clients concerned.

Automatic exchange of information on country-by-country reports

On January 27 2016, 31 countries, including Switzerland, signed the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA), which is based on the MAC ratified by Switzerland in 2016 that entered into force this year. In order to create the legal basis for the implementation of the automatic exchange of country-by-country reports in Switzerland, at the end of November 2016 the Swiss Federal Council submitted the CbC MCAA and the respective Federal Act on the International Automatic Exchange of Country-by-Country Reports of Multinationals for approval to parliament. If parliament approves the proposal and no referendum is held, the CbC MCAA and the Federal Act could enter into force at the end of 2017.

In Switzerland, multinationals in scope of the CbC MCAA would be obliged for the first time to file with the Swiss Federal Tax Administration a CbC report with respect to the fiscal year beginning on or after January 1 2018 within 12 months after their fiscal year ends. It is expected that the first exchange of CbC reports between Switzerland and its partner states would take place during the first half of 2020. In the meantime, however, CbC filings for subsidiaries of Swiss groups in other participating countries, will have to be made as early as the 2017 business year, which involves special planning and organisation.

Multilateral instrument to modify double tax treaties

The OECD announced on November 24 2016 that, along with Action 15 of the BEPS Report 2015, more than 100 jurisdictions, including Switzerland, have concluded negotiations on a multilateral instrument (MLI), which will transpose results from the OECD/G20 BEPS Project into existing double tax treaties worldwide.

The MLI has been ready for signing since the end of December 2016. A first high-level signing ceremony will take place in the week beginning June 5 2017, with the expected participation of a significant group of countries.

The Swiss Federal Council has not yet decided whether Switzerland will sign the MLI. If Switzerland does sign the MLI, the Federal Council will submit a provisional list setting out the countries and territories in respect of which the MLI should apply for Switzerland as well as the double tax treaty provisions that Switzerland is considering to amend. Once the MLI has been signed, the Federal Council will hold a consultation process and then submit its dispatch to parliament.

Double tax treaties

Switzerland has more than 100 double tax treaties in place and is continuously expanding its network of treaties. By the end of 2016, Switzerland had signed 54 double tax treaties in accordance with the international standard on exchange of information upon request as entailed in Article 26 of the OECD Model Tax Convention on income and capital, of which 50 were in force.

In 2016, new double tax treaties entered into force with Liechtenstein and Oman. Furthermore, protocols for the amendment of the double tax treaties with France, Italy, Norway and Albania entered into force. With this amendment, these treaties became standard-compliant with respect to administrative assistance.

Additional double tax treaties or protocols for the amendment of existing double tax treaties should be signed by Switzerland in order to further increase the number of double tax treaties with the provision on the exchange of information upon request as per the OECD international standard.

Tax information exchange agreements

Besides double tax treaties, Switzerland also has agreements with other states and territories on tax information exchange, which only cover the exchange of information upon request and do not serve to avoid double taxation.

By the end of 2016, Switzerland had signed 10 tax information exchange agreements, of which nine were in force. The agreements with Belize and Grenada came into force in 2016, while the one with Brazil was approved by the Swiss parliament in December 2016 but is not in force yet.