Dear Reader,

For the last time this year we would like to inform you about current developments in the tax landscape. One issue we will definitely be looking at again next year is the OECD Action Plan on Base Erosion and Profit Shifting (BEPS). This eNewsletter looks at the the report on the transfer pricing aspects of intangibles (BEPS Action 8).

We also analyse two recent rulings from the Swiss Federal Supreme Court on lump-sum tax imputation. In these ground breaking rulings the Federal Supreme Court had to consider the impact of the partial taxation/partial rate procedure on lump-sum imputation for natural persons and the calculation of the maximum deduction for legal entities.

On 30 June 2014 the Federal Supreme Court also handed down a ruling on the permissibility for tax purposes of write-downs on equity interests, upholding the standard practice for valuing these.

The Federal Supreme Court dealt with write-downs once more in a ruling of 18 July 2014. The Schwyz Administrative Court did not recognize the write-down on a loan, albeit for reasons relating to formalities. The Federal Supreme Court correctly reversed the decision, holding that the write-down was lawful. This ruling too is analysed and commented for you.

In November 2014 the Federal Council approved two important amendments that will come into effect on 1 January 2015, on VAT liability for foreign companies and group taxation. Our article explains what will change for you.

Swiss voters rejected a proposal to abolish lump-sum taxation in a referendum held on 30 November 2014. However, a legal reform already passed will tighten up the rules. We summarize for you the results of the referendum and the legal changes.

Finally, we provide an overview of the latest developments in practice and case law on withholding tax and, by way of conclusion, take a look at the proposals emanating from the Federal Council on regulating equal pay for man and women.

We would like to wish you and your families a peaceful Christmas and a good start to 2015.
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Interaction between OECD BEPS Initiative and IP rights

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In July 2013 the OECD launched an Action Plan on Base Erosion and Profit Shifting (BEPS), identifying 15 specific actions items needed. The purpose of the Action Plan is (inter alia) to develop a new set of standards to improve transparency on group internal transaction. The published Action Plan to item 8 brings into focus the tax treatment of intangibles.

On 16 September 2014, the OECD released, as part of a series of deliverables pursuant to the Action Plan draft recommendations under Action 8 (Transfer Pricing Aspects of Intangibles). The Guidance contains revised standards for transfer pricing of intangibles and additional standards with respect to comparability and transfer pricing methods.

BEPS Action 8 - transfer pricing aspects of intangibles

The setting of a pricing for intangibles is one of the most challenging topics in the transfer pricing area. The OECD’s work on intangibles is a specific Action in the OECD BEPS Action Plan and is closely related to other Actions on transfer pricing which the OECD is currently working on – final versions on these Actions are expected in September 2015. Accordingly, the report contains interim guidance on ownership of intangibles and transactions involving the development, enhancement, maintenance, protection and exploitation of intangibles, the application of profit split methods, and arm’s length pricing when valuation is highly uncertain at the time of the transaction.

New guidance is given:
(i) on the definition of intangibles for transfer pricing purposes;
(ii) on identifying and characterizing specific controlled transactions involving the use or transfer of intangibles, and
(iii) on determining arm’s length conditions in cases of involving intangibles.

Although the OECD guidelines are not directly enforceable, countries not aligning their local laws within reasonable time will be under strong pressure. In future the entitlement to returns from intangibles will be closer inspected and its licensing will become more granular.

The enlarged definition of intangibles gives room for a wide range of valuable intangibles. As IP protection was traditionally mainly focused to registered IP such as patents, designs and trademarks, further categories of non-registered IP will come more in scope for legal purposes such as e.g. copyrights, goodwill, business seccreties and “marketing intangibles” such as customer lists, customer relationships, customer data and the like. Finally the Guidance maintains the definition of “unique and valuable” intangibles as “those intangibles

(i) that are not comparable to intangibles used by or available to parties to potentially comparable transactions, and

(ii) whose use in business operations (e.g. manufacturing, provision of services, marketing, sales or administration) is expected to yield greater future economic benefits than would be expected in the absence of the intangible.”

However, for non-registered IP it will be necessary to have robust legal mechanisms in place to protect such rights best and to make them exploitable. Transfers and exploitation of IP will need proven substance. Thus, companies will be well advised to revisit their IP concept and assess the upcoming legal changes. The Guidance states that the legal ownership of an intangible by itself does not confer any right to retain the return from exploiting an intangible, even where this return may initially accrue to the legal owner as a result of its legal or contractual rights. Instead, the return ultimately retained by the legal owner depends on the contributions it makes to the anticipated value in the intangibles, relative to the contributions made by other group members, through functions performed, assets used, and risks assumed that contribute to the value of the intangible. If the legal owner performs no relevant functions, uses no relevant assets, and assumes no relevant risks, but acts solely as a title holding entity, the legal owner will not ultimately be entitled to any portion of the return derived by the multinational enterprise group from the exploitation of the intangible other than arm’s length compensa- tion, if any, for holding title. A transfer pricing policy based on the generic features of a group of entities without due regard to the specific circumstances of the transactions may be challenged. Also adequate documentation of the contractual as well as economic relationships is becoming more and more essential.
Lump-sum tax credit: summary of two recent clarifications by the Swiss Federal Supreme Court

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1. Background
Capital income – dividends, interest and license fees – arising from foreign sources is taxable in Switzerland. As some of this income is also subject to withholding tax in the source country, there is a risk that it would suffer a so-called “double taxation”. The avoidance of double taxation in international tax law is based on the particular method laid down in the applicable international treaty, i.e. the double taxation agreements (“DTAs”) which Switzerland has signed with numerous countries.

2. Lump-sum tax credit
If Switzerland has the sole right of taxation of such income under the DTA with the source country, the foreign withholding tax can be fully reclaimed in the source country. However, if both Switzerland and the source country are permitted to tax the income, the foreign withholding tax can be partly reclaimed in the source country.

As a rule, DTAs provide two different methods for mitigating double taxation: firstly, the exemption method, where the relevant income is exempt from tax in the source country; and secondly, the tax credit method, under which the recipient country credits the non-reclaimable portion (residual withholding tax) of the source country’s tax against its own. This latter method is known as lump-sum tax credit and taxpayers may apply for it in Switzerland by completing a form from the tax administration. The lump-sum tax credit provides relief in a single amount at all three levels of tax jurisdiction in Switzerland: federal, cantonal and communal level.

All natural persons and legal entities, who are resident or domiciled in Switzerland and subject to tax or withholding tax abroad and is at the same time subject to the income or corporate income taxes on, cantonal and communal level. If this is not the case, no double taxation has occurred. The principle is that a lump-sum tax credit cannot be claimed in Switzerland unless Swiss tax is payable to set it against.

3. Latest developments in case law
The conventional “limited credit” system, faces the “full credit” system for residual withholding tax. In Switzerland the upper limit for the amount of foreign residual withholding tax that may be credited (the “maximum credit allowed”) is the amount of Swiss tax due on this income.

In this context there has recently been a judgment of the Swiss Federal Supreme Court on the impact of the partial taxation procedure for dividends on lump-sum tax credit for natural persons, specifically in relation to the amount of foreign tax that may be credited in Switzerland. In the past it was the Swiss tax authorities’ practice to reduce the credit for foreign withholding tax, where a dividend in Switzerland was subject to privileged taxation. The reduction was equal to the untaxed proportion of the dividend. For example, assuming a non-reclaimable foreign withholding tax of 15% and partial taxation of 60% of dividends for direct federal tax purposes, the maximum lump-sum tax credit was reduced to 9%.

In a judgment of 9 October 2014 (BGer 2C_64/2013) the court decided that all income arising in contracting states should be lumped together, so that the maximum foreign tax credit should not be determined separately for each income type (i.e. foreign income on which withholding tax has been paid versus other income). It follows that, according to the Swiss Federal Supreme Court, there is no need to differentiate the income by nature or origin for tax credit purposes.
Clarification on investment impairments by the Federal Supreme Court

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On 30 June 2014 (cf. STE 2014, B 72.14.2 No. 44), the Swiss Federal Supreme Court gave a ruling regarding the legitimacy of investment write-downs for tax purposes. The taxpayer failed to prove that the value of its investment had declined, which meant that the write-down was added up in respect of the corporate income tax. The decision of the Federal Supreme Court was consistent with the established practice for assessing investments.

Facts and background

A. AG, registered in the Canton of Schwyz, holds an equity interest in the German B holding company and recorded an impairment of this investment in its balance sheet as at 31 December 2009. The cantonal tax authorities did not recognize this adjustment and charged the relevant amount against both corporate income tax and capital tax. The Schwyz Administrative Court rejected an appeal by the taxpayer, who then appealed to the Swiss Federal Supreme Court, requesting that the impairment be fully recognized and its taxable profits be assessed as CHF 0.

Investments qualify as non-current assets and thus, in principle, are subject to any downward adjustments and resulting impairment charges if the book value differs from the market value. However, unlike other items included in non-current assets, investments should not be written down systematically over a certain period of time, given that the revenues needed to preserve the value of the investment are essentially generated by the investee company. Due to the fact that a write-down reduces the corporate income tax payable, it is the taxpayer’s responsibility to show – in line with the burden of proof rule – that the write-down is lawful and justified on business grounds.

Circular no. 28 issued by the Swiss Tax Conference provides some helpful, but not conclusive, guidance on the valuation of investments. This states that the mean value (or indirect) method should be used to establish the value of trading, industrial and service companies by assigning a double weighting to the capitalized income value and a single weighting to the net asset value.

In this case the lower authorities did not value the investments held by B holding company separately. They applied the mean value method to the aggregate, with reference to the audited consolidated financial statements. This approach was logical and consistent. It was never challenged by the appellant.

The Federal Supreme Court upheld the decisions of the lower authorities and the established practice relating to assessments

The appellant claimed that the lower authorities had acted in an arbitrary manner in establishing and assessing the facts of the case. The taxpayer referred to the consolidated financial statements for 2008 to 2011, which all recorded a loss. On this basis, A. argued that towards the end of 2009 the investment merely had a net asset value, which necessitated the recognition of an impairment.

However, the consolidated financial statements indicated that the consolidated net loss for 2008 was attributable to the payment of a super-dividend which was used to repay a shareholder loan. The consolidated net losses sustained between 2008 and 2011 could have been avoided by adopting an appropriate dividend policy. The appellant gave no explanation as to why the dividend payment and the repayment of the loan was necessary for business purposes. In these circumstances, the loss referred to by the taxpayer could not be used as a basis for establishing the actual financial condition and value of B holding company.

In the end, the Federal Supreme Court concluded that the lower authorities had used a recognized and reliable method of valuation. The appellant had failed to show that the impairment was justified on business grounds, which meant that the charge against corporate income tax was reasonable.
Federal Supreme Court ruling on loan write-downs

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On 18 July 2014, the Swiss Federal Supreme Court gave a ruling on loan write-downs (cf. STE 2014, B 23.43.2 No. 18). The Schwyz Administrative Court did not recognize the write-down, albeit for formal reasons. The Federal Supreme Court correctly reversed the decision, stating that the write-down was lawful.

Facts and background
Dr. X is a TV executive and self-employed media consultant. In 2007, he subscribed to shares to the value of EUR 10,000 in C. GmbH, a recently established limited company. He also granted the company a loan for the equivalent of around CHF 259,000. In the accounts for his sole proprietorship as at 31 December 2007, he wrote down both the loan and the investment to CHF 1 each.

X sought to deduct the write-down made in respect of the loan from his income from self-employment. The write-down was rejected by the Schwyz tax authorities and by the Administrative Court in its subsequent ruling.

A self-employed individual is not permitted to deduct costs from his income, including write-downs or depreciation, which incur for business or professional purposes. According to tax law, any definite diminution in value may be recognized as a write-down, whereas temporary or potential adjustments are recorded as an impairment loss. This applies equally to current and non-current assets. From a tax law perspective, an impairment loss in respect of non-depreciable assets, such as investments or loans, must actually have occurred for a write-down to be recorded, even if higher depreciation is potentially available under commercial law. From a business administration perspective, the approach would be to find the “correct” value of non-current assets. In this sense, the commercial law determines the maximum values for assets. On the other hand, the tax law records the actual net income realized for the period that would be chargeable to corporate income tax based on the ability to pay principle.

The Federal Supreme Court contradicts the lower instances and reverses their decisions
In the case at hand, the Administrative Court rejected the claimed deduction from taxable income. The Court’s decision was essentially based on two considerations: firstly, the lower court had determined that the loan had been granted under particular circumstances and conditions that a third party loan would not have been granted. This finding is correct, as X. granted the loan without adequate security and appropriate interest rate on the loan. Moreover, at the time in question, the company had already run up massive debts.

Secondly, the lower court had found that the subsequent write-down of the loan constituted a de facto waiver of the debt owed by the company and that in these circumstances the write-down was not justified.

The Administrative Court ultimately rejected the write-down against income. In these circumstances, X was precluded from simply writing off the loan directly, but was required to recognize it as an investment and then record the write-down accordingly.

The appellant correctly submits that in making such a distinction, the Court’s approach was overly formalistic. In the particular circumstances, whether the write-down was in respect of a loan or an investment essentially amounted to the same outcome.

The Federal Supreme Court therefore correctly held that there had been no waiver of the debt owed, but that the debt itself could be written off under commercial law on the basis that a loss had occurred that was attributable to the performance of the business. Such a procedure would also be recognized under tax law.

Accordingly, the Federal Supreme Court adhered to the principle of taxation according to ability to pay, reversing the decision of the Administrative Court.
VAT liability and group taxation - changes to the VAT Ordinance as of 1 January 2015

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The Federal Council decided on 12 November 2014 to make two important changes to the VAT Ordinance (VATO) concerning the value added tax liability for foreign companies and group taxation respectively. The changes are due to come into force on 1 January 2015.

1. Expanded VAT liability of foreign companies

From 1 January 2015, foreign companies become VAT liable in Switzerland if they carry out domestic supplies subject to acquisition tax (reverse charge) and the revenue generated from the supplies exceeds CHF 100,000 p.a. This provision shall apply until the date of entry into force of the revised VAT Law (VATL), which will impose an even more extensive VAT registration liability on foreign companies in Switzerland.

The current provision in art. 10 para. 2 lit. b VATL stipulates that companies domiciled abroad, that provide supplies exclusively subject to acquisition tax, are excluded from VAT liability in Switzerland. The new provision art. 9a in the VAT Ordinance will stipulate that this will apply only to supplies of services, but not to the supply of goods anymore.

This provision will affect primarily foreign companies that conduct work in the construction industry and services ancillary to construction in Switzerland. However, the new provision will also affect all foreign suppliers of electricity or natural gas in pipelines, as these supplies also are subject to acquisition tax. Moreover, this will affect foreign companies that rent out or lease goods, or provide maintenance work in Switzerland.

Due to the fact that a potential tax liability in Switzerland has to be self-assessed, the foreign company has to clarify its VAT liability in Switzerland and register accordingly if required to do so. Hence, foreign companies should carefully consider whether the supplies they render trigger a VAT liability in Switzerland and if so, register for VAT. As regards Swiss companies purchasing supplies from abroad, it is advisable to practice caution when the foreign supplier does not invoice Swiss VAT. In particular there is the risk that the Swiss Federal Tax Administration levies acquisition tax on the purchase of supplies, such as the ones mentioned above, even if the foreign entity had an obligation to register for VAT in Switzerland.

2. Pension funds - membership in VAT groups newly allowed

Art. 16 para. 3 VATO concerning members of a VAT group will be repealed with effect from 1 January 2015. This article explicitly excluded Pension funds from becoming a member of a VAT group. Already in its judgment 2C_153/2013 dated 16 August 2013, the Swiss Federal Court ruled that art. 16 para. 3 VATO (at least partially) violates the VAT Law. Following this judgment, the Federal Council has removed the controversial stipulation out of the VAT Ordinance.

As a consequence, the legal situation will be reverted to the status as it was before the enactment of the VAT Ordinance. Art. 13 of the VAT Law states that legal entities with their place of business or a permanent establishment in Switzerland, which are closely associated with one another under the common management of a single legal entity may on request be registered as a single taxable person (a VAT group). Legal entities that do not conduct business activities, as well as individuals, can also become members of a VAT group. Furthermore, in the commentary to the VAT Law, it was expressly stipulated that it is conceivable that pension funds (by means of dependency agreement) could become members of a VAT group.

It is clear from the decision of the Federal Court that a pension fund (typically a foundation) can become a member of a VAT group with other companies, as long as the pension fund is the head of the group. It is at this point in time however unclear whether the repeal of the stipulation in the VAT Ordinance means that a pension fund can also be simply a member of a VAT group, under the management of another group member. This view is supported by the complete elimination of Art. 16 para. 3 from VATO and the fact that the legislator considered the inclusion of pension funds in a VAT group as feasible.

Introducing such flexibility of group taxation would be welcomed, as it would allow pension funds to save costs. Currently, VAT costs can only be avoided by having a founding company supplying administrative services free of charge to its own pension fund. In terms of cost transparency it would be welcomed if such services could be invoiced within a VAT group without VAT.

In order to include a pension fund in a VAT group with its founding company and its subsidiaries from 1 January 2015, the application for group taxation must be submitted still this year. A further possibility would be the formation of a VAT group with several pension funds, with the aim to reduce the non-recoverable input VAT on the mutually rendered administrative services.

It is likely that the Swiss Federal Tax Administration will consider each application of such nature very critically. However, a rejection of the application purely on the basis of art. 16 para. 3 VATO will no longer be possible.
Withholding tax – developments in practice and latest tax court decisions

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Like many other areas of tax law, withholding tax is also in a state of constant flux. In the following, we summarize the latest developments in practice and tax court decisions.

I. Developments in practice

“No-return days” relating to German cross-border commuters

The double taxation agreement between Switzerland and Germany defines a cross-border commuter as someone who returns to their country of residence each day from the country in which they work. If a taxpayer does not return to his/her country of residence after work on more than 60 working days in any calendar year for reasons occasioned by employment, this cross-border commuter status will be lost. These work-related “no-return days” include days worked both in the country of residence and in other countries from which a return home on the same day would either be impossible or an unreasonable expectation. There are, though, current cases in which some tax offices in Germany have refused to recognize days worked in the taxpayer’s country of residence as “no-return days”. The Swiss tax authorities recommend, however, that the previous practice of regarding such days as “no-return” days be preserved since any alternative interpretation of the rules could lead to double taxation in the international context.

Continued payment of salary to terminated employees who live abroad

According to the (Zurich) tax authorities, if Switzerland is defined as the country of work in an employment contract and an employee who is resident in a foreign country continues to receive a salary after being terminated, this salary will be subject to withholding tax. The decision by the Federal Supreme Court which makes work involving physical presence in Switzerland a requirement for tax liability in that country is, in this case, irrelevant (cf. the “Qatar case”; Decision 2C_662/2010 of 25 March 2011). Such income may possibly be allocated to a foreign country in which the employee has, in the past, spent a significant part of his/her working life.

Employees paying withholding tax who relocate within Switzerland

The Swiss Tax Conference (STC) has decided that Circular No. 14 should no longer be applied, recommending instead that tax issues be regulated exclusively by the canton to which the individual is relocating, regardless of nationality. Thus, the canton to which the employee is relocating will be responsible for assessing the entire tax period, while the canton from which the individual is relocating will have to transfer any withheld taxes to the former. However, at the request of the taxpayer – or should either of the cantons fail to observe the procedure – it will still be possible for an application to split the taxes between the two cantons to be filed.

II. Latest tax court decisions

1. Debtor’s obligation to clarify

Background:
A foreign employee told her employer that she was married to a Swiss national. Just prior to taking up the employment, however, she was divorced. Under the assumption that the employee was still subject to standard taxation, the employer failed to collect withholding tax for the entire duration of her employment. Following an audit, the employer was asked to make good the tax shortfall, and lodged an appeal against this with the Tax Appeals Court of the Canton of Zurich.

Reasoning of the Court / conclusion:
As debtors are liable to pay withholding tax regardless of fault, the court rejected the employer’s appeal; the circumstances which led to the tax failing to be collected were irrelevant. It is the duty of the employer to establish whether or not an employee is liable to withholding tax and at what rate before a taxable payment is disbursed. By the same token, employees are obliged to provide their employers with all necessary information and furnish evidence of its accuracy. In this case, the employer had omitted to obtain evidence of the employee’s marital status. The appeal was therefore rejected (Decision 1 QS.2014.7 of 23 April 2014).

2. Interpretation of the term “employment” in relation to the obligation to pay withholding tax

Background:
An employment and recruitment agency based in the Canton of Zurich deployed an Austrian national on a project on a subcontracting basis. The tax office then requested that the “Swiss employer” collect withholding tax for the worker. The company lodged an appeal on the grounds that the employee was a self-employed person deployed as a subcontractor.

Reasoning of the Court / conclusion:
The Zurich Tax Appeals Court rejected the appeal on the grounds that this was, in effect, an employment relationship. The decision was founded on economic realities such as the degree of subordination of the individual, integration in the company, and bearing of the risk inherent in the work carried out (Decision 1 OS.2012.3 of 28 February 2013 as confirmed by the Zurich Administrative Court in Ruling SB.2013.000 of 14 May 2014 and currently pending before the Federal Supreme Court).

3. Offsetting of flat-rate deductions contained in the withholding tax rate

Background:
In the context of a rate adjustment, a taxpayer who qualified as an international weekly commuter was requested to pay additional withholding tax. During his period of work for a Swiss employer, the taxpayer was subject to the social security system of his country of residence. The tax authorities subsequently added Swiss social insurance contributions to the taxpayer’s gross salary resulting in an increase of the wage withholding tax calculation basis.

Reasoning of the Court / conclusion:
The Tax Appeals Court upheld the appeal by the taxpayer. It follows that the offsetting
of flat-rate social insurance contributions is not permissible. Lump-sum deductions effected via the withholding tax rate must be granted even in the absence of corresponding expenses. The Court reasoned that the tax authorities accepted that the practice of applying flat-rate deductions would occasionally give rise to an advantage for the taxpayer (Decision 1 QS. 2012.4 of 13 December 2012).

On 30 November 2014, Swiss voters rejected with a clear 59.2% majority a proposal to abolish lump-sum taxation (expense-based form of taxation). This means that, going forward, Switzerland will be retaining an expense-based form of taxation.

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Background
Lump-sum taxation is a simplified method for determining the basis for assessing the tax payable by foreign nationals who are resident in Switzerland but do not engage in any gainful employment in the country. Over the last few years, this type of taxation has come under mounting pressure in Switzerland. Its opponents argue that the different assessment base compared with the standard taxation system is unjust and violates the constitutional principle that each individual should be taxed according to their economic means. In its autumn 2012 session, parliament approved measures to tighten lump-sum taxation, which will now be implemented as planned on the basis of the results of the vote.

More stringent requirements
As before, lump-sum taxation will be assessed on the basis of the taxpayer’s living expenses. However, the minimum expense is now assumed to equal seven times the annual residential expenses (currently five times) or three times the cost of meals and accommodation in a hotel. A new minimum threshold of CHF 400,000 has been set as the assessment base at the federal level. The cantons must also determine a freely selectable minimum assessment base (the Canton of Berne has already passed an amendment to the existing law under its «Fair taxes – for families» initiative and has followed the federal government by similarly setting a minimum of CHF 400,000).

The more stringent requirements were incorporated in the Tax Harmonization Act (StHG) effective 1 January 2014, while the cantons have a further two years to modify their laws accordingly. The new provisions will not take effect until 1 January 2016 in the case of direct federal tax. As a result of these staggered introduction dates, the new more stringent requirements with respect to the direct federal tax and the cantonal taxes will not take effect simultaneously. The existing requirements will continue to apply until the end of 2015. There will be a five-year transition period at both the cantonal and federal level for persons who were previously subject to lump-sum taxation prior to 1 January 2016. Accordingly, such persons will not be subject to the more stringent requirements until 1 January 2021.

Outlook
With the voters rejecting the proposal to abolish lump-sum taxation, Switzerland will remain a serious contender in international tax competition with other countries such as Belgium, Monaco, Andorra, Gibraltar, the UK and Malta. Together with the other advantages the country offers (such as quality of life, infrastructure, political security etc.), Switzerland will remain attractive to wealthy foreigners.
Federal Council announces proposal for new rules on pay equality

On 22 October 2014, the Swiss Federal Council announced its intention to take new measures against pay inequality. The draft legislation that is proposed to be introduced in 2015 would require Swiss employers to conduct regular pay analysis to ensure there is no pay discrimination between men and women.

The regulation is to apply to all Swiss employers with 50 employees or more, regardless of whether the employer is an entity headquartered within or outside of Switzerland. The analysis on wage discrimination would need to be conducted by a third party provider and the results disclosed within an annual report. Companies that have not already implemented the processes and procedures to address pay inequality should consider taking action.

Background

The announcement follows the Federal Council investigations that revealed substantial pay inequality continues to exist despite the fact that non-discrimination requirements have been in place in Switzerland for some time and legal action is possible in the event of discrimination.

In recent years, the Swiss Confederation and various social partners sought to establish measures to enforce pay equality. However, the Federal Council indicated in its announcement that relying on the goodwill of employers is insufficient and stated that new measures are necessary to combat the issue.

Key changes

The main proposed changes are:

- Swiss employers with 50 or more employees must conduct regular pay analysis to ensure that there is no discrimination between men and women.
- The employer will need to appoint a third party reviewer (auditor, social partner or a state approved organization) to ensure the analysis is carried out properly.
- The results must be published within an annual report.

The details of the review and reporting requirements are yet to be defined, as is the precise scope of employers covered. It is also unclear at this stage what degree of pay gap would be considered as discriminatory. The proposal does not anticipate a requirement to disclose the pay gap between male and female employees, however the requirement for a third party reviewer to inform the authorities of non-compliance may be introduced. Employers that do not take action to eliminate wage discrimination could face legal proceedings.

Next steps

Companies should ensure that their employee data is available in a format suitable to conduct an analysis of the current state of pay and determine the extent of any pay inequality. To perform this analysis companies will need to hold accurate information on their employee population, including the details of job roles, diversity and compensation packages. The review process could involve defining equal work criteria, conducting an initial assessment of both policy and practice and establishing the cause for any inequality and implementing an action plan. By taking action now, companies can maximize the opportunity to establish a robust approach to diversity in the workplace and will be prepared for any new reporting and enforcement mechanisms.

How EY can help you?

EY frequently conducts pay equality reviews, leveraging from experience on both Swiss and international projects.

We can help you to measure pay inequality so your organization is prepared to address any potential non-compliance.

In addition, we can help you establish the cause behind identified pay discrepancy and build an action plan to decrease pay inequality.

In our view taking early action will enable you to:

- better assess your company’s base-line situation
- control costs that may result from potential salary corrections
- anticipate risks to company reputation
- positively impact your company image and your brand as an employer
- increase employee engagement

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