Dear clients and business friends,

On 23 December 2011, the Swiss Federal Parliament adopted a new Accounting Law (nAL). In addition to accounting, i.e. the presentation of the net assets, financial position and income situation of an undertaking, it also regulates bookkeeping, namely the recording of relevant business transactions and factual issues. The new rules can be found spread across 29 articles in Art. 957 et seq. of the Code of Obligations. On the one hand, they replace the small number of articles that previously provided a set of rules on commercial bookkeeping, while on the other hand replacing the accounting provisions relative to share corporations in Art. 662 – 670 Code of Obligations. The characteristic feature of the nAL is that it takes a neutral approach with regard to the chosen legal form: The basic canon of the general accounting rules now applies to all undertakings subject to the nAL, regardless of their legal form. Depending on the size and significance of a given undertaking, it may need to comply with additional requirements.

The present special edition of Legal News should provide readers with an initial overview of the most important changes.

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1. Scope of Application

A The new Accounting Law (nAL) applies to all individual undertakings and partnerships with annual turnover above CHF 500,000, as well as, in principle, to all legal entities. Associations and foundations are exempted provided they are under no obligation to register themselves in the commercial register (inter alia associations that do not pursue commercial objectives, or family foundations and ecclesiastical foundations). Foundations that have been exempted from the obligation to designate statutory auditors are also exempted.

For those undertakings that are exempted, a “back of the envelope” financial statement will be sufficient, whereby the principles of proper bookkeeping are to be observed analogously.

Unaffected by the aforementioned turnover threshold of CHF 500,000 is the threshold of CHF 100,000 at which the obligation for an individual undertaking to conduct a regular audit kicks in.

Those companies that fall within the scope of application of the nAL must comply with the basic provisions thereof regardless of their legal form. Depending on the size and significance of a given undertaking, it may need to comply with additional requirements.

Changes to the general provisions that are particularly noteworthy include the following:

- An explicit obligation to switch from going concern value to liquidation value where any cessation of activities is planned or likely to be unavoidable in the 12 months following the balance sheet date;
- The possibility to conduct financial reporting in the national currency or in a currency of significance to the company’s business activities, subject to the obligation to conduct a regular audit to have been significantly raised, within the context of a separate act having taken effect on 1 January 2012, to CHF 20 million total balance sheet assets, CHF 40 million in earnings and 250 fulltime employees on an average annualised basis.

2. General Provisions

Contrary to the inclination followed by modern accounting standards, whereby financial reporting is supposed to provide an insight into the net asset, financial position and income situation of an undertaking that corresponds to the effective circumstances (a so-called true and fair view), the nAL merely requires that it be possible to make a “reliable judgment” of the undertaking’s economic situation. As was the case heretofore, the well-known principle of prudence still applies as an important guideline, and the admissibility of hidden reserves will not change.
The possibility to keep the accounts and conduct financial reporting in one of the national languages or in English;

An explicit obligation to delimit cost and revenue in both temporal and substantive terms (principle of “matching of cost and revenue”), whereby undertakings with turnover of CHF 100,000 or less are exempted from the obligation of temporal matching;

The obligation hitherto stipulated, to maintain business-related correspondence for at least 10 years, has been dropped. However the 10-year retention obligation still applies for the commercial accounts and accounting receipts, as well as for the annual report and the report of the auditors.

3. Balance Sheet
In general, more detailed provisions on classification and disclosure apply than was the case before. This manifests itself for example in a new way to present equity. Thus – as is already applicable for tax purposes – the so-called statutory capital reserves (e.g. share premiums, grants) are to be disclosed separately from the so-called statutory reserves on profits. An undertaking’s own capital shares are (“treasury shares”) to be presented as a negative item against equity. Accordingly, own shares no longer appear (as was the case hitherto) on the asset-side of the balance sheet.

Also new is that assets and liabilities are defined in a manner which approaches the IFRS terminology. Assets must be recorded on the asset-side of the balance sheet “if they can be disposed of due to past events, a cash inflow is probable and their value can be reliably estimated”. Whatever fails short of these requirements may not be recorded on the balance sheet by virtue of an effective ban against doing so. Vice-versa, liabilities must be recorded as such “if they were caused by past events, a cash outflow is probable, and their amount can be reliably estimated”. Whoever is not yet familiar with this terminology will need to adapt to these changes.

Worth emphasizing is the explicit obligation relevant to service-provider undertakings, to record non-invoiced services as assets.

In future however, it will not any longer be possible to record incorporation costs, capital increase costs, or organizational costs as assets.

4. Income Statement
Similar to the balance sheet, detailed categorization and disclosure provisions also apply to the income statement. Pursuant to an explicit rule, the income statement can either be presented as a production income statement or a sales income statement.

In addition to the hitherto well-known distinction between operating and non-operating expenses, and extraordinary expenditures and income, a new distinction has been introduced between “non-recurring” expenses and income on the one hand, and expenditures and income “relating to other periods” on the other. The key distinctions between the various kinds of expenses and income are likely to cause a number of headaches in practice.

Also new is the requirement to disclose financial expenses and financial income separately. It is no longer permissible to offset these two items against each other.

5. Notes to the Accounts
As a rule, all undertakings subject to nAL will be required to prepare notes to the accounts, and not simply those being subject to the accounting provisions of the law of share corporations. An exemption exists for individual undertakings and partnerships that are not subject to the obligation to undergo a regular audit.

Noticeable compared to the rules hitherto applicable under the law of share corporations is that for instance new details are to be provided regarding the principles applicable to the annual financial statement (e.g. valuation principles), to the extent these are not set out in the law, as well as the fact that full-time employees and significant events which have occurred after the balance sheet date must be reported.

Also to be explicitly reported are contingent liabilities, namely “legal or factual obligations in connection with which a cash outflow either appears improbable or the amount of which cannot be reliably estimated”. These contingent liabilities will have to be distinguished on the one hand from the liabilities which must be reported on the balance sheet (see section 3 above), as well as, on the other hand, from the provisions to be constituted at the expense of the income statement (“past events giving rise to an expectation of cash outflows in future financial periods”).

No longer part of the notes to the accounts form in particular details regarding sums covered under the fire insurance or risk assessment by the board of directors.

When valuing assets, a distinction is made between initial and subsequent valuations. The initial valuation must be made on the basis of acquisition or production costs. For subsequent valuations, the assets may in any event not be valued higher than the acquisition or production costs.

Derogation from the principle of valuing on the basis of acquisition or production costs is permitted in the context of subsequent valuations for assets that have a stock market price or “with another observable market price in an active market”. The newly created possibility of valuing assets to market that have an observable market price was preceded by a long parliamentary debate. It remains to be seen how this valuation principle will be implemented in practice.

The original bill presented by the Federal Council for the nAL, envisaged a relatively strict individual valuation of assets and liabilities (“Assets and liabilities must be individually valued”). The wording that became law now merely speaks of the need for assets and liabilities “to be individually valued in principle”, and only “to the extent they are significant and where, due to their similarity, they are not normally reported collectively for valuation purposes”. As the materials accompanying the parliamentary debates show, it was the legislator’s intention, with the toned-down wording, to give undertakings a relatively large margin of discretion. This will need to be taken into consideration for instance, when deciding the question as to whether holding companies must individually value their participations.

New for the Swiss AL is the principle of “impairment” – common to the IFRS rules – pursuant to which there is now an explicit statutory requirement that in the event concrete indications of an overvaluation of assets exist or that provisions are insufficient, a review and corresponding adjustments are to be made.

In connection with the valuation provisions, the nAL provides, as did the law hitherto, far-reaching and largely unchanged possibilities to create hidden
Undertakings which, by law are subject to the obligation to undergo a regular audit, must prepare (individual) annual financial statements in accordance with recognized accounting standards. A qualified minority (e.g. shareholders representing 20% of the share capital) may demand that financial statements be prepared in accordance with these standards, even at a company not subject to such legal obligations.

The obligation to prepare financial statements in accordance with recognized standards lapses where consolidated (group) financial statements are prepared according to such recognized standards. For large groups this will normally be the case.

Primarily because of publicly listed companies, for which there was a desire to let the stock exchange bodies decide, the question as to who should designate those standards deemed to be recognized (e.g. Swiss GAAP FER, US GAAP or IFRS), was contested in parliament until 1998. Initially, the Code of Obligations governs the preparation of consolidated financial statements. Within this Code, the rule that if a company is entitled to perform a tax-neutral financial statement pursuant to the effective exercise of control, must prepare (individual) annual financial statements. Where no such financial statement was prepared, the Code of Obligations serves as a guideline on the part of the auditors. This means that if the (individual or group) financial statements were prepared according to the IFRS, then the Swiss GAAP FER may require that the Swiss GAAP FER be applied.

10. Tax Implications

Nothing will change with regard to the principle that the so-called commercial law financial statements prepared on the basis of financial accounting and reporting provisions, constitutes the basis for an undertaking’s tax appraisal (principle of authoritativeness of commercial accounts). In addition, in light of the fact that as hitherto, it will still be largely possible to constitute hidden (arbitrary) reserves (see section 6 above), the optimization of financial statements for tax purposes will continue to be an option. Despite the fact that tax neutrality was a stated goal of the revision of accounting
law, according to estimates by well-known specialists such as Prof. Peter Böckli, one can expect the basis upon which profit-taxes are to be calculated for undertakings, and thereby the tax burden will tend to increase somewhat due to the nAL. The reasons given for this include, inter alia, increased transparency in presenting the balance sheet and income statement as well as additional disclosure requirements (e.g. valuation principles) in the context of the notes to the accounts and, for larger undertakings, the status report. In addition, the discernible tendency, for example when defining assets, liabilities and reserves, to lean towards the IFRS terminology, can be taken as an indication that the time at which profits are realized will be prepone. The extent to which these fears materialize will reveal itself in practice.


The date of entry into force of the new law has not as yet been determined. The earliest possible date is 1 January 2013. It is, however, also conceivable that the Federal Council will only bring the nAL into force when it does the same for the new law of share corporations. Because revision work to the law of share corporations has been delayed - primarily due to the “rip-off” initiative - it could easily transpire, given this scenario, that the nAL may only enter into force in 2014 or even 2015.

Worth emphasizing are the transition provisions adopted by parliament. Pursuant thereto, undertakings will have two years after the entry into force, to adapt their bookkeeping and financial reporting to the new law. Should, by way of example, the nAL enter into force as early as 1 January 2013, undertakings will first have to apply the new provisions as of 2015 only. The provisions on group financial statements even provide for a transition period of three years.

12. Conclusion

The nAL achieves modernization and harmonization across all legal forms for the law governing bookkeeping and accounting. With provisions which differentiate based on the size of an undertaking, it is an undertaking’s economic significance that is taken into account. In particular, SMEs will benefit from a certain easing, due in part to the fact that the threshold values for the obligation to submit to a regular audit have been raised significantly in the context of a separate legal bill that has already entered into force.

However, there are no earth-shattering changes that will come into force with the new law. In light of the increased rule density, a greater number of more detailed provisions will have to be taken into account. By their very nature, many of these provisions will be subject to interpretation and elucidation in more concrete terms. For undertakings which are already familiar with one of the well-known financial reporting standards (e.g. Swiss GAAP FER, US GAAP or IFRS), the step to nAL will be less significant than for those undertakings who have maintained their accounts exclusively in accordance with the Code of Obligations.

The fact that the provisions of the nAL will only be applicable following a transition period, affords undertakings sufficient time to prepare for the changes and to take the appropriate measures. Either way, undertakings would be well advised to become acquainted with the new law early enough and - where necessary - to conduct some forward planning.